

# THE ADJUDICATOR

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## Change is in the Air

Seasoned Attorney  
Takes Lead of the IC





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# A Change at the Top

## New IC Chairman has Decades of Experience

**Adam Gibbs**, *Director of Communications*

Thomas (Tim) Bainbridge attended his first Industrial Commission (IC) hearing in June 1970.

"A lot has changed since that time," he said. "Hearings have become a more finished, formal product than they were 40 years ago."

As a former workers' compensation attorney representing injured workers, Bainbridge is very familiar with the inside of a hearing room.

However, on July 9, Bainbridge began seeing those hearing rooms from a new perspective: The viewpoint of an IC Chairman.

"It's a very different feeling to no longer be in private practice," he said. "I am thankful that my career has offered a good foundation for this position."

Bainbridge, who will serve a six-year term that expires in June 2019, brings over four decades of workers' compensation experience to his role as the Employee Member of the Commission.

"In this position, I would like offer the Commission some consistency and predictability in how we do things from an overall operational standpoint," he said. "I am looking forward to working with our stakeholders to improve the appeals process while ensuring that

employers and injured workers have a professional experience each time a hearing is held.”

Bainbridge began his law career in 1967 as an assistant city attorney in Columbus.

“When I was working for the city, they put me in charge of workers’ compensation issues, and that led to pursuing that area in private practice,” he said.

After leaving the public sector in 1970, he served as an attorney and managing partner at Ward, Kaps, Bainbridge, Maurer & Melvin until 2009 when he became partner at the Bainbridge Firm.

Throughout his career, Bainbridge has served on multiple organizations that are dedicated to improving Ohio’s workers’ compensation system. He is a member of the Ohio State Bar Association, Columbus Bar Association, Ohio Association for Justice and the American Association for Justice. From 1982 to 1983, he was the chairman of the Columbus Bar Association Workers’ Compensation Committee.

He also served as the Chairman of the Workers’ Compensation Section of the Ohio Association for Justice from 1991 to 1993 before serving as the group’s president from 1994 until 1995.

Later, he served Ohio’s injured workers and employers as the Commissioner of the Bureau of Workers’ Compensation Oversight Commission from 1996 to 2007.

“I am very proud of my service on various boards and commissions,” he said. “It has been a privilege to be appointed by three different Ohio governors.”

Originally from Steubenville in eastern Ohio, he earned his bachelor’s degree from Washington & Jefferson College in Washington, Pennsylvania, and then received his law degree from The Ohio State University. He was admitted to the Ohio Bar in 1967 and has also been

admitted to practice before the U.S. District Court in the Southern District of Ohio.

Bainbridge currently resides in Columbus, a few miles northwest of downtown. He and his wife, Deidre, have three grown sons: Tom, 45, a Franklin County Board of Elections employee; Andrew, 43, an attorney; and Brian, 37, a real estate agent. He is also the proud grandfather of three grandchildren: Emma, 13, Todd, 11, and Bowen, 7.



Appointed by Governor John Kasich, Chairman Bainbridge will serve a six-year term at the Ohio Industrial Commission.

Outside of work, he enjoys traveling, exercising, playing tennis and reading thrillers written by Dan Brown, John Grisham and Ken Follett.

“I use the treadmills, exercise bikes and weights at the gym,” he said. “I also play tennis a few times a week.”

His hobbies and work may keep him busy, but Bainbridge is also a devoted volunteer.

“I’ve been doing charity work for the Charity Newsies, Alzheimer’s Association and St. Augustine’s Anglican Church in Westerville for several years now,” he said. “I enjoy being in a position where I can make a difference in someone’s life.”

# New Chief Legal Counsel Makes

# History at the IC



**Adam Gibbs, *Director of Communications***

It was history one hundred years in the making.

When Rachael Black accepted the offer to become the Ohio

Industrial Commission's (IC) chief legal counsel on October 6, 2013, she became the first woman and the first Hispanic to hold the position in the 100-year history of the agency.

"My parents were born in Puerto Rico and moved here as teenagers in 1955 when their fathers moved to Youngstown to work in the steel mills," she said. "I'm a first generation American so my parents are very proud to hear that I was offered this position."

A 20-year IC employee, Black began her career in 1993 as an attorney in the Legal Services Department before serving as a district hearing officer and, eventually, becoming the legal research supervisor in 2010.

"My work in the Legal Research Unit offered excellent training for this position," she said. "I obtained exposure to different areas of the law, such as contracts, administrative rules and collective bargaining agreements."

In March 2013, she moved her office to the William Green Building's 30th floor when she was appointed deputy legal counsel.

"Now that I am the chief legal counsel, my priority is to provide the Commissioners and the agency with prompt and appropriate legal guidance," she said. "I hope to be able to serve the agency and the public well as the IC continues to build an environment of legal integrity."

A Youngstown native, Black graduated with a political science and history degree from Youngstown State University, before enrolling in the Ohio State University Law School, where she obtained a law degree in 1992.

She currently resides in Dublin, Ohio with her children and her husband, Chris, an

investment attorney at Nationwide Insurance. The couple has five children.

**"I hope to serve the agency well as we continue to build an environment of legal integrity."**

# New Portsmouth Office Manager

# Learning the Ropes



**Adam Gibbs, *Director of Communications***

As a former employee of the Ohio Bureau of Workers' Compensation (BWC), Pam Hacker has a basic understanding

of the workers' compensation appeals process.

"When I was at the BWC, I knew that workers' compensation appeals went to the Industrial Commission (IC), but I had no idea there were this many," Hacker said, referring to the 150,000 claims the IC processes each year. "After my first day here, I was just shocked over how many claims are processed each day."

As the new claims examiner supervisor in the Portsmouth District Office, Hacker is receiving an in-depth education on the inner workings of the agency.

"I started in July 2013 and the transition went very well because the employees in Portsmouth and Columbus are fabulous and everyone has been ready to help," she said. "It's a very welcoming environment and everyone is willing to share their knowledge."

Before coming to the IC, Hacker spent seven months working as a human capital management associate in the BWC's Human Resources Department.

A longtime state employee, she spent 15 years as the business operations manager

in the Vocational Rehabilitation and Visually Impaired Department of the Ohio Rehabilitation Services Commission (RSC).

In this position, Hacker supervised the support staff, office assistants and account examiners while processing applications to help disabled

people find employment.

"At RSC, I helped implement electronic task assignments,

which is similar to the system that the Industrial Commission currently uses throughout the state," she said. "If a new process improves our operations for our customers, then I believe it should be implemented quickly and correctly."

Now that she has been in the position for six months, Hacker said her main priority is making sure that each customer receives fair and consistent service in the Portsmouth office.

"As the Portsmouth office manager, my most important goal is to be supportive of the team and process the appeals in an accurate and concise manner," she said. "I strive to exceed our customer's expectations of the IC."

**"I strive to exceed our customer's expectations of the IC."**

# Digital Signs

# Keep Customers Up-To-Date

*Adam Gibbs, Director of Communications*

In each IC office, there is a collection of signs, notices, and postings covering the walls of the hearing room lobbies.

for safety reasons. There are also signs that are not mandatory, but are displayed to provide necessary information to IC customers. With the new digital signage, this information can be displayed without tacking each piece of paper onto a wall or bulletin board.

A few IC customers have called it unsightly clutter.

However, the clutter ended in the Columbus Regional Office hearing room lobby last month.

Almost all of the signs and notices came down. Now, a new, state-of-the-art, 54-inch digital signage monitor is being used to display the agency's signs, notices, and postings.

"The new monitor displays the postings that used to muddle the walls of the hearing room lobby," Executive Director Tom Connor said. "Many of the postings were mandatory public notifications that could not be removed, so this is an excellent solution that looks very professional."

The Industrial Commission has 20 public postings that must be displayed in each IC office.

The Ohio Revised Code requires some of these postings, and others are displayed

The monitor's layout consists of a basic three-panel template. The left panel displays weather and traffic updates, the center panel displays the agency's public notifications and informational graphics, and the right panel displays the daily hearing schedule.

The monitors use the iCOMPEL Digital Signage Blackbox program to provide a smooth transition as each posting moves onto the screen.

Soon, the Industrial Commission will begin installing the digital signage monitors in all of the regional and district offices.

Each monitor will be able to display office-specific information, such as local weather, local traffic, and local hearing room schedules.

"This initiative is a pilot program right now, but it will be implemented statewide at some point," Connor said.



# From the Hearing Room to the Ombuds Office



**Adam Gibbs, *Director of Communications***

When inside the hearing room, Beryl Piccolantonio always remained devoted to her mission: Provide outstanding customer

service while ensuring that everyone is treated fairly.

On December 2, Piccolantonio took that commitment to her new position as the chief ombudsperson for the Ohio Bureau of Workers' Compensation (BWC) and the Ohio Industrial Commission (IC).

"In this role, I want to make sure we are meeting our mission as an office and that we are helping all parties find their way through the system," she said.

Piccolantonio was appointed to the position by the Industrial Commission Nominating Council, an independent council of business, labor and public representatives appointed by Ohio's governor. As chief ombudsperson, she will serve a six-year term and be an independent advocate for Ohio's workers' compensation system.

Piccolantonio and her staff are autonomous, reporting to neither the BWC nor the IC. The ombudsperson answers complaints and general inquiries about Ohio's workers' compensation system for customers who may not understand, nor be satisfied, with the actions taken by BWC or the IC.

"I definitely want to make sure that people who are interacting with the workers' compensation system for the first time are aware that the ombudsperson is here to help them," she said.

Piccolantonio brings an intimate knowledge of workers' compensation law to the position.

As a former district hearing officer in the Mansfield District Office, she presided over approximately 60 hearings per week from June 2010 until November 2013.

"Working as a hearing officer, I saw many unrepresented employers and injured workers who were confused by the system and the hearing process, so I often referred them to the ombudsperson," she said. "After being a part of the system for so long, and with my training and background in alternative dispute resolution, I felt like this position was a good fit for me."

A native of Mayfield Heights, Ohio, Piccolantonio graduated from Ohio Dominican University with a bachelor's degree in psychology in 1999 and has a law degree from The Ohio State University Moritz College of Law.

She currently resides in Gahanna, Ohio with her husband, Andy. The couple has three sons.



# Electronic Delivery Now Open to Employers

Nilima Sinha, *Director of Information Technology*

Last year, workers' compensation representatives were able to sign up for a service where they no longer have to wait for the mail carrier in order to have access to Industrial Commission (IC) hearing orders and notices.

Now, this same service is open to Ohio employers!

In August, IC Information Technology launched electronic delivery of all hearing-related correspondence for employers through ICON. The program will provide a better and faster service to IC customers while reducing costs for the agency.

In October, an enhancement was added to allow employers to access correspondence for multiple plant codes while logged in with the primary (-0) account.

Employers wanting to use the service can go to their "Daily Correspondence" page and opt in by following the link to update their mailing preferences. If an employer opts for the service, the IC will no longer print and mail paper copies of hearing notices, orders and letters.

The correspondence may be accessed as individual PDFs or as a complete zip file that may be saved to a computer desktop. If an employer does not like the new

service, he or she may opt out at any time. After signing up, employers may view their electronic notices, orders and letters by using the daily correspondence link available on ICON.

The procedure is designed to make the process more efficient by saving paper, reducing printing and mailing costs, and encouraging the active use of ICON among employers.

With as much paper as the IC handles on a daily basis, this innovative approach will save the agency money on paper, ink, and work hours devoted to mail delivery.

Take advantage of this service today and begin receiving your notices and documents faster than ever before!

**Domain Change:** The Industrial Commission's website has changed from [www.ohioic.com](http://www.ohioic.com) to [www.ic.ohio.gov](http://www.ic.ohio.gov). This change was made as part of a statewide initiative to provide a .gov domain for all state agencies in Ohio. Please update any bookmarked pages to use the new domain name. The old website will continue to be accessible for a limited time.



# Wrapping Up a Busy 2013 in the Ohio Statehouse

Jacob Bell, *Legislative Liaison*

As the 130<sup>th</sup> Ohio General Assembly finishes a productive 2013, there are several bills pending in 2014 that may be of interest to the workers' compensation community:

**HB 139 - HOSPITAL ADMISSIONS** - *To permit certain advanced practice registered nurses and physician assistants to admit patients to hospitals.*

**HB 220 - PHYSICAL THERAPISTS** - *To modify the scope of practice of a physical therapist.*

**HB 301 - DRUG ADMINISTRATION** - *To authorize a person not otherwise authorized to do so to administer certain drugs pursuant to delegation by an advanced practice registered nurse who holds a certificate to prescribe.*

**HB 332 - PAIN MEDICATION** - *To establish standards and procedures for opioid treatment of chronic, intractable pain resulting from noncancerous conditions and to require that professional disciplinary action be taken for failing to comply with those standards and procedures.*

**HB 341 - CONTROLLED SUBSTANCES** - *To prohibit a controlled substance that is a schedule II drug or contains opioids from*

*being prescribed or dispensed without review of patient information in the State Board of Pharmacy's Ohio Automated Rx Reporting System.*

**HB 359 - PRESCRIPTION DRUGS** - *To require disclosure of the addictive nature of certain prescription drugs.*

**SB 176 - WORKERS COMPENSATION** - *To prohibit illegal and unauthorized aliens from receiving compensation and certain benefits under Ohio's Workers' Compensation Law.*

**SB 252 - WORKERS COMPENSATION** - *To make peace officers and firefighters diagnosed with post-traumatic stress disorder arising from employment without an accompanying physical injury eligible for compensation and benefits under Ohio's Workers' Compensation Law.*

It is impossible to offer a detailed synopsis of each bill in this column. However, each bill can be viewed in its entirety at: <http://www.legislature.state.oh.us/search.cfm>.

As the legislative liaison for the Ohio Industrial Commission, I am happy to answer questions from our customers on any piece of legislation pending in the state legislature. I can be contacted at [jacob.bell@ic.ohio.gov](mailto:jacob.bell@ic.ohio.gov) and 614-387-3866.



## SUPREME COURT CASE UPDATES

### State ex rel. Coleman v. Schwartz, Slip Opinion No. 2013-Ohio-1702 April 30, 2013

**A medical report that is based upon a limited examination of an Injured Worker is not unreliable on its face. In evaluating the sufficiency of such a report, the Industrial Commission can consider whether the physician was aware of all of the allowed conditions, whether the physician reviewed other medical evidence on file and accepted the findings therein and whether there are other facts that support the physician's opinion.**

Issue: Whether the Industrial Commission abused its discretion in terminating temporary total disability compensation based upon a medical report in which the physician performed a limited examination of the Injured Worker?

Holding: The Ohio Supreme Court affirmed the decision of the Tenth District Court of Appeals. The Ohio Supreme Court held that the Industrial Commission's reliance upon Dr. Mannava's report was not an abuse of discretion because the Injured Worker had failed to demonstrate that Dr. Mannava's limited examination rendered his opinion unreliable. The Ohio Supreme Court found Dr. Mannava's report reliable, citing to the fact that the report listed all of the allowed conditions, listed the records that Dr. Mannava had reviewed, including multiple MRIs of the Injured Worker's lumbar spine, and included a notation that Dr. Mannava had accepted the objective findings in those reports. The Ohio Supreme Court further noted that, in his report, Dr. Mannava documented his observations of the Injured Worker walking, sitting, and getting on and off the exam table at the office. Finally, the Ohio Supreme Court pointed out that Dr. Mannava's report identified other facts that supported his opinion. Therefore, the Ohio Supreme Court concluded that Dr. Mannava's was "some evidence" upon which the Industrial Commission could rely to terminate temporary total disability compensation.

Case Summary: In 1984, the Injured Worker was involved in a motor vehicle accident and sustained injuries to his cervical and lumbar spines. In 2009, the claim was amended to include lumbar degenerative disc disease and the Injured Worker requested a new period of temporary total disability compensation beginning in 2007 based upon the new condition. The Industrial Commission granted the request, concluding that the Injured Worker was unable to return to employment due to the newly allowed low back condition.

Thereafter, Dr. Mannava performed a medical examination of the Injured Worker on the issue of extent of disability. In his examination report, Dr. Mannava noted that the Injured Worker had complained of pain when Dr. Mannava checked his ankle reflex and that, as a result, Dr. Mannava had stopped the examination and advised the IW that, if further examination was going to result in pain, then there was no point in continuing the evaluation. Dr. Mannava further noted that his examination should not have caused the Injured Worker any pain and that he had observed the Injured Worker leaving his office and that the Injured Worker did not exhibit any difficulties walking at a fast pace and climbing a half flight of stairs. Dr. Mannava then concluded that, despite his limited examination of the Injured Worker, the Injured Worker had attained maximum medical improvement based on the medical evidence before him, the lack of a new treatment plan and the lack of objective evidence of any change in the Injured Worker's allowed conditions despite ongoing medical treatment.

Based on this report, the BWC moved to terminate temporary total disability compensation. The Industrial Commission subsequently granted this motion relying upon Dr. Mannava's report. Thereafter, the Injured Worker filed a complaint for a writ of mandamus, alleging that Dr. Mannava did not examine on all of the allowed conditions and that, therefore, his report was not "some evidence" upon which the Industrial Commission could rely in adjudicating the issue of extent of disability.

The Tenth District Court of Appeals denied the requested writ, concluding that Dr. Mannava's report constituted some evidence upon which the IC could rely. In support, the Tenth District Court of Appeals noted that Dr. Mannava had examined the Injured Worker (albeit in limited fashion), had reviewed all of his medical records, had observed his ability to ambulate about the office, and had specified that there was no indication of any new treatment plan. Accordingly, the court denied the writ, and the Injured Worker appealed. The Injured Worker's appeal to the Ohio Supreme Court followed.



# SUPREME COURT CASE UPDATES

## State ex rel. Kish v. Kroger Co., Slip Opinion No. 2013-Ohio-1931 May 14, 2013

**The Industrial Commission does not abuse its discretion when it relies upon a physician's addenda to an initial report, which the Industrial Commission previously rejected on a different issue.**

Issue: Whether addenda to an initial report that the Industrial Commission implicitly rejected on one matter constitutes "some evidence" which the Industrial Commission can consider on a different issue?

Holding: The Ohio Supreme Court affirmed the decision of the Tenth District Court of Appeals. The Ohio Supreme Court held that Dr. Randolph, who did not list the condition of compartment syndrome in his initial report, had considered all of the allowed conditions since the physician did examine the Injured Worker on the condition of "early complications of trauma" of which "compartment syndrome" is a sub-category. The Ohio Supreme Court further held that the Industrial Commission did not violate Zamora since the Industrial Commission did not rely upon Dr. Randolph's initial report in denying the Injured Worker's request for compensation for loss of use. The Supreme Court additionally noted that, while the Industrial Commission had implicitly rejected Dr. Randolph's conclusion regarding the continued need for treatment, the Industrial Commission did not reject his clinical findings.

Case Summary: In 1990, the Injured Worker sustained a left ankle injury when she slipped and fell at work. In the years following her initial fall, the Injured Worker sustained additional injuries when her ankle would give out on her. By 2009, her claim was allowed for the conditions of left ankle injury, reflex sympathetic dystrophy, depression, fracture/dislocation left elbow with compartment syndrome and loss of use of the left leg. Additionally, the Injured Worker was taking fourteen prescriptions related to those conditions.

Based on this history, the Employer scheduled the Injured Worker to be examined by Dr. Randolph. In a report dated March 5, 2009, Dr. Randolph recorded the allowed conditions as "left lower leg injury; depressive disorder; RSD; fracture left lower humerus, closed; [and] early complications of trauma." Dr. Randolph detailed his physical examination findings and opined that the Injured Worker did not need any further treatment for the allowances in the claim. Upon receipt of Dr. Randolph's report, the Employer informed the Injured Worker that the Employer would no longer pay for treatment or medications.

Subsequently, the Injured Worker filed a motion for the authorization of treatment and a motion requesting compensation for the loss of use of her left arm with a supportive report from Dr. Gula, dated March 25, 2009, based on an October 3, 2008 examination. In April 2009, a DHO granted continued treatment and medications based on the reports from Dr. Gula and another physician.

On June 21, 2009, Dr. Randolph wrote an addendum to his March 3, 2009 report on the issue of the alleged loss of use of the left arm. Dr. Randolph opined there was no objective evidence to support the request. On July 16, 2009, Dr. Gula responded with a written reiteration of his finding of "a complete loss of use in the sense of the ability to function." A District Hearing Officer later denied the Injured Worker's motion, relying upon Dr. Randolph's addendum and specifically rejecting Dr. Gula's reports. On appeal, the Injured Worker filed another report from Dr. Gula wherein the physician causally related the Injured Worker's loss of use of the left arm to the allowed fracture and compartment syndrome left elbow. On October 2, 2009, Dr. Randolph issued another addendum reiterating his opinion that there was no objective proof of the requested condition. A Staff Hearing Officer subsequently affirmed the District Hearing Officer order, relying upon Dr. Randolph's addenda and the Industrial Commission denied further appeal. Thereafter, the Injured Worker filed a complaint for a writ of mandamus, asserting that the Industrial Commission abused its discretion by relying upon Dr. Randolph's addenda since those reports emanated from the physician's initial report, which the Industrial Commission rejected when it authorized continued treatment and medications and which did not list the allowed condition of compartment syndrome. The Tenth District Court of Appeals denied the requested writ, concluding that Dr. Randolph's addenda were "some evidence" upon which the Industrial Commission could rely to deny the compensation for loss of use. The Injured Worker's appeal to the Ohio Supreme Court followed.

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