



QUARTERLY REVIEW

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LETTER FROM THE PUBLIC COUNSEL

Dear Friends:

This will be my last letter as the Office of Injured Employee Counsel (OIEC) Public Counsel due to my retirement at the end of August. To those who I have not already thanked for having contributed so much to my pleasure at serving in this capacity, let me now do so. I have made friends that I know will last for a lifetime. Notwithstanding the “fireworks” that have characterized some of my official acts, I would especially like to acknowledge the friends within the insurance industry and their lawyers that have meant so much to me. A dear friend who is a defense lawyer originally talked me into applying for this job and I will forever be indebted to him for doing so.

I have found the representatives of the insurance lobby group to be particularly great to work with. There are too many to name individually but Trey Gillespie, Steve Nichols, Joe Woods, Bobby Stokes and Nick Huestis are among those who represent the best traditions of our profession.

Rick Levy and Matt Lewis are champions of the cause for fairness for injured employees. If you are having a bad day I recommend that you call Rick and I guarantee that you will feel better afterward.

I do not want to omit mentioning the outstanding service that so many elected officials and their staffs render to the citizens of Texas and who have provided assistance and guidance to me personally. Former Chairman Burt Solomons would certainly be at the top of that list.

Last but not least, I would like to acknowledge all of the employees at OIEC for their tireless effort on behalf of injured employees. It has been an absolute joy to work with them for these past years and their work ethic has inspired and motivated me to bring my best game every day.

Having been the first Public Counsel, OIEC will always be my “baby.” I am sure that the Governor will select an appointee who will not only carry forward the best traditions of the agency but will also build on them. My only advice to my successor is “Speak the truth and fear no man.”

Sincerely,

Norman Darwin, Public Counsel



OIEC Submits Strategic Plan



State agencies are required to submit a five-year Strategic Plan to the Legislative Budget Board, the Governor's Office, and other agencies every even-numbered year. A strategic plan is a formal document that communicates an agency's goals, directions, and outcomes to various audiences. OIEC submitted its Strategic Plan covering fiscal years (FY) 2015-2019 in June 2014.

The goal of strategic planning is to anticipate and accommodate the future by identifying issues, opportunities, and problems. Strategic planning relies on careful consideration of an agency's capabilities and environment.

OIEC's FY 2015-2019 Strategic Plan highlights new challenges and opportunities the agency will experience within the next five years. Changing demographics, increasing population, and the growing labor force in Texas may impact the agency's workload and influence new processes. Retirements and turnover may affect the agency's workforce. The ability to retain the depth of knowledge and experience necessary to navigate the complexities of the workers' compensation system is imperative.

Through its training, succession planning, and strategic planning, OIEC is prepared to meet these challenges and seize each opportunity to fulfill its mission to assist, educate, and advocate on behalf of the injured employees of Texas.

OIEC's FY 2015-2019 Strategic Plan is located on its website at http://www.oiec.texas.gov/documents/pub_stratplan_fy15_1.pdf.



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Darwin Retires as OIEC Public Counsel

Nearly nine years ago, Norman Darwin followed his heart and left his private law practice to become the first OIEC Public Counsel. He built the new agency from the ground up and under his leadership OIEC has:

- handled nearly 1.7 million telephone calls assisting injured employees;
- assisted approximately 160,000 injured employees in person at field offices throughout the State;
- assisted injured employees in more than 46,000 benefit review conferences and almost 20,000 contested case hearings;
- conducted 585 public outreach presentations for workers' compensation system stakeholders;
- adopted 12 rules to govern the agency;
- filed 10 amicus curiae (friend of the court) briefs on behalf of injured employees as a class;
- acquired legislative sponsors for nearly 100% of its proposed legislation;
- proposed 24 recommendations to the Texas Legislature for the benefit of injured employees—of these, 13 (54%) have passed and become law; and
- established an early intervention/case development program as a part of its dispute resolution process to resolve issues before they enter the workers' compensation proceeding process – approximately 60 percent of disputed issues are currently resolved prior to a proceeding.

Although Mr. Darwin will retire his position as Public Counsel on August 31, 2014, OIEC will continue the legacy he created. OIEC staff is grateful for his leadership and commitment to the injured employees of Texas.

OIEC Annual Conference Focuses on “the Customer Experience”

The theme of “the customer experience” was evident throughout OIEC’s annual conference held in June. This theme highlighted the agency’s commitment to the highest level of professional, efficient, and effective customer service. The conference is attended by all OIEC employees, who receive continuing education to maintain their workers’ compensation adjuster’s or law license.



OIEC Ombudsmen collaborate during a conference session.

The staff found the “Hot Button Issues in Workers’ Compensation” presentation by attorney Stuart Colburn particularly useful, in which he shared his industry perspective on developments in the workers’ compensation field including expected legislation, new rules, case law, and national trends that affect workers’ compensation. Caitlyn Tyler’s dynamic “First Class Customer Service” presentation provided innovative ways to ensure customer satisfaction. Other topics focused on technical issues such as the law, processes, and handling workload, but also included “the human element” and providing excellent customer service.

The conference concluded with an awards ceremony. Celebrating service awards were 30 employees who had reached five-year milestones with the State, ranging from five to 30 years. Additionally, Sylvia Hernandez and Alma Prieto were recognized for their exceptional performance over the year with OIEC 2014 Technical Achievement Awards.



2014 Technical Achievement Award Winners



Alma Prieto, Customer Service Representative, Laredo. Ms. Prieto has been in public service for more than 24 years and with her experience is able to provide information in a manner that injured employees can understand—resulting in her customers feeling empowered and comfortable about their claims. She is also proactive in providing referrals to other state agencies for additional services when appropriate.

Ms. Prieto has a comprehensive knowledge of the law which allows her to work efficiently and productively. She is accurate, thorough, and conscientious about meeting deadlines. Her attention to detail and time management results in a smooth work flow between the Customer Service and Ombudsman programs. Through excellent customer service she has developed a loyal customer base that depends on her to answer questions or assist with dispute resolution. Ms. Prieto promotes

teamwork and reinforces positive behavior within her local field office and with other field offices as well. This year she contributed to agency goals by working disputes from the Corpus Christi field office and assisted other field offices when needed. The positive manner in which she communicates creates a pleasant work environment. It is clear that Ms. Prieto truly enjoys assisting injured employees and is a benefit to the agency and its customers.



Sylvia Hernandez, Ombudsman, San Angelo. When an injured employee meets with Ms. Hernandez, who joined OIEC in March 2006, they will find her attentive and patient. She explains everything in detail, taking the time to be sure the injured employee understands completely what they need to know about their claim.

Her professional skill and leadership are demonstrated as the San Angelo office team lead. She has also mentored and trained the ombudsmen in her office and promotes a positive work environment. Her office maintains a positive “can-do” attitude in large part due to Ms. Hernandez’s leadership and influence.

Ms. Hernandez thoroughly researches and prepares her cases in a way that makes them very well-organized. Her preparation and organization is evident in her presentation at proceedings.

Ms. Hernandez not only handles all of the cases for the San Angelo field office, she also assisted the Houston East field office with case development appointments this year.

Ms. Hernandez’s supervisor, Rhonda Pace-Robertson, noted, “Sylvia has an infectious laugh and a huge smile that lightens the heart. She smiles a lot and it’s great to be around someone who has that genuine warmth and sincerity. Yet when it comes to working her cases she is deadly serious!” Ms. Hernandez is a tireless advocate for the injured employee; she is compassionate and genuinely has the customer’s best interest at heart.



Communications Corner

OIEC continues its educational efforts through public outreach and monthly educational presentations. If you would like to request an OIEC representative to speak to your organization, please contact Kathryn Harris, Associate Director of Communications and Development, at (512) 804-4170.

Upcoming Outreach Events. Look for OIEC representatives at the following events as they provide information about the agency and Texas workers' compensation:

- Labor Rights Week—week of August 25 in Houston and Dallas.
- Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) Compliance Conference—September 12 in Austin.
- Texas A&M University San Antonio Career Fair—October 9 in San Antonio.
- TDI-DWC Compliance Conference—October 21 in Houston.
- Texas Pain Society Annual Conference—October 24 in San Antonio.
- Executive Women in Texas Government—November 24 in San Marcos.

Field Office Presentations. The remaining 2014 dates for OIEC's monthly presentations are August 29, September 26, and October 31 in OIEC field offices across the State. Please visit http://www.oiec.texas.gov/resources/public_outreach.html for additional information.

Question of the Quarter

Question: How do I know which OIEC field office I should contact for help?

Answer: OIEC has local field offices throughout the State of Texas that are staffed to assist you. TDI-DWC and OIEC field offices are co-located to make it easier for injured employees to obtain services. To determine which office is assigned to assist you with your claim, please visit the following link: <http://www.tdi.state.tx.us/wc/fieldoffices/focounty.html>.

The contact information for any OIEC field office can be found on the OIEC website at http://www.oiec.texas.gov/resources/contact_oiecfo.html. You may also call 1-866-EZE-OIEC (1-866-393-6432) to speak with an OIEC representative who can assist you with your workers' compensation questions.

Case Study: Extent of Injury—Complex Regional Pain Syndrome

The injured employee (Claimant) was injured in a roll-over car accident in November 2010. Due to the rotation and direction of the vehicle, Claimant was struck on his right shoulder. He sustained some loss of consciousness, and reported severe right shoulder pain to the paramedics that transported him. In the immediate aftermath of the injury, Claimant reported pain radiating from the right shoulder into the neck and scapular areas. Eventually the pain spread to the outer extremities. Claimant underwent physical therapy and was treated with narcotic analgesics and muscle relaxants. Claimant experienced significantly reduced range of motion, despite the conservative treatment. His right shoulder remained the one area that did not improve.



In March 2011, Claimant underwent surgery to repair his right shoulder; however, Claimant continued to complain of severe radiating pain from the right shoulder following recovery. A second shoulder surgery was performed. A subsequent MRI showed that the tear had been repaired; however, by that time the Claimant had developed significant joint deformity.

Claimant's multiple sprain/strains were evaluated by a designated doctor in August 2013. He received an impairment rating of 24%—a significant rating. He was also seen by Dr. W and diagnosed with complex regional pain syndrome (CRPS). CRPS is a chronic pain condition that largely affects the arms, legs, hands, and/or feet. It is believed to be caused by trauma to the peripheral and central nervous systems. CRPS is characterized by prolonged or excessive pain and mild or dramatic changes in skin color, temperature, and/or swelling in the affected area. In more severe cases, individuals may not recover and may have long-term disability.

Dr. W provided two written causation reports linking the diagnosis of CRPS to the compensable injury of November 2010; however, the Claimant's assisting Ombudsman also felt that live testimony would be needed in order to counter the carrier's peer review report by Dr. H, and the carrier's live testimony by Dr. S. Claimant's ombudsman presented the facts of the case to OIEC's expert witness team, and the team agreed to pursue Dr. W to testify at the contested case hearing.

The contested case hearing was held in July 2014 to resolve the issue of whether or not Claimant's injury extended to include CRPS. Dr. W testified that Claimant suffered from CRPS, and that the motor vehicle accident and subsequent surgery caused the CRPS. The insurance carrier's peer review doctor testified that Claimant did not have CRPS; however, this was based on his review of Claimant's medical records and not an actual patient visit. The hearing officer was more persuaded by the written reports and testimony put forth by Dr. W. The hearing officer ruled that Claimant's compensable injury extended to include CRPS. At this time, the insurance carrier has not appealed the decision.

Employee Spotlight: Norman Darwin



Norman was born in 1938 in Waco—a town his great, great, great grandfather founded. Before that, his family on his father's side came from Scotland and was amongst the original settlers that came to Texas with Stephen F. Austin. Norman's mother, Coneta, and father, "R.B." each obtained nothing

higher than a 9th and 3rd grade education, respectively. He described his childhood as an ordinary, middle class existence with parents who were self-taught, hard-working, and very loving. He left Waco with his brother and parents in 1945 and moved to San Angelo, and then to Tyler in 1952. Norman played football in high school and was a walk-on at Texas Christian University (TCU) his freshman year but an injury he sustained on his first day of spring training ended his football career. At TCU, Norman was active in his fraternity and was a member of the ROTC. After graduating, he was in the Army Reserves for eight years, achieving the rank of 1st Lieutenant. The end of his service in the Reserves coincided with the Tet Offensive of 1968. This event, and President Johnson's policies in Vietnam, would shape Norman's run for the Texas Legislature in 1968 and 1970. (He also had a run for Chief Justice of the Court of Appeals in 1982.)

Norman's family history is a study in self-taught, self-reliant, bold, and hard-scrabble frontier people. Norman was the first on any branch of his family tree to attain a bachelor's degree, let alone attend law school. He attended law school first at South Texas College of Law and then transferred to the University of Texas where he completed his last two years and graduated in 1965. After law school he went to work for a plaintiff's attorney in Fort Worth and two years later, Norman left and started his own practice—a move which he admits was premature.



To survive, he went around to all the attorneys in Fort Worth and offered to take the worst cases off their hands. Right away he had a full case load, and perhaps the strategy worked a little too well. He began to partner with other attorneys in town and in 1971 was able to build his own office in Fort Worth.

One day, in a cafeteria off of Camp Bowie Boulevard, a group of girls sat down at a table next to Norman. Norman noticed one in particular but left a little while later and drove to a car wash. There he noticed the girl from the cafeteria pulling into an apartment complex which was managed by an acquaintance of his. Norman asked to be introduced, and as they walked to the girl's apartment she emerged with a pair of license plates. Norman offered to put the plates on her car. She introduced herself as Carol Ann. She was a teacher in Everman, Texas. Two years later they were married. They have a daughter, Britt, and granddaughter, Rhylan.

For the next few decades, Norman ran a successful law firm representing injured employees, and occasionally criminal law and family law cases. He litigated countless cases, some of them high profile. He was elected President of the Tarrant County Trial Lawyers Association and holds the title of Director Emeritus of the Texas Trial Lawyers Association. He is board certified in personal injury trial law and a member of the State Bar College.

In 2005, Norman agreed to head the newly formed OIEC as its first Public Counsel. He described the early days as Public Counsel as the most daunting task he had ever undertaken. He focused his attention on further developing the training program for the ombudsmen. And to him, this is his legacy. He said, "I think that for the most part they do a better job of handling comp cases than many of the lawyers out there."

Certainly some of Norman's time after retiring will be spent advocating for injured employees. But there are other endeavors, as well. It is rumored that Norman is working on a memoir. He has a granddaughter to spoil. And he has his ancestral lands to visit. But mostly he is just going to take the opportunities that come his way, and maximize the joys of the next part of his life.

IN HIS OWN WORDS:

If I could go anywhere in the world tomorrow, I would go to: Scotland to visit my ancestral home.

I would rather be (happy or right): Right.

Last book read: *Behind Japanese Lines: An American Guerrilla in the Philippines* By Ray C. Hunt and Bernard Norling.

If I only had time to save one thing from my house, it would be my: Pictures of my grandparents and great grandparents.

People place too much importance on: Being popular, going to the right schools, country clubs, looks, etc.

People place too little importance on: The serious parts of life—family and career.

People might be surprised to know that: I'm a softie.

My personal hero is: My great, great, great grandfather, Shapley Ross.

Good/Fast/Cheap: If I could only pick two, I would pick something that is good and fast.

The proudest moment of my career thus far has been: Graduating from TCU.

If I could do anything else in life, I would: Be a career military man.

I'd rather have (a great view or a great memory): A great memory.

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