

# DEFENSE TALK

SM

A PUBLICATION BY THE LAW FIRM OF

CLIFTON, MUELLER & BOVARNICK, P.C.

JUNE

ATTORNEYS AT LAW

2009

CURRENT EVENTS, ARTICLES, AND SUMMARIES OF RECENT CASES AND LEGISLATION IN THE AREAS OF WORKERS' COMPENSATION, LIABILITY, INSURANCE, AND EMPLOYMENT LAW

## Damages in Premises Liability Cases Subject to Reduction

In *Union Pacific Railroad Co. v. Martin*, decided June 8, the Colorado Supreme Court held that the affirmative defenses of comparative negligence and pro rata liability apply in premises liability cases. The case involved a 2002 collision between a Union Pacific train and a car driven by the Martins' minor daughter. Because the railroad crossing was owned and maintained by Union Pacific, the trial court held that Colorado's premises liability law applied.

Under the Colorado premises liability statute, a landowner's duty of care to other persons on the property depends upon the status of those other persons, i.e., whether

they are trespassers, licensees, or invitees. In *Vigil v. Franklin*, the Colorado Supreme Court held that the premises liability statute abolished all other common law doctrines of landowner liability.

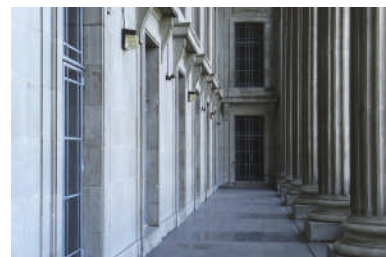
Relying on the Supreme Court decision in *Vigil*, the trial court ruled that the defendant in a premises liability case is not entitled to an apportionment of damages for the negligence of the injured party or fault of a nonparty. The Court of Appeals held that *Vigil* did not address the relationship of the premises liability statute to statutes limiting liability for damages according to relative fault and therefore did not bar the statutory defenses of comparative negligence and pro rata liability.

However, the Court of Appeals noted that the General Assembly had amended the premises liability statute in 2006 to expressly make the defenses of comparative negligence and pro rata liability applicable. Because the court found no clear indication the amendment was intended as a clarification of existing law, it reasoned that the legislature must have intended the amendment to be a change in the law, which would only apply to future cases.

The Supreme Court agreed with the Court of Appeals that the *Vigil* case did not decide whether the statutes limiting liability for damages applied to premises liability cases. However, it disagreed that the premises liability statute in effect at the

time of the accident required that damages be assessed without regard to negligence of the injured party or fault of a nonparty.

The Supreme Court reviewed the 2002 premises liability statute in the context of the statutory scheme of which it was a part. It noted that the premises liability statute defined the duties of care by and grounds for recovery against landowners but did not exempt premises liability cases from the general requirement that damages for death or injury be assessed according to the



defendant's degree of fault. The statutory provisions regarding comparative negligence and pro rata liability addressed only apportionment of damages and were therefore not inconsistent with the premises liability statute.

Because the statutes functioned harmoniously as part of a single statutory scheme, the defendant should have been allowed to raise the statutory defenses of comparative negligence and pro rata liability. Therefore, the case was remanded for a new trial.

### INSIDE THIS ISSUE:

Victories in the Trenches	2
CMB Welcomes John M. Abraham	2
Practice Pointer	3
Court of Appeals Update	3
Industrial Claim Appeals Office Update	4
Ipsi Dixit	5

VISIT US ON THE WEB: [WWW.CMB-PC.COM](http://WWW.CMB-PC.COM)

# VICTORIES IN THE TRENCHES

## James R. Clifton

In *Albert M. Baker v. Nabors Drilling USA and Zurich/FARA*, the Industrial Claim Appeals Office affirmed ALJ Friend's denial of the claimant's claim for compensation. The ALJ relied upon evidence that claimant gave his healthcare providers inconsistent reports of the mechanism of his injury. He also credited testimony by claimant's supervisor that he did not receive a report of injury from the claimant, and that when claimant picked up his belongings after he had been suspended he did not mention an injury or appear to be in pain.

In *Garrett Defoe v. Wal-Mart Stores, Inc. and American Home Assurance*, ALJ Cain granted respondents' motion to change venue to Grand Junction. Claimant resides in Gunnison, Colorado, which is closer to Grand Junction than to Denver, but his Denver attorney set the case for hearing in Denver because he had retained an expert physician who is located in Denver and he prefers to have that witness testify live. Jim Clifton pointed out that the physician who performed the autopsy on claimant's deceased spouse, and who may be a witness at hearing, is located in Montrose, Colorado, which is much closer to Grand Junction than to Denver.

## Richard A. Bovarnick

In *Yelena Solok v. Wal-Mart Stores, Inc. and American Home Assurance*, ALJ Krumreich denied claimant's request to change the authorized treating physician from Allison Fall, M.D. to Jeffrey Kleiner, M.D. The ALJ agreed that the claimant's "dissatisfaction" with Dr. Fall was an insufficient basis for her request to change to Dr. Kleiner.

In *JoAnne Kaiser v. Wal-Mart and CMI*, ALJ Walsh agreed that claimant failed to prove it was more probably true than not that she sustained a compensable work-related injury when she was struck by a line of shopping carts. The claim was not compensable because (1) the claimant was not disabled by the incident as she continued to work her regular job; and (2) claimant did not seek any healthcare treatment for almost three months.

In *Olivia Maez v. LQ Management, Inc. and Zurich American Insurance*, Rich successfully moved to strike claimant's Notice and Proposal to Select an Independent Medical Examiner and Application for a Division Independent Medical Exam based on claimant's failure to attend a properly scheduled DIME. The prehearing ALJ agreed that claimant failed to demonstrate good cause why the DIME should not be stricken. This case is now closed subject to reopening.

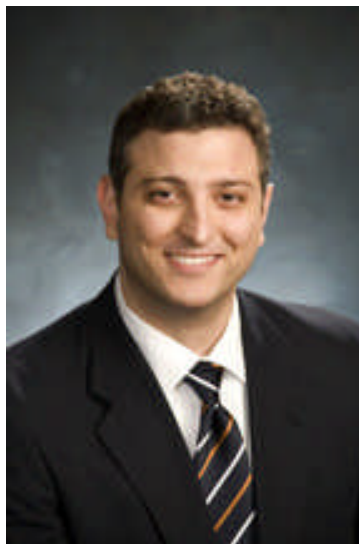
In *Alfredo Vargas v. Tetra Technologies and Insurance Company of North America*, ALJ Friend agreed that the employer's provision of the rule 8-2 choice of physician letter to the claimant was valid even though the claimant was in a hospital's intermediate ICU at the time. The ALJ held that Dr. Yamamoto was not authorized and costs for his care were not respondents' liability. ALJ Friend also denied claimant's request for an awning to be built over the wheelchair accessible ramp that the insurer had built at claimant's home, holding that claimant had failed to show that an awning was reasonably necessary.

## Holly M. Barrett

In *Cecil Riffle v. Current USA and Pacific Indemnity Co.*, the Industrial Claim Appeals Office affirmed ALJ Stuber's denial

of additional permanent partial disability benefits. The DIME physician had assigned a 7% whole person impairment rating pursuant to table 53 of the AMA Guides and 21% for loss of range of motion, for a combined whole person impairment rating of 27%. However, in a letter to the DIME Unit of the Division of Workers' Compensation and in his deposition, the DIME physician stated that the range of motion rating was "absurd" and the only appropriate rating would be the 7% whole person impairment rating. The ALJ determined that the DIME physician's rating was 7% and that the claimant had failed to prove by clear and convincing evidence that it was incorrect.

In *Thomasine Young v. Nana Regional Corp. dba K.I. LLC and Ace American Insurance*, ALJ Stuber denied and dismissed claimant's claim for compensation and benefits. The ALJ found that claimant had failed to prove by a preponderance of evidence that she suffered an occupational disease to her low back as a natural consequence of her work activities for the employer. Claimant gave her various healthcare providers inconsistent histories, and she did not file a claim for compensation until more than three months after she alleged her occupational disease arose.



## CMB WELCOMES JOHN M. ABRAHAM

The firm is pleased to announce the addition of John M. Abraham as an associate in the Denver office. Mr. Abraham received his Bachelor of Arts degree in history from the University of Texas at Austin in 2002 and his juris doctor degree from the University of Denver in 2006. Prior to joining Clifton, Mueller & Bovarnick, he practiced workers' compensation defense with the firm of Thomas, Pollart & Miller. Before joining the Thomas firm he served a fellowship in the 18<sup>th</sup> Judicial District, Arapahoe County, where he assisted Judges J. Mark Hannen and Valeria Spencer. Mr. Abraham is fluent in Spanish and Portuguese and has acted as a Spanish legal interpreter/translator. His personal interests include international travel, Texas Longhorns football (of course), tennis, basketball and the outdoors. Please join us in welcoming John!

## Practice Pointer

## Termination of TTD Benefits After a Worsening

By Holly M. Barrett

The Industrial Claim Appeals Office's (ICAO) interpretations of *Anderson v. Longmont Toyota, Inc.*, 102, P.3d 323 (Colo. 2004) make it more difficult for Respondents to terminate TTD benefits when a Claimant is responsible for termination and has a worsening of condition.

In the case of *Karen Fantin v. King Soopers*, W.C. No. 4-465-221 (February 15, 2007), the Industrial Claim Appeals Office upheld an ALJ's finding that the termination statutes (§8-42-105(4) and §8-42-103(1)(g)) do not apply to worsened conditions. In *Fantin*, the parties stipulated that Claimant was at fault for her termination. However, Claimant's condition worsened, she was taken off of work, and Respondents reinstated TTD payments to Claimant. Once Claimant was able to return to modified duty, Respondents sought to terminate her TTD benefits based upon Claimant being at fault for her termination. The ALJ denied Respondents' request to terminate TTD benefits stating that none of

the requirements in §8-42-105(3) had been met.

§8-42-105(3), C.R.S. sets forth 4 requirements for terminating TTD benefits:

1. Claimant reaches MMI;
2. Claimant returns to regular or modified employment;
3. ATP gives Claimant a written release to return to regular employment;
4. ATP gives Claimant written release to return to modified employment, modified employment is offered to Claimant in writing, and Claimant fails to begin modified employment.

ICAO held that §8-42-105(4) does not apply when a worsening of a work related injury causes the wage loss. The ruling in *Fantin* arguably left room for application of the termination statutes if the employer would testify that but for the termination, modified employment, within Claimant's restrictions, would have been offered.

However, that argument was shot down in the subsequent case of *Evelin Riley Speer v. National Mentor Holdings, Inc.*, W.C. No. 4-680-959 (April 15, 2009).

In *Speer*, a witness for the employer testified that but for Claimant's termination, Claimant would have been offered a modified duty position, within her restrictions after she was released to modified duty following a worsening of her condition. ICAO upheld the ALJ's award of TTD benefits holding that the original basis under the termination statutes for termination of Claimant's TTD benefits is not revived once Claimant's physical restrictions return to those in effect prior to the time the Claimant was responsible for her termination.

As a result of these holdings, the only way to currently terminate TTD benefits when Claimant is at fault for termination and has a worsening of condition is when one of the requirements set forth in §8-42-105(3), C.R.S. is met.

# Court of Appeals Update

## Supplemental Liability Insurance—Crime Exclusion

In *Lincoln General Insurance Company v. Bailey*, decided May 14, 2009, the Colorado Court of Appeals affirmed the trial court's entry of summary judgment and dismissal of claims against the insurer. The case involved supplemental liability insurance coverage purchased from a rental car agency. The insured drove the rental car in a high-speed chase from police that resulted in a head-on collision. The driver of the other car was severely injured and her son was killed. The insured pleaded guilty to five felonies and assigned his claims against the insurer to claimants.

The trial court granted the insurer's motion for partial summary judgment based on the crime exclusion listed in the rental agreement. The Court of Appeals affirmed, holding that (1) the crime exclusion was

clear and unambiguous, and the doctrine of reasonable expectation did not apply; (2) the crime exclusion did not violate Colorado public policy; and (3) the crime exclusion was not unconscionable. The Court of Appeals also concluded that there was no deceptive trade practice under the Colorado Consumer Protection Act and no breach of contract.

## Workers' Compensation—DIMEs—Conflicts of Interest

In *Ruff v. Industrial Claim Appeals Office*, decided May 14, 2009, the claimant challenged the division-sponsored independent medical examination (DIME) process under Division of Workers' Compensation Rule 11-2, which rule requires that a DIME be conducted "in an objective and impartial manner." Rule 11-2(H) prohibits a DIME physician from evaluating a

claimant "if the appearance of or an actual conflict of interest exists." Under Rule 11-2(H), "a conflict of interest includes but is not limited to, instances where the physician or someone in the physician's office has treated the claimant."

The Court of Appeals held that Rule 11-2(H) "contemplates and guards against the appearance of a conflict that may be present as the result of a DIME physician's relationship with an insurance carrier when that relationship involves a substantial financial interest." The court affirmed the ALJ's determination that no actual conflict of interest existed but remanded for additional findings on the issue of whether an apparent conflict of interest existed. The court directed the ALJ on remand to consider the extent of the DIME physician's financial relationship with the insurer.

Please see COURT on page 4

## COURT OF APPEALS UPDATE

Continued from page 3

## Workers' Compensation— PTD—Lump Sum

In *Nelson v. Industrial Claim Appeals Office*, decided May 28, 2009, the claimant sought an additional lump sum payment after the statute was amended to increase the maximum lump sum allowed. At the time of claimant's injury, the aggregate of all lump sums that a claimant who had been awarded permanent total disability compensation could receive was limited to \$26,292. The lump sum statute was

amended, increasing the maximum aggregate amount to \$60,000, effective May 30, 2007.

In February 2007, claimant applied for and was awarded a lump sum payment of \$26,292. In November 2007, claimant applied for an additional lump sum payment of \$33,708, the difference between the new maximum aggregate amount and the lump sum she had previously received. The Director of the Division of Workers' Compensation ordered the employer to pay the additional lump sum.

The Court of Appeals noted that although workers' compensation awards are determined by the law in effect at the time of the injury, enforcement of an award is a matter of procedure. Procedural changes to a statute apply to transactions that occur after the changes are effective, regardless of the date of injury. The court held that because the lump-sum statute provides procedures for administering benefits that have already been awarded it is procedural, and the claimant was entitled to an additional lump sum payment under the amended statute.

# Industrial Claim Appeals Office Update

The cases summarized here are only a selected portion of the cases decided by the Industrial Claim Appeals Office. In these summaries, ALJ=administrative law judge; ATP=authorized treating physician; DIME=Division-sponsored independent medical examination; DWC=Division of Workers' Compensation; ICAO=Industrial Claim Appeals Office; MMI=maximum medical improvement; PTD=permanent total disability; TTD=temporary total disability.

## Causation

ICAO affirmed ALJ Cannici's order denying claimant's request for medical benefits to cure and relieve the effects of a condition that the DIME physician had concluded was of unknown etiology. Held: claimant's lay testimony failed to overcome the opinion of the DIME physician on the issue of causation by clear and convincing evidence. *Bettinger v. The Great Indoors*, W.C. No. 4-513-392 (ICAO May 11, 2009)

ICAO affirmed ALJ Jones's order that respondents pay for claimant's ulnar nerve transposition surgery, despite the ATP's original opinion that claimant's elbow problems were not work-related and the opinion of another expert that causation was medically improbable. Held: medical evidence is not dispositive of causation, and the testimony of the claimant and the current opinion of the ATP constitute substantial evidence. *Simpson v. Benchmark/Elite Inc.*, W.C. No. 4-467-097 (ICAO

May 4, 2009)

## DIMES

See also Termination of TTD, below.

ICAO affirmed ALJ Harr's determination that respondents had overcome the DIME physician's opinion that claimant had not reached MMI. Claimant's admitted injury was to her right upper extremity. The ATP placed claimant at MMI and rated her impairment at 10% of the upper extremity. The DIME physician relied upon claimant's report of a new and different mechanism of neck injury as the basis for his opinion that claimant had not reached MMI. Held: there was substantial evidence for the ALJ's findings that claimant lacked credibility and that the DIME physician's opinion was unpersuasive. *Solis v. Sunshine Building Maintenance*, W.C. No. 4-726-043 (ICAO June 12, 2009)

ICAO affirmed ALJ Felter's order that claimant had waived her right to pursue a DIME by refusing to schedule an appointment for over a year while challenging the "propriety" of the DIME selection process. *Rodriguez v. Safeway Stores Inc.*, W.C. No. 4-712-019 (ICAO June 3, 2009)

ICAO affirmed ALJ Cannici's order that claimant failed to overcome DIME opinion that claimant's back condition was not caused or substantially altered by her work activities. Held: when the threshold question of whether claimant sustained a compensable injury is not at issue, a DIME physician's opinion about the cause of

claimant's permanent back condition is binding unless overcome by clear and convincing evidence. *Nunnally v. Eastman Kodak Company*, W.C. No. 4-720-435 (ICAO May 28, 2009)

ICAO affirmed ALJ Felter's order that respondents had overcome the DIME physician's opinion by clear and convincing evidence. The ALJ and ICAO relied in part on the doctrine of issue preclusion, which bars re-litigation of an issue if certain elements are present. The DIME physician opined that all of claimant's shoulder problems were related to the work injury, contrary to the opinions of the ATP and the previous holding of the ALJ. *Lockhart v. Tetra Technologies*, W.C. No. 4-725-760 (ICAO May 21, 2009)

## Penalties

ICAO remanded this case to ALJ Krumreich for entry of a new order on respondents' request for attorney fees and costs. Held: 8-43-211(2)(d) requires assessment of attorney fees and costs if a party sets a hearing on any issue that is not ripe for adjudication, even if one or more of the issues set are ripe. *Youngs v. White Moving & Storing, Inc.*, W.C. No. 4-648-693 (ICAO May 28, 2009)

ICAO affirmed ALJ Broniak's order imposing a penalty on insurer for unreasonable delay in responding to a prior authorization request for surgery. The insurer failed to provide a copy of the re-

Please see ICAO on page 5

**ICAO Update**  
Continued from page 4

viewing physician's report to claimant and the ATP. *Walker v. Mesa Vista of Boulder*, W.C. No. 4-751-936 (ICAO May 13, 2009)

**PTD**

ICAO affirmed ALJ Krumreich's order denying the claim for PTD. Held: the ALJ has the responsibility to weigh competing evidence and determine its probative value, and it was within his prerogative to give more weight to the opinions of respondents' IME and vocational rehabilitation experts. *Jiron v. Douglas County School District Re 1*, W.C. No. 4-636-107 (ICAO May 12, 2009)

ICAO affirmed ALJ Martinez's order denying the claim for PTD. Held: claimant has the burden to prove that she is "unable to earn wages in the same or other employment." Whether the claimant is permanently and totally disabled is a question of fact for the ALJ, and the ICAO must defer to the ALJ's resolution of conflicts in the evidence, credibility determinations, and plausible inferences drawn from the record. *Gauvin v. Microfilm & Imaging of Durango*, W.C. No. 4-570-204 (ICAO May 11, 2009)

**Reopening**

ICAO affirmed ALJ Friend's order granting claimant's petition to reopen based on change of condition. Claimant had suffered a compensable injury to his knee. He was unable to undergo the recommended surgery because of multiple myeloma. The change of condition on which he based his petition was a remission of the myeloma, making it possible for him to undergo the recommended surgery. ICAO held that the change in condition does not have to involve the originally injured body part. *Bolivar v. United Natural Foods, Inc.*, W.C. No. 4-678-516 (ICAO May 22, 2009)

ICAO affirmed ALJ Jones's order denying claimant's petition to reopen. The ALJ concluded that "claimant provided no credible testimony as to how his left knee condition was worse at the time of the hearing or how the symptoms differed from symptoms he had at the time of his

reaching maximum medical improvement." *Valera v. Excel Manufacturing*, W.C. No. 4-563-417 & 4-461-532 (ICAO May 20, 2009)

ICAO affirmed ALJ Krumreich's order reopening an award of death benefits and ordering the employer's carrier to reimburse the Subsequent Injury Fund for benefits erroneously paid. Held: ALJ has the authority to order a workers' compensation insurer to reimburse another carrier for benefits the first insurer paid to the claimant; language in the reopening statute that reopening may not "affect the earlier award as to moneys already paid" only prohibits orders requiring claimant to repay (except in cases of fraud or overpayment). *Ehrsam v. Bonneville Foods Corporation*, W.C. No. 3-070-937 (ICAO May 7, 2009)

Please see ICAO on page 6

**DEFENSE TALK <sup>SM</sup>**

FOUNDED 1991

is published monthly by the law firm of

Clifton, Mueller & Bovarnick, P.C.  
Attorneys at Law  
Suite 500  
789 Sherman Street  
Denver, CO 80203  
Telephone (303) 988-7692  
Facsimile (303) 988-7724

Grand Junction Office  
Suite 204  
200 Grand Avenue  
Grand Junction, CO 81501  
Telephone (970) 255-8852  
Facsimile (970) 255-8905

John M. Abraham  
Holly M. Barrett  
Richard A. Bovarnick  
Angelia K. Champoux  
James R. Clifton  
M. Frances McCracken  
Royce W. Mueller  
Diane K. Murley  
Erica A. Weber

© 2009 Clifton, Mueller & Bovarnick, P.C.  
All rights reserved. Printed in USA.

**IPSI  
DIXIT**



Clean it, if it's Dirty.  
Oil it, if it Squeaks.  
But: Don't Screw with it, if it Works!  
USAF Electronic Technician

"Five second fuses only last three seconds."  
Infantry Journal

"If you see a bomb technician running, keep up with him."  
USAF — Ammo Troop

"The only time you have too much fuel is when you're on fire."

"Airspeed, altitude and brains. Two out of three are needed to successfully complete the flight."

"You know that your landing gear is up and locked when it takes FULL Power to taxi to the terminal."

Note: Summaries and articles should not be relied upon as authority for a particular case. Consult your attorney for advice on the application of ALL the law to the specific facts of your case or legal problem.

**ICAO Update**

Continued from page 5

**Responsibility for Termination of Employment**

ICAO reversed that part of ALJ Jones's order that awarded claimant TTD on her occupational disease claim. ICAO held that claimant could not establish the threshold conditions for an award of TTD benefits because the onset of her disability occurred before she was terminated for excessive tardiness and absenteeism. **Palmer v. Borders Group, Inc.**, W.C. No. 4-751-397 & 4-723-172 (ICAO June 5, 2009)

ICAO affirmed ALJ Krumreich's order denying respondents' petition to terminate TTD. The ALJ had concluded that claimant was not responsible for her termination from employment because she resigned when she was unable to locate daycare during the hours she worked. ICAO affirmed based on its interpretation of *Anderson v. Longmont Toyota* that once benefits are properly admitted to they cannot be terminated even when the claimant's worsened condition improves to the state it was at the time of claimant's termination from employment. **Smith v. Wal Mart**, W.C. No. 4-751-887 (ICAO May 19, 2009)

**Time for Filing**

ICAO affirmed ALJ Jones's order finding that claimant's reliance on DWC records that employer was uninsured constituted good cause to allow claimant to file his claim within three years (instead of two). She also found the statute of limitations

was tolled by the claimant's oral report on the date of his injury. ICAO remanded for a determination of whether claimant's request for penalties against the employer for failure to file a first report of injury was time barred. Held: request for penalties must be made within one year after party first knew or should have known of facts giving rise to possible penalty, even if penalty is continuing. **Mendoza v. Sanders Construction, Inc.**, W.C. No. 4-655-387 & 4-749-187 (ICAO May 27, 2009)

ICAO affirmed ALJ Stuber's order granting partial summary judgment on issues closed by the final admission of liability because claimant did not object or file an application for hearing within 30 days. Held: a new objection was necessary once the FAL was filed. Claimant could not rely on RAH that was pending at the time the FAL was filed. **Reyes v. Extra Miles Landscaping, Inc.**, W.C. No. 4-690-754 (ICAO May 27, 2009)

ICAO affirmed ALJ Cannici's denial of workers' compensation benefits because the statute of limitations had run. Claimant argued that the statute was tolled because the employer had not filed a first report of injury. Held: whether the employer had notice of an injury "indicating to a reasonably conscientious manager that the case might involve a potential compensation claim" is a question of fact for the ALJ, and claimant has the burden to prove that the employer had sufficient knowledge to trigger the duty to report the injury to the Division. **Gemmer v. Poudre Valley Healthcare**, W.C. No. 4-643-289 (ICAO

May 11, 2009)

**Termination of TTD**

ICAO affirmed ALJ Friend's order denying claim for TTD benefits after the ATP gave claimant a written release to return to work without restrictions, even though DIME physician said claimant had not reached MMI. Held: § 8-42-105(3)(c) termination of TTD when claimant is released to regular employment is independent of § 8-42-105(3)(a) termination for MMI. Furthermore, nothing in DIME statute treats opinion of DIME physician as binding with respect to claimant's ability to perform regular employment. **Abeyta v. Robinson Brick Company**, W.C. No. 4-741-115 (ICAO June 3, 2009)

ICAO affirmed ALJ Walsh's order denying claim for TTD benefits during period the ATP had released claimant to full-duty work without restrictions, even though DIME physician opined that claimant was not physically fit to return to any job for which he had training and experience. Held: § 8-42-105(3)(c) C.R.S. mandates the termination of TTD benefits when the ATP gives the employee a written release to return to regular employment. Presumptive effect of the DIME statute does not apply to work restrictions. **Dejoy v. The Shaw Group**, W.C. No. 4-741-382 (ICAO May 14, 2009)

The orders summarized here are on file with the editor. If you would like a copy of any order, contact Diane Murley at [dmurley@cmb-pc.com](mailto:dmurley@cmb-pc.com) or 970-255-8852.

**CLIFTON, MUELLER & BOVARNICK, P.C.**

789 SHERMAN STREET  
SUITE 500  
DENVER, COLORADO 80203