

ALL ABOUT CLAIMS

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All About Claims is a newsletter published by the **Colorado Division of Workers' Compensation** designed to provide information to claims practitioners. Please send comments or suggestions for future topics to Lise Maes by emailing lise.maes@state.co.us.

INTERVIEWING CHIEF JUDGE GOLDSTEIN



Jeff Goldstein has practiced in the workers' compensation system for over 40 years and has been an Administrative Law Judge in the Prehearings and Settlement Unit since 2009. He was appointed Chief Judge in June. Judge Goldstein afforded us the opportunity to ask about his journey to public service.

You came to this role as a prehearing conference judge after years of representing injured workers. What aspects of your current role do you find most fascinating?

My current role as a prehearing and settlement judge is certainly very interesting and over the last four years, I have gained new perspectives and insights into our workers' compensation system.

When I was appointed to the position of Administrative Law Judge, I was asked if I could make the break with advocacy and be a judge. I said "no problem." I started my career clerking for a judge in the Court of Appeals in California and I have enjoyed getting back to doing that kind of work – listening to the parties and understanding their issues, doing the legal research and writing orders;

and, to the best of my ability, doing justice. Settlement conferences are particularly interesting. There are many fascinating attorneys, claimants, and respondents. And every case is different. I believe that my years of experience as an advocate in the workers' compensation system give me the ability to help the parties see the strengths and weaknesses of their cases.

Another new perspective for me was learning about and better understanding the daily challenges facing employers, insurance carriers, and their legal representatives. Before becoming a judge, I only represented injured workers and gained a lot of insight into their issues. Now that I'm a judge, I have gained more insight into the challenges facing all parties in the workers' compensation system.

Back in 1979, I went on a delegation of lawyers to China. This was right after a big change in that country, a change that put more emphasis on economic development and the rule of law. At that time, China only had a few thousand lawyers in a country with more than a billion people. We met with law students and professors at the Beijing Law School. They asked us a lot of questions about our legal system, and especially about administrative law. A modern society – people, businesses, and institutions – can't function without effective administration remedies. Workers' Compensation dispute resolution is exemplary of that kind of process. We solve problems that employers and employees can't solve by themselves. These problems need to be resolved on a speedy and fair basis so that the parties can move on with their lives and businesses. Pursuing lawsuits in District Court takes too long. Our workers' compensation system is the most effective way to deal with these issues. It is pretty fascinating that we have been able to develop such an advanced administrative law system that economically developing nations like China are eager to copy.

Not everyone knows that you're from California – what brought you to Colorado?

Well, I moved to Denver in 1972. I was working as a Legal Services attorney in Long Beach, California and I was driving all over the L.A. Basin. I was ready for a change, and John Denver was singing the praises of Rocky Mountain High. Like many others, sight unseen, I gave up my job, rented a van, packed up my family – including two young daughters – and came to Denver. I found work building greenhouses and doing some legal research and writing for a couple of Denver attorneys until I could take the Colorado bar exam. Once that was accomplished, I hung out my shingle on Bannock Street, just down the block from the City and County Building, with three other young attorneys. We took on a lot of interesting cases. We were able to take on public interest issues that I could not take on as a legal services attorney: for example, labor law, criminal cases, civil rights cases, including even court marshals under the Code of Military Justice. My wife of 37 years was my paralegal. Looking back, my move to Colorado was one of the best decisions of my life.

We understand that your father was a dentist who established the first mobile dental clinic for migrant farm workers. Tell us about that and how that influenced your perspective on public service.

My dad, Charlie Goldstein, went to dental school in San Francisco at the University of California, went into the Navy as a Lieutenant in the Navy Dental Corps during World War II, and then opened up a general practice in Santa Monica, California. In the late 1960s, he decided to get his Masters of Public Health. Dad thought that maybe after my younger sister and brothers were grown up, he and my mom, who was educated as a linguist, would do some volunteer work in an underdeveloped country. That didn't come to pass. Instead, he was invited to work on a public health project with the University of Southern California Dental School.

Up until the late 1960s, the dental school's clinical program – where dental students gain practical experience working on patients – was located on campus. My dad said to us, "You know, I see a need for these students to get off campus and treat poor children and adults who cannot travel to the dental school." Dad and the dean got together and developed a full-time U.S.C. mobile dentistry program. Dad scrounged up an old Winnebago mobile home and found a guy to retrofit it: put in dental chairs, units, compressors, and everything you need to examine and treat patients. Dad started by taking dental and dental hygiene students up to the United Farm Workers' compound in Delano in the Central Valley, and then the program just kept on growing. They would go to schools all over the agricultural valleys of the state and treat mainly migrant and poor rural kids right in their schools'

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parking lots. He also built a clinic at the Rescue Mission in what they call 'Skid Row' in downtown Los Angeles. He raised a lot of money through donations and fought for increased funding from the MediCal (Medicaid) program to cover dental care for poor children. He won many awards, including the first Humanitarian Award from the California Dental Society just days before his death at age 87. He was working on grants right up to the end. He was and remains my personal hero.

So you were in California around the time of the creation of the United Farm Workers Union...

Yes, and also around the time of the creation of the Legal Services program as part of President Johnson's War on Poverty. It was a unique period of time, a time when the government paid young lawyers to go out and sue the government on behalf of poor people. One of my professors in law school was Derrick Bell, a very famous African-American law professor who later became the first tenured African-American law professor at Harvard. He was also the director of the Western Center on Law and Poverty. In my senior year, I clerked for Professor Bell, and had the opportunity to travel to Delano and meet with UFW organizers and attorneys supporting the struggles of farm workers. Several years later, I represented the UFW in a case to remove a restraining order barring them from picketing a large Denver area liquor store.

During this period of time, a large number of young lawyers really wanted to do public interest law. Young lawyers *still* want to do *pro bono* public interest law. The difference is that today, they have heavy debt resulting from their Law School education, so it's really incumbent on the established firms to take on *pro bono* cases through organizations like the Colorado Lawyers Committee, and to pay their young associates for the time necessary to win those cases.

You were instrumental in the years-long battle of the Sangre de Cristo land grant. What did that mean to you?

In 1978, some folks from Costilla County in Colorado approached us after receiving a grant from the Campaign for Human Development, which is an arm of the Catholic Church, and they said, "Would you guys be interested in taking on a legal struggle to win back our historic use rights to gather wood and timber, graze our animals, hunt, fish, and recreate upon our traditional lands?" We said yes. I had no idea I would work on the case from 1978 through 2009.

Our clients were the heirs and successors in title to the original Hispanic settlers of San Luis Valley in southern Colorado. Their ancestors settled on the Sangre de Cristo Land Grant, which was formerly part of Mexico until the war between the U.S. and Mexico, which ended in 1848.



When they arrived here from northern New Mexico in the mid-1800s, they were promised that they would have access to the mountains east of their home places to exercise their traditional rights, all necessary to their survival. They exercised those rights for over 100 years until a new owner fenced them off from the mountains they call “La Sierra,” in the 1960s. The new owner of the underlying land was a North Carolina lumberman named Jack Taylor. His deed was subject to the claimed use rights. Nonetheless, he went to Federal Court and obtained a flawed decree barring the local folks’ access without giving proper notice to the majority of the local landowners.

We filed a lawsuit in 1981 attacking that decree. After dozens of court hearings and appeals in local, state, and federal courts, finally in 2004, the Colorado Supreme Court restored the use rights of La Sierra to the successors in title of the original landowners for wood, timber, and grazing rights. Since then, it’s just been a question of identifying the local landowners that should have access to La Sierra, who now number several thousand people. They now enjoy gathering wood and grazing their cattle on La Sierra during the summer months, just as their ancestors did 150 years ago.

This struggle could not have been won without the persistence of the local people, and the hard work of dozens of volunteer attorneys, land experts, and legal workers. I also have to thank my then-law partner, Shelley Dodge, who held down the office while I spent weeks trying the case in San Luis.

We’ve heard the word “tenacious” used to describe you. What word would you use to describe who you are?

Well, I would describe my *clients* in that Sangre de Cristo

land grant case as being tenacious and me as being one that they kept on pushing and making sure that I followed through on the case. I think successful lawyers – and I think I was pretty successful in my practice – are hardworking lawyers who zealously represent their paying and *pro bono* clients equally. It’s the same being a judge. You can’t just walk through it on a day-to-day basis and not give any thought to whatever happens. It takes consistent hard work, researching and thinking about issues, about what the parties are asking you to do, and the resolution of the issues before you. So I think success at any endeavor requires consistency and hard work. I admit that I am a suffering workaholic; I think it must be in my DNA. My dad worked to within a month or two of his death and my grandfather lived and worked into his 90s.

We understand that you had a connection with the Afghan Refugee Relief Association in the 80s, during the invasion of Afghanistan by the then-Soviet Union. Can you tell us about that?

I had a client who was a leader of the Afghan community in Denver. He was an engineer who had been trained at the School of Mines and then went back to Afghanistan. He worked on roads and bridges and when the Soviet invasion occurred, he came back to Denver. He and others from his country created an organization called the Afghan Refugee Relief Association, which raised money for the people who were forced out of Afghanistan into Pakistan because of the Soviet occupation. Governor Romer even signed a declaration supporting the refugees. It was interesting working with that group, learning about their culture, and their fierce desire for independence.

What inspires you, or continues to inspire you?

I think what inspires me the most are people who go the extra mile and make the sacrifice to serve the better good of society. There are so many such people in the Division of Workers' Compensation. For example, consider some of the work that's been done by the Medical Unit; they are on the forefront of evidence-based medicine, developing diagnostic criteria and treatment guidelines based upon the best available research. Everyone I work with in the Prehearing and Settlement Conference unit unselfishly puts in tremendous time, energy, and talent into their work.

I know there's a lot of conflict in our society right now, but I see conflict as being a challenge, not something you just hide from or ignore. If there's conflict, you find a way to deal with the conflict! And the folks who jump into the struggle continue to be my inspiration.

This past November commemorated the 50th anniversary of President Kennedy's assassination. Where were you when the assassination occurred and what were your impressions?

Well, I was in college. I remember – boy, the things I remember from that period of time, through college and law school – first, the Cuban Missile Crisis. Everybody was *terrified*. I was pre-med. I was in class and there was an announcement that Kennedy had been assassinated. I changed my major on the spot to political science. My political science professor at that time immediately invited us all over to his house and we were all trying to figure out what it all meant for our country and the world.

Then, of course, I lived through Martin Luther King's and Bobby Kennedy's assassinations. That was when I was in law school. The UFW were supporting Bobby for president, and I was listening to his speech in L.A. when he was shot and killed. That was the last straw. I knew that I wanted my legal career to include public service.

Is there something you can tell us about yourself that people would be surprised to know about you?

I have a wonderful family: I have three daughters and four grandchildren. A very interesting family! My oldest daughter Janine does the computer side of the science at the National Center for Atmospheric Research (NCAR) in Boulder. I have another daughter, Genevieve, who is a Kaiser doctor and she's married to a wonderful man from Cuba, who is a conga player. My youngest daughter, Deanna, has just moved back from California. She has a degree in music business and has worked for some very interesting companies. I have a wonderful wife who has always supported me. She's a PhD historian. She specializes in Western history, mainly women's history and the

women's suffrage movement in the late 1800s and early 1900s.

Between the time I "retired" from my practice of law in 2006 and came here in 2009, I had planned on sailing from the United States to Europe. A friend of mine has a 40-foot boat and we spent all this time preparing and sailing around Florida and the Caribbean. I even learned celestial navigation and obtained my General Class Amateur Radio Operator License, but then we unfortunately weren't able to make the trip to Europe. In some ways, I wish I could have done that as part of my life – maybe I still will!

Another thing – I was in Wounded Knee during the American Indian Movement's occupation in 1973. I was one of the lawyers who went to South Dakota to represent AIM, and members of the local Ogallala Sioux nation who faced arrest by federal marshals. That was quite a unique experience for a young attorney, and I learned a great deal about the history and ongoing struggle for Native American rights.

You and your family have quite diverse backgrounds! It's pretty incredible.

I'm lucky. I'm fortunate, both in terms of what my parents taught me and what I've tried to teach my kids, but also economically fortunate. It's allowed me to help my kids get through college; not everybody can do that. I worked while my wife was finishing her PhD. Of course, that was after she sacrificed her education to help me with the land grant case.

Is there anything else you'd like to share with us?

The only other thing I would like to say is that I really do enjoy working as an administrative law judge for the Division. Our judges are wonderful. We really get a lot of work done and I think we really serve the workers' compensation community by resolving issues and cases, often allowing the parties to avoid costly and time-consuming merit hearings. We do a tremendous number of settlement conferences. I really enjoy doing them because I get both sides together to discuss the strengths and weaknesses of their claims and defenses, often resulting in a full and final settlement. My philosophy through my practice of law was to always prepare and attempt to resolve issues without going to court. I often felt like a claims adjuster for the claimant, rather than primarily a litigator, because I figured if I really prepared the case, I could probably get a better result without having to go to court and take the chance that maybe the particular judge that was there that day wouldn't like what my client and I had to offer. So I figured a lot of work ahead of time is always the best way to go.



Workers' Compensation Director Paul Tauriello announced today that the Division will host the 2014 Colorado Workers' Compensation Educational Conference July 24-25. The conference will be held in cooperation with the International Workers' Compensation Foundation at the DoubleTree by Hilton in Colorado Springs.

The keynote speaker for the conference will be Dean M. Hashimoto M.D., J.D., associate professor at Boston College Law School. In addition, Dr. Hashimoto serves as Chief of Occupational and Environmental Medicine at Massachusetts General Hospital and at the Brigham and Women's Hospital for the Partners HealthCare System. He has been a consultant to the Massachusetts Department of Industrial Accidents (DIA) since 1991, and Chair of the Health Care Services Board of Massachusetts since 1999. He will address the potential impact of the Patient Protection and Affordable Care Act on the workers' compensation system in Colorado.

The goal of the conference is to present information and updates to system practitioners and create an opportunity for dialogue on current and upcoming issues. Employers, worker representatives, medical providers and their office staff, insurance claims professionals, self-insurers, third party administrators, safety and human resource managers, claimant's and defense attorneys, and vocational rehabilitation providers are encouraged to attend. In fact, anyone interested in the workers' compensation system in Colorado will receive valuable information at the conference. The conference will also feature an Exhibit Hall, and presentations and workshops from experts within the Division of Workers' Compensation as well as outside experts.

"The conference gives a diverse audience an opportunity to share ideas and best practices to help the Colorado workers' compensation system operate with integrity and effectiveness," Director Tauriello said. "We are also really pleased to host the conference in Colorado Springs since many of our practitioners reside in the regional areas. Colorado Springs is a beautiful venue."

Conference participants may be eligible for continuing education credits. Application will be made for Colorado CLE credit for attorneys and CRC, CDMS and CCM credit for rehabilitation providers. A certificate of attendance will be available for other professional disciplines.

To be included on the conference distribution list when registration opens, including information on available exhibit and sponsorship opportunities, contact the International Workers' Compensation Foundation at iwcf@bellsouth.net.

For additional information regarding this upcoming conference, contact JoAnne Ibarra at (303) 318-8790, or by email to joanne.ibarra@state.co.us.

YOU ASKED AND WE LISTENED!

And because of your suggestions—the Surcharge Payment Engine will be even easier to use for the January 2014 filing!

- Carriers that report and pay surcharge for more than one entity can save key strokes without having to retype all the information such as address, contact, and email, by enabling [autofill settings](#) on your browser. For example, Google Chrome saves your information automatically the first time you fill out a form. You can even store multiple addresses as separate entries.
- Self-insureds can now print the detail of class code information included with their filing - either to mail or to retain for their records.
- Additional lines have been added to increase the number of classification codes available for manual entry by self-insureds—to provide an option to an uploaded CVS file.
- Buttons were repositioned and descriptions were revised based on user comments.

VIEW THE SURCHARGE SITE:

<http://tinyurl.com/n454we6>

The only information required	
For Carriers:	For Self-Insureds:
Total premium written on Colorado Workers' Compensation Insurance policies with deductibles less than \$10,000, including excess coverage	Classification Codes
	Number of Employees
Premiums on deductible policies over \$10,000, reported on a \$10,000 deductible basis	Payroll
Total of any cancelled or returned premiums	NCCI Experience Modification

The calculator will do the rest *and* allow you to save filing information for up to 30 days!

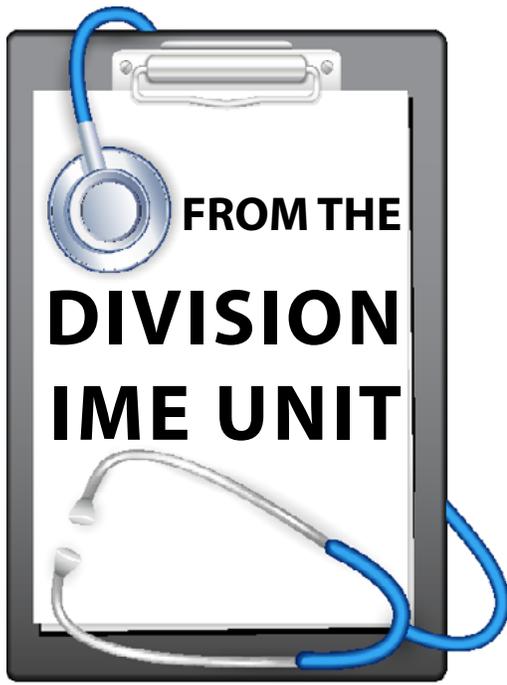
Within those 30 days, signatures can be obtained and notarized. With an easy upload of a notarized PDF file, the filing can be completed in a matter of minutes. Payment can also be made with the routing and account number from your company checking account.

Filers that do not owe surcharge can complete the required report and receive confirmation.

If you are unable to pay online, don't be deterred.

Just print out your calculated form, obtain the signatures and notarization, and then send it by mail along with your payment. If you have any questions or need any help please feel free to call us at **(303) 318-8767** to speak to Brenda Carrillo, or **(303) 318-8771** to speak to Mike Nelson.

Please email brenda.carrillo@state.co.us and tell us about your experience.



Two pieces of legislation this past year affected the Division IME (DIME) process. The Division would like to extend a few reminders and tips for working with these changes:

SENATE BILL 13-285 changed what had been called the “18-month DIME” process to 24 months. It now establishes that the DIME doctor’s opinions on both MMI and impairment – under this “24-month” circumstance – are binding, whereas formerly only MMI was binding. In many respects, it will work and appear as a typical, standard DIME. The main difference involves the circumstances under which it is requested. It is preferred that requests for this DIME are submitted using Division Form WC78, which identifies the request as one under §8-42-107(8)(b)(II)(A) – (D).

SENATE BILL 13-249 included some amendments to the DIME process. Among other things, the change to §8-43-203(2)(b)(II)(A) establishes some new time frames. It requires the DIME physician to respond to an Incomplete Notice within 20 calendar days. Additionally, it reduces the time frame for the respondent to file for hearing or a final admission to 20 calendar days (formerly 30) after the DIME is completed. The following are a few suggestions to help the adjuster, case manager, or risk manager meet the tighter deadline:

- After the Division DIME unit has reviewed and accepted a doctor’s report as final, it will issue a *Notice of Receipt of DIME Report - DIME Process Concluded*. The respondent has 20 days from the date of issuance of that Notice to submit a Final Admission or request for hearing. If you receive this Notice but do not have a copy of the doctor’s report, please contact the DIME unit at **(303) 318-8655** and one of the staff will fax or email a copy. Keep in mind that where an attorney and an adjuster are both listed as contacts on a case, the doctor’s office will usually have only one of those names listed for sending the report. Therefore, if you are an adjuster, check first with your counsel’s office to see if the report arrived and vice-versa. However, you are always welcome to request a copy of the DIME report from the Division.
- When possible, review the DIME report very soon after receipt. There are instances when a question of a ‘technical’ nature is raised about a report that could potentially be resolved within the 20 days. For example, a minor ambiguity in the report could be clarified with a phone call. Claimant’s counsel would have the same option. There should always be notification to the opposing party.
- Remember that the 20-day time frame also applies following receipt of a *Not at MMI* notice, for the purpose of filing for hearing to contest a “not at MMI” finding.
- The following documents from the DIME unit do NOT trigger the 20-day time frame:
 - *NOTICE: DIME Physician Requesting Additional Work-Up or Information*
 - *NOTICE: Repeat Range of Motion Required*

In these situations, the DIME impairment rating or report is essentially not yet completed. Accordingly, no type of completion notice is yet issued.

Please notify the DIME unit when a Follow-Up DIME per Rule 11-7 is being requested and/or scheduled.

Finally, please observe Division Rule 11-3(K) when organizing medical records to submit to the DIME physician and the other party. When the packet of records is not organized appropriately, it can result in extra time for the physician and his or her staff to read or reorganize the records. Keep in mind that the Rule permits the physician to request that the insurer reorganize and resubmit the records, but as a practical matter, that rarely occurs. The extra time expended can be charged to the party requesting the DIME, which may or may not be the same party submitting the records. Thank you for taking a few minutes to review this procedure.

All of us in the Division IME unit send our best wishes for the holiday season, and for a happy and healthy new year!

WHAT'S NEW?

- The **PREHEARINGS AND SETTLEMENT UNIT** is relocating to the **3rd Floor** of **633 17th Street** in Denver in January 2014.
- The **OFFICE OF ADMINISTRATIVE COURTS** has relocated to **1525 Sherman Street, 4th Floor, Denver, CO 80203**.
- The Division would like to welcome **BARBARA HENK** and **PAT CLISHAM** as our newest **PREHEARING ADMINISTRATIVE LAW JUDGES**. Judge Henk will begin on February 3, 2014 and Judge Clisham will begin on March 3, 2014.



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"Quality and excellence in all we do."

