

- **Interpreter Fees Are Not a Taxable Cost**
- **Announcements!**
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HDBOB To Host Annual Mid-Winter Seminar

On February 9, 2006 HDBOB will once again host its annual Mid-Winter Seminar. The Seminar is aimed at addressing emerging issues of importance—and hopefully of interest—to claims representatives, human resource professionals, and business owners/managers.

The morning program addresses issues relating primarily to workers' compensation claims. The program features a presentation from Dr. Paul Arbisi, a renowned Twin Cities psychologist and Associate Professor of Psychology at the University of Minnesota. Dr. Arbisi will address the all-too-common phenomenon of claims of depression or other psychological conditions stemming from specific physical work injuries.

The morning program will include a discussion on the current status of Minnesota law in relation to workers' compensation claims brought by illegal aliens. Is there an entitlement to benefits? If so, what benefits? Can an employee's illegal status ever be used as a basis for discontinuance?

We will round out the morning with a discussion of recent Workers' Compensation Court of Appeals decisions and the effect they might have on our approach to future workers' compensation claims. We will provide an analysis of the new rules of the Office of Administrative Hearings and the Department of Labor and Industry, including

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Beyond Vanity—Botox for Backs?

Everyone has heard of Botox® injections for cosmetic purposes. Hollywood stars and starlets alike line up to be injected with botox to firm up facial muscles and remove those little wrinkles that might otherwise signify wisdom. Of course everyone knows beauty is in the eye of the beholder. But did you know that these very same botox injections are being used for a wholly different purpose? These days, botox is being injected into the paravertebral muscles of the neck and lower back to stabilize the musculature and reduce pain.

Botox is the brand name of a naturally occurring substance known as botulinum toxin type A. The toxin itself is related to botulism, a type of food poisoning that occurs when meat or other foods develop a bacteria known as *Clostridium botulinum*. Doctors have long been aware that severe cases of botulism can lead to paralysis when such toxins attach

to nerve endings in the body, preventing the release of brain chemicals responsible for controlling muscle contractions. Doctors soon discovered that in carefully controlled amounts, this same toxin could be used to manipulate brain chemistry, thus controlling contractions in patients suffering from diseases linked to severe muscle spasms. Eventually, experimentation involving lower back pain began.

Initial studies are promising. In 2003 the *Journal of Anesthesiology* published a study of 19 patients with chronic back pain. Ten patients were untreated and nine were injected with botox into the paravertebral muscles of the lower back. In the botox group, all the patients had immediate relief from spasm and pain following the injections. The patients were again asked about their back pain at intervals of one month and six months

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HDBOB partner Randy Sayers was recently made a Fellow of the American College of Trust and Estate Counsel, an organization of more than 2,600 trust and estate lawyers and law professors from the United States and Canada who have been affirmed by their peers as having made outstanding contributions to the practice of trust and estate law.

Randy was also selected by *Minnesota Law & Politics* as one of the Top 40 trust & estate planning attorneys in Minnesota. He was further honored by being named a *Law & Politics* "Super Lawyer" for the second consecutive year.

Randy has been practicing in the areas of wills, trusts, probate, and taxation of estates and trusts for 24 years. During the last ten years he has also been teaching estate planning and taxation at William Mitchell College of Law and Hamline University School of Law.

Congratulations, Randy, on your achievements!

Interpreter Fees Are Not a Taxable Cost

HDBOB attorney Joan G. Hallock received a decision from the Workers' Compensation Court of Appeals that potentially saves all insurers money in claims involving non-English speaking employees. In the case of *Sanchez v. Greg Wellik Construction*, File No. WC05-108, May 26, 2005, the WCCA was asked to determine whether the cost of an interpreter hired by the employee's attorney is taxable against the employer and insurer.

In *Sanchez*, the employee's attorney hired an interpreter to help him communicate with his Spanish-speaking client. The parties eventually settled portions of the case, and the attorney filed a Statement of Attorney fees. The employer and insurer agreed to reimburse the attorney for all of the costs except the cost of the Spanish interpreter. The issue of payment for the interpreter went to hearing before Judge Gary Mesna at the Office of Administrative Hearings. Judge Mesna denied the costs incurred for hiring the interpreter. The employee appealed.

In a case of first impression for the Court, the Workers' Compensation Court of Appeals held that the cost of an interpreter is not a taxable cost under Minn. Stat. § 176.511, subd. 2. The court, therefore, affirmed the denial of the employee's attorney's claim for reimbursement of those costs.

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HDBOB.COM GETS A NEW LOOK

hdbob.com has undergone a facelift. A variety of new information is contained within the site, including information on HDBOB practice areas, HDBOB attorney profiles, and helpful links to a variety of judicial, administrative and legal data bases. In addition, hdbob.com has the most recent issue of "Quarterly" and archives of all past "Quarterly" articles.

Visit the site often, as hdbob.com will be updated regularly with upcoming events and information about the firm. Use hdbob.com as a resource to search for answers to your legal questions, or to e-mail your questions to any HDBOB attorney. Attorney e-mails are easily accessible within the Attorneys section of the web site.

Finally, use hdbob.com to register for firm events, such as this year's Mid-Winter Seminar. Simply locate and click the Seminar RSVP button, enter your information, and click Submit. It is fast, easy, and you will receive an e-mail acknowledging your registration.

Announcements

HDBOB is pleased to announce that Joseph G. Twomey has been made a general partner of the firm.



Joe is a 1992 graduate of St. John's University, Colleagueville, where he received a B.A. in English. In 1996, he graduated from Hamline University School of Law, and served as Editor-in-Chief of the *Hamline Law Review*.

Following law school, Joe clerked for Ramsey County District Court Judge

John T. Finley. In October, 1998, Joe joined HDBOB as an associate attorney.

Joe's practice areas include workers' compensation, insurance and personal injury defense. He is active in the Ramsey County Bar Association, serving on the planning committee for its annual benefit to raise money to provide legal services to lower income individuals. He has been named a *Law & Politics* "Rising Star" the past two years.

Joe and his wife, Annette, live in St. Paul with their daughter, Keara.

HDBOB is pleased to announce that Colleen O. Kaufenberg has joined the firm.



Colleen is no stranger to HDBOB.

In 1985 as a law student, she clerked for the firm, after which she went on to practice law for nearly 20 years, representing clients in multiple areas of practice. She has now returned to HDBOB and focuses her practice in the areas of personal injury, medical

malpractice, civil litigation, workers' compensation, and employment law.

Colleen is a graduate of Saint Mary's University (Winona), where she graduated *magna cum laude* with a double major in political science and public administration. She is a graduate of Hamline University School of Law, where she was a Merit Scholarship Recipient and on Law Review.

Colleen is licensed to practice in Minnesota and is a member of the Minnesota State Bar Association, the Ramsey County Bar Association, and the Minnesota Trial Lawyers Association.

Botox for Backs CONTINUED FROM PAGE 1

following the injections. At those intervals, seven of nine had improved, two of nine had experienced no change from their initial relief, and none were worse. In another study, the results of which appeared in a 2000 issue of *Neurology*, published by the American Academy of Neurology, 31 patients were studied. Fifteen patients were given botox injections into the lumbar paravertebral muscles and 16 received injections of normal saline. At three weeks, 11 of the 15 patients who received botox had greater than 50% pain relief versus four of 16 in the saline group. At nine weeks, nine of the 15 in the botox group and two of

the 16 in the saline group had continued relief. At eight weeks 10 of 15 in the botox group and three of 16 in the saline group showed improvement. No patients experienced any side effects. The conclusion of both studies was that patients who received the botox injections demonstrated improvement in range of motion and pain scores compared with the untreated patients.

By contrast, St. Paul orthopedic surgeon David Florence does not use botox in his practice. He feels that botox is not an effective or proven treatment for back pain. Nonetheless,

physicians at Sister Kinney Rehabilitation Institute in Minneapolis are treating their patients with botox injections which cost, depending on the amount of botox used, between \$2,000.00 and \$3,000.00 for each set of injections.

The treatment parameters under the Minnesota Workers' Compensation Rules do not contemplate the use of botox for treatment of neck or back pain. In fact, the Rules specifically indicate that botox is not a compensable method of treatment.

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Provided by the law firm of Hansen, Dordell, Bradt, Odlaug & Bradt, P.L.L.P. Quarterly is only a general summary of the topics discussed here and is not a substitute for legal advice. If you have any questions regarding these topics, please call us at (651) 482-8900.

Jason Schmickle
Editor

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2006 MID-WINTER SEMINAR REGISTRATION FORM

Thursday, February 9, 2006

Midland Hills Country Club

2001 Fulham Street • St. Paul, MN 55113

Register in one of three ways:

- Complete the form below and mail it to:
HDBOB, 3900 Northwoods Drive, Suite 250,
Saint Paul, MN 55112
- Call 651-482-8900 or 800-994-6056
- Visit our web site at www.hdbob.com

I will attend the following sessions (check all that apply):

- Morning (9a.m. – noon)
Workers' Compensation
- Lunch (noon – 1p.m.)
- Afternoon (1pm – 4pm)
Civil Litigation

Name: _____

Organization: _____

Address: _____

City/State/Zip: _____

Phone: _____

E-mail address: _____

*R.S.V.P. By February 1, 2006.
We look forward to seeing you!*

Mid-Winter Seminar CONTINUED FROM PAGE 1

the impact of those rules on video surveillance and settlement conferences.

The afternoon program is aimed primarily at issues relating to a wide variety of liability topics. It features Dr. David Florence, a well-respected orthopedic surgeon with 45 years of experience in the field of spine diagnosis and treatment. Dr. Florence will address the emerging and controversial theory of treating significant spine injuries with artificial disc replacement. Specifically, he will discuss whether this currently experimental procedure is likely to become commonplace in the treatment of future back injuries.

The afternoon program will also include an analysis of the recent avalanche of property claims stemming from water intrusion and mold issues. This discussion will focus on the history of such claims and explore the question of why there has been such a dramatic increase in these claims in recent years.

The program will include a discussion of recent Court of Appeals decisions affecting Minnesota No - Fault and liability claims. The afternoon will conclude with a discussion of bad faith claims in both Minnesota and Wisconsin.

We invite you to register for the morning session on Workers' Compensation issues, the afternoon session on Liability issues, or both sessions. A continental breakfast will be served in the morning, and all participants are invited to join us for lunch at noon.