

The Impact of COVID
Virtual Technology on
WC Litigation &
Dispute Resolution
Process

Chairperson: Edward Moriarty, Esq

Monday, March 27<sup>th</sup>, 2023 1:15-2:00pm



## The Employer Insurer Perspective

Lisa Anastos, MA, Esq Risk Manager, WMK LLC dba Mobility Works Driverge

2023
Work Related Injuries
Workshop

## Employer Insurer Perspective

- Investigating Injuries: actions speak louder than words
- Treatment Implications [Telehealth]: onset vs ongoing
- Independent Medical Examinations: why bother
- Dispute Resolution: mitigating loss





### **Nationwide Look**

Judson L. Pierce, Esq.
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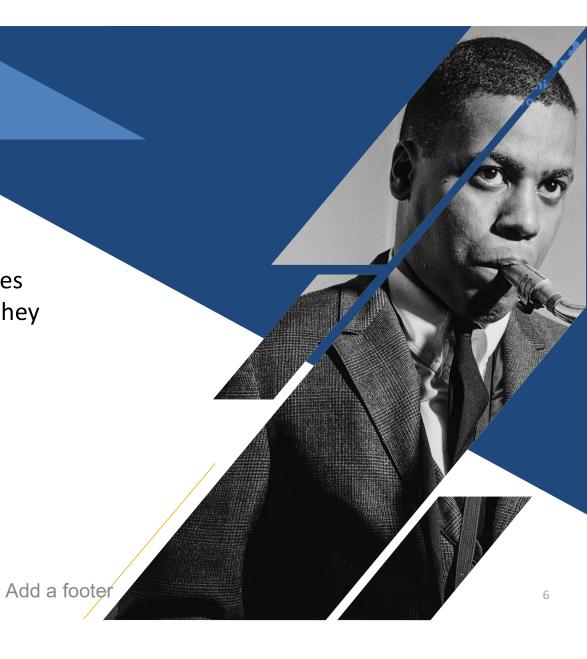
# What happened around the country?

- Most states allowed for remote practice. Phone and video conference were used.
- Use of email to send pleadings and documents was also widespread.
- Many state offices remained open for those who had no access to technology.
- Many states went back to more in person proceedings by the second half of 2021.



## States adapting

Like a great jazz improvisationalist, states adhere to an internal logic even when they break the rules.





What next?

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## States will continue to encourage masks but will not mandate.

(VA,AZ)

All parties must meet CDC and local health department guidelines in an effort to limit Covid-19 exposure. Screenings required to enter (NV, ND)

Some states have not gone back to in person (KY, MN,NY)

Bulletins are changed regularly so check your state's publication



### There are new rules everywhere

Some are temporary
Some are indefinite
Adapt is the key word!



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## The Defense/ Insurance Attorney Perspective

Ed Moriarty Jr, Esq. Senior Partner Moriarty & Associates

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## DEFENSE ATTORNEY/INSURANCE ATTORNEY RESPONSE TO MASS DIA WEBEX LITIGATION PROCESSES AND PROCEEDINGS

March 27 - 28, 2023

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#### I. <u>DIA RESPONSE TO COVID</u>

- A. Keep the doors open
- B. WebEx/tele litigation
- C. All proceedings: WebEx not in person
- D. Mission Accomplished: Board remains open without infection

#### II. POST COVID MASS DIA LITIGATION AND DISPUTE RESOLUTION PROCEDURES AND PROCESSES

- A. WebEx/tele litigation rules
- B. In person proceedings exception
- C. Only Hearings in person
  - 1. Post exhaustive Pre-Hearing filings, processes and procedures
  - 2. Only the few ever see inside of a DIA courtroom
- D. All other DIA Proceedings: WebEx/Tele litigation only
  - 1. Conciliations
  - 2. Conferences
  - 3. Mediation
  - 4. Lump Sum Conferences
  - 5. Review Board
  - 6. All DIA proceedings WebEx/tele litigation/tele due process

#### III. WEBEX/TELE LITIGATION

- A. Fast
- B. Except when slow/disconnected/disrupted by technology
- C. Need to be ready
- D. Brief
- E. On point
- F. Well documented
- G. Schedule hectic, especially in the am
- H. Conciliators and Judges: busy, distracted, and disinterested

#### IV. CONCILIATION

- A. Have Insurer/Employee documents ready/pre filed
- B. Refer to documents and presentation with specificity
- C. Why behind Insurer position:
  - 1. Deny
  - 2. Dispute
  - 3. Discontinue

#### V. <u>CONFERENCE</u>

- A. Pre file: Conference Memo with employer, insurer exhibits, medical, non medical with hypothetical questions
- B. Timely: 48 hours in advance of Conference
- C. Summarize the issues
- D. Summarize the argument
- E. Refer to relevant insurer exhibits with page number
- F. File a Legal Brief in support of insurer position: ask the Judge to read it prior to Decision

#### VI. MEDIATION

- A. File Brief timely
- B. Emphasize insurer strengths
- C. Emphasize employee weaknesses
- D. Set out exposure
- E. Reference demand
- F. Reference insurer offers
- G. Note willingness to bend but not break regarding settlement
- H. Avoid opening statements, waste time, and are unnecessary
- I. Be frank with the Mediator and specifically ask Mediator to limit information to employee and employee attorney on an as need/necessary basis

#### VII. <u>REVIEW BOARD</u>

- A. Brief on file
- B. Issues framed
- C. Basis for appeal
- D. Summarize the rational: why appeal is needed or why appeal fails

#### VIII. <u>IS TELE LITIGATION AND TELE DUE PROCESS LAWFUL DUE PROCESS?</u>

- A. Is a difference in kind between in person and web proceedings: procedural and substantive
- B. Is WebEx proceedings consistent with due process of the law
- C. Open question
- D. Many in the Mass Bar say: due process requires in person Conferences and Hearings, especially since Conferences are more important than Hearings in terms of case outcome

#### IX: <u>CONCLUSION</u>

- A. WebEx/Tele litigation born of COVID necessity
- B. Here to stay in the name of efficiency
- C. Be aware of the sea change in DIA/DDR process and procedure
- D. Comply with care and efficacy with DIA Administrative Bulletins, guidelines and practices for WebEx litigation
- E. Consider issue of due process of law vs tele litigation due process in terms of Mass DIA Dispute Resolution proceedings going forward