

A Claimscene

A Publication of the Atlanta Claims Association

September 2022



In Memoriam

Atlanta Claims Association offers our sincere condolences to the family and friends of our long-time member **Juanita Keltner** who passed away peacefully August 24th, 2022. She was 90 years old.

Juanita started her 50 plus year career in the Insurance Industry at J. Gordan Gaines, Inc. and later became the Vice President of Claims at AON.

In her time as a member of the ACA, Juanita served as president, and also served as the chair of the ACA Convention Committee. Juanita was also a recipient of the ACA Claims Person of the Year Award.

Upcoming Event

The ACA Fall Bowling Outing is almost sold out. Only a few spaces remain. If you are a current member and would like to attend, please register here: [Register](#)

For submissions or questions regarding the Claimscape please contact:
Jamaal Wilson
Jamaal_Wilson@pmagroup.com



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2022-2023

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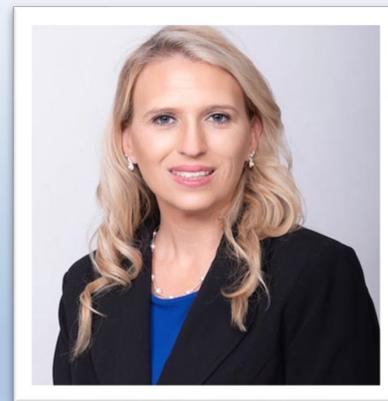
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Letter from The President Jennifer Sweat



Hello ACA family,

I hope everyone is enjoying the last days of summer, but who is ready for fall? Pumpkin patches, bon fires, changing of the colors of leaves, crisp cool nights; it is right around the corner. This summer has flown by. We had a great turn out for the golfing outing in June, and we are already looking forward and planning for next year's event. Stay tuned for more updates!

We have the fall bowling outing at Bowlero in Chamblee coming up on 09/29/2022. If you have not already, please RSVP if you want to join. It is free for members, but you must be a member. We would love to see you there!

Speaking of being a member, we need your help in spreading the word of the ACA and increasing our memberships. Please if you have friends or family in the industry, co-workers etc. please tell them about the ACA and ask them to join. We really want our membership to grow! In all lines of insurance!

The annual GA work comp conference just wrapped up and the attendance level was great! We had several ACA board members and members speak at the conference, which is great! Knowledge is power and it is great to see our family be able to educate others within the industry.

We recently added a new Facebook business page – if you have time, please check it out! [ACA Facebook](#)

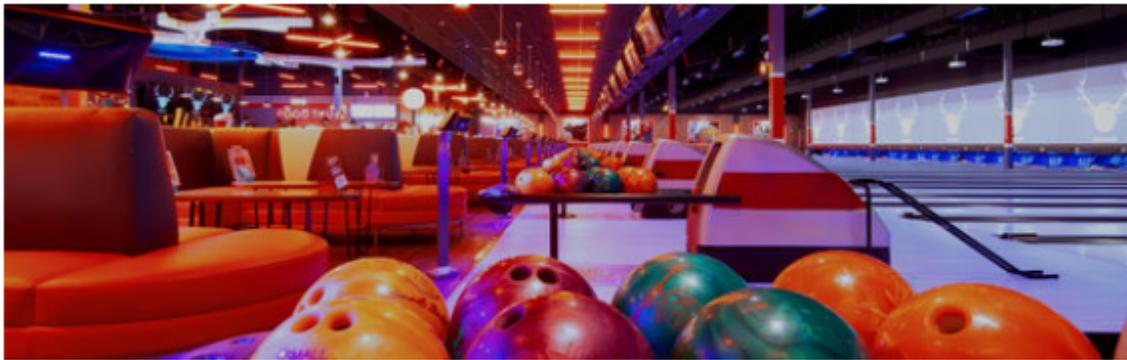
Lastly, it is with great sadness to inform you of the passing of our past President and longtime member, Juanita Keltner. Please keep her friends and family in your thoughts and prayers during this difficult time.

Yours truly,
Jennifer Sweat
President
Atlanta Claims Association

Upcoming Event



ACA Fall Outing 2022!



Thursday, September 29th ~ 5:00 p.m. - 7:00 p.m.

Bowlero Chamblee

2175 Savoy Drive

Atlanta, GA 30341

**Register Now for this Free Member Event
Limited Registrations, First Come, First Served**

REGISTER



THE NATIONAL INSURANCE
INDUSTRY COUNCIL PRESENTS

Strike Out Cancer

WEDNESDAY, OCTOBER 5, 2022
4:30 TO 7:30 P.M.

Topgolf Alpharetta
10900 Westside Parkway, Alpharetta, GA 30009

Strike Out Cancer is back! Last year's event at Topgolf was a huge success, and we hope to have you and your friends back again to make this year even bigger. Join us for golf, dinner, drinks and an opportunity to network with your fellow insurance colleagues in the Atlanta area.

Proceeds benefit research and treatment programs in cancer, diabetes and other life-threatening illnesses at City of Hope.

For more information and to register your team:

[Click Here >](#)

REGISTRATION INCLUDES:

- Two rounds of play (approximately two hours)
- Fiesta buffet dinner
- Two drink tickets

EVENT SCHEDULE

- 4:30 p.m. — Check-in
- 4:45 p.m. — Warm up/practice
- 5 p.m. — Tournament begins
- 5:15 p.m. — Buffet served
- 7:15 p.m. — Awards banquet/free play
- 7:30 p.m. — Event concludes

SPONSORSHIP OPPORTUNITIES

EAGLE SPONSOR: \$10,000

- Four teams of six (24 total)
- Company logo placed on website, e-blasts, event day signage, PowerPoint loop
- Special recognition during the event and opportunity to address attendees
- Logo due on Friday, September 16

BIRDIE SPONSOR: \$7,500

- Three teams of six (18 golfers total)
- Company logo placed on e-blasts, event day signage, PowerPoint loop
- Logo due on Friday, September 16

PARTICIPATION OPPORTUNITIES

- Six Pack (six golfers total): \$1,500
- Individual (one golfer total): \$250
- Individual Network: \$250

PRIZES WILL BE GIVEN FOR:

- High Team Score
- High Individual Score — Men/Women
- Best Team Costume
- Most Creative Team Name

RAFFLE

- Amazing items await you!
- One ticket = \$5
- Five tickets = \$20

PAR SPONSOR: \$5,000

- Two teams of six (12 golfers total)
- Company logo placed on event day signage, PowerPoint loop
- Logo due on Friday, September 16

TEAM SPONSOR: \$2,500

- One team of six (six golfers total)
- Company logo placed on PowerPoint loop
- Logo due on Friday, September 16

UNDERWRITING OPPORTUNITIES

Underwriting opportunities do not include admission to the event and are therefore 100% tax-deductible.

- Bar Sponsor: \$5,000
- Food Buffet Sponsor: \$3,000
- Tee Sponsor: \$750
- Logo due on Friday, September 16



LEGAL CORNER

Prepared by **Brett Penley**:

In Donegal Mutual Insurance Group v. Jarrett, 2022 Ga. Appl LEXIS 331 (June 27, 2022), the claimant, Jeffrey Jarrett, sustained a compensable on-the-job accident caused by the negligence of a third party tortfeasor. His employer's insurer, Donegal, paid him \$130,359.02 in workers' compensation benefits. Jarrett brought an action against the third party tortfeasor, and Donegal placed Jarrett's counsel on notice of their subrogation lien but did not seek to intervene in the action brought by Jarrett against the tortfeasor.

Jarrett and his wife entered into a settlement agreement with the tortfeasor; they were paid \$520,000 and signed a release stating that "the consideration paid hereunder does not fully compensate [Jarrett] and/or make him whole for the injuries and damages that he sustained or incurred as a consequence of the incident." Donegal then sought to enforce their subrogation lien against Jarrett's settlement, but Jarrett moved for summary judgment on the ground that he had not been fully and completely compensated by the settlement. Donegal argued that there was a genuine issue of material fact and "pointed to evidentiary disputes about Jarrett's current physical condition, the effects of his injury on his day-to-day living and activities, and his future prognosis." The trial court granted the motion for summary judgment, finding that there was no genuine issue of material fact.

The Court of Appeals began their analysis by noting that a workers' compensation employer or insurer, after paying any benefits under a workers' compensation claim, has a right of subrogation against any recovery by a claimant against a third party tortfeasor and "may intervene in any action to protect and enforce such lien." However, the employer/insurer may only recover under that subrogation lien "if the injured employee has been fully and completely compensated, taking into account both the benefits received under this chapter and the amount of the recovery in the third-party claim, for all economic and noneconomic losses incurred as a result of the injury."

The Court cited a prior decision, Georgia Electric Membership Corporation v. Hi-Ranger, 275 Ga. 197 (2002), in which the Supreme Court of Georgia stated, "In practice, this rule requires the [insurer] to assert its lien against the employee after the employee has recovered a judgment or settled his claim. The burden is then on the [insurer] to establish that the employee has been fully and completely compensated."

The Court further noted that a workers' compensation subrogation lien can only be recoverable against economic losses and cannot be enforced against noneconomic losses such as pain and suffering. Therefore, in order to recover, the employer/insurer "must show that the employee has

been fully and completely compensated as to each category of noneconomic loss for which the insurer seeks subrogation and that no portion of the lien is taken against recovery for noneconomic losses." If the trial court cannot determine what portion of the recovery was meant to compensate the claimant for economic losses and what portion was meant to compensate him for noneconomic losses, the trial court cannot enforce the subrogation lien, and the employer/insurer cannot recover anything.

Furthermore, the Court of Appeals noted that a lump-sum settlement typically "prevents a court from determining 'what portion of the settlement was allocated to economic losses and what portion was meant to compensate for noneconomic losses.'" While the Court had, in a previous case, allowed the parties to go to trial after the employee made an admission as to the amount that would fully compensate him, there was no evidence in this case "that would help the trial court determine the amount that would constitute a full and complete recovery." As the Court found, the questions of fact regarding Jarrett's current condition and need for future medical treatment "are simply not material to the allocation of the lump-sum settlement payment between Jarrett's economic and noneconomic losses."

Additionally, the Court noted that they could not presume that Jarrett was fully compensated simply because the amount of his settlement exceeded the amount of workers' compensation benefits he received. After all, a claimant could decide to settle his claim for less than its full value in order to minimize the risk of going to trial.

Finally, Donegal argued that it was error for the trial court judge to base her ruling on Jarrett's release, which specifically stated that the settlement was a compromise that did not fully compensate him. Donegal was not a party to that release, so they argued that they should not be bound by it. The Court of Appeals agreed that the release did not bind Donegal, but concluded that the release language was relevant "because it shows that Jarrett denied that the settlement fully compensated him" and that "release documents generally are relevant because they reflect the terms of the settlement, showing that the settlement was a lump sum that was not allocated either between economic and noneconomic losses or between losses sustained by Jarrett and those sustained by his wife."

The Court of Appeals therefore concluded,

By pointing to the release, other record evidence, and legal tenets concerning the nature of lump sum settlements to show the terms of the settlement, Jarrett met his burden on summary judgment of 'establishing from the record an absence of evidence to support [Donegal's] claim' that Jarrett had been fully and completely compensated. So the burden shifted to Donegal to point to specific evidence creating a genuine issue of fact on that issue. Because Donegal failed to do so, we affirm the trial court's grant of summary judgment to Jarrett.

(citations removed).

Unfortunately, it has long been apparent that the employer/insurer's right to workers' compensation subrogation is not particularly valuable. The requirement that the employer/insurer prove that the claimant was fully and completely compensated for economic and noneconomic damages is a difficult, if not impossible, one to meet. Even worse, claimants are permitted to settle with third party tortfeasors without the employer/insurer's involvement or even their knowledge, and when that happens, the settlement documents will certainly be worded in such a fashion as to undermine any effort by the employer/insurer to pursue a recovery against the settlement sum. The Georgia courts have consistently deferred to the language of settlement releases in concluding that a claimant has not been fully and completely compensated, despite the self-serving nature of those releases and the fact that employers/insurers are not parties to those releases.

It is at least possible for the employer/insurer to recover under a subrogation lien if all of the following conditions take place: the employer/insurer intervene in the claimant's lawsuit against the third party tortfeasor, the case does not settle, the case goes to a jury verdict, the jury awards damages against the third party tortfeasor, the jury utilizes a special verdict form which specifically delineates the economic and noneconomic damages, and the award of damages is great enough that there is a viable argument that the claimant was fully and completely compensated for all economic and noneconomic damages. However, this is quite obviously an expensive, time consuming process, and the likelihood of recovery at the end of the process is vanishingly small since proving that the claimant was fully compensated is still extraordinarily difficult even in these circumstances.

One other possibility that is somewhat more likely to lead to a recovery would be if the claimant does not exercise his exclusive right to file suit against the tortfeasor within the first year after the accident and does not reach a settlement agreement with the tortfeasor. If the employer/insurer pursue a recovery against the third party tortfeasor (which they have the right to do after a year has elapsed since the accident but before two years have elapsed) and the claimant does not participate and assert his right to full and complete compensation, the employer/insurer can recover up to the amount of their lien, and they would have to pay any amount they recover in excess of the lien amount to the claimant. On the other hand, if the employee intervenes in the employer/insurer's action against the third party tortfeasor, then the employer/insurer would still have to prove full and complete compensation in order to recover under their lien.

In the author's experience, the workers' compensation subrogation lien is most valuable when used as leverage while negotiating settlement of the workers' compensation claim. That is, even though claimants who are represented surely know that they can likely settle with the third party and pay the employer/insurer nothing, they would presumably prefer to avoid the time and hassle of having to defend that position in court (and avoid the delay in being able to spend their settlement money). If the employer/insurer can convince the claimant to reduce his settlement demand in his workers' compensation claim in return for a waiver of the subrogation lien, then at least the lien has had some value, and the employer/insurer do not incur any additional legal expenses in the (likely fruitless) pursuit of the subrogation lien.

Prepared by **Brett Penley**:

In Smith v. Parks Hotels & Resorts, 2022 Ga. App. LEXIS 280 (June 8, 2022), Stephanie Riddle was killed by her boyfriend while working as a housekeeper at a Hilton hotel. Her aunt, Cottingham, was appointed as the guardian of her minor children, and Cottingham hired Deming to represent her in that capacity. Deming then filed a workers' compensation claim based on Riddle's death.

The probate court appointed Cottingham as the conservator of the children. Cottingham then reached a settlement agreement with Hilton and signed a settlement, release, and indemnification by which she agreed to release Hilton from any wrongful death claims based in workers' compensation or tort. Cottingham certified that she had the sole right and authority to execute the agreement and signed the agreement as the guardian and conservator. In return, Hilton agreed to pay \$150,000. The probate court appointed Herrera as the administrator of Riddle's estate, authorizing her to receive the settlement proceeds.

After the settlement agreement was approved by the Board and the settlement sums were paid by Hilton, Herrera filed a notice with the probate court detailing the payments. Cottingham was then replaced as conservator by Smith.

After he was named as the new conservator, Smith filed a motion to set aside the workers' compensation award approving the settlement. Smith argued that the probate court precluded Cottingham from entering into a workers' compensation settlement agreement without its approval, such that "the settlement approved by the Board was void because there was a non-amendable defect on the face of the record." Smith also argued that the Board's approval of the settlement was the result of fraud, accident, or mistake.

The trial court agreed with Smith that there was a non-amendable defect in the record, finding that the probate court "restricted Cottingham's ability to enter into a settlement agreement that would dispose of the children's property without obtaining a court order by the probate court." However, the trial court nonetheless denied Smith's motion. Smith appealed to the Court of Appeals (but did not appeal the finding that there was no fraud, accident, or mistake). Hilton also appealed the trial court's order finding that there was a non-amendable defect in the record.

The Court of Appeals addressed Hilton's cross-appeal first. The Court noted that "a judgment is void on its face when there is a non-amendable defect appearing on the face of the record." While

the trial court found that the probate court required its written approval before entering into a settlement agreement, the Court of Appeals determined that this factual finding was “belied by the record.” That is, Smith had “specifically requested that the probate court inform the parties as to whether its approval of the workers’ compensation settlement was required,” and the probate court responded by noting that the Board’s “authority to review appropriate settlements is governed by Georgia law and the settlement agreement’s terms.” The probate court then went on to clarify that the settlement at issue did not require its approval and “expressly stated that it ‘lacked legal authority’ to even review a settlement approved by the Board in a workers’ compensation proceeding.” The Court of Appeals further noted that the probate court was aware of the settlement payments made by Hilton and did not object to those payments.

As the Court of Appeals noted, the only evidence supporting the argument that the probate court prohibited a settlement was the language of the letters of conservatorship, which reflected that Cottingham “shall . . . not sell or give away any of the minor’s property without a court order.” However, “the probate court subsequently issued a written order explaining that this requirement did not apply to workers’ compensation settlement agreements approved by the Board.” The Court of Appeals therefore concluded that “the alleged defect on the face of the record identified by the trial court simply did not exist.”

Although the trial court erred in finding that there was a defect on the face of the record, the trial court correctly denied the motion to set aside the workers’ compensation settlement. The Court of Appeals therefore affirmed the denial of Smith’s motion, noting that they would affirm a judgment “so long as it is right for any reason.”

Settling a workers’ compensation death claim with minor children involved can be a more complicated task as compared to a traditional settlement with a merely injured employee. This decision by the Court of Appeals lets employers and insurers know that an agreement to settle a claim is indeed final and that, absent some extreme extenuating circumstances (which were not present in this case), that settlement cannot later be set aside. If the Court had found otherwise, employers and insurers could have faced considerable uncertainty with regard to future settlements of death claims, so this decision by the Court was a welcome one from this writer’s perspective.

Brett Penley

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New Members May 15th - September 15th, 2022

We're so happy that you've joined us!

Analise Dennis - DigiStream Atlanta

Bryan Johnson - JS Held

Christine Cleveland - Independent Claims Adjuster

Courtney Castellon - The Wagner Firm

Curtis Lee - SageSure

Darlene Canty - Fulton County Government

Ellen Waller - SelectONE

Kavin Edward - Buster Edwards Security Services LLC

Kyle Brophy - JS Held

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Rhonda Cole - Network of Independent Claims Adjusters

ACA ATLANTA CLAIMS ASSOCIATION



Membership 2022

It's time to renew your membership or join if you're not a member. Membership runs a full calendar year from January until December.

Membership includes:

- ✓ Free Special Events
- ✓ Online Webinars with CE credit
- ✓ Networking
- ✓ Joining a committee
- ✓ Being a valued member of a well-recognized and respected group of claims professionals

We would love for you to join us!

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