THE EXECUTIVES IN WORKERS' COMPENSATION

EWC NEWSLETTER

Resources to Help With Your Biggest Challenges, Insights From Industry Experts.

Coming to a Reasonable Settlement to Maintain Future Financial Stability

BY MICHAEL ZEA, MASTER CERTIFIED STRUCTURED SETTLEMENT CONSULTANT AT RINGLER

When negotiating a settlement for a workers' compensation case, it's easy to see the end result as a simple equation -- Injured Worker + Employer + Desired Outcome = Settlement. Unfortunately, it's often not that easy. There are many concerns on any workers' compensation case, not limited to the injured party or the employer. Navigating everyone's interests is tricky. That's where a professional settlement consultant can help the parties bring about a resolution for the benefit of everyone!

Utilizing a Structured Settlement

Settlement consultants use a variety of products and services to navigate the settlement process and steer the claim to settlement. One of the tools they rely heavily on is a ***structured settlement plan***.

First created in Canada, structured settlements came to the US in the early 1970s exclusively for injured claimants. Initially used on extensive catastrophic injury cases, roughly half of all structured settlements today are less than $50,000. Federal and state governments have passed a myriad of laws and changes to the tax codes over the years to make structured settlements attractive.

Instead of taking the money received from a workers' compensation settlement in one lump sum, some or all the money is put into a structured settlement to address future needs and goals.

NOVEMBER 1, 2020

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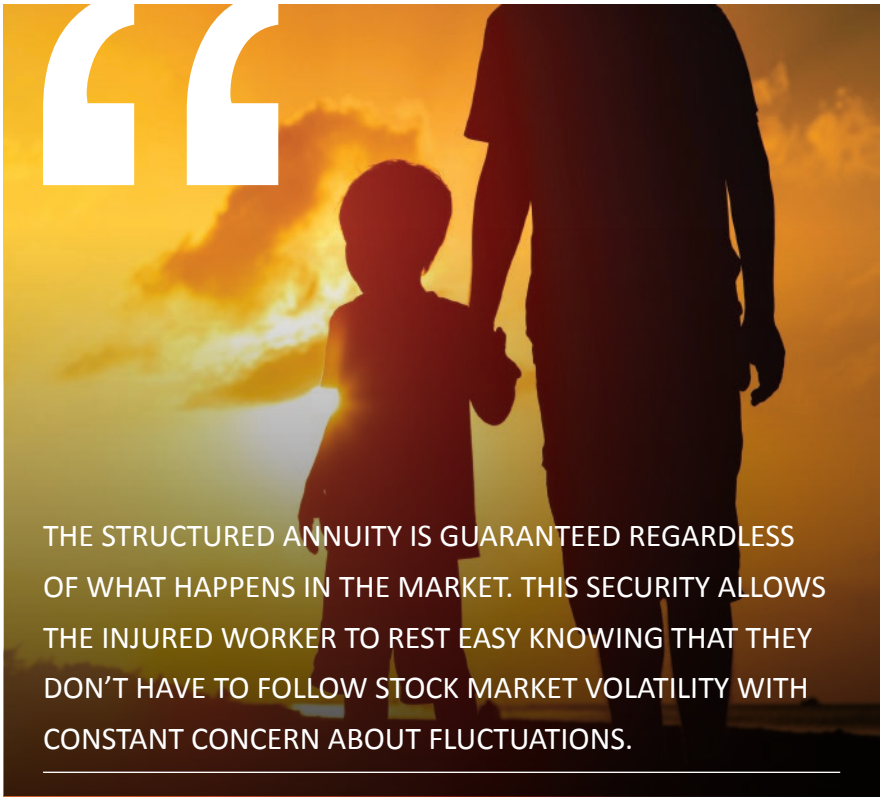

A set benefit is distributed at preset intervals – monthly, quarterly, annually, or whatever is agreed upon by all parties. It can be doled out over a finite period, or for the person's lifetime. The settlement may even include a portion for beneficiaries to continue upon the injured worker's death.

A structured settlement plan generally includes cash for immediate needs and to address attorney fees or medical liens. The remainder is then put into one or more annuities issued by a life insurance company, which makes periodic payments to the injured worker. ***First and foremost, the structured settlement product is a negotiation tool to address real needs!***

Future Financial Security

Structured settlements are not investments like other products and, therefore, not subject to Wall Street's whims. They are guaranteed due to their underlying financial instrument – typically an annuity from a highly-rated life insurance company. The structured annuity is guaranteed regardless of what happens in the market. This security allows the injured worker (a "unique investor") to rest easy knowing that they don't have to follow stock market volatility with constant concern about fluctuations.

Advantages of a Structured Settlement

Research has shown that a majority of people who receive a single sum of money from their settlement often spend most or all of it too soon. A customized structured settlement plan protects from this occurring by including a host of features that cannot be attained elsewhere.

Additionally, structured settlement benefits are:

Guaranteed. The payments to the injured worker are backed by highly rated and regulated insurance companies.

Tax-Free. The injured worker receives a 100% lifetime exclusion from income, dividend and capital gains taxes.

Free from Ongoing Management Fees. Structured settlements do not include ongoing management fees.

No Risk. Because of payment structure and guarantees, the injured worker receives the money as scheduled – regardless of current interest rates. Benefit streams are not managed as other investment products are, so are not in danger of ending too soon due to poor investment results.

Eligibility Protection. Benefits from federal and private health care plans are protected, including Medicare.

Customizable. Working with an experienced, reputable, knowledgeable settlement consultant means the settlement can be designed to fit the specific needs and desires of the injured worker.

Higher Returns. One of the most significant advantages of structured settlements stems from their status as tax-free. That translates to returns that are higher than those seen in low to moderate-risk investments. To match or get a better return than what an underlying annuity provides would require taking on higher risk or more uncertainty.

Of note, Ringler settlement consultants utilize more than just a structured settlement annuity in the settlement process. By working with trusted partners and identifying true needs, we match products and services that best fill the needs for each case. Settlement plans can be designed with multiple payment streams, using real solutions to address the relevant issues and needs of the case. The goal: create a plan that's amenable for both sides in the negotiations. In doing so, the hope is that ***Everybody Wins!***

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KEGEL, TOBIN & TRUCE APC PRESENTS

George the Bartender's Dispatches From Online Happy Hour

Sufficient Proof of Service in COVID Times and Man's Best Friend to the Rescue

BY JOE KIEFFER, SHAREHOLDER AT KEGEL, TOBIN & TRUCE APC

FROM MY BAR AT HOME – Like Forrest Gump's proverbial "box of chocolates," you never know what you're going to get when you request a Qualified Medical Examiner (QME) panel. But I didn't have to consult my Ouija Board when I saw the name Dr. Baloney pop up on a recent panel list. I quickly issued my "strike" by mail and email and breathed a sigh of relief.

The applicant attorney in my case, Newt Newbie, had already issued his strike and, not surprisingly, we were left with Dr. "Who the Heck Are You." Several days later, I had just finished a run and was enjoying an enthusiastic welcome from my English springer spaniel, Max, when I turned on my laptop to check my mail.

What's this?! Newt had issued a second strike of Dr. "Who the Heck Are You," meaning that Dr. Baloney would become our designated QME. He was claiming that I had not complied with statutory timeframes; that my strike was invalid. Surely, this was a mistake, so I immediately emailed the applicant attorney with another copy of my timely strike and assured Max that everything would be OK.

But it wasn't. When I called Newt to clarify the situation, he said he had never received our mailed copy, and further, although he had received my email strike in a timely manner, it was "procedurally deficient."

"Procedurally what?!?" I exclaimed! "Yes, that's right," he said, "Procedurally. Deficient." He then informed me that his office didn't accept service by email.

I asked Newt if he was aware of the ongoing pandemic; that the Workers' Compensation Appeals Board (WCAB) had suspended service by mail, issuing an en banc decision in re: COVID-19, State of Emergency March 18, 2020?

Newt brushed aside my arguments and cited my failure to comply with the service requirements of Workers' Compensation Appeals Board Rules of Practice and Procedure (Rules) in Title 8, Chapter 4.5, Subchapter 2, Article 9. Filing and Service of Documents Rule 10625 Service of the California Code of Regulations, specifically § (b)(4) and (b)(5), which read as follows:

(4) A party's preferred method of service if a method has been designated in accordance with rule 10205.6; or
(5) Another method if the serving and receiving parties have previously agreed to some other method of service.

I told the young Mr. Newbie that, first of all, we never had any prior notice of his "preferred method" or that his office didn't accept service by email. Furthermore, although there had never been an agreement on another method of service, Rule 10625 section (3) allows for an "alternative method that will effect service that is equivalent to or more expeditious than first class mail."

I asked what happened to the copy we had mailed to his office location. He reminded me that they never received it and asked if I had proof of service. When I said that I didn't, the applicant attorney said he'd "see" me in court. Clearly, Newt wasn't budging from his "procedurally deficient" argument.

I had just hung up when Max jumped up, put his paws on my lap and gave me an instructive bark. What was Max trying to tell me?

Of course! File for an Expedited Hearing! (Max didn't really bark – he's no Lassie – but it makes for a better story.) So, I pulled out the DIR form that apparently originated with the discovery of fire, but saw that none of the checkable boxes fit my situation. Fortunately, however, California Labor Code §5502(b)(3) did, allowing for an Expedited Hearing for a medical treatment appointment or medical-legal examination. It states in relevant parts as follows:

GEORGE'S KT&T
PUMPKIN SPICE MARTINI

In a cocktail shaker filled with ice, pour 2 ounces of vanilla vodka and 1/2 ounce cream liqueur and shake well. Add 1/2 ounce pumpkin liqueur and shake again. For special flavoring, wet the glass rim with apple cider and place in a cinnamon sugar mixture. Strain into cocktail glass, garnish with a cinnamon stick and enjoy!

(b) The administrative director shall establish a priority calendar for issues requiring an expedited hearing and decision. A hearing shall be held and a determination as to the rights of the parties shall be made and filed within 30 days after the declaration of readiness to proceed is filed if the issues in dispute are any of the following, provided that if an expedited hearing is requested, no other issue may be heard until the medical provider network dispute is resolved:

(3) A medical treatment appointment or medical-legal examination.

I submitted my request for an Expedited Hearing. Regrettably, a few days later, I received more disturbing news. The QME exam with Dr. Baloney had been scheduled, and our Expedited Hearing was set before a judge who was an absolute stranger to me. What next? A LinkedIn invite from Dr. Boloney?

It was then I realized there was only one answer: George the Bartender! So I rang up Joe Truce, my mentor and creator of *George the Bartender*, at his beach house and said, "Joe, I'm in big trouble and need help." He told me to relax and asked, "How's Max?" "Good," I said, "but he's still drinking out of the toilet."

Joe and I exchanged gossip and complained about our time staying Safer at Home – he was displeased with the new rebooted version of Perry Mason. "I know," I said, "It's terrible. The 'new' Perry Mason isn't even a lawyer!" Then again, I watched only the first episode. When we finally got around to my dilemma, I put myself in Joe's hands.

First of all, Joe directed me to California Evidence Code §641 and explained that a letter correctly addressed and properly mailed is presumed to have been received, although the presumption is rebuttable. However, the applicant attorney's mere allegation that he did not receive our mailed strike was insufficient to rebut the presumption.

The WCAB, Joe explained, could take evidence on whether my strike was received. If I could produce evidence that the

document was mailed, the burden would shift to the opposing side to provide believable evidence to the contrary. Joe recommended I have my legal assistant file an affidavit under penalty of perjury that they placed my strike letter in the mail, addressed to the location of the applicant attorney's firm.

Second, Joe drew my attention to Labor Code §4062.2 (c), which states that:

> (c) Within 10 days of assignment of the panel by the administrative director, each party may strike one name from the panel. The remaining qualified medical evaluator shall serve as the medical evaluator. If a party fails to exercise the right to strike a name from the panel within 10 days of assignment of the panel by the administrative director, the other party may select any physician who remains on the panel to serve as the medical evaluator. The administrative director may prescribe the form, the manner, or both, by which the parties shall conduct the selection process.

As he read from his Labor Code, I realized that the section doesn't indicate that the strike needs to be served with a proof of service, nor does it indicate how the strike should issue. Joe added that indeed, a phone call would appear to be sufficient to satisfy the statute or even skywriting – although he wouldn't recommend it.

Last, and most importantly, Joe said there is no denial of due process when a party obtains actual notice of an action notwithstanding lack of proper service, pointing me to three decisions dealing with this very issue: *Julie Garcia v. The Vons Company* (2001) 66 CCC 362 (en banc); *Patricia Nunez v. Mainstay Business Solutions*, 2010 Cal. Wrk. Comp. P.D. Lexis 597 (panel decision, filed October 25, 2010); and *Hartford Accident & Indem. Co. v. WCAB* (1978) 86 Cal. App.3d 1; 43 CCC 1193. Quite simply, Joe added, once an applicant attorney

had actual knowledge of your email strike, they had notice. And if they had notice, they had sufficient service.

Clearly, Joe was on a roll, chuckling that the applicant's attorney also should have realized that "notice" is a two-way street. In other words, the fact that Newt never served me with prior "notice" that his office did not accept service by email was enough alone to sink his boat – if it was ever floating.

I ignored the mixed metaphor and thanked Joe. One more time, Joe, not Grubhub, had delivered. Joe might have his Beefeater's, but I was ready to break out the champagne! The game might not be in the refrigerator, as legendary Los Angeles Lakers' announcer Chick Hearn would say, but it sure seemed like the Jello was jiggling. Now, if I could only get the judge on board and Max to focus on his water bowl. Stay tuned.

DISCLAIMER – All characters at my home bar are fictional, and the storyline is simply a product of my lively imagination.

Max is a clutch contributor when it comes to my Safer at Home legal practice. It's important to realize where you stand regarding sufficient service, especially in times like these where so many things are in flux, and it can be hard to keep track of any new decisions or old decisions that may be beneficial to your defense.

While *Garcia and Nunez* lack the designation "significant panel decision," Joe Truce always liked to remind me of one of his favorite portions of the Labor Code, subtitled "Specific Additional Evidence Allowed," §5703(g) which states in relevant part as follows:

> The appeals board may receive as **evidence either at or subsequent to a hearing**, and use as proof of any fact in dispute, the following matters, in addition to sworn testimony presented in open hearing:
>
> (g) Excerpts from expert testimony received by the appeals board upon similar issues of scientific fact in other cases and the prior decisions of the appeals board upon similar issues. (emphasis added)

He would also draw our attention to California Evidence Code §452(d), which provides that judicial notice may be taken of "Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States."

We're still making our own doubles for now. May George guide my hand. Bottoms up, friends, and keep washing your hands.

[1] Thanks to our firm's adaptation to a paperless file management system several years ago, all of our physical mail is now digitized.

[2] A copy of *Garcia, Nunez* and *Hartford* can be obtained via email request.

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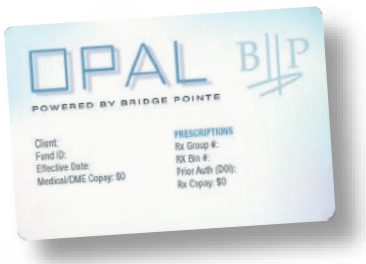

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Not to be Overlooked:
Understanding AB 685 and Preparing for an Invisible Risk

BY KRISTIN L. BERGESEN, ESQ., LFLM-SACRAMENTO OFFICE

On September 17, 2020, Governor Newsom signed AB 685 into law, further expanding and solidifying legislation created in response to the COVID-19 pandemic. **The law will become effective as of January 1, 2021.**

We have provided a breakdown of the law and recommendations for how our clients can best handle and prepare for the changes to Cal/OSHA regulations and procedures.

AB 685 expands both reporting and notification requirements for employers. It also increases Cal/OSHA's authority to issue Stop Work Orders and citations where it identifies hazards threatening immediate and serious physical harm related to COVID-19. The new law amends Labor Code Sections 6325 and 6432 and adds Section 6409.6. *Employers who fail to comply with the new health and safety regulations could be subject to civil penalties and citations.*

Stringent Notice Requirements Will be in Place

Under AB 685, employers must provide written notice of potential COVID-19 exposure within *one day of knowledge* of exposure by a **"qualifying individual"** as follows:

- Notice to employees and other subcontractor employers with employees present at the worksite in question on the date of exposure;
- Notice to employee representatives, such as unions and attorneys;
- Notice to employees regarding benefits related to COVID-19 and protections for employees against discrimination and retaliation for reporting COVID-19 cases;
- Notice to employees regarding disinfection protocols and safety plans to prevent further exposure, pursuant to CDC guidelines.

Who Are "Qualifying Individuals" Under AB 685?

Qualifying Individuals include those who have:

- A laboratory-confirmed case of COVID-19,
- A COVID-19 diagnosis from a licensed health care official,
- A COVID-19 related isolation order from a public health official, or
- A death due to COVID-19 confirmed by a county public health official.

"Notice" may include any written notice, such as email, text message, or personal service, so long as it can be "reasonably anticipated" that the employee will receive the notice within one business day. Employers must keep record of the notices for at least four years.

Notice of Exposure to Public Health Agencies

In addition, employers must notify their local public health agency of an "outbreak" at the place of employment within 48 hours of knowledge of the outbreak. As of September 11, 2020, the California Department of Public Health defines an

"outbreak" as occurring when three or more employees who do not live in the same household have laboratory-confirmed cases of COVID-19 within a two-week period. Employers must continue to report positive COVID-19 cases at the worksite. Employers are further required to report any employee COVID-19 related deaths to the local public health agency.

Expansion of Cal/OSHA Authority

Cal/OSHA typically has the authority to prohibit entry to all or part of a workplace with an imminent hazard or to order that an employer stop an operation or process that creates such a hazard. AB 685 expands this power by allowing Cal/OSHA to prohibit entry to a workplace or part of a workplace or prohibit an operation or process where there is a finding that the workplace, operation, or process exposes employees to a risk of COVID-19 infection.

The expanded authority is subject to some limitations and exceptions. Cal/OSHA must provide the employer with notice of any action taken under this provision and post notice of the action in a conspicuous place. Cal/OSHA cannot impose restrictions that would interrupt "critical government functions" essential for public health and safety or services that ensure delivery of water and power. Further, the ability to prohibit entry into or restrict operations or processes of a workplace is limited to the areas and operations or processes that pose an imminent hazard. The provision is set to expire as of January 1, 2023 absent further action from the legislature.

Serious Violation Citations

Prior to AB 685, Cal/OSHA notified employers of an alleged violation 15 days before issuing a citation for a serious violation of occupational health and safety statutes or regulations. This notification enabled the employer to provide additional information or evidence that they took mitigating factors to rebut the potential citation. AB 685 eliminates this requirement where the alleged violation involves COVID-19 exposure. Cal/OSHA can now issue citations for serious violations related to COVID-19 exposure immediately. The employer may still appeal the citation.

How Does AB 685 Intersect with SB 1159?

California lawmakers' urgent response to the unique challenges presented by COVID-19 is evidenced in the parallels between SB 1159 and AB 685. Specifically, employers need to be aware of and prepared for changes in the following areas:

Presumptions: Both SB 1159 and AB 685 begin with the assumption that an employee contracted COVID-19 at work when specific criteria are established, shifting the burden of proof to the employer to demonstrate otherwise.

Timeframes: The employer has a limited/reduced timeframe to conduct investigations, provide information, and assert defenses.

Notification/Reporting: Employers are charged with frequent notification to multiple parties within a short period of time when an employee or employees test positive for COVID-19. Failure to comply could have serious, negative implications for the employer.

"Outbreak" as used in AB 685 is different than in SB 1159 for purposes of determining if the presumption applies. An "outbreak" requiring notification under AB 685 does not necessarily qualify as an "outbreak" under SB 1159.

Potential Serious & Willful (S&W) Claims:

Employers may see an increase in S&W claims based on Cal/OSHA's safety orders related to COVID-19 or evidence of actual citations related to COVID-19 violations, pursuant to Labor Code 4553.1.

Potential Labor Code 132a Claims:

The new laws have the potential to not only make it easier for an employee to claim a COVID-19 injury but also to provide additional grounds for increased benefits under Labor Code §132a, assuming the employee can demonstrate that the employer violated one of the provisions of the new Cal/OSHA regulations preventing discrimination and retaliation for reporting COVID-19 cases.

Take a Proactive Approach to Mitigate Exposure

We strongly recommend early reporting and coordination with adjusters and defense attorneys when an employer receives notice than an employee has tested positive for COVID-19. We also recommend that employers use the remaining portion of 2020 to prepare for changes set to occur as of January 1, 2021, including:

- Developing an effective procedure for COVID-19 notifications to employees;
- Developing an effective procedure to notify employees regarding COVID-19 benefits and protections;
- Developing safe and effective methods to prevent and minimize the risk of the spread of COVID-19 at worksites;
- Developing effective sanitizing and disinfecting procedures should COVID-19 exposure occur; and
- Developing effective procedures to document and track information related to any COVID-19 cases for the purpose of both complying with all notice requirements and obtaining information needed to defend against any workers' compensation claims, S&W claims, and Cal/OSHA citations.

As with any change to the law, knowledge and preparation will ensure success in navigating and responding to claims.

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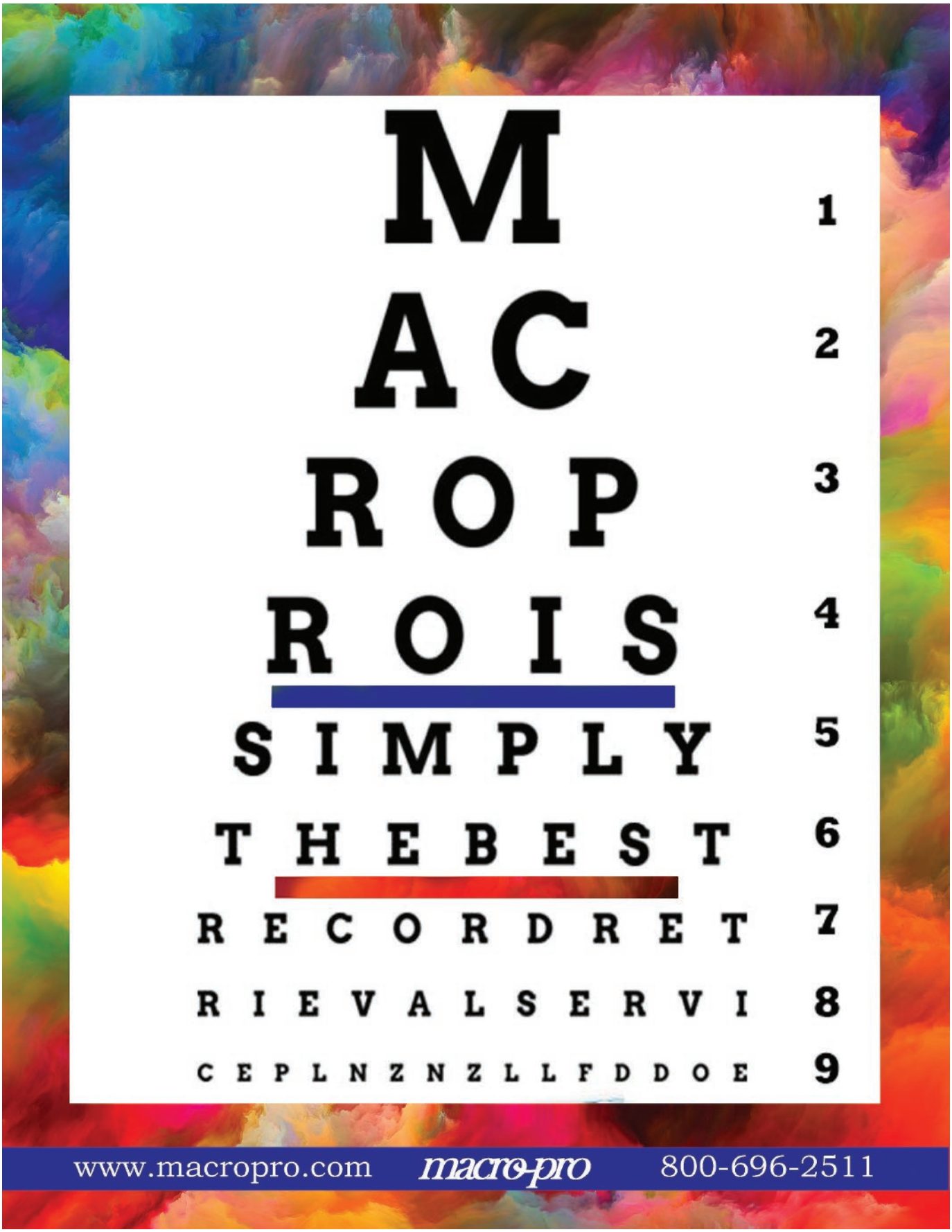
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The changing health disparities in workers' compensation in a POST-COVID-19 ERA

BY DON LIPSY, ASSISTANT VICE PRESIDENT, NATIONAL TECHNICAL COMPLIANCE AT SEDGWICK

The inarguable fact of COVID-19 is that the coronavirus itself has been an indiscriminate and equal-opportunity tragedy on a global scale. Women and men, young and old, across the world and right next door, COVID-19 has impacted the way in which we live our lives irrespective of who we are or where we come from. Yet, from the tragedy of this global pandemic emerge changes that may positively shape how we engage one another for years to come.

Workers' compensation is a microcosm and unique ecosystem through which to view some of the positive changes driven by COVID-19. However, there are still factors to consider as the world and our industry evolves. In fact, we may not know the true impact of COVID-19 for some time, despite the best clinical and analytical resources. What we do know is that managing care will never look the same.

When we look at behavioral health issues, recently conducted national survey data shows that 88% or more employees report the time since the onset of COVID-19 to be the most stressful time in their career. Within the workplace, 62% of employees also report that this stress and anxiety has led to one or more lost hours of work. Unsurprisingly, data from pharmacy benefit managers shows a significant increase in new prescriptions for antidepressant, antianxiety and anti-insomnia medications as well. Injured workers, like so many of us, spent a prolonged period in relative isolation due to COVID-19. For some, this meant only having interaction at work, and, for many, it meant no longer having work. These factors reinforce the need to look at how behavioral health and return to work services should be enhanced to meet the new reality of a reduced workforce.

Additionally, there needs to be a greater focus on understanding and addressing the disparity with which COVID-19 is impacting women and people of color in the workplace. In many ways, workers' compensation has been, and will always be, a reflection of our nation's times. This reflection has never been more evident than when we look at the people most frequently filing claims for COVID-19. The hardest hit among our workers are the first responders, health care workers, industrial workers, agricultural workers, and all the essential workers who keep us in food, medication and transportation. The data also shows that these same workers are part of communities that are primarily comprised of women and people of color.

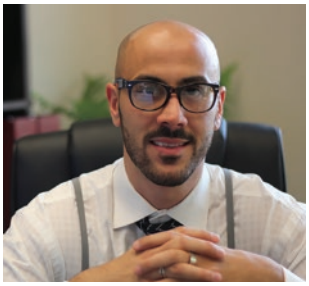
- Women make up 78% of all health care workers.
- Women also make up 73% of health care workers testing positive for COVID-19.
- People of color make up 49% of all food manufacturing workers and 37.9% of all crop production workers.
- Is trying to empower injured workers with technology-driven solutions leaving behind people with little to no access to smartphones or wi-fi?
- Are medical networks constructed to address not just timely access to care but access to care with a provider who can engage an injured worker in their first language or who comes from a similar cultural background?
- When thinking about comorbidity analytics in our injured worker population, are we investing time and energy into understanding the biopsychosocial dynamics of injured workers from underserved populations?

There is value in knowing this information. It highlights that, when being responsive to the needs of injured workers affected by COVID-19, we must be conscious of the makeup of the populations needing the most help. From how we engage an injured worker to how we look at their possible outcomes of care, we must start asking and answering some hard questions.

COVID-19 has forced us all to reinvent to meet the challenges and find new ways of reaching out and caring for injured workers, and, so far, we have met that challenge halfway. Let's not stop now.

MEET OUR ATTORNEYS

James Rossi | **Founder**



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The CorVel Corner:

The Millennial Workforce

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Within the next decade, the workers' compensation industry could lose more than 50% of its most experienced executives. As the need to hire new talent becomes increasingly urgent, the industry will need to adapt to attract and retain a new generation of workers.

Millennials are forecasted to comprise 75% of the global workforce by 2025. Attracting and retaining millennial talent is especially challenging in the workers' compensation industry. Organizations in the industry have historically been viewed as technology laggards who are slow to adopt new processes and value tradition over innovation.

To attract millennial talent, the workers' compensation industry can appeal to the generation's eagerness to have an impactful career and their interest in technology.

Millennials are often thought of as the generation with a strong desire to make a difference and add value through their work. In workers' comp, an advocacy model that promotes a noble goal, such as getting an injured worker back on the job, could attract more millennials to the industry. Michele Tucker, CorVel's Vice President of Enterprise Comp Operations, explains, "Claims organizations that share a culture of genuine concern and caring for those they serve will also have an advantage in attracting millennial talent. CorVel's DNA as a company has always strived to produce the best outcomes and aligns with the high-minded millennial generation."

Because millennials were raised in a time of rapid technological advancement, when the internet became widely accessible and smartphones became the norm, they value innovation and digital collaboration. Increasing the prevalence of technology in workers' comp, whether it be through the advancement of virtual patient care, development of AI in claims systems, or usage of web-based collaboration tools, will help attract millennial talent to the industry.

To retain millennial talent, companies should consider offering more flexible work schedules, encouraging the exchange of innovative ideas, and providing clear opportunities for professional development. Elizabeth Lowry, Area Vice President at CorVel, explains CorVel's approach in a recent *Risk & Insurance* article. "We believe we have addressed much of this lag at CorVel by offering flexible work arrangements, attractive career paths, an emphasis on a teamwork culture, and the tools to help improve our everyday work. Even more important is finding purpose and job fulfillment - we all want to know we are doing something good and that our jobs and contributions matter."

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Malingering and Brain Injury

BY CHRIS PERSEL, M.A., CCM, CBIS, CPHM, CENTRE FOR NEURO SKILLS

Mild traumatic brain injuries (mTBI) affect approximately 42 million individuals worldwide each year and produce significant symptoms including headache, fatigue, visual sensitivities, dizziness, impaired sleep and hearing, balance disturbance, diminished attention and concentration, slow processing speed, depression, anxiety, agitation, impulsivity, reduced awareness, and social inappropriateness. Even a mild brain injury can impact an individual's ability to perform daily activities. Although the injury may appear less intense, at times, individuals report severe symptoms, leading those involved in their care to question the validity of their claims.

So why do some individuals appear to be "malingering" or present with questionable reporting?

Behaviors such as exaggerations, overreporting, inconsistent performance, unexpected performance (considering the nature and extent of the injury), focus on complaints, not wanting to return to work, legal representation, and talk of money or lawsuits all contribute to concerns. Malingering has been defined as "faking illness, consciously lying about a condition to gain a benefit and stopping when benefit is obtained; a conscious effort to deceive, intentional deception." Are there alternative explanations that can guide professionals and help to provide targeted care and support?

While malingering is a concern, the numbers are relatively small and not directly related to return to work, leading one to consider multiple other influences. Since brain injuries often occur during a traumatic event, symptoms may be caused by the actual event and less by the injury. Genetic factors, a prior head injury, and/or a history of substance abuse can also complicate the prognosis. Under-recognized conditions such as seizures, vestibular disorders, visual problems, and chronic pain complicate recovery and produce symptoms that may not be due to brain injury.

Several factors can interact with mTBI symptoms, such as *recovery expectations*, i.e., optimism (even if unrealistic), sense of personal control, beliefs about illness duration, and an "all or nothing" belief pattern. A *stereotypical threat* requires understanding how society's bias of this subgroup impairments and symptoms may affect performance. *Anger and/or revenge* toward other parties when there is a failure to acknowledge the injury can result in blaming behavior and lead to decreased emotional and physical health. *Loss aversion* may present when the emotional impact of the loss is greater than the attraction of the gain.

Psychiatric issues may also be present. Examples include *Somatoform disorder* including hypochondriasis, conversion disorder, and pain disorder. *Major depression* presenting diminished motivation, cooperation, and attention. *Anxiety disorder* resulting in avoidance, irritability, outbursts, mood disturbance, and memory failures. *Adjustment disorder*, a maladaptive reaction to an identifiable stressor, usually emerges within a month of a loss (i.e., relationship, job, etc.), diagnosis of illness, injury or disability, conflicts at home or work, and economic hardships.

Other considerations may include *memory amplification* (i.e., demonstrating inflated reports and overvaluing negative autobiographical memories), *testing problems* such as inattentive responding, and *personality traits* (i.e., negative affectivity or habitual negative emotions). *Alexithymia*, or the inability to identify and describe feelings or misinterpreting common symptoms as being serious, may also evolve.

For effective treatment, first, it is vital to understand the neuro-profile of a typical brain injury, the course of recovery, and their susceptibility to psychological factors. Next, investigate the interplay of these components and vulnerability to new disorders. Obtain a detailed history including personality (for coherence of answers, presence of anxiety or depression), eyewitness statements, medical and employment records (objective findings), and third party accounts (i.e., family and friends). Finally, consider the role of a "disabled person" in the family and gather the current and historical legal status.

Early intervention is essential to reduce the reinforcement of maladaptive response patterns. The key is to provide an individualized, multi-faceted treatment plan, including psychosocial and behavioral approaches. Utilizing experienced, specialized assessment and treatment staff, approaches may include affective/emotion labeling and interoceptive and mindfulness training to address awareness and perception of body signals and correct interpretation of their meaning. It is important to not confront or question the beliefs or accuse the individual of being deceptive or "lying." Rather, consider all situational factors and address them systematically. A comprehensive, multi-disciplinary, experienced team can, over time, sort through the "real" and exaggerated.

A source reference list can be obtained via email request to Cpersel@neuroskills.com.

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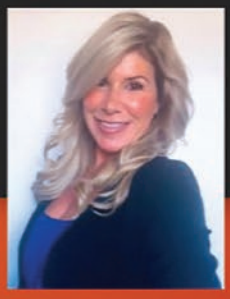

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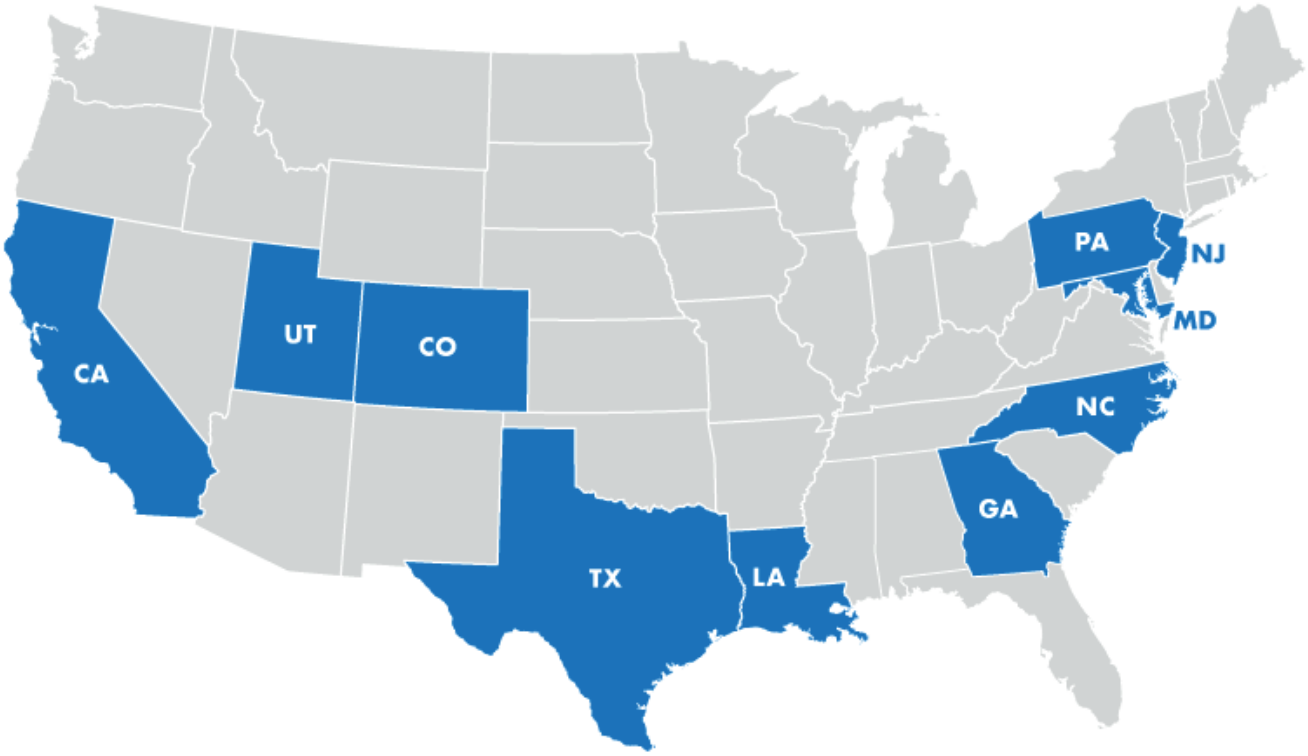

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Through a BROKEN CRYSTAL BALL

BY DAVID B. DOLNICK, ARM, CRIS

"What's next?" It's a common question right now among my kids, my colleagues, and my friends. About the only one not asking is my cat. She's happy to have us at her beck and call, and if I understand her correctly, she's not one least bit interested in things going back to "normal." She may be the smart one.

In the US, we're more than seven months into the pandemic, and the question of, "What's next?" is never more valid. I'm no genius, but I hope 42 years working in and around workers' compensation gives me some perspective on what might be coming in the future, and while I've discussed some of those ideas in prior articles, I'll make some additional guesses in this one. Hit me up in a few years and let's compare notes on how I did…

Remote Work: Insurance companies, TPAs, attorney firms, safety consultants and advisors, and similar members of our industry already have a fairly good grasp on remote work. Unfortunately, our conventional wisdom crumbled in the face of mandated closures, employee fears, and the immediate need to pivot to a mostly remote workforce. Some employers have discovered that remote workers can be as productive as their on-site peers. Still, businesses fear losing control over the workflow, and are concerned about home office ergonomics, how occupational safety and health laws will apply, and about cybersecurity issues, among other things. While many offices are partly vacant, that space will be needed in the short term to maintain social distancing as employees begin their returns to "normal." Businesses are also concerned about the appearance of mostly empty offices on morale and on public perception. A great deal of effort will be needed to reimagine the office and improve resilience while still meeting employee and customer expectations. We've got much work yet to do.

Technology: Webcasting and video conferencing were not new when COVID-19 hit, but they are now far more critical at work and in our schools and private lives. Their growth also brings an increased need for connectivity and bandwidth, and the availability of those services is not uniform across all neighborhoods or cities. While paperless (or almost paperless) offices have an easier time making those adjustments, one limiting factor is internet availability. Broadband connectivity is often beyond the reach of lower-level employees, limiting their ability to engage in remote work. Employers who are able (and have the will) to make substantive changes in their work practices may well become the employers of preference, while those who cannot or who chose not to do so may well wind up losing out on the best and the brightest workers.

While telemedicine was in use before COVID-19, remote medicine has assumed new importance. But it also requires bandwidth, as well as robust privacy and cybersecurity protections on all fronts. Once seen as a novelty, the value of remote medicine (or its second-cousin-once-removed, remote law) has grown exponentially in recent months. As with remote work, employee level bandwidth and availability are among the key limiting factors.

Data Science: Workers' compensation collects data. Lots of data. The increasing use of machine learning (artificial intelligence) and data analytics has led some companies to begin using predictive analytics in the fields of underwriting, safety, and claim administration. With our current pivot to remote handling of almost everything, the amount of available data will also grow, and the same type of algorithms that allow social media platforms to target ads to your personal taste can also help guide more consequential decisions regarding employee injury or in the setting of workers' compensation rates. How well those algorithms function, and their impact, will likely be a subject of dispute for many years. As with all the other factors above, however, the key to addressing these issues will be, in a word – flexibility. Charles Darwin's observations about the most adaptable species surviving have never been more applicable than they are today. Best of luck to you all throughout these interesting times.

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David Dolnick is founder and President of Dolnick Risk Advisors and has over 40 years' experience in construction risk management, occupational safety & health, loss prevention and commercial insurance.

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As Beautiful as You Feel:

Advancement Advice for the Workers' Comp Professional

BY CARL VAN, ITP

You've got to get up every morning with a smile on your face,
And show the world all the love in your heart.
Then people gonna treat you better. You're gonna find, yes you will,
That you're as beautiful as you feel.

"Beautiful" – Carole King

Pretend It

I am sure you have heard the phrase "fake it till you make it." The idea is that you can train your mind to accept something just by continually saying it and acting it. This is an excellent technique and one I suggest using if you are looking for a promotion or want people in your office to start seeing you as someone who has leadership ability.

I have found that simply pretending and acting as if you already have achieved what you want can be helpful. The more you pretend you already have what you want, the more your attitude and your actions will be tailored to fit. Give yourself a taste of it.

I have used this many times myself, and I would like to offer an example.

When I was a claims adjuster, I desperately wanted to become a supervisor. Knowing that the concept of "fake it till you make it" can be a positive force, I decided I would apply it. One morning I simply decided that I was, in fact, a supervisor. I wasn't going to overstep my bounds, but I was going to imagine that I was a supervisor and start talking and acting as if I already was. I would actually say this to myself in the morning: I am now a supervisor, so I need to act that way.

Almost immediately, when office meetings were going on and projects were being assigned, I noticed that the more I imagined that I was a supervisor, the easier it was for me to volunteer for projects and be willing to lead focus groups. But I also noticed that I started thinking about things that supervisors do and started doing them myself: helping a customer who was waiting in the lobby, offering to cover for someone out of the office, and so on.

I noticed good claims managers in our branch would call other branches and congratulate particular adjusters if they had received some recognition. If someone in another office had been awarded "Adjuster of the Month" or received a promotion or something, they would often call adjusters at other branches and say thanks or congratulations.

So, as a "supervisor" now, I just started making these calls myself. I did not think I would get in trouble for this or anything, but I went ahead and started reading the newsletters and the monthly management reports. Whenever I would see an adjuster in another branch receive some award or recognition, I would call that person and say,

"Hey, this is Carl Van; I am over here at the Sacramento branch. I read that you received the highest number of compliments from customers during the last month, and I just wanted to congratulate you."

Of course, people were usually excited to hear that, and they would tell their manager or supervisor that they received a call from some guy named Carl Van in another branch. Everyone over there assumed I was in management.

This recognition is how some claims managers at our company would encourage each other. Now keep in mind, not all the people in management did this, but some did. And I found myself doing it even though I wasn't a supervisor and even though I wasn't in management. It didn't seem to matter; people still thought it was nice that I was calling. Often, many of the people who received the call assumed I was already in management because that was something management tended to do.

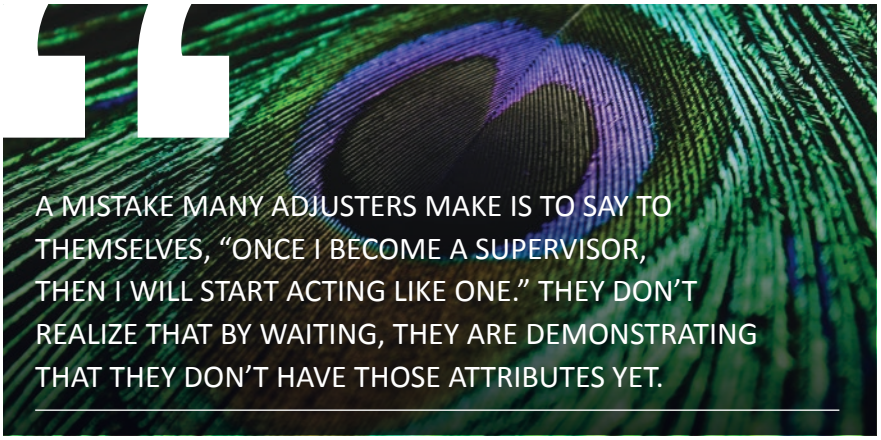
Now keep in mind that this was not the only thing I would do while "pretending" I was a supervisor, but just one of many.

About a month into this, I received a call from a manager at another office (we'll call him Jim because I couldn't locate him to get permission to use his real name).

Jim said, "Carl, I just want to let you know that I appreciate the fact that you call my people and congratulate them. I think that is great, and it really boosts morale. So, I wanted to thank you." I told Jim it was no problem and happy to do it. While we were on the phone, he asked me, "Hey, by the way, I am working on this one analysis of customer service statistics, and I was wondering if you know of anybody who might be interested in your branch in working on the same project."

I told Jim that I would be happy to, so we started talking a little bit about it and he sent me some information. It was a straightforward project involving trying to analyze complaint calls and the best way to record successful resolutions, something he was going to submit to HR. It took us a brief period of time to do it, and he submitted it. HR seemed to like it, and our company went with it.

Over the next month or so, I got a couple of calls from Jim, again wanting to bounce some ideas off me. Then, even a manager at another office called me (he was tough and his last name was Ammerman, but we called him "the Hammer man"). He had been talking to Jim, and Jim told him to give me a call because he thought I had some good ideas.



Then, one day a position for a supervisor opened up in Jim's office, and I applied for it. During the interview, we broke the ice by talking for a few minutes about that one project we had worked on and some other ideas we had for our company. But then, Jim asked me a question which floored me. He asked, "Well, Carl, I have a question for you. Why would you want to transfer all the way from your branch to this branch? I mean, what's in it for you?"

I told him it wasn't a transfer – that it was a promotion. Jim was stunned; he had assumed that I was already in supervision or management in some capacity. When I told him I was still an adjuster, he absolutely could not believe it; he had just assumed I was already there. And of course, when it came time to offer the position, who was he going to offer it to? A bunch of other people who had promised they could do a good job, or someone he had actually dealt with and had already seen act in the capacity of a management role?

Needless to say, I got the offer for the job, and I attribute it almost 100% to the fact that it was because I had already had the mindset of being in that job and started doing things consistent with that.

A giant mistake many adjusters make is to say to themselves, "Well, once I become a supervisor, then I will start acting like one. Once I become a supervisor, I will stop complaining. Once I become a supervisor, I will look around to see if I can get involved in projects." They think they have to wait until they have the position to demonstrate those attributes. They don't realize that by waiting, they are quite literally demonstrating that they don't have those attributes yet. So the technique of pretending that you already have something you are looking for is an excellent way of altering your attitude. As the old and wise guru says, performance is 80% attitude and 20% ability!

The second technique I'll mention is to Restate It.

Restate It

Another great technique is to practice rephrasing the things you say and hear to find something positive in it. To be able to say what you want to say is essential. Then, decide you want to try to find something positive if you can, rather than the negative. See if you can break out of some of those bad habits. Below are some comments I have heard adjusters make rather casually. See if any of them sound familiar.

I have too much work.
My manager gives me all the difficult files.
Customers are always complaining.
If this job was easier, I'd like it better.
No one helps me unless I ask for it.
My job is nerve-racking. One little mistake could cost the company thousands.
The only time I see my supervisor is when I make a mistake.
I always have to go to conferences and review them for everyone else in office meetings.

The customers are so needy. I wish they'd leave me alone.
I'm the only one in my office with any experience.

Here is an exercise. See if you can reword the comments to point out the positive. Keep in mind that all of the remarks are entirely valid. But if you can change them around just a little so that they seem positive instead of negative, you are ahead of the game.

Below I have rewritten the comments as I believe one who aspires to be an Awesome Adjuster would see things.

I have too much work.
I have job security.

My manager gives me all the difficult files.
My manager trusts me to handle the difficult files.

Customers are always complaining.
Customers need my help. That's my job.

If this job was easier, I'd like it better.
This is a tough job. But, if this job was easier, the company wouldn't need me.

No one helps me unless I ask for it.
I'm left alone to do my job.

My job is nerve-racking. One little mistake could cost the company thousands.
I have a job that is important and requires thoughtful care. My company trusts my decisions.

The only time I see my supervisor is when I make a mistake.
My supervisor doesn't hover over me and lets me do my job.

I always have to go to conferences and review them for everyone else in office meetings.
I am trusted to interpret important information and help train others in my office.

The customers are so needy. I wish they'd leave me alone.
The customers are very needy. If they weren't, anyone could do this job.

I'm the only one in my office with any experience.
I am relied upon in my office because of my experience.

Stop Your Whining

Frequently, when I am teaching a training class, some individuals want to spend the entire time complaining about their manager. They want to spend the whole class trying to prove to me that they have no need for improvement. It is entirely their manager's fault. "Claims managers are too demanding." "They don't recognize my efforts." "They don't appreciate the hard work that I do." Whatever!

When that happens, I try to bring them around to the fact that no one is perfect. I will say things like, "Well, yeah, your manager's not perfect, but you know what? Your mother's not perfect either, and you still love her, don't you?" And often, that type of comment will get people to realize, "Yeah, nobody is perfect, not even me. And if I can accept and live through the faults of my own mother, then maybe I can forgive my manager just long enough to figure out how to deal with him or her."

That technique usually works, but it did backfire on me one time, and I definitely learned my lesson.

I tried using that technique once in New Jersey. I said to a guy named Tony in class, "Well, yes, but your mother's not perfect either, and you still love her, right?" The room went silent, there was a long pause for about ten seconds, and Tony looked at me and said, "What did you say about my mother?"

It took me a while to get that class back on track, and I learned two important lessons:

1. Not every technique works for every person or even every region of the country.
2. Never talk about someone's mother in New Jersey.

Now, I am not saying that we all need to love our claims managers like we love our mothers, but what I am saying is every manager has his or her strengths, and every manager has his or her weaknesses.

Our job as adjusters is to realize that everyone is different and that we cannot mold our manager into our image. We have to deal with their strengths and weaknesses. Focus on or at least consider their priorities and their situation. Forgive them for their faults and find the best way to perform well in that environment. Remember, you can't change other people, but you can change how you react to them.

Spend just one week pretending you already have what you want and rewording every negative comment you say or hear, and you will see an immediate change in your attitude toward your responsibilities. Your job satisfaction will go up, and your stress level will go down. Then, if you like the way that tastes, go ahead and indulge. Keep eating up that positive attitude. Don't worry; a positive attitude is the ultimate diet. No fat and no carbs!

Carl Van is President/CEO of International Insurance Institute. He is author of *The 8 Characteristics of the Awesome Adjuster*, based on his full-day workshop for insurance companies in the U.S. and abroad. Carl can be reached at 504-393-4570 or CarlVan@InsuranceInstitute.com.