

## Conference To Explore New Technologies

Registration is open and space available for exhibitors at the upcoming annual conference of the North Carolina Association of Self-Insurers, scheduled for March 27-29 at the Holiday Inn Resort in Wrightsville Beach, North Carolina.

This year's conference will explore emerging technologies in workers' compensation, such as mining geosocial data in claims investigations, wearable robots, and developments in surgical techniques and in role of sub-specialized clinics. Also on the agenda:

- Developments in Medicare Secondary Payer
- Case law update
- Hemp and the opioid crisis
- A panel discussion focusing on judicial views on workers' comp litigation
- Managing pain
- Avoiding conflicts between workers' comp and employment law

The session on geosocial data by Stephen Roper of DigiStream will analyze what investigations can uncover from photos, blogs, and other postings on Facebook, Twitter, and Instagram, among other social media outlets. The presentation will also discuss real-life examples and how cyber evidence can be leveraged in claims investigations.

In his presentation on wearable robots in workers' compensation, Bob McIver of Brooks Rehabilitation will look at the rapid gains made by exoskeletons in the field of rehabilitation technology. He will explain how the interface of biofeedback and bioelectrical signals allows patients to use their nervous system to power their walking ability.

Friday's session on surgical technologies by R. Glenn Gaston and Bryan Loeffler of OrthoCarolina will look at advances in medical management of amputees, emerging techniques in nerve reconstruction, and the role of multidisciplinary, sub-specialized clinics for patients with complex injuries.

Registration fees for the conference are \$225 for members and \$500 for non-members. Exhibitor fees are \$650 for members and \$950 for non-members. Exhibitor fees cover registrations for two registrants. The conference starts at 1 p.m. on Wednesday, March 27 and will conclude at noon on Friday, March 29. Exhibitors may set up and take down any time between Wednesday and Friday.

The conference has been approved for 12 continuing education credits for adjusters and 7.5 hours for lawyers (general requirement). In addition to paying for course-approval fees to designated authorities, the association also pays for continuing-education fees assessed by the North Carolina Department of Insurance and the North Carolina State Bar.

NCASI's annual conference is an ideal forum to network with your peers and potential customers and learn how workers' comp is developing in North Carolina. Many of North Carolina's largest employers belong to our association, along with claims professionals, rehab specialists, TPAs, surveillance professionals, and law firms. Membership is open to self-insured employers and employers with large deductibles.

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## CASE LAW UPDATE

By Bruce Hamilton



### Does the legislative fix to Wilkes apply retroactively?

On December 7, 2018, the North Carolina Supreme Court issued a decision in *Pine v. Walmart*, which is one of the first cases to deal with the recent 2017 legislative amendments to G. S. 97-82(b) in response to the Supreme Court's June 2017 opinion in *Wilkes v. City of Greenville*.

In *Pine*, the plaintiff fell at work and hit her right wrist, shoulder, left knee and chest on the floor. The plaintiff initially complained of problems with her left knee, right hand, right wrist and shoulder pain. Plaintiff was diagnosed with a shoulder sprain and later with injuries to her left knee, cervical spine and wrist. Subsequent MRIs revealed a rotator cuff tear in the right shoulder, problems with the left knee and a subsequent EMG revealed carpal tunnel syndrome in the right hand. Defendants filed a Form 60 accepting plaintiff's claim as compensable regarding only her right arm/shoulder. Plaintiff filed a request for hearing seeking compensation for the other body parts that were injured in her fall beyond the right shoulder/arm.

The Deputy Commissioner entered an Opinion and Award concluding, among other things, that all of plaintiff's injuries were related to her work-related fall. On appeal, the Full Commission again found for the plaintiff, specifically stating in its findings of fact that plaintiff had proven that all of her injuries were related to the fall by a preponderance of the evidence. Confusingly, however, the Full Commission also concluded as a matter of law that the defendants filing of a Form 60 had created a rebuttable presumption, also known as the *Parsons* presumption, that all of plaintiff's injuries were related to her fall, and that defendants have failed to rebut that presumption.

Defendants appealed to the Court of Appeals arguing that the Commission had erroneously applied the *Parsons* presumption. The *Pine* case was briefed and oral argument was completed prior to the North Carolina Supreme Court issuing the *Wilkes* decision and prior to the legislative response to *Wilkes* in June 2017.

The Court of Appeals issued its decision in *Pine* on September 5, 2017, approximately 2 months after the legislative

response to the *Wilkes* decision. The Court noted the legislative change to G. S. 97-82(b) and concluded that the

Commission had erroneously applied the *Parsons* presumption based upon the fact that the legislative change applied to all claims accrued or pending prior to or after the date on which the amendment became law. However, the Court of Appeals ultimately ruled in favor of the plaintiff on other grounds.

On appeal to the North Carolina Supreme Court, the plaintiff argued that the legislative amendments to G. S. 97-82 (b) should not apply retroactively and that the Commission properly applied the *Parsons* presumption in this case. The Supreme Court reversed and remanded the Court of Appeals decision on other issues, but noted in a footnote that because the amendment to G. S. 97-82 (b) occurred after the Court of Appeals heard arguments in this case, the plaintiff's first opportunity to raise the issue of whether the legislative amendment should apply retroactively was in the appeal to the Supreme Court. Therefore, the Supreme Court held that the plaintiff was not barred from raising the issue of the retroactive effect of the legislative amendment on remand.

Consequently, whether the legislative amendment to 97-82(b), the so-called legislative fix to the *Wilkes* decision, will apply retroactively is still an open question. Depending on how the Court ultimately rules on this issue, parties in workers' compensation claims may end up with two sets of rules regarding the applicability of the *Parsons* presumption: One set of rules involving a Form 60 filed prior to the legislative amendment, and a second set of rules applying to a Form 60 filed after the effective date of the legislative amendment.

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*Bruce Hamilton is a partner in the Raleigh office of Teague Campbell. He is a graduate of Tulane University and the University of Virginia School of Law.*

## *President's Note*

### **Farewell, dear friends**

This marks my last message to you as president of the North Carolina Association of Self-Insurers. I recently accepted a retirement-package from Duke Energy and retired at the end of February. However, I will be attending and presiding at the conference in March and look forward to seeing you there. Indeed, even in retirement I hope to attend a few more conferences as my wife, Lynn Norris, is still working and Southern Rehabilitation is an active member and exhibitor at our conference.

Our 2019 conference will also be the last official appearance for Don Carter of Columbia Forest Products in Greensboro. Don is a long-time board member and former president of NCASI and was among the founders of our association when we incorporated nearly 40 years ago. Don and Columbia Forest Products have generously supported the association all these years. We wish Don a healthy and contented retirement.

I am truly pleased to announce that the NCASI board has elected Stephanie Gay as our next president. No one works harder than Stephanie for the welfare of the association. For the past dozen years or so, she has devoted considerable energy and effort in selecting topics and speakers for the conference and, as

many of you know, she is there every year to ensure it all flows smoothly. Please join me in congratulating Stephanie as she assumes additional responsibilities.



It has given me immense pleasure to be a part of NCASI all these years. I have seen our conference grow from modest beginnings to extraordinary success in recent years. In addition, our association has always been prompt in throwing our weight and funds to support initiatives seeking to improve workers' compensation, and we have never hesitated to line up against ill-founded ventures and ill-considered court decisions.

I am sure these traditions will continue into the future as we demonstrate time and again that NCASI is truly the employers' voice in workers' compensation in North Carolina.

With very best wishes,

Jay Norris

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## **Rising prescriptions for benzodiazepines**

The percentage of visits to a physician that led to a benzodiazepine prescription doubled between 2003-2015 and researchers are warning the U.S. may be facing another public health problem. Although benzodiazepines are well-known as anti-anxiety medications – under the brand names Valium, Librium, Halcion – they are increasingly prescribed for back and chronic pain, even though there is little evidence they are effective past eight to ten weeks.

The most-recent warning was voiced by researchers in a study published January 25, 2019 in *JAMA Network Open*. “I don't think people realize that benzodiazepines share many of the same characteristics of opioids,” says Dr. Sumit Agarwal, an internist at Brigham and Women's Hospital in Boston and one of the authors of the study.

He noted to **NPR** that benzodiazepines are addictive, lead to slower breathing, alter mental status, and can lead to overdose

and deaths. Researchers have estimated this class of drugs may account for as many as 12,000 deaths per year in the U.S.

A major reason for increased use of benzodiazepines is that the large class of drugs can be used for many indications- anxiety, panic, insomnia, seizures, alcohol withdrawal, muscle spasms, and neuropathic pain— but “when prescribed selectively in appropriate patients for short-term use,” as the researchers noted.

As it is, “surprisingly few guidelines exist for a medication that is prescribed by so many different types of physicians and for so many different indications.” Researchers report benzodiazepine use has risen substantially for indications other than anxiety and insomnia. Between 2003-2015, usage more than doubled for back and chronic pain as well for other non-specific conditions.

# coming up

March 27-29, 2019

NC Association of Self-Insurers' Annual Conference.

Holiday Inn Resort, Wrightsville Beach

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*The employers' voice in workers' comp*

## Update from The Commission

*By Bruce Hamilton*

Commissioner Philip Baddour was recently named Chair of the Industrial Commission replacing Charlton Allen. In addition, Commissioner Myra Griffin was named Vice Chair of the Industrial Commission replacing Yolanda Stith. Commissioner Allen and Commissioner Stith will remain on the Commission for the remainder of their terms.

The appointment of the Chair and Vice Chair of the Commission was subject of recent litigation. In December 2018, a Wake County Superior Court Judge ruled that prior legislation from 2016 was unconstitutional; a ruling which invalidated the legislative appointment of Commissioner Allen as Chair and Commissioner Stith as Vice Chair. Following the December ruling, Governor Cooper named Commissioner Baddour Chair and Commissioner Griffin Vice Chair. Although the initial ruling from the Superior Court was stayed, that stay was removed in January 2019, allowing Commissioner Baddour and Commissioner Griffin to assume their positions as Chair and Vice Chair.

Effective March 1, 2019, Deputy Commissioner Melanie Goodwin was named Chief Deputy Commissioner replacing Deputy Commissioner Sumit Gupta and Deputy Commissioner Robert Harris was named Senior Deputy Commissioner to assist Chief Deputy Commissioner Goodwin and oversee the administration of tort claims.

Former Commissioner Tammy Nance, was appointed as a Deputy Commissioner by then Chairman Charlton Allen in January. In addition to her regular duties, Deputy Commissioner Nance will oversee the Claims Administration Section and will serve as the Director of Programs and Innovation.

Lyla Santa Rosa was appointed Deputy Commissioner by then Chairman Allen in December 2018 and is assigned to the Raleigh office.

Governor Cooper has nominated Deputy Commissioner James Gillen for appointment as a Full Commissioner to the Industrial Commission to fill the vacancy created by the expiration of Commissioner Nance's term in June 2018. Deputy Commissioner Gillen's appointment needs to be approved by the North Carolina General Assembly.