

# A CLAIMSCENE

THE NEWSLETTER OF

**ACA ATLANTA CLAIMS**  
ASSOCIATION

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February 2015 • A Monthly Publication of the Atlanta Claims Association

## WORKERS' COMPENSATION BOOT CAMP

▶ **Thursday February 5, 2015**  
**8:00 a.m. to 4:00 p.m.**  
**\$45.00** (includes breakfast & lunch)

**Villa Christina**  
**4000 Summit Blvd., Atlanta**  
**Atlanta Claims Association**

**GEAR UP  
FOR 2015**

# From the President



Dear Fellow ACA Members,

The month of February is upon us. This month will be highlighted by the Super Bowl on February 1st. I'm certainly looking forward to the game but not the official end of the football season. The next event is Groundhog's Day February 2nd or the day after the Super Bowl. Even though we have been blessed with a mild winter, I'm certainly hoping the Groundhog does not see his shadow. I'm sure we would all love to see an early spring.

Our Nominating Committee, chaired by Immediate Past President Robin Weidman, recommended an excellent slate of new Officers and Directors for the 2015-2016 year. The slate will be voted on and approved by the membership during the March meeting. Please join us at our March meeting to vote on and welcome our new Officers and Directors elected to serve for the upcoming year.

Remember if you are interested in serving on a particular committee, this is the time to get involved. Over the past year, we have approved a large number of new members. I'm sure some of these new or existing members have talent and will bring a host of new ideas to the various committees. We need everyone's help in accomplishing our goals. Please contact Linda Mihyar or any current Officer or Director if you would like to serve. Committee rosters are still in the process of being finalized.

Please remember to register for the upcoming Workers Compensation seminar on February 5, 2015. The seminar will be held at Villa Cristina. You can register at [www.atlantaclaims.com](http://www.atlantaclaims.com). Greg Presmanes has assumed the role of acting Workers Compensation Director. This is a result of the untimely passing of Debby Darrell, the prior Workers Compensation Director. Please continue to keep Debby's family in your prayers. We will have a special tribute to Debby during the seminar.

The convention has been finalized! This year's theme is "The Braves are moving to Cobb and so are we". The dates are April 15th and 16th at Cobb Galleria Center. This event is for you and our sponsors! Please remember to take advantage of the continuing education offered. Join us as we install our newly elected officers as well as honoring our scholarship recipients at the April meeting. This is a great time for all. Remember this is open to everyone. Please invite your friends, family and co-workers. I promise you will not be sorry.

I look forward to seeing everyone at the upcoming Workers Compensation Seminar.

In Fellowship,  
Kowalski M. Brown  
ACA President

## Atlanta Claims Association Mission Statement:

To strengthen the professional life of those involved in the claims industry by providing members with education and network opportunities while promoting a positive public image of the claims industry.

## Thursday, February 5<sup>th</sup>, 2014

Villa Christina  
4000 Summit Boulevard  
Atlanta, Georgia 30319  
678-539-1234

12:00 - 1:00 PM

11:30 AM Registration  
Luncheon Cost:  
\$25.00 Members  
\$30.00 Non-members

Reservations Required  
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RSVP Required

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Contact:  
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## 2014–2015 Officers

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# March Speaker



## Mr. Mike Miller, Clear Point Claims, LLC “A Strategic Approach to Everyday Success”

Mark your calendar to plan on joining us for our annual joint luncheon with CPCU. The date is Wednesday March 11, 2015 at Villa Christina. Registration begins at 11:30 am

CE credits are pending approval at this time. We anticipate this event to be well attended by both associations so early registration is suggested to ensure a seat. ACA members will also be voting on our new slate of Officers for the ACA 2015-2016 term and the 2015 CPOY nominees will be introduced at this luncheon. We will have door prizes and announcements for upcoming activities for both associations. This will be a fun, educational, and motivational meeting and we look forward to seeing you there.

Interests in sponsorship of this event or door prize donations should be submitted to Linda Mihyar at ll.mihyar@gmail.com

### Clear Point Claims, LLC, Chief Financial Officer

#### Business Consulting – 23 Years

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- KPMG (Charlotte, NC), Advisory Services Director
- McGladrey & Company
  - o National Managing Director-IT Consulting
  - o Regional Managing Director-Consulting (North Carolina)
  - o Regional Managing Director-South Dakota Operations
  - o Partner-Consulting Services (Minneapolis, MN)
- Grant Thornton (Minneapolis, MN)

#### Executive Positions-15 Years

- Network Communications (Minneapolis, MN)
  - o President, CEO
  - o Board Member
- Telident, Inc. (Minneapolis, MN)
  - o President, CEO
  - o Board Member
- Hickory Tech Corporation (Mankato, MN)
  - o President, CEO-Non-Regulated Enterprises
- Collins Communications (St. Paul, MN)
  - o Chief Operating Officer
  - o Chief Financial Officer

#### Education & Professional

- University of Chicago
  - o Executive Program (3 Years)-Business Advisor Program (Global Strategy)
- Indiana University-Masters in Business Administration
- St. Joseph's College (Indiana)-Bachelors in Finance
- Certified Public Accountant (Minnesota, North Carolina, South Dakota)

#### Civic

- Mecklenburg County Council Boy Scouts of America (Executive Board Member 2008-2012)
- First Book Volunteer-Boys and Girls Club-Boulevard Homes (Charlotte)
- Peninsula Yacht Club-Fleet Committee Treasurer

#### Other

- Federal Aviation Administration-Licensed Private Pilot
- United States Coast Guard-Licensed Charter Captain

# Save The Date

## Thursday, February 5th, 2015

Atlanta Claims Association's Annual Workers' Compensation Educational Seminar

Location: Villa Christina

When: Thursday, February 5th, 8am to 3:30pm

This year's event will feature panels on closing files, setting claims and best practices to improve return-to-work. The seminar will include breakfast and lunch and offer guests the option of attending the entire event at a cost of \$45 or the luncheon only for \$25.

Please contact Greg Presmanes at 770-391-9100 to reserve your spot as sponsor, suggest speakers or nominate a claims person for the 2015 Stellar Achievement Award.

## Wednesday March 11, 2015

Joint CPCU Luncheon

Location: Villa Christina

## Friday, March 20, 2015

Atlanta CPCU I-Day

Ritz-Carlton Hotel, Atlanta, GA

If you would be interested in attending this annual event for a great educational and networking opportunity please visit the CPCU website at [atlanta.cpcusociety.org](http://atlanta.cpcusociety.org) for more information and registration.

## Thursday April 16, 2015

THE BRAVES ARE MOVING TO COBB AND SO ARE WE!

Please mark your calendar for the newly revised Atlanta Claims Convention on April 16th at Cobb Galleria Centre. Look for exciting training opportunities, vendor expo and networking with your peers.

When: April 16, 2015

Where: Cobb Galleria Centre  
2 Galleria Parkway SE  
Atlanta, GA 30339

Invitations and enrollment instructions will follow in the coming weeks Watch the ClaimsScene newsletter for more information.

## Tuesday, May 12, 2015

We are pleased to announce that this year's Atlanta Claims Association Golf & Tennis Outing will be held at Rivermont Country Club ([www.rivermontcountryclub.com](http://www.rivermontcountryclub.com)). For those of you who have joined us in the past for this event, we look forward to seeing you again this year. And for those of you who are new to Atlanta Claims or who just haven't joined us in the past, we welcome you to this fun event and look forward to meeting you! This Outing is one of the most anticipated and well-attended events of the year.

New this year is that Atlanta Claims Association is partnering with The Wounded Warrior Project as our charity sponsor. A portion of the proceeds from this Outing will be donated to The Wounded Warrior Project. We are very excited about this commitment that Atlanta Claims Association has made and believe it will make this fun Outing that much more special. Registration to be available on line in March.



# Annual Workers' Comp Boot Camp Seminar

**When: Thursday, February 5**

**8:00 a.m.–4:00 p.m.**

**Where: Villa Christina**

**Price: Member \$45.00**

**Associate \$45.00**

**Student \$25.00**

**General \$45.00**

**Lunch Only \$25.00**

Don't Miss this great event...registration is now open on the Atlanta Claims Association's website: [www.atlantacclaims.com](http://www.atlantacclaims.com). For additional information contact Greg Presmanes @ 678.338.3914. For Sponsorship inquiries contact Emilie Gastley at 770-883-8594. (*\*Pending approval of 5 continuing education credits from the Georgia State Insurance Commissioner for adjusters and the Georgia State Bar for attorney CLEs or attorneys: Additional Fee \$20.00 for CLE Credit.*)

The Atlanta Claims Association's annual Worker's Compensation seminar is Thursday, February 5, 2015, at Villa Christina. Registration and breakfast is from 8 AM-9 AM. The Honorable Frank McKay, Chairman, State Board of Workers Compensation will open the seminar with an address on the State of the Board. We will begin with a panel on moving files to closure: strategies and techniques to push claims to file closure, from seasoned claims professionals, defense and claimant attorneys, and a vocational rehabilitation supplier (Moderator Doug McCoy, McCoy Consulting; Garwynne Wiggins, Sr. Claims Professional, Sedgwick CMS; Yvonne Parker, vocational rehabilitation, Taylor and Associates; and Sidney Mentor, defense attorney, Teague Campbell).

We will then have a panel on compensability: making sense of the confusing case law on compensability, addressing when an accident arises in and out of the employment, and when accidents are considered idiopathic and not compensable (Moderator, Honorable Viola Drew, Administrative Law Judge, State Board of Workers Compensation; defense counsel, Lynn Olmert, Carlock, Copeland and Stair LLP; injured worker's attorney Susan Sadow, Susan J Sadow, PC.

We will then break for lunch where Ann Bishop, President, Kid's Chance of America will make a presentation. After lunch, we will have a presentation on when back surgery is really appropriate, when is it better than pain management, what happens when back surgery does not work, and advice on how to use pain management effectively, both before surgery and when surgery does not work (Doctor Victor Allen Chin, Pain Management Specialist with Physicians Rome Surgery Center).

We will conclude with a two hour mock trial on the issue of whether a catastrophic designation can be terminated when the injured worker reaches retirement age. This issue is very important in settlement evaluations, negotiations, and reserving to reduce the exposure for catastrophic lifetime indemnity payments. This presentation is loosely based on a true case that was decided by the Honorable Meg Hartin, Administrative Law Judge, State Board of Workers Compensation, who will preside as Judge at the mock trial (Moderator, Warren Sponsler, defense attorney, Sponsler, Bishop, Koren and Hammer, PA; injured worker's attorney, Tom Holder, Long and Holder; injured worker's, Shannon Rolen, J. Franklin Burns, PC; functional capacity evaluation expert, Jan Braunstein; vocational rehabilitation expert Earl Thompson; and physician, Victor Allen Chin, M.D., A pain Management Specialist with Physicians Rome Surgery Center).

# Workers' Compensation Issues in a PEO World

By: **Cristine K. Huffine, Partner**  
**Amanda M. Conley, Senior Associate**  
**Swift, Currie, McGhee, & Hiers, LLP**  
**Atlanta, Georgia**

The presence of PEOs is on the rise across all types of industries. With the recent passage of the Small Business Efficiency Act (SBEA), that presence will only continue to grow now that PEOs have received the Federal "stamp of approval" with respect to taxes. The presence of a PEO in the employment hierarchy presents special challenges in the context of workers' compensation claims and we have found that many employees, their counsel and their employers, are still "in the dark" about what role the PEO plays and how it interacts with their workers' compensation claim. Dispelling some of this confusion is critical in ensuring that workers' compensation claims are handled as efficiently as possible and at minimal cost to both the PEO and the client employer.

Time and again, we encounter injured workers who truly do not know who they work for. In a deposition context, the testimony usually goes a little something like this, "Well, I've worked for Mr. Smith's construction company for 5 years, so I guess that's who I work for." When asked about whether they are aware that they became an employee of a PEO 2 years ago when Mr. Smith outsourced his HR needs, the response is usually, "Well, I remember signing some paperwork a couple years back, but I've always worked for Mr. Smith." More often than not, their attorney is equally confused. This type of situation can be avoided on the front end by providing the client employer with a clear and concise explanation of what a PEO is and what it does for the client employer that the client can, in turn, pass along to the employees. In general, the average person does not know what a PEO is. We usually explain it as "outsourcing HR," which of course does not cover nearly half of the functions of a PEO, but is descriptive enough to give the lay person a general idea. You might be asking, why does it matter if the employees are a little confused about who cuts their paychecks? It might not matter at all, until one of those employees files a workers' compensation claim. In any lawsuit, naming the appropriate party is critical and an error at the outset could lead to a dismissal of the claim altogether, or months or years of litigation against the wrong defendant. Even where the mistake has been made by the employee asserting the claim, some states, like Georgia, require the employer/insurer to correct the employer name where there is a PEO involved because of the confusion that exists at all levels with respect to the PEO's place in the "employment chain."

A second common issue involving PEOs that arises in a workers' compensation context involves drug testing: when do we do it, how do we do it, and who is responsible for it? There is a simple answer to the first two questions: drug test immediately after every accident. However, the PEO is relying on the client employer to implement this policy since they are not usually physically present on the jobsite when the accident occurs. Educating the client employer on how to properly handle workplace accidents and drug testing can lead to tremendous savings for the PEO on their workers' compensation claims. One of the key areas of emphasis should be reporting all accidents to the PEO in a timely fashion. You cannot help your client if you don't know that an accident occurred! Specifically with regard to drug testing, as soon as an employee reports an accident, the next step should be completing an incident report and then immediately taking the employee to a designated facility for a drug test. Do not count on the employee to go of their own volition; the excuses for why he or she could not take 5 minutes to go and have the drug test performed are many and varied and the clock is ticking with respect to a potential drug defense to a workers' compensation claim. For example, in Georgia, in order to take advantage of the rebuttable presumption that the accident was caused by the employee's impairment due to drugs or alcohol, a drug test must be performed within 3 hours of the accident for alcohol and 8 hours for drugs. O.C.G.A. § 34-9-17. Otherwise, even a positive test does not give rise to the presumption and it will be much more difficult to prove that the employee's impairment was responsible for the injury. There are also chain of custody issues that must be considered, which is why it is important for the employee to be tested at an appropriate facility. Providing better training to client employers on these issues will lead to consistency in the handling of work injuries, which will dramatically reduce associated costs and help client employers defend claims altogether where appropriate under the law.

Another typical issue encountered in workers' compensation claims is the question of whether the injured worker was working within the scope of his or her employment at the time of the accident. In the PEO context, this is often governed by the contract between the PEO and the client employer. For example, the PEO contract with the client employer may only cover work performed by the client in Georgia, Florida, and Alabama. On the date of the accident, the client took his crew to a job in South Carolina and one of the workers was injured. Was this injury within the scope of the injured worker's employment such that the PEO would be liable for workers' compensation benefits? While the answer would depend on the specific language within the contract, the PEO would have an argument that the client employer violated the contract by working in a state that was not designated by the contract, such that the client employer would be responsible for those benefits. Similar issues arise when dealing with independent contractor issues. Was the injured worker an employee of the PEO such that benefits are owed? The question of whether an individual was an employee or independent contractor is complex and highly fact specific, but the PEO should require the client employer to submit all employee's names and information so that they can be individually listed in the

contract between the PEO and client employer. Doing so will help the PEO to avoid the following situation: client employer has an uptick in business and “casually hires” an extra worker, on the third day on the job the worker has a heart attack and dies. The client employer submitted the claim to the PEO, who had never heard of this individual and was not liable for the claim due to a specific provision in the contract stating that employees who were not reported to the PEO would not be covered under their workers’ compensation insurance.

In the workers’ compensation context, we are also frequently arguing over the employee’s proper wage rate, which is made more complicated when a PEO has recently come on to the scene. In Georgia, an employee’s “average weekly wage” is calculated using the 13 weeks of wages immediately preceding the date of accident. However, if the client employer recently signed on with a PEO, thereby making the injured worker an employee of the PEO, there may only be a handful of weeks of wages that were paid by the PEO. The average weekly wage can also be calculated using the wages of a “similarly situated employee,” but that method will also fail in this context because all of the workers became employees of the PEO on the same date. Thus, we are left with the third and final method, the contract rate of hire, which usually multiplies the hourly rate by 40 hours per week. We prefer to avoid using that method as it generally yields a higher average weekly wage that may not reflect the true average weekly wage. Also, claimants tend to assert they worked more hours or were hired to work more hours than what the true terms of the contract were. One solution may be to go back and utilize wages that were paid directly by the client employer before the PEO became involved. Although this is technically utilizing wages from two different employers, this method tends to yield a more truer average weekly wage. We are usually able to come to an agreement with most claimant’s attorneys to apply this method rather than have the administrative law judge render an average weekly wage he or she deems appropriate and no one is happy with.

As the presence of PEOs continues to grow across the country, we anticipate that there will be more and more questions about the role PEOs play in the workers’ compensation context. Helping client employers understand the proper procedures to be followed in administration of workers’ compensation claims will lead to increased savings and fewer claims, and a greater appreciation for the benefits to be had by streamlining HR needs through the use of a PEO. Providing guidance and support when handling workers’ compensation claims figures to be yet another weapon in the marketing of PEOs as the industry continues to expand.

# Officers Slate for 2015

**The final slate for the 2015 board is as follows:**

**President** – Linda Mihyar

**1st VP** – Pamela Glick

**2nd VP** – Tammie Kater

**Secretary** – Ann Wright

**Treasurer** – Pete Mobley

**Assistant Secretary** – Jaclyn Chapman

**Assistant Treasurer** – Annette Ward

**The 3-year Directors are:**

Evelyn Brown, Essie McMillan and Doug White

Voting on the new positions will take place at the March Luncheon.

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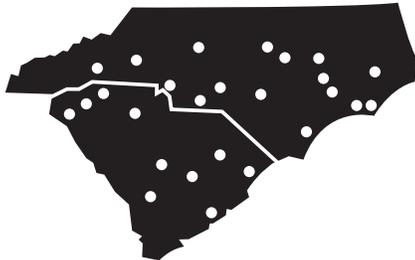


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