

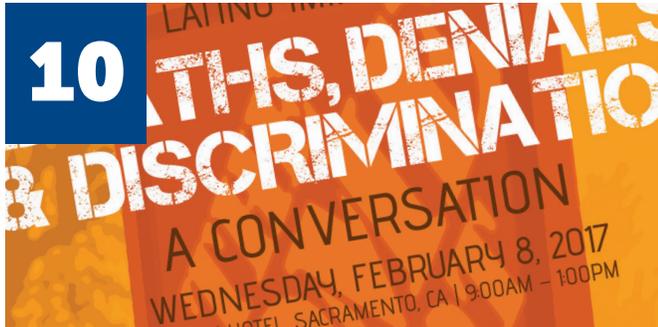
JANUARY 2017

CAAA **ments**

The Voice of the
California Applicants'
Attorneys Association

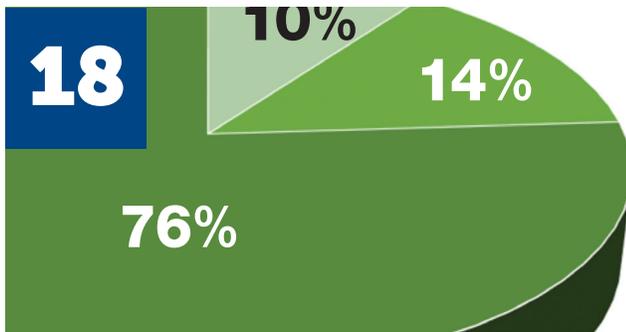
The Year Ahead

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CAAA Latino Caucus Symposium

Addressing the question: Is bias and disparate treatment against Latino workers inherent in our present workers' compensation system?



The CAAA Survey

The Committee on Health and Safety and Worker's Compensation just completed a survey of 850 injured workers. Check out the results.



Meet Alberto Torrico

CAAA's new Legislative Advocate sits down for an interesting and wide-ranging Q&A session.

JANUARY 2017

CAAAments

The Voice of the California Applicants' Attorneys Association

California Applicants' Attorneys Association

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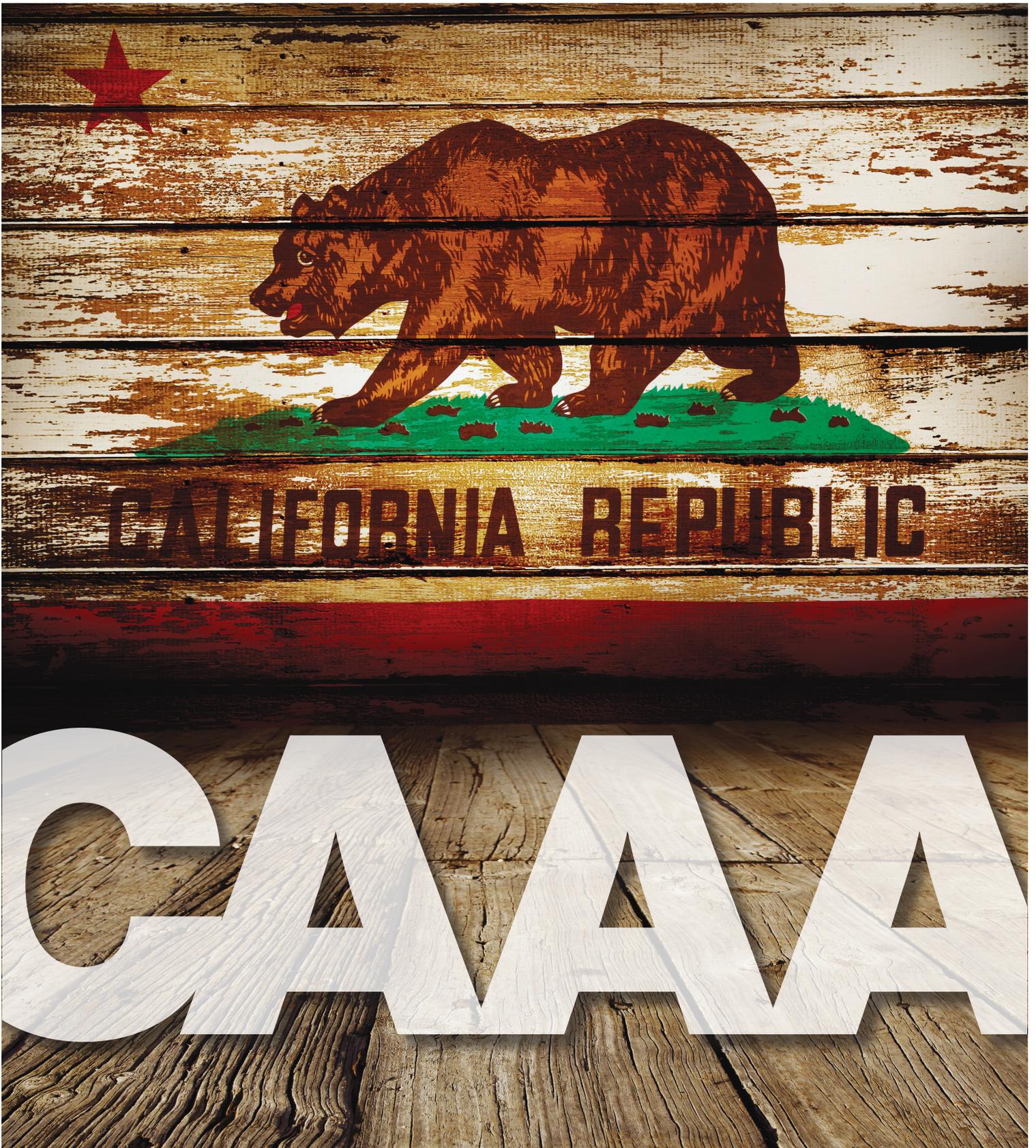
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PRESIDENT'S MESSAGE

CAAA's Success: **Preserving the Past, Planning for the Future**

By Christel Schoenfelder, President of CAAA

Welcome to the 51st year of CAAA! I am incredibly honored to be at the helm of this amazing organization. As a former Chapter President, I understand the importance and power of participation by our members at the grassroots level. And it has been a pleasure to tour the state visiting all our chapters and interacting with members. I really appreciate those of you who have provided your suggestions for the betterment of this association and who are committed to CAAA's success.

Speaking of success, thank you to everyone who registered for CAAA's first webinar. The response was especially overwhelming as you broke the 100 registrant level within 3 hours of the registration link going live! Embracing this technology to provide more of our gold standard education- especially to our younger members and those new to workers' compensation- is a high priority. We are bursting with ideas for webinars and podcasts and I hope you continue your enthusiasm for this new delivery method of education. We welcome your ideas for webinar, podcast, chapter meeting, seminar & convention panel topics.

Last November, CAAA's Board of Directors gathered together for Strategic Planning. We

covered a range of topics including the upcoming Latino Symposium, the gig economy, ethics, and the difference in practices between Northern and Southern California. We ended the retreat with a panel of enthusiastic young CAAA members. During that panel, we learned that 46% of our Regular Members are over 50 years old and 30% of our members are under 40 years old. We are excited to take their suggestions and feedback- especially their quest for mentorship and a sense of community- and turn them into tangible benefits for all of our members.



Last year, CAAA celebrated its 50th Anniversary and honored our Past Presidents. As we move forward, it is important to preserve our institutional memory for future CAAA members- the pictures, the stories, the memories, the principles this organization was built on, and the larger-than-life characters who have served California's injured workers. A committee has been assembled to start the preservation process and I anticipate we'll have an exciting project for the Summer Convention. Stay tuned!

Coming out of Strategic Planning, we have developed numerous action plans for our committees for 2017. We look forward to implementing those plans for the benefit of California's injured workers, our members, and the outside world. Again, THANK YOU for allowing me to serve as your President. I look forward to working with you in 2017. 

EXECUTIVE'S MESSAGE



By Karen Locke, Executive Director

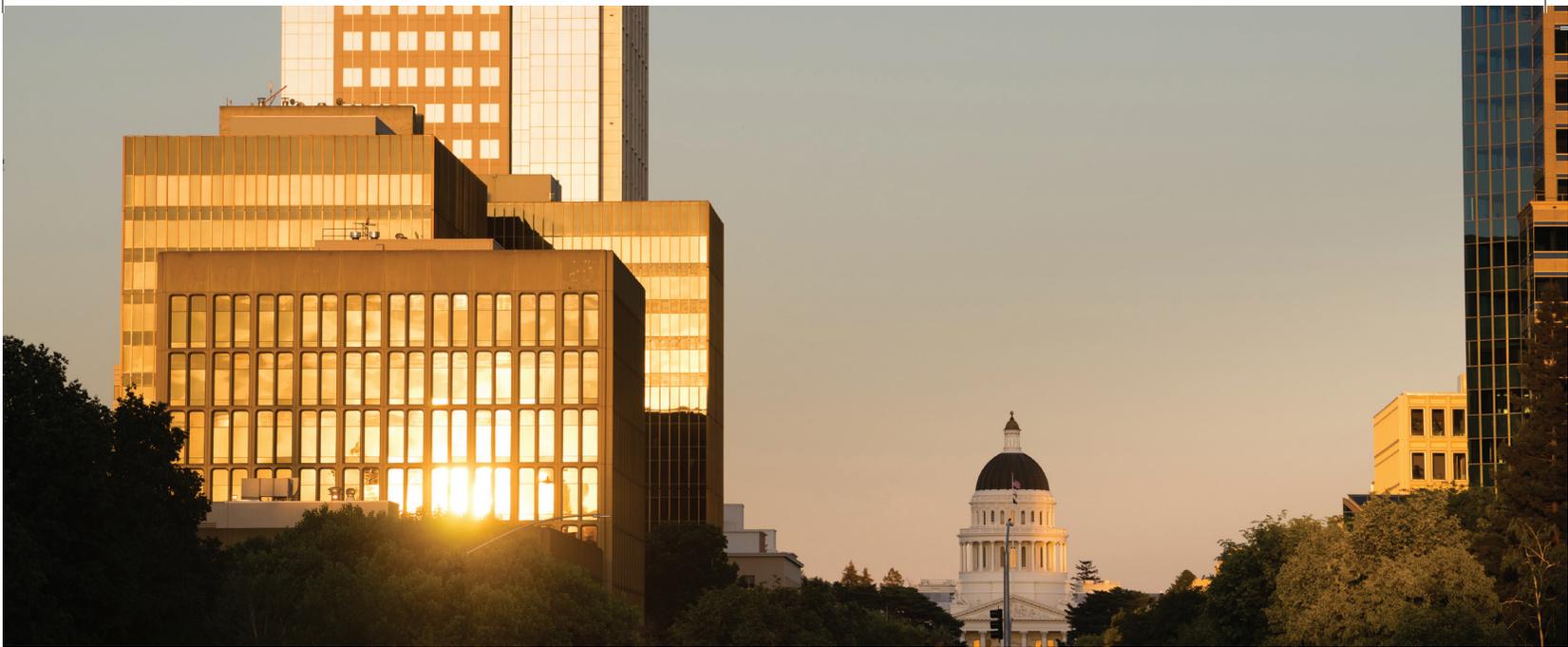
Following

Happy New Year and welcome to the January 2017 convention. As Christel said in her message to you we are indeed embarking on our 51st year serving the injured workers of California and fighting to keep and improve the benefits they receive. Christel also talked about the institutional memory and how important it is to understand where, why and how the giants in this field of law came together for the betterment of injured workers and in doing so improved each and every one of their own firms by sharing what worked and what did not. They applied these ideas toward the greater good of the organization they envisioned. I have been honored to know some of those giants in this field of law, some have left us and happily some are still with us and still striving and helping CAAA every day to fight the good fight.

It is my great honor to assist Christel in her year as president as she follows in the footsteps of one of the great giants in the field of workers' compensation law, Eugene Marias, who was also a founder of her firm, Rose, Klein & Marias.

We do have many years to look back on but we also have to look to the future for the 30% of CAAA's applicants' attorney members who are under 40. We must give them the same foundation we have been fortunate to share.

We have many programs this year to look forward to. Art Johnson has committed to lead his third seminar in Hawaii on the island of Maui and this program should not be missed. In the past two years we have had attendance of 150 people, each year, and everyone has taken away helpful information that they can use in their practices. As Christel mentioned we are embarking on a new method of delivering our brand of educational programs through the use of webinars, which is an exciting enterprise. I would also like to point out that the 2017 Summer Convention will be held at the Hyatt Embarcadero, June 22nd – 25th. We are returning to the Hyatt Embarcadero after a four year absence while labor resolved its issues with the hotel management. CAAA is proud to



Giant Footsteps

“

Christel also talked about the institutional memory and how important it is to understand where, why and how the giants in this field of law came together for the betterment of injured workers....

”

say it stood in support of the hotel workers. As a result we negotiated an excellent room rate of \$219.00 for single or double occupancy and \$269.00 for the Regency Club. This convention does not fall on 4th of July weekend and those who are interested in the Giants, there are games scheduled for Friday and Saturday evening. I hope you can bring your family or your significant other and enjoy one of the most beautiful cities in the world. I am sure the education program will not disappoint you either.

Once again thank you to everyone who has made the last 50-years of CAAA possible. Our new E-Board and Board of Directors in addition to many committee members are “Setting the Table” for the future of the California Applicants’ Attorneys Association in protecting the dignity and rights of injured workers. It is an honor to be your Executive Director and as we say as an organization, “Never Give Up.” 



CAAA Membership Update: Membership on The Rise

By Lauren Belger, Co-Chair of the CAAA Membership Committee

April 19, 2004 and the passage of SB 899 brought more to the workers' compensation community in California than just the plethora of significant changes that truly devastated the workers' compensation benefits our clients previously enjoyed. Of course, the word "enjoyed" is used loosely, understanding that most applicants' attorneys, and certainly each of our clients, likely took many of these benefits for granted, such as an absence of a cap on the ability to collect temporary total disability, the absence of utilization review based on tenuous medical standards, or the ability to choose a doctor outside of the employer's direct influence after the first 30 days.

The years following the passage of SB 899 also brought the unfortunate dramatic reduction in membership in the California Applicants' Attorney Association. Our membership rosters for both Associate and Regular Membership dipped precipitously each year after SB 899, until hitting its nadir in 2010.

With the tremendous work done by CAAA's volunteer committees, especially with respect to developing practice tips and business practices that have helped practitioners weather the storm, and even thrive, CAAA's membership numbers are on the rise and nearing pre-SB 899 levels. CAAA's Membership Committee hopes to continue this trend far into the future. One

such way is to ensure that members take full advantage of what it means to be a member of CAAA.

CAAA's educational programs continue to be the best, and most respected, in the industry. CAAA members receive discounts off the registration for conventions, seminars and chapter meetings that occur throughout the year across the state. 2016 saw the introduction of webinars to CAAA's line-up for the delivery of educational programs and of information relevant to our respective practices so that members do not have to necessarily leave their offices or homes to learn about the latest developments in the law.

CAAA's ListServe continues to provide a wealth of information for practitioners, whether solo practitioners, or with larger firms, across the state of California. There is a "New to Comp" ListServe also, for those with limited experience as applicants' attorneys but wish to learn from seasoned professionals. There are opportunities to mentor, or to be mentored. There is also a tremendous sense of camaraderie for those who become actively involved in CAAA as an organization.

There are a host of additional benefits CAAA membership has to offer. For those who would like additional information, including on how to become more involved in CAAA, please call the CAAA office at 916.444.5155. 





CAAA Latino Caucus Symposium

Addressing the Question: **Is Bias and Disparate Treatment Against Latino Workers Inherent in Our Present Workers' Compensation System?**

*By Joseph Capurro, Secretary of CAAA and
Jack Goodchild, President of LAVAAA*

On February 8, 2017 the Latino Caucus of the California Applicants' Attorneys Association will host its first Latino issues symposium at the Citizen Hotel in Sacramento, California. This symposium is intended to shine a light on policies embedded in the state's Workers' Compensation system, which may discriminate against Latino workers. Speakers from the legal, legislative and academic arenas will be brought together to review and discuss concerns focused on Latino communities within the context of California's workforce and most particularly those injured while participating in work activities. Representatives from Centro Legal de la Raza in Oakland, La Raza Centro Legal in San Francisco, and the Coalition for Humane Immigrant Rights of Los Angeles have been invited to the symposium. While the focus will be on Latino communities specifically, the results of the symposium are intended to illuminate issues and concerns for all minorities as it relates to the receipt of adequate medical care and compensation for work injuries.

CAAA Latino Caucus Mission

The mission of the California Applicants' Attorneys Association's Latino Caucus is to improve workplace conditions and outcomes of industrial injury for Latino workers. The Latino Caucus meets its mission by educating Latino workers about legal rights, raising awareness of disproportionate impacts resulting from the system's status quo, and advocating for public policy in the best interest of Latino workers.

CAAA's Latino Caucus has been very active this year including conducting educational presentations on workers' rights with the Alameda Labor Council, the Orange County Labor Federation and the Mexican Consulates in Los Angeles and San Francisco, a successful fundraiser in July at Fior D'Italia Restaurant in San Francisco which kick started the planning efforts for the February Symposium, and the production of an Injured Worker Rights Video in English and Spanish which will be highlighted



at the opening of the Symposium. It has been a busy year for CAAA's Latino Caucus and the February Symposium will be a culmination of all their efforts and hard work. A big thank you to CAAA's immediate Past President, Bert Arnold, who made his number one priority to work with CAAA's Latino Caucus to strengthen its' presence in our communities.

Why a Latino Issues Symposium?

Our workers' compensation system arose as one of the great political compromises of the Progressive Era: workers injured on the job gave up the right to sue their employers for personal injury damages in return for less generous but more certain benefits. Over the past 25 years, the attacks on this "Grand Bargain" have escalated but none so much as the attacks on Latino workers.

Latinos are the largest ethnic group in the workforce. The Latino labor force grew 13.4% between 2009 and 2013. Yet, Latino workers are

the only demographic group in America where work related deaths are rising. Immigrants are the only group who are at risk of losing their jobs permanently when pursuing their legal rights and their immigration status is revealed.

California prides itself on the progress it has made in leading the nation to enlightened public policies impacting immigrants. However instead of congratulating ourselves, it is important that we remain mindful of the fact that in almost every case, the progressive policies we are adopting are nothing more than reversals of the anti-immigrant policies California has previously passed.

Yes, undocumented immigrants can now get a drivers' license. But that is nothing more than a reversal of the 1990's California law that took those drivers licenses away in the first place.

California voters had an opportunity to approve a system of multi- language education in our public schools in November. But again, that is simply

because we are repealing the voter approved English-only policies previously put in place. In 1994, California's Proposition 187 banned immigrants from access to public health care and education. The progress we are currently making is progress only in the sense that it reverses those backward policies.

And while California can point at its laws requiring banks, retailers and realtors to provide people with their legally required consumer protection information in their native language, California still resists providing immigrant workers who are injured at work with their state government rights in their own language.

Bias and Legislative Changes

A series of legislative changes to California's Workers' Compensation system beginning late in the Gray Davis administration and continuing through the most recent legislative session have significantly impacted core issues fundamental to the constitutional promise of substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character. Assessment of permanent disability, calculation of apportionment, access to quality medical treatment to cure and relieve from the effects of injury, development of expert evidence to prove

up one's claim, and even access to an open adjudicative process have all been profoundly impacted by these sweeping legislative enactments.

With enactment of each subsequent legislative modification to the Workers' Compensation system, it has become apparent that there is a real risk that certain protected groups have been adversely impacted both in overt and

subtle ways. As the system has become more closed to due process, adequate development of the record and access to full and fair hearings, the risk for bias and prejudice has increased.

One early example of this impact is in the area of modifications to Labor Code section 4663 allowing for consideration of a broader scope of factors in assessing apportionment. Factors based on gender, age and ethnicity could be

asserted as a basis to justify apportionment. Such concerns were manifested in the cases of *United Airlines v WCAB (Milivojevich)* (09/20/2007) 72 Cal Comp Cases 1415; unpublished decision of the Court of Appeal, Third Appellate District, and *Vaira v WCAB (California Travel and Tourism Commission)* (12/03/2007) 72 Cal Comp Cases 1586; unpublished decision of the Court of Appeal, Third Appellate District.



California still resists providing immigrant workers who are injured at work with their state government rights in their own language.



From a purely medical perspective many risk factors are linked to ethnicity. In *Milivojevich*, the court determined that apportionment to risk factors based upon statistical analysis alone is impermissible. However, the Court declined to publish this important decision. Thus many physicians continue to consider such factors including ethnicity when assessing apportionment with possible disparate impact on certain ethnic groups.

In *Vaira*, apportionment was based in significant part both on gender and age. Again such apportionment was rejected by the appellate court but the Court again rejected requests for publication.

Clearly overt or subtle bias may lead to medical opinions apportioning in a manner impacting protected groups in an unequal manner.

These potential impacts are not limited to apportionment. Something as simple as restrictions on the selection of interpreters can adversely affect communication and thereby result in disparate impact. Access to evidence and full hearings likewise can have a more substantial impact particularly on those with limited or absent English skills.

Here are some of the Highlights of the 2017 CAAA Latino Symposium:

Panel 1: Latino Workers' Injuries and Deaths

A Review of the Statistics and an Analysis of Causes - Seen and Unseen

Guest speakers:
Arturo Rodriguez
(President, United Farm Workers)
Barry Broad, Esq.
(Legislative Advocate, Teamsters)
Kent Wong (Director, UCLA Labor Center)

Angelica Salas (Executive Director, CHIRLA)

Panel 2: Rights of the Undocumented

A Summary of the Constitution and the Law and the State of Enforcement and Impact of Non-Enforcement

Guest speakers: Adam Gray (California State Assemblymember, 21st Assembly District)
Joe Capurro, Esq. (CAAA Executive Board, Co-chair Amicus Committee)
Doug Bloch (Political Director, Teamsters/CHSWC)
Laura Polstein (Senior Staff Attorney, Centro Legal de la Raza)

Panel 3: Tearing Down Walls

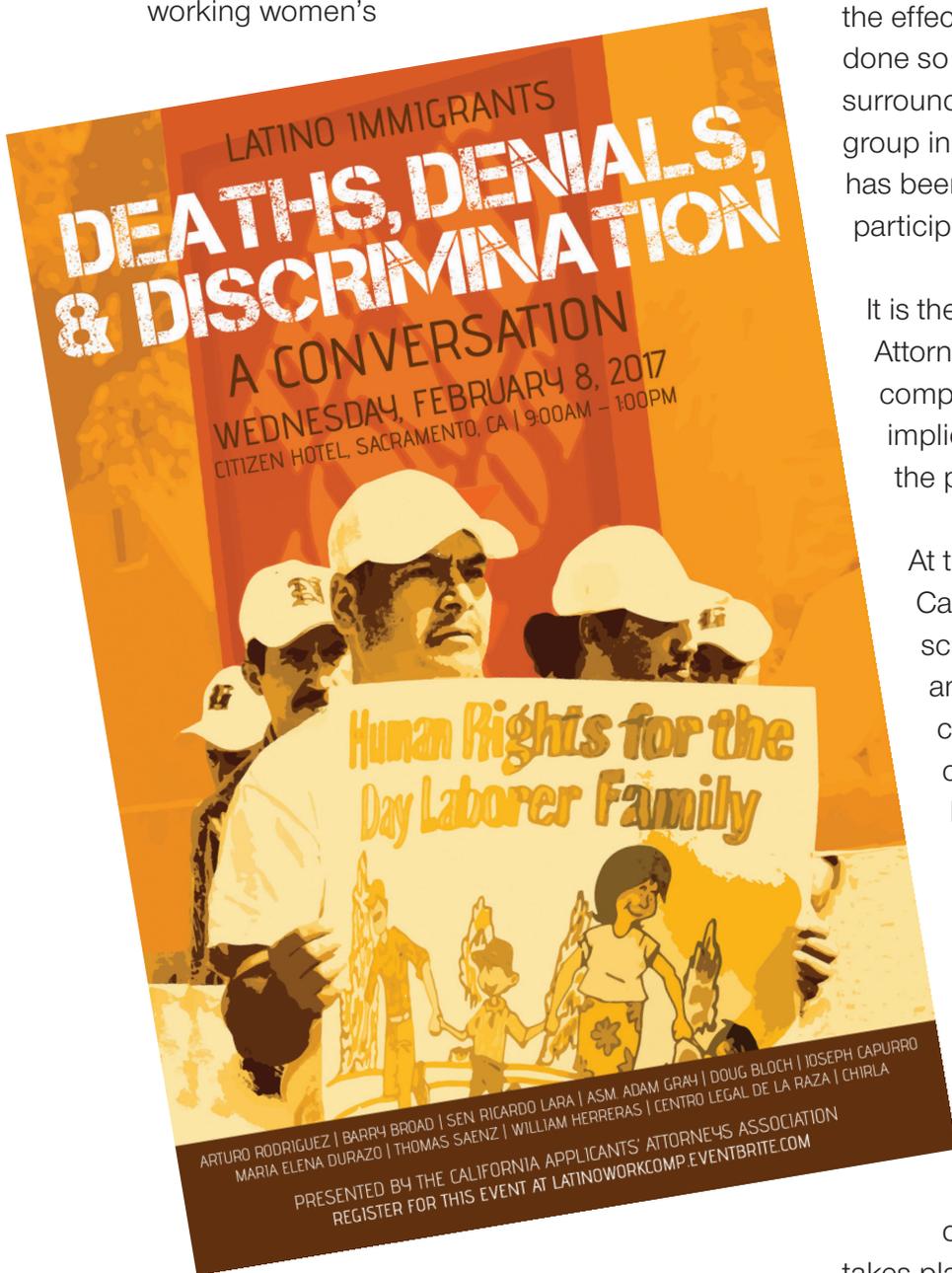
Profiling: The Salas Case Study and Language, Culture, and Fear

Guest speakers:
Maria Elena Durazo (General International Vice President for Immigration, Civil Rights, and Diversity, UNITE HERE)
Bill Herreras, Esq. (CAAA past president, Co-chair Amicus Committee)
Thomas A. Saenz (President and General Counsel at MALDEF)

As can be seen, the California Applicants Attorneys Association has explored several avenues to call attention to and to address the question: Is bias and disparate treatment hardwired into the Workers' Compensation System?

The Latino Symposium was preceded by a recent successful effort in February 2014 which was the CAAA Womens' Caucus sponsored "Working Women's Injuries Symposium: Causes, Consequences and Prevention," co-hosted by the California Legislative Women's Caucus. At

this symposium, over 100 legislators, regulators, labor leaders, workplace safety advocates, and attorneys examined the causes of working women's



on-the- job injuries, and built upon a multitude of research to recommend policies and practices to reduce, and better address, women's workplace injuries. Similar to Latinos, the percentage of women in the workforce has steadily increased. The result of this symposium was to clearly highlight several ways in which women were disadvantaged in California's Workers' Compensation system.

Echoing the success of the Women's Symposium, CAAA's Latino Caucus has launched an initiative this year to build upon the effectiveness of that symposium. It has done so by placing an emphasis on concerns surrounding Latino workers, the largest ethnic group in the state. A significant degree of interest has been expressed by those invited by CAAA to participate.

It is the belief of the California Applicants Attorneys Association that a workers' compensation system which overtly or implicitly manifests bias cannot deliver upon the promise of substantial justice.

At the February symposium, CAAA's Latino Caucus along with invited guests will closely scrutinize the extent to which discrimination and disparate treatment of protected classes is permitted in California's workers compensation system. We hope that by generating greater concern for the issues facing Latino workers the system may be brought back into balance through legislative or other means. It is our intent that our efforts to support the rights of Latino Workers will also adhere to the benefit of all injured workers in our state. Hopefully by creating an atmosphere in which an honest evaluation of the aspects of

our system which create unfair outcomes takes place we can move towards correcting not only what was taken away by regressive laws in the past but also we can move towards a more just and fair system which treats the workers of our state in a respectful and appropriate manner.



This article has been reprinted from the State Bar Quarterly.

Taxpayers: **Bad Workers' Comp Laws are Costing You**

By James A. Yoro

As a business owner, I have a personal investment in the health and welfare of my employees. Not only do I want a safe working environment but if, God forbid, they get injured, I want them to be taken care of so that they can return to work as soon as they recover. That is what I expect for the insurance premium dollars I have spent.

A workers' compensation system that provides adequate support to injured workers is a key component to the social safety net that we as a society have all agreed is necessary. It provides a fair and balanced approach to the costs of doing business and the unfortunate inevitability of on-the-job injuries.

Continuing erosion of these safety net benefits results in harm and widespread economic consequences to the injured worker. What often goes unnoticed and unmentioned is the fact that we all will ultimately bear the brunt of this denial of benefits as a result of the cost shifting that occurs.

In fact, it's costing you, my fellow taxpayers, right now.

California's private workers' compensation insurance carriers so effectively lobbied California's legislators that they have eroded the system to the extent that the costs

for the long-term care and disability for injured workers in the state often falls on taxpayers through the Medicare, Medi-Cal and Social Security system. This is an undue burden to the taxpayers and a shirking of the insurance company's responsibilities. California's workers' compensation insurers continue to collect premiums from California's employers all to increase their profits while California's injured workers ultimately have to rely on taxpayer-funded systems.

A recent U.S. Department of Labor report ("Does the workers' compensation system fulfill its obligations to injured workers?," Oct. 5) outlines the troubling condition faced by injured workers because state-sponsored workers' compensation programs throughout the nation are failing to provide even rudimentary benefits.



TAXES >>>



“Other social benefit systems...have expanded out social safety net, while the workers’ compensation safety net has been shrinking. There is growing evidence that costs of workplace-related disability are being transferred to other benefit programs, placing additional strains on these programs at a time when they are already under considerable stress.”

For example, here in California, benefits paid to injured workers to replace lost wages during the time off needed to recover from an injury have been capped at 104 weeks. The consequence of this is that those most seriously injured who do not recover in that amount of time face severe financial pressures. With no other similar benefit available, the burden to survive falls on the disabled worker, and ultimately the taxpayers.

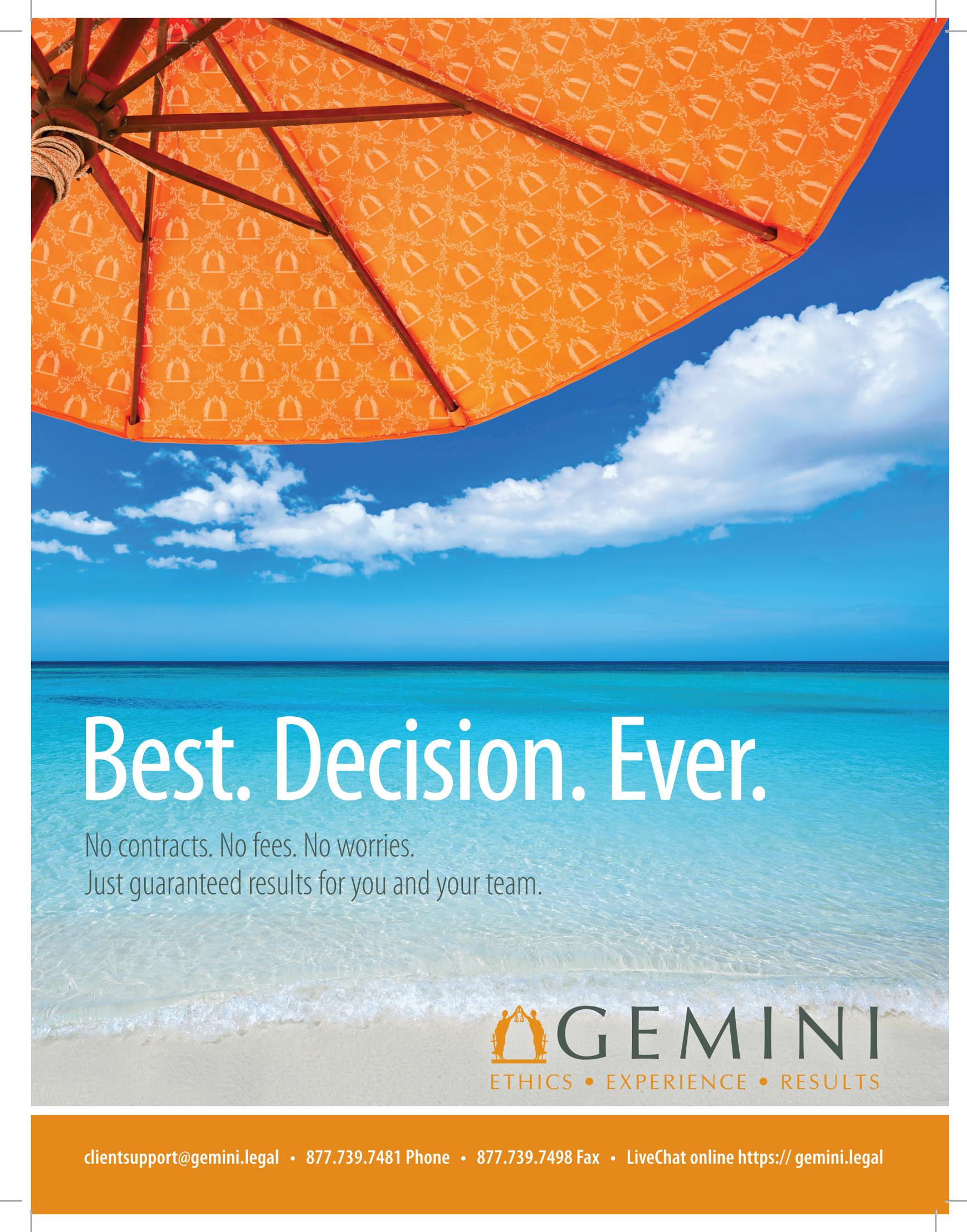
The U.S. Labor Department report calls for an increase in the federal role of oversight including

the appointment of new national commission and establishment of minimum standards.

Business owners and employers should all be contacting their legislative representatives and demanding an end to this counting degradation of rights and benefits to our hard-working labor force.

I am not a proponent of federal intervention into our state’s workers’ compensation system; however, this report should serve as a wake-up call to all of us. If we do not take care of our injured workers, then the threat of big government casting its shadow across our Golden State loom large in our foreseeable future. 

This article was reprinted from the Bakersfield Californian.



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CAAA SURVEY

CAAA Survey Report

By Rick Meechan, Chair of CHSWC Committee

The survey created by CAAA's Committee on Health and Safety and Workers' Compensation is now complete.

As most of you know, we put together a survey on Survey Monkey for industrially injured workers that have been in the workers' compensation system for the last three years. Over 850 injured workers have completed the survey and we believe it is now time to release the results to CAAA members. We are looking to generate a discussion as to how we use this survey.

The first thing we want to stress is that this is a survey, not a poll. Polls oftentimes have scientific basis and can be calculated to determine a margin of error. In our case, we have no way to determine the margin of error in our survey. We simply know that over 850 people answered our survey and this is how they viewed their experience with the workers compensation system. As always, words matter, and we are asking that when you speak of this survey that you use the term "survey" and not "poll".

The Survey

785 English speakers and 77 Spanish language speakers completed our survey. The survey started with the question: Have you received medical treatment under the California workers'

compensation system in the last three years?

If the survey respondent answered "yes" to this question, then the person would be provided with the rest of the survey. The survey started with questions regarding the date of injury, the county of residence, age, and gender and then our questions began in earnest.

One of our key questions was: How much time did you lose from work after your injury? With this question, we've been able to sort our respondents into different return to work periods to see how an injured worker was affected the longer they were off work.

The next questions were as follows:

- Please rate your overall experience with your workers' compensation company.
- Please rate your workers' compensation medical treatment.
- Was your medical treatment delayed or denied?
- Did delays or denials in medical treatment authorization affect your ability to heal and return to work?
- Did you seek medical treatment outside of the workers' compensation system for your work injury?

The Results

With these questions in mind, these are the results from the 785 workers who completed the English language survey:

Experience with workers' compensation company:

8% Excellent / 11% Good / 15% Average
25% Poor / 41% Very Poor

Medical care in the system:

12% Excellent / 21% Good / 23% Average
21% Poor / 24% Very Poor

Note: Insurers/adjusters seen as worse than medical system.

Treatment delayed or denied:

17% None / 21% A Little / 46% A Lot

Delays affect healing and return to work:

21% None / 16% A Little / 163% A Lot

Sought medical care outside of the workers' compensation system: 66%

Again, these are the responses for all English speakers without being sorted for the amount of time that they had been out of work.

The Filtered Results

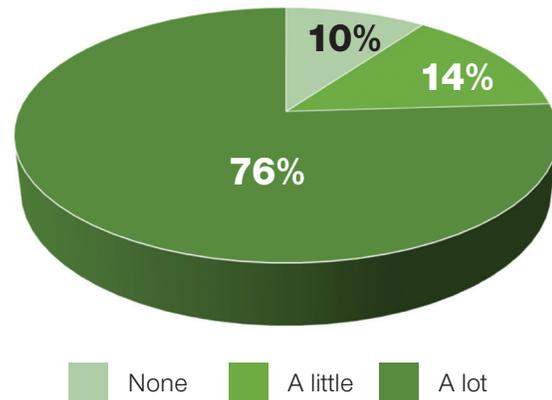
When you compare the answers of men to women in our survey, men thought that there was more delay or denial of treatment and more men than women thought that the delays in their medical treatment had affected their ability to return to optimal health or work.

We also looked at the answers of women that were out more than one year because of their injuries. The tabulation in this survey allowed us

to look at more than two specific factors and then see the results. We looked at women who had been out of work for more than a year.

Women Out More Than 1 Year

Did Delays affect Ability to Return to Work?



Women Out More Than One Year

268 women that answered our survey fit into this category with the following results.

Experience with workers' compensation company: 76% poor or very poor

Treatment delayed or denied:

18% A Little / 75% A Lot

Delays affect healing and return to work:

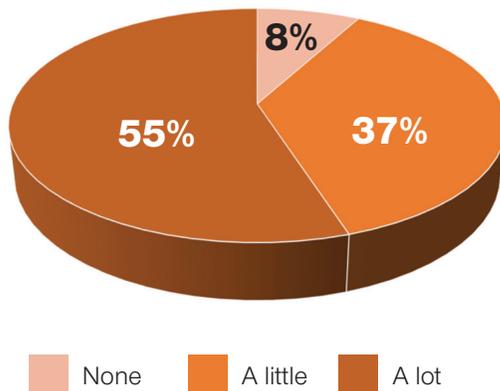
14% A Little / 76% A Lot (90%)

Sought treatment outside of the workers' compensation system: 64%



Spanish Speakers

Did Delays affect Ability to Return to Work?



Spanish Language

The Spanish language survey had a total of 77 Spanish speakers complete our survey. The responses were almost equal between men and women. 48% of the respondents had lost a year or more from work. The results are as follows.

Experience with workers' compensation company: 0% Excellent / 52% Bad or Very Bad

Medical treatment in the system:
5% Excellent / 20% Bad / 12% Very Bad

Treatment delayed or denied:
41% A Little / 44% A Lot

Delays affect healing and return to work:
37% A Little / 55% A Lot (92%)

Clearly, Spanish speakers are faring worse than English speakers, according to our survey.

Missed More Than Three Months Due to Injury

We calculated how long respondents had missed from work. These Responses were made up of 45% men and 55% women. There were 574 people in this category. The answers for workers who missed more than 3 months of work through never having returned to work are as follows:

Experience with the workers' compensation company: 47% Poor / 47% Very Poor

Medical treatment in the system:
24% Poor / 28% Very Poor

Treatment delayed or denied:
20% A Little / 71% A lot (91%)

Delays affect healing and return to work:
15% A Little / 74% A Lot (89%)

Sought medical care outside of the workers' compensation system: 59%

Conclusion

These are generally the results of our survey and we have the ability to sort these responses via any question or answers.

The overall answers in our survey were a significant condemnation of the way medical care is provided at this time and injured workers' experiences with the workers' compensation system. One thing is clear, the longer a worker is out of work, the worse the system is to them.

At this time, we're asking you to review our survey. Help us decide what is the best way to publicize the survey results and what you can do to help us.

I very much want to thank everybody involved in helping us with this survey, particularly CAAA's CHSWC Committee, as well as Diane Worley, Richie Ross, John de los Angeles, our consultants, and special help from CAAA staff Caitlin Shields. Thanks to Board members Sue Borg, Bert Arnold, David Dugan, and all the other hands that helped with this heavy lift. Thanks so much. 

Employment Referrals?

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EDUCATION COMMITTEE

The Background of Education

By Elliot Berkowitz, Chair of the Education Committee

A score and a half ago, Art Johnson and Elliot Berkowitz were given the task of creating educational curriculum for CAAA conventions. Back in those days our conventions would have a judge read the cases he summarized and then we would try to get some ethics units. Not much else was happening.

Art and I being slightly different, discussed this and said it was never going to happen like this again. Art, with his brilliant ideas, me with some occasionally brilliant ideas, took the CAAA education programs and began to produce the type of conventions and educational programs we have today with the help of our convention chairs, Barry Gorelick and Alan Gurvey, who know how hard it is to put on good quality programs.

We had fun. Some of us decided to change the law. We altered the presumption. We made penalties. We lost penalties. We advocated for access to medical care for our clients and evaluated the loss of earning capacity an injury can have on a worker. Some of you old timers will remember a room of 800 people meditating for stress reduction, which was then an ethics program, with a judge and a maharishi. Others will remember how we changed the landscape. Look at the stage—you will see more women and

diversity than ever in the past, rather than the white beards who stood up there for decades.

When we thought we were all going down in 2005 with the introduction of the AMA Guides, we fought hard to figure out ways to achieve accurate ratings to help injured workers. Ideas that later became Board panel decisions and Court of Appeal decisions such as *Alvarez/Guzman* were first pitched at CAAA Conventions.

We have lived through changes at the WCAB, the good, the bad and the ugly. We have had many of our speakers become great speakers, and have had famous outside speakers assist us, including some of the top physicians in the business. We have educated physicians in the law as we think it should be, and the defense bar as well.

Art and I are proud of our achievements and hope it remains our legacy, and that legacy will be improved upon by Barry, Alan and future chairs.

The smarter we are, the better we practice, the stronger we stand together, the more we can get for our clients, and maybe even one day convince the Boards and the courts that what we do is always in the best interests of the injured workers in all areas of our practice. 



MIKE HERALD

Farewell & Thanks

By CAAA Staff

Mike Herald has become an integral part of our work comp world, and so it's with a heavy heart that we must bid him farewell as he embarks on a new endeavor as the Director of Policy Advocacy with the Western Center on Law & Poverty.

"I was very proud to represent CAAA and the injured workers who depend on their advocacy," says Herald. "I'm glad we were able to protect one of the country's best work comp systems from attacks by insurers and employers."

For the last several years, Herald has been the face of our Association at the California State Capitol in Sacramento—visiting legislative offices and testifying in committee hearings on our

behalf. He's overseen our Legislative Committee and has helped to lead us through the aftermath of SB 863 with the passion and experience he's gained from the more than 20 years of advocating for forgotten families.

“

I was very proud to represent CAAA and the injured workers who depend on their advocacy....

”

In the past, Herald has helped secure increases to the minimum wage, CalWORKs and SSI grants, and other public benefits. Most recently—in light of threats to deport immigrants during the Presidential election—Herald has helped to organize interests around securing legal representation for immigrants during deportation or removal proceedings. The California Applicants' Attorneys Association has been among the first to join the coalition of advocacy

groups to support a measure to do so, Senate Bill 6 (Hueso).

“CAA’s support for SB 6 demonstrates again that applicants’ attorneys are on the vanguard of supporting the rights of the most vulnerable in our society,” states Herald.

Herald’s leadership around SB 6 has also served as a catalyst to other jurisdictions deciding to arm immigrants with lawyers. In fact, municipalities all around the country have followed with plans to set up funds dedicated to providing legal aid to individuals during immigration proceedings. So far, San Francisco has proposed a \$5 million

fund, Los Angeles has proposed a \$10 million fund, and Mayor Rahm Emanuel has put up the first \$1.3 million to start Chicago’s fund.

Mike Herald has been an invaluable asset to California’s progressive community of advocates over the years and our Association looks forward to collaborating with him in his new capacity as we head into the future. We cannot thank him enough for his contributions.

Cheers, Mike! 





Meet Alberto Torrico: **New Year, New**

By CAAA Staff

As our Association heads into the new year, our team in Sacramento will be doing so with a new face representing us at the State Capitol. Alberto Torrico, our Association's new Legislative Advocate, will pick up where outgoing Legislative Advocate Mike Herald left off.

In late-December, Alberto sat down with CAAA to discuss his past and his perspective on our Association as we head into the new year. What follows is a condensed transcript of that conversation:

Who is Alberto Torrico? Where did he come from? How did he get into this line of work?

As a student leader at Santa Clara University, a group of us invited Cesar Chavez to speak about the work of the United Farm Workers and the on-going grape boycott. I had the honor of introducing him to a jam-packed theater on campus. As the first person in my family to attend college, the son of immigrants, Cesar's message was powerful for me.

My parents had to work as janitors in the evenings to make ends meet. My younger brothers and I worked with them on the weekends and during summer vacation. My parents would never allow us to work during school. Education was always a priority in my family—and viewed as the vehicle for a better life.

Following college I attended the University of California, Hastings College of the Law. During my third year in law school, I represented a Central American immigrant in a wage and hour dispute. He was owed over \$10,000 in overtime and back-pay. The employer offered \$2,500 to settle the case. My client wanted to accept. I talked him out of it. The next offer was around \$7,500. Again, I told my client to reject. He told me he trusted me so we rejected it. Now, the pressure was on me. Just 48 hours before the trial, the employer made their final offer - \$10,500. When I handed the client his check a few days later, he said to me, with tears in his eyes, "You are the type of lawyer people like me need. You speak Spanish and you are willing to fight. Gracias." I knew right then and there that I would represent working people for the rest of my life.

Faces



My first job after law school was at the union-sided Van Bourg law firm. I represented labor unions throughout the state, both public and private sector. I even handled a couple of workers compensation cases.

In 2001, I ran for city council in Newark. I won by a whopping 32 votes. Three years later I was recruited by the local Democratic Party and labor leaders to run for the Assembly. That was another tough race in the primary – I won by 2%.

I served in the Assembly for 6 years – Chair of the PERSS committee, Chair of the Governmental Organization Committee and Majority Leader. After I was termed out at the end of 2010, I began my lobbying business representing labor unions, public safety organizations, Sacramento County Democratic Party, and various business entities.

What are your goals for CAAA as the incoming Legislative Advocate?

As with all my clients, my goal is to assure that the perspective of CAAA is understood and

relied upon by policy makers in the Capitol— from legislative staffers, to Assembly Members, Senators, and the Governor and his staff.

Injured workers continue to be short-changed by the numerous so-called “reforms” of the past 10 to 15 years. As I have said since I was in office, if you are injured on the job, you are better off walking out of your job and getting hit by a car on the street, if you want to be properly compensated for your injuries. It is critical that policy makers understand the dire plight of injured workers.

Workers’ Compensation issues must become interwoven with and inseparable from discussions regarding all workplace issues – safety, gender discrimination, treatment of immigrant workers, and the very classification of “employees”.

Individual workers are assuming more risk while corporate and government shock absorbers (such as workers’ compensation) are being weakened in the new “Gig Economy”. What do

you believe CAAA's role should be as California adjusts to this fundamental shift?

I think the “Gig Economy” may be one of the greatest challenges for all worker advocates—Including the California Labor Federation and CAAA. As the economy continues to grow and expand for the wealthy, it leaves more and more individuals either as unemployed or severely under-employed. This is one of the reasons that work in the Gig Economy is so attractive—they allow individuals to make necessary extra income to pay their rent, medical bills, go to school, etc.

How do we deal with this? I think one way is to acknowledge that the “employment” relationship has been part of a social compact in a democratic and capitalistic society. In light of the fact that both the federal and state government have cut back on vital services over the past 2 decades, the many worker protections (i.e. safety net) have been accessed through their jobs—social security for retirement, health care (in some instances), disability insurance, and of course Workers’ Compensation. These things are not traditionally provided to “independent contractors”.

Advocates, policy makers and corporations need to work together in an effort to find a new way for non-employees to access these traditional benefits.

How do you think CAAA can build a better relationship with the next Governor?



I think the “Gig Economy” may be one of the greatest challenges for all worker advocates—including the California Labor Federation and CAAA. As the economy continues to grow and expand for the wealthy, it leaves more and more individuals either as unemployed or severely under-employed.



That is a great question. But, the first question is, who do we think is going to be the next Governor? This is shaping up to be the most competitive gubernatorial race in decades. Lieutenant Governor Gavin Newsom, former LA mayor and Assembly Speaker Antonio Villaraigosa, State Treasurer John Chiang and former State Superintendent Delaine Eastin, are all in for now. My counsel to CAAA is to wait and see how things shake out over the next 6 to 12 months—fundraising, endorsements, and most of all, which

candidate can generate the most enthusiasm.

Thanks, Alberto. We look forward to getting to work with you during this next year. 

Congratulations Joe!

If The Workers' Compensation Section of the California State Bar reserves the Steven J. Jimenez Special Recognition Award for the most distinguished practitioners of law. This past September, the newest member of the California Applicants' Attorneys Association's Executive Board was the distinguished recipient of the award: Joseph V. Capurro.

Joe has practiced Workers' Compensation law since being admitted to the California Bar in 1980 and is the sole practitioner at The Law Office of Joseph V. Capurro in San Jose, CA. He has over 35 years of experience with workers' compensation and has been a certified specialist in the field for over 20 years.

Most notably, Joe has argued before the California Supreme Court and various Courts of

Appeal—including the recent Stevens v. WCAB case as Amicus in support of the Petitioner.

Before being chosen to serve on our Association's Executive Board, Joe served (and still currently serves) as the Co-Chair of CAAA's Amicus Curiae Committee. Joe is also a member of the Santa Clara County Bar Association, the Bar Association of San Francisco, the Workers Injury Law & Advocacy Group, and the American Association for Justice.

Joe received his Bachelor's Degree from California State University, Hayward and his Juris Doctorate from the University of Santa Clara School of Law.

From all of us at CAAA, congratulations on this milestone of achievement! 



Your online resource: **CAAA.ORG**



Speakers Bureau: **A New Asset for CAAA**

By Jack Goodchild

After spending over 40 years in the active practice of law on behalf of the injured workers of this state it has become apparent to me that there is a need to reassess our effectiveness in the pursuit of better outcomes for our clients. While how we do this in our practices is an ongoing process of education, analysis and strategy in light of unfavorable changes to the laws under which we practice, there is also a noticeable change in our ability to affect the outcome of the political battles and legislative onslaught that have been so unfavorable to our clients.

For many years our organization was able to hold the tide and even obtain and maintain favorable results by simply contributing to and lobbying politicians. We relied on relationships with unions and we had effective representation by experienced lobbyists who were known entities and who had ongoing relationships with long term legislators.

Then the mislead voters of our state allowed the enactment of term limits. Much of what we thought we had accomplished went out the window. Institutional memory of previous bargains and tradeoffs were entirely forgotten. There was no longer a brake on the efforts of the

insurance lobby and other interests to further the process of taking away the rights and benefits of the injured workers of this state.

We are now in an entirely new framework. The interest groups that represent insurance companies and other work compensation defendants were quick to realize that things had changed. They quickly took the opportunity to push legislation favorable to their interests. They were successful and continue to be.

I found the situation unnerving and oppressive. I thought about it a lot and I realized that in this new world of term limits, we could no longer simply rely on legislative lobbying and contributions. While these approaches are still necessary and important to our overall effort, they are simply not enough.

It is also apparent that injured workers by and of themselves are not a politically viable group. Horror stories from injured workers are helpful but are also not enough. Something has to be done to create a network of interested parties that can be called upon in times of conflict and need. We can then seek to pull this network together in regards to any particular effort needed to create change and to fight the onslaught of

efforts intended to negatively affect those whom we serve.

What we need is a grass roots effort that can be sustained, coordinated and directed as any particular situation in the future requires. The question then arises: How do we do this?

Clearly we cannot just continue to speak sometimes and with some people in a non-sustained and erratic manner. While we have had our representatives speak in various capacities to various groups, there has been no ongoing, coordinated effort to maximize the impact of what we have been doing. We also had no system to coordinate the message being presented as between different speakers, nor did we have a proper system for following up and referencing contacts made for follow-up and feedback.

We cannot realistically expect to have broad based support for our efforts when we are little known to the communities and entities to which we speak and to whom we appeal when we are in need of support. It is a little bit like the relative who only shows up when he or she needs something.

Considering this dilemma I came to believe that the only real long term solution was to have CAAA create and maintain a Speakers 'Bureau. This would be something not for a month or a year's

duration but rather an ongoing and permanent part of what we as an organization do to create trust and relationships in the entire state. As new issues and crises arise (and they will as we all well know from experience) we will already have entities and people that we can approach for support.

What is a speakers Bureau?

A Speaker's Bureau is an entity that will recruit, train and dispatch speakers to various entities and groups who have expressed an interest in hearing from our organization. We will offer our services as a public service to provide education about the Workers' Compensation Laws in California.

As a member of the California State Bar Workers' Compensation Executive Committee I have been able to bring to CAAA a complete outline of California's Workers' Compensation Law

and a power point presentation of that outline. It has already been tested by various members of the State Bar Executive Committee in live presentations around the state to both employer and employee groups. It was created by a joint effort including that of Paige Levy who is now our system's Chief Judge.



Who has contact with severely injured workers? We do of course, and we need your help in driving our numbers. Here is what we have so far and how you can help.



The Speakers Bureau will offer to provide this and other community services to the communities in which we practice throughout the state. Our message as we go forward will be crafted and honed by the Communications Committee in coordination with our other committees and our legislative and social media aides to further our legislative and political goals

Our initial speaking engagements will be handled by board members, so as to feel out the process and refine it. At an appropriate time thereafter we will open this opportunity to volunteers from the greater membership. In fact, a wonderful aspect of this plan is that it will offer our general membership and especially its younger and newer members an excellent opportunity to step up and do something positive. This will help our organization to have a far greater impact. As our network grows our power and impact in Sacramento will also grow.

It is our intent that the Speakers Bureau will be an umbrella entity to encompass the efforts of other committees including as in our recent past and present, the Woman's caucus and the Latino Caucus, for example.

We will have training and criteria re participation to ensure consistency and continuity of message and to prevent any abuse of the privilege of representing our organization in this capacity.

Participants and the community at large will be asked to assist in the process of making known our services available and to seek out appropriate groups and entities who may be interested in having our speakers present at a meeting or event. Speaking engagements will be coordinated by our central offices in Sacramento and will be supplemented by information on our website. Our Chapter Presidents will be encouraged to promote both volunteering and

solicitation of speaking engagements at each meeting.

Our central offices will coordinate speaking engagements, speakers and follow up with the entities and people contacted to promote our long term goals. This will be used to maintain contact and to nurture and grow these relationships on an ongoing basis. Our website will promote the availability of this service and will assist in the coordination and fleshing out of the messages we convey. Speakers will be able to refer their audiences to our website for further information and to book additional events.

Our members will be encouraged to engage in community events, voter registration drives, charitable endeavors, etc. We will reach out to all of our members in this regard, both so as to further the positive image of our organization and so as to create long term ongoing relationships that will form part of our network of supporters.

We will also speak to employer groups and the like. There is a commonality of interest in getting what employers pay for including effective and prompt medical treatment for their legitimately injured workers, and fair compensation. Failure to accomplish these goals hurts employers as well as employees and their families. Morale is dampened and productivity is hampered when injured workers are not given the medical care and compensation they need and deserve. Enlightened employers understand this. We will help enlighten them.

One thing we can be sure of. The tug of war over the law applicable to our client's injuries will never end. Only by accepting this reality and truly preparing for it, can we realistically expect to increase our power in Sacramento and thereby our ability to affect and control those changes that affect our clients and their families.

We need you!

So this is not a “flash in the pan” idea. It will not be quick or easy. It will require a sustained, ongoing and coordinated effort. It will require participation from the entire membership. We need all of you to come forward and contribute to this joint effort. It is no longer acceptable to moan and complain in the back ground and to merely criticize our organization for not fighting strongly enough against the noxious onslaught we have faced and which we will continue to fight.

Come forward and be counted, volunteer, participate and stand together as brothers and sisters united in a common effort to really have an impact on the laws of this state.

Contact John De los Angeles, our Communications Director at 916-444-5155, or email at support@caaa.org. Now is the time to make a real difference in winning the battles that we are facing now and those that we will face in the future. 

The Eugene Leviton Fund

By Christel Schoenfelder and Jason Marcus

Eugene Leviton was one of the earliest members of CAAA. He was the recipient of the Eugene Marias Lifetime Achievement Award in 1991 and was taken from us unexpectedly by cancer. Eugene Leviton always went the extra mile to help injured workers and it is in this spirit that our Association established the Eugene Leviton Fund to help a few lucky families a year.

This year, two of our Executive Board members had the pleasure of taking after Eugene Leviton by spreading the holiday spirit. Here are their stories.

Christel Schoenfelder, President

It is a special feeling helping injured workers day in and day out. But it is an extra special feeling during the holiday season to surprise an injured



worker with an unexpected gift. Due to the amazing generosity of CAAA’s Board of Directors, this year I was able to surprise two of my injured worker clients with unexpected gifts.

Part of the fund money helped a young Latina mother who injured her back lifting a heavy pot

at a fast-food restaurant. Her employer claimed they could accommodate the industrial clinic's work restrictions; however, the employer wanted her to do work duties that violated the restrictions. So she stayed home and used up her sick and vacation time to avoid further injury. Because there was a dispute about whether the employer could accommodate the work restrictions, temporary disability was delayed which caused a detrimental impact on this mother of three. She was so thankful to receive the Fund money.

Part of the fund money helped a man who lost his car and home as a result of the work injury and is staying with a relative. He injured his back lifting a case of wine and has encountered numerous UR and IMR roadblocks in pursuing spine surgery. Currently, his doctor's request for fusion surgery is pending an IMR determination. He has exhausted his temporary disability benefits and State Disability benefits. It took a Request for Dispute Resolution to finally obtain his voucher. He was so grateful for the assistance and it left him truly speechless."

These are just some of the unfortunate stories of injured workers trapped in a system that doesn't adequately protect, treat or compensate them. Knowing that CAAA has helped these injured workers makes me even prouder to be a CAAA member!

Jason Marcus, President-Elect

I had the special honor and privilege this year of surprising two of my clients and their families with an unexpected gift from the Eugene Leviton Fund, made possible by the generous donations from CAAA's Board of Directors.

The first client I chose is a cook at a local Mexican restaurant who was injured when a pot of hot oil was accidentally spilled on her chest and

legs. She was hospitalized in a burn unit for more than 2 weeks following her injury, during which time her husband took time away from his job to tend to my client. As a result of this missed time, my client's husband was fired from his job. Although my client has made significant progress since her injury and has returned to modified duty, she has not been able to return to her normal hours, nor has her husband been able to find a new job. As you might imagine, their financial situation has become quite challenging. My client was incredibly thankful when I gave her the news about the gift ("¡Gracias! ¡Gracias!" she exclaimed, again and again), and it warmed my heart to know that the money from the Leviton Fund was going to make a real difference—even if a small one—for my client and her family.

The second client I chose is a landscaper who has been unable to work since 2010, following a serious injury where he was crushed by his work truck. His temporary disability benefits ran out long ago (thanks to the 2-year TD cap) and his permanent disability advances stopped last summer after the carrier decided they had advanced all the PD that was owing. My client's wife now works 3 jobs to keep their family afloat, but despite her efforts they weren't able to make ends meet, and my client received an eviction notice shortly after Thanksgiving. My client and his wife were overcome with emotion and gratitude when I told them about the gift, and they were able to use the money from the Leviton Fund to avoid eviction and stay in their apartment over the holidays.

It's interactions like those above with my clients that make me proud to be an applicant's attorney and proud to be a member of CAAA. Thanks to all who gave so generously as part of this year's Leviton Fund, and thanks to every CAAA member for keeping up the good fight on behalf of California's injured workers! 

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