Legislative

FEDERAL

- WILG® moved early in the Biden administration to support qualified pro-worker candidates for key positions in the Department of Labor (DOL), including the Office of Workers Compensation Programs (OWCP), which regulates both the FECA and Longshore programs. We provided early crucial support for Chris Godfrey, previously Chair of the ECAB, and were pleased when Secretary of Labor Marty Walsh, appointed Godfrey to run the OWCP. Since that time we have, with some success, been conducting an ongoing dialogue with Godfrey and the DOL on a number of issues affecting the operation of the OWCP. Of particular concern is the continued use of the 6th Edition of the AMA Guides by the FECA program (and many states) and, while this issue has not been resolved as yet, we are hopeful that progress on diminishing or eliminating the Guides will occur in 2022.

- On December 2, 2021, the House Education and Labor Committee held the first oversight hearing on the operation of the OWCP. The hearing centered on the testimony of Director Godfrey, who outlined the many changes underway to improve protections for workers covered under the FECA and Longshore Programs.

- Godfrey also endorsed, and defended from Republican attack, the DOL’s decision to reinstitute its former practice, abandoned in 2004, of issuing an annual report on the operation of state workers compensation programs with a view toward highlighting and exposing the degree to which benefit cuts and reductions in coverage are hurting injured workers and shifting costs to federal benefit programs including Social Security, Medicare and Medicaid. Reinstating DOL oversight of state workers compensation programs has been a high priority for WILG® and production and distribution of this report promises to be the top priority of WILG®’s federal efforts in 2022, which is the 50th anniversary of the 1972 Commission.

- Establishing & strengthening relationships with US DOL officials and congressional members

- Continuing to advance an MSP bill by broadening our coalition, including AAJ, and gaining bipartisan support

- Provided research and information for the 12/2/21 House Hearing on OWCP, FECA & Longshore

- Raising AMA Guides challenges & raising awareness in Congress & with the US DOL

- Working with the OWCP to reject the online updates to the AMA Guides for FECA

- Raising Congressional and OWCP awareness of problems with the AMA Guides

- Having OWCP representatives attend our 2021 Annual Convention
STATE

- Supported state efforts to increase workers’ compensation benefit wage replacement levels
- Maintained up-to-date information on the effects of COVID on the workers’ compensation system
- Contributed to a University of Illinois research project studying the applicability of the exclusive remedy to employers who use employees from temp agencies
- Monitored national developments in adoptions of COVID liability shields for businesses
- Studied national trends in the use of professional employer organizations (PEOs) and the effect on workers’ compensation systems
- Conducted research on the AMA Guides and alternative disability rating guides
- Maintained database of court cases involving constitutional challenges on workers’ compensation issues
- Supported efforts to establish federal monitoring of state workers’ compensation laws
- Prepared responses to important changes expected on the applicability and structure of the AMA Guides

Amicus

- Kelley v. General Motors – federal preemption of workers' compensation law
- Albonajim v. AECOM and ACE Am. Ins. Co. – Whether application of § 10(i) to effectively deny compensation to a victim of delayed onset PTSD abrogates § 10(c)'s requirement that an ALJ fairly and reasonably calculate earnings capacity; and whether § 10(i) is unconstitutional as applied because it provides an inadequate remedy for legitimate injuries
- CITY OF BARTOW, ET AL. vs. ISIDRO FLORES – One time change in treating doctors for the Claimant
- Talisha K. Rose v. Vectrus Systems Corporation and Insurance Company of the State of Pennsylvania – Whether the Longshore Act's presumption of compensability is invoked via the production of “some evidence” of a harm and working conditions that could have caused that harm, or whether these two elements must be proven by a preponderance of the evidence at the outset. See 33 U.S.C. § 920(a)

FECA

- The past year continued to see changes at the Department of Labor (DOL) regarding the Federal Employee’s Compensation Act (FECA). DOL worked its way through the pandemic with claims offices re-opening. The program however continues to have its struggles and the FECA Section of WILG® is pushing for changes to make the system more efficient and fair to injured workers.
- The Section has had meetings with OWCP Director Chris Godfrey and Tony Rios. We continue to voice what is the main systemic problem with FECA, lack of doctor availability. OWCP is attempting different proposals to address this concern. OWCP is also giving its support to HR 6087 which would designate nurse practitioners and physician assistants as medical professionals that can not only treat under FECA, but can also give opinions on items such as causal relationship and disability. Section Secretary Christina Faliero has collaborated with American Association of Nurse Practitioners union in support of the measure. The measure has passed the House of Representatives and should be voted on by the United States Senate by the time of publishing of this article.
- The Section continues to urge OWCP to do more with doctor recruitment and retention. OWCP recognizes that many doctors drop out of the system due to payment issues and has stated they will look at correcting that.
- The past year did see Department of Labor’s implementation of the E-Comp access to allow on-line access to representatives. The Department of Labor had an open line of communication with the Section and considered our input. While the system is not without some hitches it does allow representatives to immediately access the files of their clients for timely and efficient handling. The Section continues to have periodic communication regarding improvements that can be made. DOL has made some of the improvements and given a timetable for when the other enhancements will occur. The on-line access to files is something the Section has long pushed for and in 2020 OWCP presented a plan for it which has finally been implemented.
- The Section is also re-establishing relationships with other agencies that fell off during the pandemic. The co-chairs met with the new Associate Director of the Office of Personnel Management (OPM) regarding ideas on disability retirement claims and coordination between OWCP and OPM. The Section will also reach out the Social Security Administration regarding their offsetting of schedule awards in violation of the FECA and Social Security statutes.
- The Section's goals for the coming year are to:
  - Work with the Department of Labor to attract and retain medical providers in the system
  - Be pro-active regarding any attempts to reduce injured workers schedule award benefits due to any negative updates to the AMA Guides, 6th Edition
  - Continue to maintain and grow the professional relationship between the Section and OWCP leadership
- The Section holds monthly Zoom meetings the fourth Tuesday of every month to keep the membership abreast of changes and to solicit suggestions regarding ideas the Section wants to see pushed for.
Practical Assets

- WILG® spoke at over 10 coalition and opposition group events during the past year to discuss relevant legislative, regulatory & judicial issues in the workers’ compensation arena
- WILG® assisted over 30 states in their legislative battles
- WILG® fielded over 150 media inquiries providing background information and direct quotes. The outlets are varied and include industry forums and mainstream television and print media
- Held WILG®’s second virtual holiday party and raised money for Kids’ Chance
- WILG® continued to implement its pre & post legislative survey of its members, state trial lawyer associations & state workers’ compensation associations to track legislation, determine trends and evaluate what assistance specific states need
- Provided board orientation and leadership training for members
- Continued to work on increasing diversity among the organization and leadership
- Held the most successful Annual Convention
- Continued to grow the Firm Sponsorship Program
- WILG® now provides over 46 separate services to its members
- Worked with AAJ to get secure their Hi-Tech package for our members for free
- Hired a diversity consultant to assist WILG® in furthering its DEI efforts
- Held an appreciation event for WILG® Partners and firm sponsors that supported WILG® through the pandemic
- Brought in the TX Workers’ Advocates under the WILG® umbrella
- Held the second Constitutional Summit and reinvigorated the Constitutional Committee
- Segued back to live events
- Held several membership dinners throughout the country

Longshore

- Helped members stay abreast of changes to procedural changes with the new e-filing system launched by the OALJ and ECOMP by the OWCP
- Brought member concerns to the OWCP through multiple meetings with the new OWCP Director Chris Godfrey and Director of DFELHWC
- Brought member concerns to the OALJ through meetings with Chief Judge Henley, Associate Chief Judge of Longshore Paul Almanza, and Boston District Chief Judge Jonathan Calianos.
- Presented CLEs at the virtual Longshore Conference in March and live Annual Convention in September
- Held monthly Longshore section telephone conferences, and bi-monthly Third Country National telephone conferences.
- Attended the WCI Longshore/DBA breakout

Injured Immigrant Worker Rights Section

- We have increased membership.
- We have prepared a bold Mission Statement.
- We will educate the membership via a Webinar on Injured Immigrant Workers’ Rights
- We changed to committee name to, “Injured Immigrant Worker Rights Section”
**Diversity Committee**

- The Diversity Committee, co-chaired by Ed Carter and Cathy Stanton had a very busy yet productive year. The committee's focus has been diversity not just based upon gender, sexual orientation and color but also of geographic location and age.
- We started the year in a strategy development exercise that became the basis for WILG®'s Diversity and Equity Inclusion blueprint and concluded the year with a set of goals and policies we felt should be explored not just as a committee but to the organization at large.
- The committee along with leadership and staff subsequently issued recommendations to the Board to adopt a strong stance and take affirmative steps to increase the diversity of our membership. The committee discussed regularly how we could effectuate change so that all of our members could feel comfortable and included. After a number of committee meetings and chair and leadership discussions we retained the services of a Diversity Consultant, Gloria McDonald to assist the committee in its goals. Ms. McDonald engaged the committee in a number of exercises and research assignments to prepare for the task ahead. Her assistance in this regard has been invaluable. Additionally, the committee arranged for Ms. McDonald to take part in our annual convention at the Breakers in Palm Beach by appearing via Zoom as a speaker on Diversity and Inclusion.
- During the past year, we undertook review of our committee's mission statement. The journey to get to this point was bumpy and sometimes frustrating but we ended up with a draft statement of which we are extremely proud. The statement includes recognizing and celebrating our differences; striving for active participation and leadership from all its members, fostering an environment where everyone feels comfortable contributing and that they are being heard, and creating an expansion of diversity in the overall workers' compensation system. The committee has created the initial blueprint on how to achieve these initiatives. The next part of our journey will be developing specific strategies to achieve our goals which include policy evaluations, recruitment and allyship. We are thankful to not only Ms. McDonald for her assistance but also to the Diversity Committee and WILG® staff for their commitment. They gave many hours of their time to this endeavor and actively participated in the exercises and research to achieve their goals.

**Constitutional Committee**

- The WILG® Constitutional Challenge Committee had an active year in 2021. We conducted a well-received Zoom seminar in April 2021, and, with Elliott's help, we continue to build the WILG® Constitutional Challenge Resource Base with numerous decisions, briefs, and other pleadings from around the country. In December, as Chairman of our Committee, I was invited to speak on constitutional challenges to the North Carolina Advocates for Justice along with Professor Duff. As you can imagine, I made a strong push for claimants' attorneys to join WILG®.
- Interestingly, we continue to receive sporadic requests from different attorneys from across the country who are challenging unconstitutional statutes. For instance, we recently collected the briefs and Order from the Kentucky Supreme Court ruling against an equal protection challenge to the denial of PTD benefits. We have also referred several attorneys to our Resource Base. Naturally, this is a great way to bring new attorneys into WILG®.
- One interesting thing about this subject area is that the cases move very slowly. As I've said before, many cases take between six and eight years to fully litigate; therefore, it often feels like we are talking about the same cases year after year. That is not to say that we do not have more to do now. We need to continually build the Resource Base with past cases, and we need to begin our work in constructing the white paper on constitutional challenges. That white paper appears to be the next big mission for the Committee. We have not had a committee meeting this year ... yet, so that will need to happen soon. At present, I think we could contemplate another seminar in 2023. This could be a stand-alone seminar as before or it could be presented in conjunction with the national seminar. The goal, as always, is to help new lawyers who want to learn how to bring a constitutional challenge to an unconstitutional statute.

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