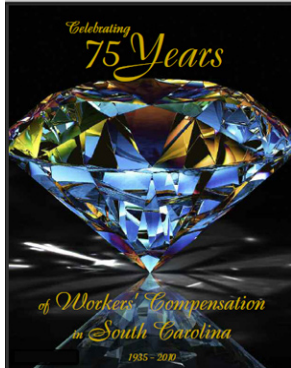


Summer 2010

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Conference Celebrates 75 Years Of Workers' Compensation

The South Carolina Workers' Compensation Act was signed into law by Governor Olin Johnston on July 17, 1935. This year, the Act enjoys its 75th Anniversary. Not many of us have had the opportunity to celebrate a Diamond Anniversary for any reason, but that will change this year. The Conference recognizes 75 years of workers' compensation in South Carolina, and what a celebration it will be!

Sunday

We start on Sunday evening with our always popular Exhibitors' Reception and Kids' Chance Silent Auction. Attendees will receive a bingo card to be signed by participating exhibitors. Get the requisite number of signatures showing you have visited these vendors and be eligible on Wednesday for two big drawings! Entertainment will be provided by one of our own, Gibbs Leaphart of Sowell Gray, who is a member of the Joe Good Band.

Monday

Leading off on Monday morning will be the Honorable Costa M. Pleicones, Justice of the South Carolina Supreme Court. He will take a look back through time and how the system has developed. Anyone who has heard Justice Pleicones speak knows he has his own unique brand of humor. His way of looking at things always makes him informative and entertaining.

Monday morning also includes Colleen Troy, Marketing Professor at the College of Charleston, who will discuss the power of branding and marketing. She will present ways to understand and adapt your organization to marketplace change, building brand loyalty, drive website traffic and generate buzz using social medial.

Ms. Troy will be followed by Dr. Don Johnson of the Southeastern Spine Institute who is well known to us all. He will describe new advances and treatments in spine surgery and how new technology is allowing spine surgeries to be done faster,

safer, and cheaper than before, and as an outpatient!

Lunch Monday is included in the registration fee for all attendees and exhibitors. There is no reason to leave the hotel to eat, so everyone can be back in time for the afternoon breakout sessions.

Breakout sessions will have a different twist this year. For each 45 minute time period the breakouts will be offered in three tracks. Track A is designed for employers; Track B is designed for nurse case managers and insurance professionals; and Track C will be for attorneys.

Topics include a roundtable with the Commissioners; safety, nurse case manager/adjuster ethics; and the aging workforce. We end Monday with the presentation from LaCrapo, always fun, always funny.

Monday evening is dinner on your own, but Monday has always been the night the law firms and other businesses entertain so it is not likely you'll go hungry.

Tuesday

Tuesday includes a presentation by Latonya Edwards and Terri Lynch on the dissolution of the Second Injury Fund. Learn details on deadlines, submitting claims and the handling of claims by the Fund as it winds down. Commissioner Andrea Roche and Linda Hanf, RN, of the Directions Group will describe what's new in the workers' compensation world, and at 11:00 a.m., a new and exciting game will be played:

continued next page

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continued next page

Conference continued



2009 fishing trip anglers

The Newlywed Game: Til Clincher Do Us Part. It's new, it's fresh, and it will be a blast!

Optional activities for Tuesday afternoon include the golf tournament at Beachwood Golf Club and the annual fishing trip, or you can spend the afternoon on the beach or shopping in the nearby Outlet Malls.

After having dinner on your own, join us at 9:00 p.m. for the dance and reception. This year we feature those beach music icons, The Catalina's! So bring your shagging shoes!

Wednesday

Wednesday's program is worth staying to hear. Jeff Jones, Richard Davis and Commissioner Roche will give an overview of the new Repetitive Trauma Statute followed by a plaintiff's lawyer's view of

Third Party Liability, presented by Hugh McAngus, Jr. And the best is saved for last.

The commissioners will have a panel discussion on what makes a case and what breaks a case. What do they consider important in reaching a decision. Elizabeth Luzuriaga will moderate. After conference closing remarks from Chris Daniel, our president, there will be a short annual business meeting for the election of Board Members.

We know you won't want to miss a single minute of this conference. By registering before September 15, 2010, you will save money. Need details or registration information? Visit the website for details.

See you in Myrtle Beach!

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NEW! First Annual Workers' Comp Academy

TTD, AWW/CR, MMI, TPD, Form 16, Lifetime care...what does it all mean?

Come and learn at the First Annual Workers' Comp Academy being held in conjunction with this year's Annual Educational Conference at Kingston Plantation in Myrtle Beach. This program is designed to reinforce and enhance your knowledge of the South Carolina Workers' Compensation System. It is geared towards individuals new to the workers' compensation system (i.e. attorneys, adjusters, case managers, insurers, employers and other professions), as well as seasoned professionals who need a "refresher" in various general topics of the South Carolina Workers' Compensation System.

The 2010 Workers' Comp Academy is a full-day program on Monday, October 18th that begins immediately after the conference keynote speaker, Justice Costa M. Pleicones, Esq. and will conclude at approximately 5:00 pm. Academy attendees will participate in the conference breaks and luncheon on Monday. Space is limited— so register early. Due to the nature of the course, there is a separate registration fee for this event. This fee includes two breaks, lunch, continuing education credits or continuing legal education units as well as a binder of materials associated with the presentations.

Cost

New Attorneys <i>in practice one year or less</i>	\$125
SCWCEA Member	\$200
Non-Member	\$300

Individuals interested in attending other sessions and activities during the Annual Educational Conference should pay the appropriate member/non-member registration fee and indicate attendance in the Workers' Comp Academy so that appropriate space will be held during this class.

Academy Cancellation Policy

If received in writing before September 30, 2010, SCWCEA will refund your registration, less a \$50 administrative charge. Refunds will not be made after September 30 for any registrations or no-shows. Cancellation requests should be sent to scwcea@bellsouth.net or by fax to 803.407.3361. We will confirm receipt of your notification.

Don't miss this opportunity to participate in this comprehensive learning session on the South Carolina Workers' Compensation system. Visit the website to register.

LaCrappo Wants YOU!

Ever wanted to be part of the LaCrappo Production at the Educational Conference? Did you ever want to see yourself on the big screen? Work behind the camera? Write hilarious scripts? Be part of a really fun group?

Now's Your Chance! We Want You!

Email your name, address, phone number, and email address to Stan Lacy, at slacy@collinsandlacy.com. He will add you to the email mailing list so that you will know when and where LaCrappo is meeting to plan this year's production. Bring your ideas, your experiences, and your talents. We especially want to get a broad representation of attorneys from all firms, adjusters and supervisors from all carriers, nurses from every industry involved with workers' comp, and anyone else who wants to be part of the fun. Let us hear from you!

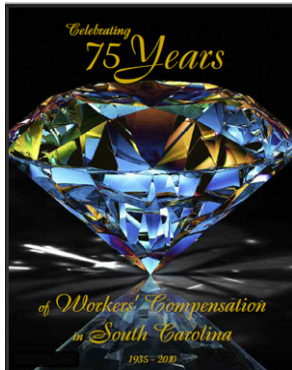
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Commission Elects T. Scott Beck as Interim Chairman

During their June 21st Business Meeting, the SC Workers' Compensation Commissioners elected T. Scott Beck as their interim Chairman. This position took effect July 1, 2010 and he replaces Commissioner Andrea C. Roche, whose two-year term as Chairman expired on June 30, 2010.

The Chairman is appointed by the Governor with the advice and consent of the SC Senate. In the event the Governor does not appoint another chairman at the expiration of the two-year term, the statute calls for a majority of the Commission to elect from among its members an interim chairman. The interim chairman shall serve until the Governor appoints another Chairman.



Commissioner Beck's six year term on the Commission began July 1, 2008.

President's Message



South Carolina's 34th Annual Educational Conference on Workers' Compensation will be held October 17 – 20 2010 and we hope to see you there. Your conference committee, chaired by Hal Willson, has worked diligently to tailor this meeting towards topics you wanted to hear. Additionally, the focus this year will be the celebration of 75 years of Workers' Compensation in South Carolina. We hope that many of the former and current Commissioners will join us so that we may recognize their service to our industry.

After years of requests, the SCWCEA is offering the First Annual Workers' Comp Academy which will be held simultaneously with the conference on Monday, October 18. If you are new to the industry or are a seasoned professional who needs a refresher, this comprehensive class will teach you everything you need to know about our workers' comp system. And there will still be plenty of time to network with your peers. Additionally, we have expanded break times so that you can visit with the many vendors who have products and services to make your work easier.

2010 has been a busy year for the association. We have held a successful Medical Seminar and One Day Seminar and will launch our "members only" section of the website in just a few short days. Our goal is to provide, you, the membership with the very best in educational resources at an affordable price. We always welcome your suggestions on how we can serve you better so feel free to share your ideas, thoughts and recommendations with us at any time.

Why don't you plan to join us this fall. We promise that this conference will provide you with a positive return on your investment both monetarily and professionally!

Looking forward to seeing you there!

Chris C. Daniel
President

Growing in South Carolina



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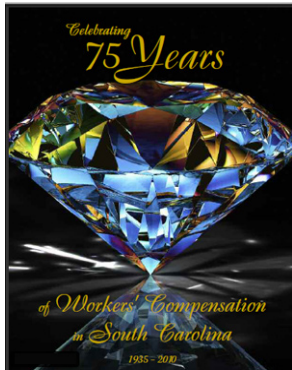
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The Unanswered Question

By Stan Lacy
Collins and Lacy, PA

A worker is injured on the job. A press has mangled his right hand. He is rushed to the hospital and, in spite of receiving the very best in medical care, loses 60% of the use of his hand. Workers' compensation pays all medical bills, twenty-six weeks of temporary total disability and 185 weeks of permanency. Unfortunately, the worker is right handed and cannot return to his former job. At a compensation rate of \$500, the worker receives a total of \$105,500 plus medical benefits, all totaling \$300,000.

The worker's attorney also brings a third party suit against the manufacturer of the press alleging negligent design and failure to warn. The employer gladly assists in the suit hoping to collect on its workers' compensation lien. But the manufacturer's answer does more than simply deny the claim.

It alleges the press was fitted with a safety guard when it left the factory and the guard was removed while in the possession of the employer. Had the employer not removed the guard, the accident would not have happened.

So the stage is set. The worker has received his workers' compensation benefits but says they were inadequate given the severity of the consequences of the injury; the employer wants his \$300,000 lien paid because he says the injury was the result of the negligently designed press; and the press manufacturer asserts the employer was at fault for removing or failing to maintain the guard. How does this all play out?

Our third party statute was adopted from the Model Act in 1969. The statute was amended in 1974 to clarify the employer's lien included medical expenses paid or to be paid, and in 1978, §42-1-560(f) was amended to allow reduction of the employer's lien if circumstances so warranted.

In 2003, the Supreme Court decided its first case interpreting the third party statutes. The case was *Breeden v. TCW, Inc.*, 355 S.C. 112, 584 S.E.2d 379 (2003), and the Court took the opportunity to discuss at length basic principles upon which the third party statutes rely. First, the injured party (our worker with the mangled hand) cannot collect twice for the same injury. Second, the ultimate wrongdoer should pay for the injury.

The first principle is well established in South Carolina jurisprudence; the second is just plain common sense. The injured worker should be properly compensated for his injuries by the party who caused them. Because workers' compensation is a no fault system, the employer is responsible for workers' compensation benefits regardless of who caused the accident. So if the third party is the wrongdoer, it must provide the funds to compensate the injured worker who must use some of those funds to pay the employer's lien.

Where the employer's negligence did not cause the accident, the third party wrongdoer pays for the injuries; the employer who was neutral in a fault sense is made whole; and the worker, who has already received workers' compensation benefits, also receives the balance of third party proceeds. *(This is an over simplification, I know, but for the purposes of this discussion, I need to keep it simple. We'll save attorneys' fees, reduction of the lien and other issues for another day.)*

Before we get to our ultimate point, there is one other principle of workers' compensation that must be addressed: exclusivity. An injured worker cannot sue his employer in civil court for injuries arising out of and in the course of employment. The only remedy the worker has against his employer is workers' compensation, period. The exclusivity doctrine extends to anyone claiming through the worker as well.

Obviously, in a no fault system, negligence is not an issue. The employer must pay for injury by accident arising out of and in the course of employment even if the worker was negligent. The employer is absolutely protected from suit by §42-1-540.

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Problem solved.



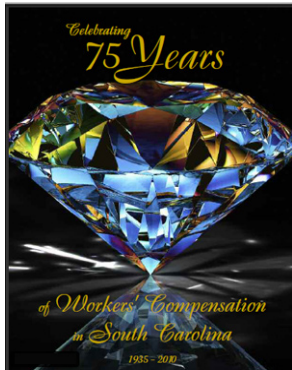
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The Unanswered Question continued

Now the question. If the employer cannot be sued in civil court under any circumstances and cannot therefore be made a party to the worker's suit against the press manufacturer, who decides whether the employer was actually negligent?

We thought we had an answer in §42-1-580. It gave the right to the third party to enforce contribution or indemnity from the negligent employer. Its purpose was to limit the third party's exposure only to the degree of his negligence. Because the employer was negligent, he lost his workers' compensation lien. The injured worker kept those benefits and was paid only for the negligence of the third party. But the Supreme Court recognized a flaw in this approach in 2005 when it decided *Gordon v. Phillips Utilities, Inc.*, 362 S.C. 403,608 S.E.2d 425 (2005).

Since the employer's lien was at stake in the third party action and the employer could not be made a party to the suit, there was no one in the courtroom to protect the rights of the employer. The employer was completely unrepresented and a verdict finding the employer in any degree negligent could wipe out his lien. In *Gordon*, the Supreme Court held the statute was inapplicable. That is, it could not be applied. The employer could not be made party to the suit because of the exclusivity doctrine, yet his absence was a patent miscarriage of justice.

No cases have been decided since *Gordon* and the General Assembly has not taken up the issue. So we have the unanswered question: how do we resolve the conundrum created by the conflict of the exclusivity doctrine and the principle that the ultimate wrongdoer should pay? Maybe by the next edition of the newsletter, we'll have some ideas.

You Spoke and We Listened...Survey Results

On May 24, 2010, the SCWCEA sent an electronic survey to 1,082 members to determine whether or not reducing the number of days of the annual educational conference would be a welcome alternative and also to see if the membership preferred to rotate the annual meeting or stay in one location.

Thank you to the 318 members who completed our questionnaire.

The findings were:

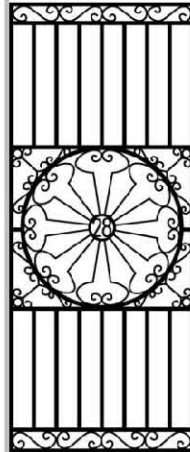
57.9% preferred a Sunday – Tuesday conference (reducing the length by one day)
62.3% preferred alternating between cities

The 2010 Annual Educational Conference dates will not be reduced. Conference dates are October 17 – 20 2010.

Many of you have requested that we look at properties in Charleston, Columbia and Greenville for our annual conference. Very few hotels in South Carolina have enough rooms and meeting space for a conference as large as the Annual Educational Conference.

No downtown Charleston hotel is of sufficient size and reasonable cost to accommodate this conference and also allow exhibit booths. Exhibitors help defray the cost our attendees pay.

SCWCEA will continue to work toward closely evaluating other properties for our meetings, but Myrtle Beach and Hilton Head are likely the two South Carolina options at this time for the Educational Conference.



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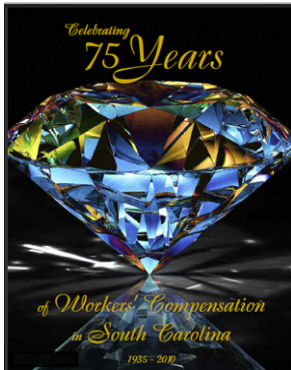
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Don't Believe Everything You Read!

On February 26, 2010, the revised Rules and Regulations of the South Carolina Workers' Compensation Commission were approved by the South Carolina General Assembly. Unfortunately, West Publishing printed the 2010 version of the South Carolina Code in December 2009. The Commission requested the publication be postponed, but publication was not delayed. As a result of that decision, the rules and regulations in the 2010 version of Westlaw are not correct.

The vast majority of the changes in **Chapter 67 of the Administrative Procedures Act** are a result of the passage of Act 111 on June 25, 2007. For instance, the creation of the Form 14B to determine future medical benefits is necessitated by the change in the law with regard to the change of condition statute. Another change as a result of Act 111 is the Commission management of Final Agreements and Releases when the Claimant is represented by Counsel.

The Commission now receives and processes these documents without the signature or approval of a Commissioner. The change in the statute requires more specificity with regard to pleadings. Forms 50/51 must specify specific body parts and specific injuries in order to be processed for hearing. **Regulation 67-1101** now reflects the shoulder and the hip as added body parts for specific loss of use. Also, a regulation is in place to address the role of rehabilitation professionals within the system.

Other amendments, deletions and additions further reflect grammatical changes, the ability to receive and to electronically serve forms and documents, changes in electronic data interchange procedures, and the addition of attorney fee petition procedures.

The addition of the ability to file certain notices, forms and orders electronically is a major change. The Commission continues to develop procedures for electronic filing and the management of a paperless record system. The development of the eCase System is a priority of the Commission with the goal of more efficiently managing the caseload and improving service to Commission constituencies.

There are several changes as well reflecting the proper names of divisions of the Commission such as the Medical Services Division and the Public Affairs Division. The elimination of duplicative forms is addressed as well.

The current Rules and Regulations are available through the State Register and the SCWCC website at www.wcc.sc.gov. Make sure you register on eCase for online information regarding the status of your claims.



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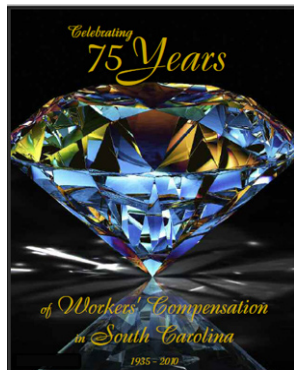
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We Continue to Grow: Welcome New SCWCEA Members

The following is a listing of our new members who have joined the association since January 1, 2010. Make certain you introduce yourself to those attending the annual conference this fall. They will all wear a "New Member" ribbon and can easily be identified.

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Rodger Benson
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John Burns
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John Carpenter
HealthQuest Physical
Therapy, Inc
Camden, SC

Lisa Carrigan
Intracorp
Boiling Springs, SC

Sheryl Cloud
Intracorp
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Stephanie M. Corley
Stephanie M. Corley, PC
Walhalla, SC

Thea Coleman
Occupational Health &
Rehab Services
Spartanburg, SC

Alison Crews
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Kristian Cross
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Branden Curry
National Claim Services
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Connie Dease
HealthQuest Physical
Therapy, Inc
Camden, SC

Brenda Finley
Rehabilitation Management,
Inc.
Vale, NC

Stacy Folk
Stephanie M. Corley, PC
Walhalla, SC

Dwayne Green
DJG Investigative Services,
Inc
Charlotte, NC

T.J. Hadley
Gallivan, White & Boyd, PA
Greenville, SC

Mildred Hazewinkel
Compendium Services, Inc
Elgin, SC

Kyle Hougham
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Greenville, SC

April "Ann" Hughes
Upstate Medical
Rehabilitation
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Vera Isreal
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Medical Center
Spartanburg, SC

Angela Johnson
McWhirter, Bellingier and
Associates
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KeenanSuggs
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Land Parker Welch
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Kimberly Land
Land Parker Welch
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Christie Lasater
Rehabilitation Manage-
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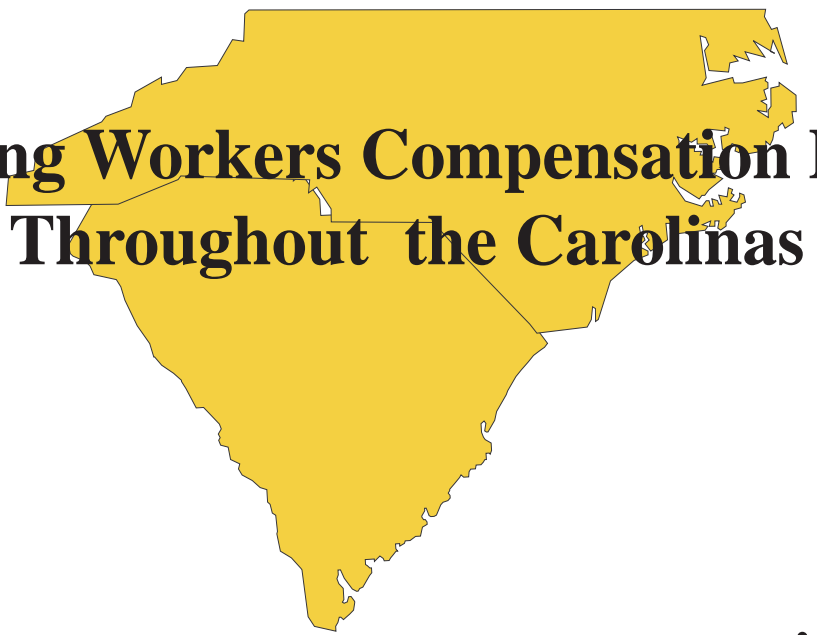


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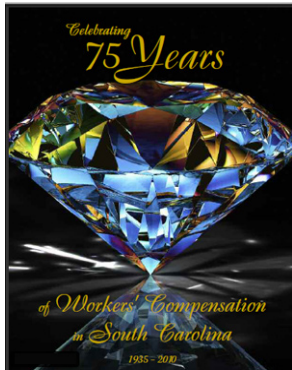
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Sturkie
Greenwood, SC

Brian McElreath
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Charleston, SC

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Columbia, SC

Bonnie McKay
Case Management Con-
sulting, LLC
Mt. Pleasant, SC

Kevin W. Mims
Young Clement Rivers,
LLP
Charleston, SC

Jennifer Ogle
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Special Note

In our Winter 2009/2010 newsletter, we provided a listing of SCWCEA Member Mediators. This list was provided by the SC Bar Association and was strictly a list of attorney mediators. We apologize to any non-attorney mediators who were not included.

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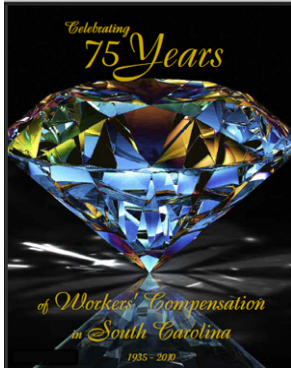
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Future Conference Dates & Locations

February 27 – March 1, 2011

32nd Annual Medical Seminar on Workers' Compensation
Francis Marion Hotel
Charleston, SC

October 16 – 19, 2011

35th Annual Educational Conference on Workers' Compensation
Embassy Suites at Kingston Plantation
Myrtle Beach, SC

October 13 – 16, 2012

36th Annual Educational Conference on Workers' Compensation
The Westin Hotel
Hilton Head Island, SC



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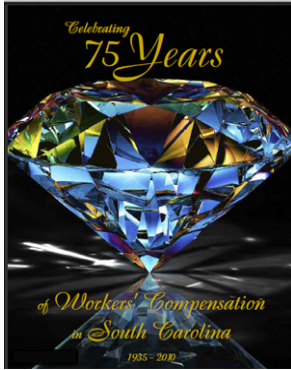
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The SCWCEA is pleased to recognize the following organizations who are our PARTNERS for this year. They share our commitment to providing exceptional programs and essential tools for the association's success and membership, and their dedication and financial support benefit all members of the SCWCEA. Join us in thanking them for their commitment to us this year!

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