

Belk achieves excellence with comprehensive approach



FROM LEFT TO RIGHT: MARTHA BASCO - *New risk manager;*
 MARK MEEK - *Safety Manager;* GARY NESBIT - *Vice President Procurement,*
Facilities, & Travel; MASHEA MILLER - *Triage Risk Analyst*

Charlotte-based Belk Inc. turned around its workers' compensation program by methodically reinforcing opportunities in communications, training, claims management, and company wide understanding of the financial impact of losses.

The cumulative impact of these initiatives won the department-store chain National Underwriter's Award for Excellence in Workers' Compensation Risk Management. The 2007 honor has drawn national attention to Gary Nesbit, Belk's director of risk management. An insurance- industry veteran with more than 30 years of experience, Mr. Nesbit is nothing if not thorough – as evident from his CSP, CPCU, SPHR, ARM, ASP, ALCM, and AIC designations.

“One of the issues we had was that no one was communicating losses meaningfully or even in understandable terms,” Mr. Nesbit says, in recalling where matters stood when he joined Belk in 2004. “What the company had done in the past was to send out a three-ring “Emergency Procedure” notebook to store managers in the field and that essentially was the extent of our workers' compensation program.”

— CONTINUED ON PAGE THREE

INSIDE THIS ISSUE

PRESIDENT'S NOTE	TWO
LEGAL VIEWS	TWO
WORKPLACE FATALITIES	THREE
COMING UP	FOUR

President's Note

Welcome to the premier issue of NC Workers' Comp NEWS



Dear Friends:

I am pleased to present the premier issue of our newly designed quarterly newsletter, *NC Workers' Comp News*. Our aim is to bring you news and

features pertaining to developments in workers' compensation in North Carolina and, occasionally, across the region and the country.

We would very much like to hear from you. Please send us any ideas and suggestions you may have on how we can make this publication useful to you. Please also contact us if you are interested in submitting news and articles that we might be able to use in this publication.

I am also pleased to add that we have a newly designed website as well. Visit us at www.ncselfinsurers.com where you can read this newsletter in its entirety and keep abreast of emerging developments.

The North Carolina Association of Self-Insurers is dedicated to promoting the interests of employers self-insured for workers' compensation or with large deductibles (which, in essence, makes them self-insured). We are the employers' voice in workers' compensation. For a mere \$290 per year, you can join and reinforce our ranks and work with us to make sure workers' compensation continues to work for all of us.

With very best wishes,
Jay Norris, *president*

LEGAL VIEWS

From Bad to Worse:
Death Benefits under the
Workers' Compensation Act

By Joe Austin



The North Carolina Workers' Compensation Act requires an employer to pay 400 weeks of compensation when an employee dies as a result of a compensable injury or disease. While an award for payment of death benefits is not surprising when an employee dies as a result of a sudden traumatic event, an employer may be surprised to learn that he is potentially liable for death benefits for an employee who has ceased to work and has collected total disability benefits for a number of years.

The June 3, 2008 case of *Kelly v. Duke University* provides a good example of this scenario. In that case, the employee (Jeffreys) worked as a secretary for an exceptionally demanding doctor who "was generally abusive towards her." Jeffreys had underlying diabetes, and the Industrial Commission found that the "extreme stress" of her work environment exacerbated her diabetic condition. Although Jeffreys began experiencing symptoms associated with this aggravation in April of 1997, she did not experience any reduction in her wages until she stopped working in April of 1999, at which point she filed a claim for workers' compensation benefits. In the course of litigating Jeffreys' claim for benefits, the parties stipulated that her "injury" occurred in April of 1997. In 2000, the Industrial Commission granted Jeffreys' claim for total disability benefits, which she collected until her death in 2004.

Jeffreys' sister, who was the closest surviving relative, filed a claim for death benefits. Duke contested liability, contending that the statute of limitations had run.

The Act provides that death benefits are payable when death results within six years of a compensable injury or occupational disease. Notwithstanding the stipulation that Jeffreys' injury occurred in April of 1997, the Court observed that Jeffreys' claim had been for an occupational disease, and cited case law establishing that, in occupational disease claims, the first date of disability is deemed to be the date of injury. Since Jeffreys did not have any disability until April of 1999, the six-year statute of limitations did not begin to run until that date, meaning that Jeffreys' death in 2004 was within the six-year statute of limitations.

Joe Austin leads the workers' compensation practice group at Young Moore and Henderson in Raleigh. A graduate of Davidson College, Joe received his law degree from Wake Forest University. ■

Belk achieves excellence with comprehensive approach — CONTINUED FROM PAGE ONE

Belk paid for the casual approach, with injury rates running between 14%-15%, almost twice the nationwide rate for similar businesses. Although Belk, the nation's largest privately owned department-store company with 313 stores in 17 states, has been serving customers since 1888 it never had a professional risk manager until it hired Mr. Nesbit.

Almost immediately, Mr. Nesbit proceeded to build the program step-by-step in collaboration with his risk management team, which includes Martha Basco, assistant risk manager; Mark Meek, safety manager; and Mashea Miller, customer triage specialist. Over the next three years the risk management team infused new life into the comp program by introducing Accident Prevention Awareness training classes, emphasizing the store manager's role in returning injured employees to work, and sending weekly e-mails to managers covering accident trends, rates, and claims summaries, among other initiatives.

One move that got the attention of Belk store managers was when the company instituted an allocation program that charges back claims costs to individual stores (\$26,000 per loss, with a \$13,000 refund for return-to-work success). The company also implemented targeted programs for stores with high losses. Belk's ability to quantify exactly how much workers' compensation losses were costing its stores, along with its insistence store managers accept responsibility for losses and making improvements, were two attributes that vowed the judges in the national competition. Belk was chosen first from among 32 applicants in the National Underwriter contest. The annual competition is sponsored by the National Council on Compensation Insurance.

Judges were also impressed Belk was able to reduce its injury rates from nearly 15 per 100 workers to just under 5 injuries per 100 workers. Belk estimates these substantial improvements amount to nearly a \$19.5 million reduction in workers' compensation and general liability costs.

Mr. Nesbit and his team have made a difference because of the energy and imagination they've brought to the task. They know there is no letting up. "You have to drive that ongoing awareness," Mr. Nesbit says. ■

Workplace fatalities in North Carolina post record decrease

Fatalities from workplace accidents fell 30 percent in North Carolina last year—the largest decrease ever recorded—according to figures released by the N.C. Department of Labor.



The number of fatal work accidents fell from 65 in 2006 to 45 in 2007. The N.C. Department of Labor investigated 68 workplace fatalities in 2005 and 75 in 2004. Non-work-related fatalities involving medical conditions such as heart attacks and strokes are not included in these totals. ■

COMING UP

North Carolina Workers' Compensation Educational Conference

Sheraton Imperial Hotel & Convention Center, Durham

North Carolina Association of Self-Insurers Annual Meeting & Educational Conference

Holiday Inn Sunspree Resort, Wrightsville Beach

RIMS 2009 Annual Conference

Orange County Convention Center, Orlando

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The employers' voice in workers' comp

13TH ANNUAL Workers' Compensation Educational Conference set for October 13-15

The North Carolina Industrial Commission and the International Workers' Compensation Foundation are jointly sponsoring the 13th Annual Workers' Compensation Educational Conference, set for October 13-15, 2008, at The Sheraton Imperial Hotel and Convention Center (near Research Triangle Park). Please note that this conference is scheduled to run Monday-Wednesday.

According to the industrial commission, the block of rooms reserved for the conference at the Sheraton is now full. Rooms are still available at the Sheraton, with a three-night minimum stay, but not at the conference rate. The overflow hotels (at the bottom of the hill from, and usually at the same rate as, the Sheraton) are: Marriott SpringHill Suites and Comfort Suites RTP/RDU. Among the topics on the agenda:

Monday, October 13, 2008

- Creating and Maintaining Positive Workplace Expectations
- Chronic Pain: Management Challenges and Public Health and Safety Considerations
- Legal Ethics (1 CLE Ethics Hour)

Tuesday, October 14, 2008

- Musculoskeletal Ultrasound: Diagnosis and Treatment Guidelines
- Claims Compliance: New and Revised Forms
- Physical Therapy: Black Hole or Best First Choice
- Advantages of Vocational Rehabilitation

Wednesday, October 15, 2008

- Industrial Commission Year in Review
- Noninvasive Treatment for Chronic Heel and Elbow Pain
- Mediation Update
- Partnering with Medical Providers
- Case Law Update