

# Claimscene

A Publication of the Atlanta Claims Association



## ACA November Webinar

**November 17th 12-1pm**

Dr. Keith Raziano with The Physicians will be presenting  
"Pain Management and the Aging Worker"  
1 hour CEU will be available for WC Adjusters  
and NCM's who attend the full hour.

For non-members, there will be a nominal charge  
for attendance that will be credited toward ACA membership.

After registering, you will receive a confirmation  
email containing information about joining the webinar.

[Register](#)



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## Letter from The President Angela M. Patman

October 24, 2020

Dear Fellow ACA Members,

The Fall season has arrived. With our new normal, it has been exciting to have so many sports available to everyone! Who would have thought that in October, we would be watching football, basketball, soccer, and various other sporting leagues? For all sports fans, it has been a nice respite from the “new normal”.

The 2020 Hurricane season has been one for the record books. For those claim professionals that have met the call to service whether in person, telephonically, or virtually, hats off to each of you for the long hours, and the commitment to provide excellent claim service to those in need. Please take a brief moment and think about those in the Gulf Coast areas, through no fault of their own, they have been hit several times by the force of Mother Nature. Let’s keep our fingers crossed that we can move into the holiday season without another major catastrophe.

In an effort to make sure that Atlanta Claims Association is providing educational resources for our Liability community, many thanks to Attorneys James Hankins and Samantha Mullis for the October 6<sup>th</sup> ZOOM webinar, “Medical Funding Updates”.

As ACA continues to provide educational seminars, the next Workers’ Compensation ZOOM seminar is scheduled for Tuesday, November 17<sup>th</sup> from noon to 1P EST, with Dr. Keith Raziano of The Physicians, “Pain Management and the Aging Worker”. Please visit the ACA website for additional information.

The ACA is looking for claims adjusters and supervisors interested in joining any of our committees. This is a crucial time to network and look to the Atlanta claims community to be involved.

Lastly, I shared the possibility of having an in-person holiday event in December. With the continued COVID-19 pandemic, in the best interest of the association, this has been pended. ACA will look to support a local non-profit organization for this holiday season. Additional details will be provided in the November 2020 Claimscene.

Respectfully,

Angela M. Patman  
President  
Atlanta Claims Association





**Kids' Chance Georgia** provides educational scholarships to the children of Georgia workers who have been seriously, catastrophically, or fatally injured in work-related accidents. It has been a particularly tough year for Kids' Chance with most of their events associated with fund raising being cancelled. Kids Chance is ending the year with three virtual events.

**Kids' Chance Awareness Week 2020 is November 9<sup>th</sup> thru 13<sup>th</sup>.** Kids' Chance of Georgia is proud to partner with Choate Construction and J. C. Lewis Ford in their 2020 Kids' Chance of Georgia Auto Raffle. They are raffling off a used 2012 Ford Fusion – Hybrid Sedan to help in their mission to provide educational scholarships to the children of Georgia's seriously and fatally injured workers. The drawing will be held on **November 9<sup>th</sup> at 3:00 p.m.** Please click below to go to the event page for more info and to purchase raffle tickets.



**On November 9th they will also launch their virtual silent auction.** Donated items are being accepted. Please sign up for the four-day event and do some of your holiday shopping with Kids Chance. **To conclude the year, Kids Chance is hosting a virtual Holiday Concert planned for the evening of December 12<sup>th</sup>.** More on that to come.

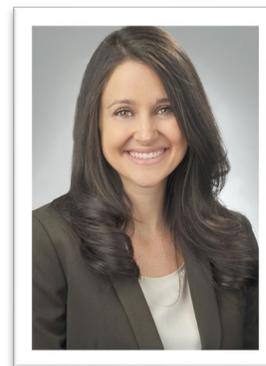


## Should I Stay, or Should I Go?

### Working from Home and Traveling for Work

*Ann M. Joiner*

*Emily J. Truitt*



Even before the COVID-19 pandemic, statisticians showed an ever-increasing flexible workforce. Americans frequently work from home, the sidelines of their kid's soccer practice, and in the car. Employees are flown across the country for two-hour meetings and large companies have closed physical office space permitting permanent work-from-home policies. It is therefore incumbent upon employers and insurers to familiarize themselves with potential liabilities surrounding such flex options. This paper seeks to discuss two realms of flexible plans in Georgia: traveling for work and working from home.

In Georgia, it is an employee's burden to show her alleged workplace injury has both arisen out of and occurred within the course of employment. From a practical standpoint this requires an employee to show she was where she was supposed to be, at a time she should have been working, engaged in the act of working and her injury has a causal connection to her work.

#### **Traveling Employees**

In instances where employees are said to travel for work, Georgia courts label them within the purview of the "traveling employment doctrine." This allows the courts to broaden the scope of an employee's physical location, hours, and activities. A traveling employee is often said to be "continuously working" and therefore even acts of ministration — such as grabbing a bite to eat — would be compensable. Though Georgia's workers' compensation system is technically that of no fault, there is often still some level of control employers can take to prevent injuries. If an employee is injured in a warehouse, an employer may then make changes to create a safer warehouse. This is how harnesses, non-skid shoes and safety glasses have come to pass. However, this is not the case with traveling employees. The case law is littered with scenarios where an employer could have done nothing to prevent the injury, and yet the claim is found compensable. There have been instances where an employee fell to his death on the stairs of his hotel, and another where an employee fatally fell off a stool in a restaurant while eating lunch. In *Thornton v. Hartford Acc & Indemn. Co.*, 198 Ga. 786 (1945), a traveling employee was merely crossing the street from his hotel to a restaurant when injured. In finding his claim compensable, the Supreme Court of Georgia reasoned it was "the very nature of his employment [that] carried him upon the highways and streets."

Of course, simply because traveling employees are afforded broader coverage does not mean that any activity resulting in an injury would be found compensable. In *McDonald v. State Highway Dept.*, 127 Ga. App. 171 (1972), the court aptly explained the continuous employment doctrine "does not mean he cannot step aside from his employment for personal reasons, or reasons in no way connected with his employment." With an edge the court suggests "he might rob a bank; he might attend a dance; or he might engage in other activities equally conceivable for his own pleasure and gratification." Thus, while eating at a restaurant serves as an act of ministration, robbing a bank does not.

## Teleworkers

Teleworkers are often compared to traveling employees insofar as they both fit into a category in which the employer has less control of the circumstances. Just as the employer cannot control the safety of some hotel steps, an employer can hardly protect against the hazards within an employee's home.

Unlike the bountiful Georgia caselaw of traveling employees, there has yet to be a single published appellate case analyzing teleworkers. Be wary — this does not insinuate that no teleworker has alleged a workplace injury. Rather, it is more likely because only after appealing three times would such a case have been published.

Some attorneys have suggested *Amediys Home Health, Inc. v. Howard*, 269 Ga. App. 656 (2004), be looked at as applicable precedent. However, in *Howard* the employee was a 24-hour field nurse. Thus, while she was injured at home (and her claim found compensable), the court analyzed her as a traveling employee. She was not a teleworker, but a continuous employee who just happened to be home when the injury occurred. Therefore, the reality is that this case has no applicability in analyzing teleworking cases in Georgia.

Without applicable statutes or case law, our suspicion is that the courts are likely to be all over the map on the teleworker issue, up until the issue is settled by our legislature.

### So . . . Should I Stay or Should I Go?

Understanding the case law (or lack thereof) surrounding Georgia teleworkers and traveling employees may make an employer or insurer question the point of looking into this, as its compensability is but a foregone conclusion. Though we know injuries occurred while attending a dance are not compensable, are there no other limitations? The answer, of course, is yes.

With any sort of flexible employee, the best thing an employer can do is set boundaries. Is this employee expected to travel for work or does she choose to stay the week and return home on Sunday? Does the employer pay for the hotel or merely permit that she stay at one? With teleworkers, we recommend establishing guidelines and defining the physical workspace. In either scenario, fix work hours to the degree possible. Scheduled breaks (as opposed to unscheduled) create insulation if an employee is injured on a break — say, walking up her basement steps to the kitchen.

Lastly, accidents do happen, and this is why we carry insurance. When an accident is reported, move right ahead into the investigation phase. Start with these basics: Where was the employee injured? Doing what? Coming or going? What hazards were around? Was the employee expected or permitted to be in this area? On a scheduled or unscheduled break? Cases are often fact specific, so understanding the intricacies and timeline can sway a judge in your favor. Worst case, hire a lawyer.

*Ann Joiner is a partner at Swift, Currie, McGhee & Hiers, LLP, with more than 10 years of experience practicing primarily in the area of workers' compensation defense. Joiner has significant experience representing employers, self-insureds and third-party administrators, including clients in the waste removal, retail, and food and beverage industries, in claims through Georgia. She can be contacted at [ann.joiner@swiftcurrie.com](mailto:ann.joiner@swiftcurrie.com).*

*Emily Truitt is an attorney at Swift, Currie, McGhee & Hiers, LLP, representing employers in the hospitality, healthcare, construction, and manufacturing industries. For the last seven years, Truitt has solely dedicated her practice to defending claims in whatever unique manner is fit, whether by advising clients in settlement negotiations or litigating the case through the appellate process. She can be contacted at [emily.truitt@swiftcurrie.com](mailto:emily.truitt@swiftcurrie.com).*



Breast cancer is the most common cancer in women, targeting one in eight women over a lifetime. According to the American Cancer Society, it is expected there are nearly 270,000 new breast cancer cases in the country in 2020.

Early detection is key for combating breast cancer. The American Cancer Society's recommendations for early detection of breast cancer for women of average risk include:

- Ages 40-44: Women should have the option to start screening with a mammogram every year.
- Ages 45-54: Women should get a mammogram every year.
- Women age 55 and older can switch to a mammogram every other year or choose to continue annual mammograms.

Although there is no sure way to prevent breast cancer, there are things you can do to lower your risk:

- Get to and stay at a healthy weight: Both increased body weight and weight gain as an adult are linked with a higher risk of breast cancer after menopause. The American Cancer Society recommends you stay at a healthy weight throughout your life.
- Be physically active: Moderate to vigorous physical activity is linked with lower breast cancer risk, so it is important to get regular physical activity, including at least 150 minutes of moderate intensity activity each week.
- Avoid or limit alcohol: Alcohol increases risk of breast cancer. Even low levels of alcohol intake have been linked with an increase in risk.
- Eat fruits and vegetables: Many studies have suggested that a diet high in vegetables and fruit, and low in red meat, can reduce the risk of cancer.
- Other factors that might lower risk: Women who choose to breastfeed for at least several months may also get an added benefit of reducing their breast cancer risk.
- Using hormone therapy after menopause can increase your risk of breast cancer. To avoid this, talk to your health care provider about non-hormonal options to treat menopausal symptoms.

For more information on breast cancer early detection, risk factors, treatment, recovery or free patient support, call the American Cancer Society anytime at 800-227-2345 or visit [cancer.org](https://www.cancer.org)

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