

# **COLORADO WORKERS' COMPENSATION THEORY AND PRACTICE**

Fall 2011

## **The Professor**

Vito A. Racanelli has practiced law in Colorado since 2004 with a focus on worker's compensation defense. He is an associate with the law firm of Ruegsegger, Simons, Smith & Stern, LLC (1401 Seventeenth Street, Suite 900, Denver, CO 80202). Mr. Racanelli was named the Outstanding Respondents' Attorney for 2009 by the Professionals in Workers' Compensation Association, and authored the workers' compensation sections of the Colorado Bar Association's Annual Survey of Colorado Law from 2008 through 2010. Mr. Racanelli received a juris doctor degree from the University of Colorado Law School in 2004, and a bachelor's degree from the University of Illinois in 2000. Before law school, Mr. Racanelli was a risk consultant in Chicago.

## **Course Description**

Colorado workers' compensation claims are governed by a unique set of administrative laws and represent a significant component of the civil litigation system. In 2005, approximately 24,000 claims were filed for injuries which resulted in greater than three days of lost work, permanent impairment, or fatality. In 2008, administrative law judges conducted 2,269 workers' compensation hearing, or nearly nine per business day. Employment opportunities for young attorneys in the workers' compensation industry are diverse and located throughout the state.

This course will introduce you to the most important legal theories and practical aspects which govern Colorado's workers' compensation system. I hope you enjoy the subject matter and feel ready to compete in a litigation setting upon completion of the course. The subject matter will be Colorado-specific and special attention will be given to the Workers' Compensation Act, the Workers' Compensation Rules of Procedure, and the Office of Administrative Courts Rules of Procedure.

## **Class Times and Office Hours**

Class will meet once per week on Wednesdays at 4:15 p.m. to 5:55 p.m. The professor's office hours will be posted when classes begin.

## **Course Expectations and Evaluation (2 credits)**

Grades will be curved on a numeric scale and comprised of scores for class participation/attendance, a practical exercise, and a final examination.

Final examination	– 75%
Practical Exercise	– 15%
Class participation and attendance	– 10%

## **Final examination**

The two-hour comprehensive final examination represents the largest portion your grade because this course is designed to provide a broad overview of the theories and laws that comprise Colorado's workers' compensation system. You will be asked to provide essay answers concerning the claims or defenses you might pursue based on a hypothetical fact pattern. The highest grades will be given to the students who identify the relevant claims and defenses, and provide the most persuasive explanations concerning the strengths and weaknesses of those claims and defenses.

## **Practical exercise**

The practical exercise represents a significant portion of your grade because this course is designed to provide some of the basic practical skills needed to succeed in the industry. The highest grades will be given to the students who accurately complete the pleadings, identify the relevant claims and defenses, and provide the most persuasive answers concerning the strengths and weaknesses of those claims and defenses.

## **Class participation/attendance**

Class attendance and participation constitutes a significant component of your grade process because workers' compensation litigation practice requires a large amount of oral argument. Please complete the reading assignments prior to class and be prepared to be called on without notice. The highest grades will be given to the students with the fewest absences who thoughtfully and voluntarily contribute to class discussions. Absence or lateness for more than 20% of the total number of classes or lectures in any course shall be cause for the instructor to levy on the student a grade penalty the instructor deems appropriate, up to and including the assignment of a failing grade.

## **Course Materials**

The only required textbook is *Colorado Workers' Compensation Practice and Procedure*, 2<sup>nd</sup> Ed. (2005), by Douglas and Susan Phillips. You will also be asked to read several articles and portions of the Workers' Compensation Act, Workers' Compensation Rules of Procedure, and Office of Administrative Courts Rules of Procedure, but all of these resources are available for free online via Westlaw and the websites of the Colorado Division of Workers' Compensation and Office of Administrative Courts.

## **Class 1: The evolution of workers' compensation law**

**Reading Assignment:** Phillips pp. 1-21, 646-647, 650-655, and 671-675 (chapters 1.1-1.15, 15.2, 15.11-15.12, and 15.31-15.32); sections 8-40-101, 8-40-102(1), 8-43-201(1), 8-43-207, 8-43-209, 8-43-210, and 8-43-215, 8-43-301, and 8-43-403, C.R.S. (2010).

### ***Class Discussion***

- Workers' compensation history

- The Department of Labor and Employment
- The Division of Workers' Compensation
- The Office of Administrative Courts
- Administrative Law Judges
- The Colorado Workers' Compensation Act

## **Class 2: Rules and resources**

**Reading Assignment:** Phillips p. 648 (chapter 15.3 excluding p. 649); W.C.R.P. 3-6 and 5-4; O.A.C.R.P. 1-6, 14, and 16-19; sections 8-42-101(3.7) and 8-43-217, C.R.S.; and Eston W. Orr, "The Bargain is No Longer Equal: State Legislative Efforts to Reduce Workers' Compensation Costs Have Impermissibly Shifted the Balance of the Quid Pro Quo In Favor of Employers" (37 Georgia L. Rev. 325, 2002).

### ***Class Discussion***

- Division of Workers' Compensation Rules of Procedure
- Office of Administrative Courts Rules of Procedure
- Office of Administrative Courts Policies
- *The AMA Guides*
- Esten Orr discussion

## **Class 3: The scope of the Act**

**Reading Assignment:** Phillips pp. 38-45, 203-208, and 214-217 (chapters 1.31-1.35, 4.61-4.63, and 4.67-4.68); sections 8-40-202(1)(a-b), 8-40-202(2)(a), 8-40-202(2)(b)(II), 8-40-203, 8-40-301, 8-40-302(3), 8-40-302(4), 8-41-102, 8-41-204, 8-41-401(1)(a), 8-41-401(2), 8-41-401(3), 8-43-408(1), 8-43-408(4), and 8-44-101, C.R.S.; and *Snook v. Joyce Homes, Inc.*, 215 P.3d 1210 (Colo. App. 2009).

### ***Class Discussion***

- Mandatory coverage
- Covered employees and employers
- Colorado jurisdiction
- Exclusive remedy
- Statutory employers

## **Class 4: Compensability & Reporting**

**Reading Assignment:** Phillips pp. 55-63, 66-75, 77-78, 108-112, 114-118, 120-126, and 128-131 (chapters 2.1-2.3, 2.5-2.8, 2.10, 3.6-3.7, 3.9, 3.12-3.13, and 3.16); sections 8-41-301, 8-41-304, 8-43-102(1)(a), 8-43-102(2), 8-43-103, 8-43-203(1)(a), and 8-43-203(3), C.R.S.; W.C.R.P. 5-2; and *Phillips Contracting, Inc. v. Hirst*, 905 P.2d 9 (Colo. App. 1995); *Varsity Contractors and Home Ins. Co. v. Baca*, 709 P.2d 55 (Colo. App. 1985).

### ***Class Discussion***

- Elements of compensability

- Occupational diseases, industrial injuries, and mental stress injuries
- Last injurious exposure
- Reporting requirements

### **Class 5: Admissions of liability & Medical benefits**

**Reading Assignment:** Phillips pp. 219-221, 223-225, 234-236, 241-246, and 248-250 (chapters 5.1, 5.3-5.4, 5.11, 5.16-5.18, and 5.21-5.22); sections 8-40-201(11.5), 8-42-101(1)(a), 8-42-101(3)(a)(I), 8-43-101(1), 8-43-203(1)(a), 8-43-203(2)(a), 8-43-203(2)(b)(I), 8-43-404(1), 8-43-404(3), 8-43-404(5)(a)(III)(A) and (D), 8-43-404(5)(a)(VI), 8-43-503(3), and 8-43-404(7), C.R.S.; W.C.R.P. 16-2(B).

#### ***Class Discussion***

- General admissions of Liability
- Notices of contest
- Medical benefits
- Authorized treating providers
- Change of physician
- Maximum medical improvement
- Quasi-course of employment injuries

### **Class 6: Temporary disability benefits & disfigurement**

**Reading Assignment:** Phillips pp. 269-273, 282-291, and 294-296 (chapters 6.1-6.2, 6.11-6.18, and 6.22); sections 8-42-102, 8-42-103(1)(a), 8-42-103(1)(b), 8-42-104(1), 8-42-105, and 8-42-106, C.R.S. (2010); W.C.R.P. 5-4(D), and 6-1; *Anderson v. Longmont Toyota, Inc.*, 102 P.3d 323 (Colo. 2004); *Pizza Hut v. ICAO*, 18 P.3d 867 (Colo. App. 2001).

#### ***Class Discussion***

- Average weekly wage
- Temporary disability benefits
- Defenses to claims for temporary disability benefits
- Disfigurement benefits

### **Class 7: Permanent disability benefits**

**Reading assignment:** Phillips pp. 296-306, 325-330, 331-333, and 340-341 (chapters 6.31-6.34, 6.46-6.47, 6.50-6.51, and 6.65); section 8-42-107(8), 8-42-107(8)(e), 8-42-107.5, and 8-42-108, C.R.S. (2010); Robert I. Corrales, “Workers’ Compensation and Vocational Rehabilitation Benefits for Undocumented Workers: Reconciling the Purported Conflicts Between State Law, Federal Immigration Law, and Equal Protection to Prevent the Creation of a Disposable Workforce” 81 Denver U. L. Rev. 347

#### ***Class discussion***

- Scheduled impairment ratings

- Whole person impairment ratings
- Conversion of impairment ratings
- Statutory benefit caps
- Permanent total disability benefits
- Defenses to claims for permanent disability benefits
- Correales discussion
- Death benefits

### **Class 8: Offsets**

**Reading assignment:** Phillips pp. 389-406 (chapters 8.1-8.6, 8.8-13); sections 8-42-103(1)(c), 8-42-103(1)(f), 8-42-103(1)(e), 8-42-104(3) through 8-42-104(6), 8-42-112(1), and 8-42-112.5, C.R.S. (2010), W.C.R.P. 12-3

#### ***Class discussion***

- Safety rule violation
- Intoxication
- Apportionment
- Workers' compensation benefits from other states
- Unemployment benefits
- Social security benefits

### **Class 9: Closure**

**Reading assignment:** Phillips pp. 251-252, 414-431, and 562-572 (chapters 5.23, 9.1-9.14, and 13.1-13.5); sections 8-42-107(8) and 8-43-203(2)(a)(II)(A), C.R.S. (2010); W.C.R.P. 7, and 11-1 through 11-3

#### ***Class discussion***

- Penalties
- Final admissions of liability
- Objection to final admissions of liability
- DIME process

### **Class 10: Hearings**

**Reading assignment:** Phillips pp. 657-60, 680-682, and 689-696 (chapters 15.14-15.17, 15.41, and 15.47-15.51); sections 8-43-207, 8-43-207.5, 8-43-209, and 8-43-210, C.R.S (2010); W.C.R.P. 9-2(C); O.A.C.R.P. 7-15, and 20-25; Chief Judge Directive 2

#### ***Class discussion***

- Application for hearing
- Response to application for hearing
- Prehearing conferences

- Settlement conferences
- Types of hearings
- Hearing practices
- Closing statements
- Orders

**Practice exercise will be distributed at the end of class** (completion of Workers' Claim for Compensation, Application for Hearing, and Response to Application for Hearing; essay questions regarding any topics covered in classes 1-8)

### **Class 11: Discovery**

**Practice exercise due at the beginning of class**

**Reading assignment:** Phillips pp. 250-251, 661-668, and 708-709 (chapters 5.22, 15.18-15.21, and 15.71); sections 8-43-207(1)(e) and 8-43-404(1), C.R.S. (2010); W.C.R.P. 9-1; *Compton v. Safeway, Inc.*, 169 P.3d 135 (Colo. 2007); *Alcon v. Spicer*, 113 P.3d 735 (Colo. 2005)

#### ***Class discussion***

- Discovery with represented vs. unrepresented parties
- Limited scope
- *Compton* and *Alcon*
- Independent medical examinations

### **Class 12: Appeals**

**Reading assignment:** Phillips pp. 737-770 (chapters 16.11-17.13); sections 8-43-215, 8-43-301(1), 8-43-301(2), 8-43-302, and 8-43-307, C.R.S. (2010)

#### ***Class discussion***

- Final orders
- Corrected orders
- Requests for full orders
- Petitions to review
- Appellate process (ICAP, COA, CSC)

### **Class 13: Settlement & Reopening**

**Reading assignment:** Phillips pp. 584-589, and 614-626 (chapters 13.13-13.15, and 14.1-14.10); sections 8-43-204 and 8-43-303, C.R.S. (2010); W.C.R.P. 7-2

#### ***Class discussion***

- Settlement evaluation
- Represented vs. unrepresented parties
- Limited scope of settlement

- Medicare set-aside accounts
- Reopening

### **Class 14: Changes in the Law & Attorney Representation**

***Reading assignment:*** Phillips pp. 46-54, (chapters 1.41-1.46); W.C.R.P. 9-8;

Joan T.A. Gabel, "Escalating Inefficiency in Workers' Compensation Systems: Is Federal Reform The Answer?" 34 Wake Forest Rev. 1083 (1999)

#### ***Class discussion***

- Changes in the law
- Attorney representation
- *Pro se* claimants
- John Gabel discussion
- Final examination review