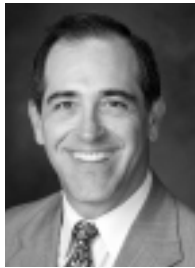


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Partner John H. Guthmann Appointed to Ramsey County District Court Bench



John Guthmann

On January 31, 2008, Governor Tim Pawlenty appointed HDBOB partner John H. Guthmann to a Second Judicial District trial court bench vacancy in Ramsey County, Minnesota.

John joined HDBOB as an associate in 1981, later became a partner in 1990 and acted as the firm's managing partner from 1999 to 2002. Prior to joining HDBOB, John clerked for Minnesota Supreme Court Chief Justice Robert Sheran upon graduation from William Mitchell College of Law in St. Paul, where he earned his juris doctorate degree. As a law student at William Mitchell, John filled roles as both an editor and later the editor-in-chief of the William Mitchell Law Review. John received his bachelor of arts degree from Cornell College in Mount Vernon, Iowa in 1976.

Governor Pawlenty aptly observed, "John has the knowledge and wisdom to manage the most complex cases that come before the Ramsey County bench, as well as the compassion to treat all who appear before him with dignity." Also acknowledging what both his clients and peers have known about John for years, Governor Pawlenty observed "John has achieved a high level of respect in the legal profession for his strong intellect and adept handling of complex civil cases."

John is a member and past president of the Ramsey County Bar Association where he also serves on the civil litigation section, a member of the Minnesota State Bar

Association, and the Minnesota Defense Lawyers Association. He has been recognized professionally as one of "The Best Lawyers in America" in both the personal injury litigation and workers' compensation categories by Woodward/White, Inc., named a "Super Lawyer" by Minnesota Law & Politics magazine, and listed in "America's Registry of Outstanding Professionals" and "Leading American Attorneys."

In addition to devoting his time to the legal community, John finds time to give back to the community at large. In fact, in 2001, John was named to the *Mpls.St.Paul Magazine's* Volunteer Hall of Fame. John currently serves as a member of the Minnesota Special Education Task Force, the Coalition for Children with Disabilities and the Rotary Club. He is also a member of the board of directors and past president of PACER Center, Inc, and is acting president of Friends of PACER, Inc. John is also an acting member of the board of directors of Boy Scouts of America North Star Council First Minnesota and the Troop 90 Eagle Scout advisor.

In John's limited free time, he acts as a volunteer infantryman as part of a Civil War reenactment organization. His most recent "battles" have taken him to Kentucky and this summer he plans to participate in the 145th anniversary reenactment of the battle of Gettysburg. When the dust settles, John returns home to Saint Paul, where he resides with his wife, Teresa and children, Alex, Abby and Andy.

HDBOB congratulates John on his appointment and wishes him the best of luck on the bench.

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The “Controlling Event” for Consequential Injuries

In *Bennett v. Northwest Airlines* (W.C.C.A., October 16, 2007), the Workers’ Compensation Court of Appeals concluded that the controlling event for a consequential injury is the original work-related personal injury. As the date on which the injury occurred determines the applicable law, issues regarding the date of the controlling event for a consequential injury can often have a profound impact on the value of a claim.

In *Bennett*, the employer and insurer did not dispute that the employee sustained a consequential injury. Rather, the Court was simply asked to determine the date of injury – or controlling event – of the consequential injury such that the appropriate law could be applied.

In the case of a specific injury, the controlling event is, of course, the injury itself. In a cumulative trauma (Gillette-type) claim, a court must determine the date on which the injury “culminated” – this could often be several years after the initial injury.

In *Bennett*, however, the W.C.C.A. determined that the controlling event for a consequential injury is not the date when the injury “culminated”, but the date of the underlying injury. Thus, the law in effect on the date of the underlying injury governs any consequential injuries arising therefrom.



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WHO’S WHO IN WORKERS’ COMPENSATION LAW



David Odlaug

HDBOB partners Dave Odlaug and John Guthmann were recently named to the list of Top 40 Workers Compensation Attorneys in Minnesota, by *Minnesota Law and Politics*. This follows their selection to the list of workers’ compensation “Super Lawyers” as voted upon by their peers. Dave and John are both widely regarded as extremely experienced and knowledgeable workers’ compensation lawyers and are perennial additions to Minnesota’s “Super Lawyers.”

Dave received his B.A. from the University of Notre Dame and the College of St. Thomas and his J.D. from the University of Minnesota Law School. He is admitted to practice in Minnesota and the U.S. District Court-District of Minnesota. He is a member of the Ramsey County and Minnesota State Bar Associations, and the Minnesota Defense Lawyers Association. For the last 20 years, Dave has practiced exclusively in workers’ compensation defense. His clients appreciate his accessibility and his commitment to regular communication, providing information on a timely basis.

John received his B.A. from Cornell College and his J.D. from William Mitchell College of Law. John is admitted to practice in Minnesota, Wisconsin, the U.S. District Court-District of Minnesota, U.S. District Court-Eastern and Western Districts of Wisconsin, and U.S. Court of Appeals, Eighth Circuit. John is known by both his clients and peers for blending aggressive representation with a completely gentlemanly approach.

Congratulations, Dave and John!

HDBOB ANNOUNCES THE ADDITION OF NEW GENERAL PARTNERS

Hansen, Dordell, Bradt, Odlaug & Bradt, P.L.L.P. is pleased to announce that Joan G. Hallock and Karen K. Hatfield have become General Partners of the firm.

Joan is a 1985 graduate of William Mitchell College of Law and is admitted to practice in Minnesota. She practices in the areas of workers’ compensation litigation and workers’ compensation mediation.



Joan Hallock



Karen K. Hatfield

Karen is a 2002 graduate of William Mitchell College of Law and is admitted to practice in Minnesota and Wisconsin. Her practice areas include civil litigation, personal injury, employment law and workers’ compensation litigation.

Acceptance of Retirement Package Does Not Bar Indemnity Benefits

Employees who accept a voluntary retirement package, even when the employer is able to accommodate restrictions and is working at full wage, may still collect future wage loss and rehabilitation benefits, according to a recent decision of the Minnesota Workers' Compensation Court of Appeals (W.C.C.A.).

In *Boutto v. US Steel Corporation*, No. WC06-288, 2007 WL 2253488 (W.C.C.A. July 18, 2007), an employee who worked for US Steel for thirty years sustained an admitted injury to his low back in 1990 and underwent fusion surgery in 2002. After the surgery, the employee returned to work in a light duty capacity. He worked five months post-surgery, but then chose to accept early retirement under an incentive program that provided a cash bonus and monthly pension benefit.

The employee subsequently found work as a school bus driver and intermittently as a carpenter. He sought entitlement to temporary partial disability and rehabilitation benefits from his date-of-injury employer, claiming that he needed to supplement his retirement income. At hearing, the employer argued that the employee's personal decision to leave a high paying job with the employer, knowing that he could not return to that employment, represented a

"partial withdrawal from the labor market" so as to be a complete defense to his entitlement to temporary partial disability.

Following an initial decision by the compensation judge denying wage loss benefits, the employee subsequently redeemed himself and established that he had conducted a reasonable and diligent job search, thereby establishing an "earning capacity" based upon his physical abilities given his work-related restrictions. In doing so, following a second hearing, the judge reversed course and awarded benefits to the employee.

In its decision, the W.C.C.A. reiterated the long-held conclusion that termination, even when "involuntary," does not preclude entitlement to temporary partial or rehabilitation benefits and concluded that the same must be true for "voluntary" termination so long as "it has become demonstrable that the employee's work-related disability is the cause of the employee's inability to find or hold new employment." See *Marsolek v. Geo. A. Hormel Co.*, 438 N.W.2d 922 (Minn. 1989). The W.C.C.A. stated that the employee's decision to accept early retirement "should not place him in a worse position than someone discharged for misconduct."

Although the court concluded that "a job that is no longer available to an employee is of little relevance in determining entitlement to wage loss benefits," it is not clear from the *Boutto* decision whether a supplemental argument could have been made that temporary partial benefits should properly be based upon the difference between what the employee could have earned in the post-retirement labor market without his disability versus with his disability. Rather, the decision merely implies that, regardless of voluntary retirement and the ability of the employer to accommodate restrictions at full wage, temporary partial disability is based upon his wage at the time of early retirement and that which he is able to find in the post-retirement labor market with work-related restrictions. As a result, it would appear that this remains an unsettled issue subject to future argument.



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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.

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Join Us For Our Annual Mid-Winter Seminar

THURSDAY, FEBRUARY 21, 2008

HDBOB's 2008 Mid-Winter Seminar is fast approaching. The 2008 Mid-Winter seminar will again be held at Midland Hills Country Club, in Roseville, Minnesota. This year our seminar will be devoted exclusively to Minnesota workers' compensation issues and we have prepared an exciting program.

Seminar registration and a hearty continental breakfast begin at 7:45 a.m. At 8:15 a.m. our seminar begins with Dr. Jeffrey Nipper, a noted orthopedic surgeon, who will discuss the diagnosis and treatment of shoulder injuries, including a discussion of post-surgical complications.

- **Jason Schmickle, Colleen Kaufenberg, and Karen Hatfield** will provide insight into recent cases involving mistake of fact payments, payment of temporary partial disability in multiple party cases, petitions to vacate involving new witnesses or evidence, voluntary retirement and controlling event issues, among other developing matters. In addition, **Craig Nichols** will provide a brief update on Medicare intervention issues and recent legislation passed by Congress placing even greater burdens on insurers.
- **Joan Hallock** will speak on the benefits of mediation in workers' compensation cases, utilizing her years of experience as a workers' compensation judge and aggressive practitioner.
- Our seminar will conclude with **Joe Twomey and Stacey Sorenson** discussing the evaluation and settlement of permanent and total disability claims.

A delicious lunch and friendly conversation will follow the seminar.
Also, our workers' compensation attorneys will be available to answer questions.

HDBOB will apply for approval of CLE credits.

Please contact Caryl Ghimenti at cghimenti@hdbob.com or 651-332-8723 to register.

We look forward to seeing you on February 21st.