

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION**

JOHN GIBSON, in his Individual  
Capacity and d/b/a "JOHN GIBSON &  
ASSOCIATES"

Plaintiff,

vs.

Case No. \_\_\_\_\_

TEXAS DEPARTMENT OF INSURANCE,  
DIVISION OF WORKERS' COMPENSATION;  
and ROD BORDELON, Commissioner,  
Texas Department of Insurance, Division of  
Workers' Compensation, in His Official Capacity

Defendants.  
\_\_\_\_\_/

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF,  
AND ATTORNEY'S FEES**

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PLAINTIFF, JOHN GIBSON, in his Individual Capacity and d/b/a "JOHN GIBSON & ASSOCIATES" for his cause of action against the TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION; and ROD BORDELON, Commissioner, Texas Department of Insurance Division of Worker's Compensation, in His Official Capacity, would respectfully show the Court as follows:

**PRELIMINARY STATEMENT**

1. This is an action brought by JOHN GIBSON, in his individual capacity and d/b/a "JOHN GIBSON & ASSOCIATES," suit for declaratory and injunctive relief with respect to the constitutionality of actions taken by representatives of the TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION a political unit of the State Of Texas (hereinafter "TDI-DWC"), as implemented by ROD BORDELON, in his official capacity

as Commissioner of the TDI-DWC, restricting persons, including, but not limited to businesses, from using and publicizing certain phrases and combinations of words under authority of Texas Statutes, which impose restrictions and prohibitions on First Amendment protected expression, specifically political speech and commercial speech, and operate in such a way as to constitute both *prima facie* violations of the First Amendment and “prior restraint,” by the very nature of the statute. The legislation and official actions challenged herein, both the original legislation of the State of Texas, as well as the application of that legislation by TDI and its Commissioners, violate the constitutional rights of the Plaintiff, and infringe on the Plaintiff’s Right to Freedom of Speech, thus violating the United States Constitution. Plaintiff seeks injunctive and declaratory relief and attorneys fees.

#### **I. JURISDICTION AND VENUE**

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C., Sec. 2201 and to Rule 65, FED. R. CIV. P., and pursuant to 42 U.S.C. § 1985, 42 U.S.C. § 1988, and to the First, Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

3. Venue is proper in the Northern District of Texas, since the conduct complained of herein occurred within Lubbock County, Texas, which is within the geographical area assigned to the Northern District of Texas, Lubbock Division.

4. This action is brought to determine issues, rights and liabilities of an actual and present controversy between the parties involving the constitutional validity of Texas Statutes, as well as arbitrary enforcement action taken and/or threatened against the Plaintiff by the Texas Department of Insurance, Division of Workers’ Compensation.

5. There are substantial bona fide doubts, disputes and questions that must be resolved concerning whether the subject provisions of the State of Texas legislation and the

administrative actions of the TDI-DWC at issue violate the rights of Plaintiff under the First, Fourth and Fifth Amendments as applied to the states through the Fourteenth Amendment to the United States Constitution.

6. Plaintiff seeks to obtain temporary and permanent injunctions to enjoin Defendants from enforcing any and all provisions of the challenged legislation because such enforcement eliminates, prevents, chills and/or discourages, and ultimately, through administrative penalties and the threat of administrative penalties, totally restrains Plaintiff and others from the exercise of their rights under the First Amendment to freedom of political speech and freedom of commercial speech.

7. Plaintiff further seeks a declaratory judgment specifically finding the subject provisions of the challenged legislation to be unconstitutional because said provisions deny Plaintiff his Federal Constitutional rights of free speech and expression, due process, equal protection, adequate procedural safeguards, and prompt judicial review.

## II. PARTIES

8. Plaintiff, JOHN GIBSON (hereinafter “GIBSON”), is an attorney licensed to practice in the State of Texas, and actively practices law in Lubbock, Lubbock County, Texas, his firm doing business and known as “JOHN GIBSON & ASSOCIATES.” GIBSON has been practicing law for more than fourteen years, and is Board Certified by the Texas Board of Legal Specialization in the field of Workers’ Compensation Law. For purposes of this suit only, Plaintiff may be served with process through his attorney, Robert S. Hogan, HOGAN LAW FIRM, PC, 1801 13<sup>th</sup> Street, Lubbock, Texas.

9. Defendant, TEXAS DEPARTMENT OF INSURANCE – DIVISION OF WORKERS’ COMPENSATION (“TDI-DWC”) is a duly organized governmental unit of the

State of Texas, duly organized and limited under the Constitution and Statutes of the State of Texas, and whose authority is governed by said Constitution, as well as the Constitution of the United States. Defendant TDI-DWC may be served with process by serving its chief executive, Commissioner Rod Bordelon, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

10. Defendant ROD BORDELON, In his Official Capacity as the Commissioner of the Texas Department of Insurance, Division of Workers' Compensation, was and is an independent constitutional officer, directed through the State's challenged legislation to administer all regulation of use of specific names and words by any person in the State of Texas, and duly governed and limited by the Constitution and Laws of the State of Texas and the Constitution of the United States. Commissioner BORDELON may be served with process at 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

11. Because this is a suit challenging the validity of a statute of the State of Texas, service should also be made, in accordance with Texas Statutes, upon the Attorney General of the State of Texas, Greg Abbott, 300 W. 15<sup>th</sup> Street, Austin, Texas 78701.

### **III. GENERAL ALLEGATIONS**

#### **A. PLAINTIFF'S STATEMENT OF POSITION**

12. Plaintiff seeks to continue engaging in the business of practicing law, involving advertising and promotion of his law practice, and to continue engaging in active critical discussion of Texas Law and the legal process, both of which activities involve engaging in protected First Amendment communication, protected as commercial speech and political speech.

13. Plaintiff has been practicing law since approximately 1996, and has focused his practice on representation of injured workers' in Workers' Compensation claims, and contested

cases, both before the Texas Workers' Compensation Commission, and before the judiciary of the state of Texas. In 2005, Plaintiff earned his certification in Workers' Compensation Law from the Texas Board of Legal Specialization.

14. As part of his legal practice, Plaintiff maintains a website at <http://www.gibsonfirm.com>, describing his practice and advertising his services. Plaintiff also maintains a separate website, titled the Texas Workers' Compensation Law Blog, at [www.texasworkerscomplaw.com](http://www.texasworkerscomplaw.com). This website is designed to promote critical and spirited discourse concerning current issues in workers' compensation law within the State of Texas, as well as examination of recent judicial and commission decisions in worker's compensation cases.

**B. DESCRIPTION OF THE PERTINENT PROVISIONS OF THE STATE'S CHALLENGED LEGISLATION**

15. In 2005, as part of their ongoing efforts to recodify and streamline the provisions of Texas law relating to workers' compensation insurance, the State of Texas adopted new provisions of Texas Labor Code Chapter 419, pertaining to restriction of usage of certain words and word combinations by any person, not just persons engaged in the business of insurance.

16. Section 419.002, Texas Labor Code, a copy of which is attached hereto as Exhibit "A" purports to regulate and restrict persons, from using the term "Texas Workers' Compensation" or any term using both "Texas" and "Worker's Compensation" or any term using both "Texas" and "Workers' Comp" in connection with "any impersonation, advertisement, solicitation, business name, business activity, document, product or service." This section also prohibits use of "any combination or variation of the words or initials, or any term deceptively

similar to the words or initials. . .”<sup>1</sup> Section 419.002(b) further restricts usage of a picture or map of the state of Texas in conjunction with the use of the words above.

17. Section 419.004, TEXAS LABOR CODE, directs a civil penalty not to exceed \$5,000 for each violation of § 419.002, and empowers the attorney general to bring suit to collect the civil penalty, however the commissioner of the Division of Workers’ Compensation, pursuant to § 419.003, TEXAS LABOR CODE, is delegated with the responsibility to enforce § 419.002, however there is no process, or alternatively, insufficient legal process, for determining whether individuals have violated § 419.002, in that the Commissioner and the Commissioner’s staff are uniformly empowered to determine whether there has been a violation and assess a penalty, without first requiring that the individual accused of a violation have the opportunity to be heard, and having reasonable standards imposed on precisely what will be considered a violation, and there is no reference to how any such officer would be trained or familiarized with the constitutional implications of the regulations.

18. The terms whose conjunctive use is regulated by the Statute, “Texas” “Workers” and “Compensation,” as well as the map or shape of the State of Texas, are terms which are not uniquely the intellectual property of the State of Texas, but rather are in the public domain. Based on the varied ways in which these terms could be used, there is no governmental interest served by regulation of these terms, and the prohibition of the use of these terms together serves as an impermissible restraint on otherwise protected First Amendment Activity. For instance, under the terms of the regulation, a physician or medical clinic would be prohibited from

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<sup>1</sup> §419.002 also restricts use of the terms “Texas Department of Insurance,” “Department of Insurance” and “division of worker’s compensation” and the state seal and official logo of the Texas Insurance Department and the Division of Workers’ Compensation. Plaintiff does not challenge these provisions specifically, except as far as his challenge to other provisions of the statute may affect the validity of the statute, itself.

advertising that they accept workers' compensation patients in Texas. Any attorney who was board certified would also be strictly prohibited from using the phrase "Board Certified in Workers' Compensation Law by the Texas Board of Legal Specialization," which is the accepted manner and form for disclosing Board Certification in Texas. These and other unnecessary restrictions on advertising are the result of § 419.002, without serving any governmental interest.

19. Additionally, the prohibition of usage of the terms in "any business activity, document, product or service," casts a very wide net around many areas of conduct that would otherwise be permissible protected First Amendment free speech. For instance, how could any candidate for office discuss in his campaign literature, or in a public speech, the needs for reform in the "Texas Worker's Compensation system."? How could a legal professional give a seminar presentation on the latest cases handed down by the "Texas Workers' Compensation Commission," or be critical of a judicial finding by a "Texas" court on a "Workers' Compensation" case? Any such usage, under the clear language of the statute, would be a violation subject to \$5,000 per day.

20. Due to the absolute language of the statute, and the lack of any requirement of intent to cause confusion, etc., or other requirement of *mens rea* on the part of the user, the statute results in a constitutional conflict that is incapable of being interpreted in any way as being consistent with, and not in conflict with, the First Amendment of the United States Constitutional. The Statute appears therefore to be unconstitutional on its face.

### **C. DESCRIPTION OF THE FACTUAL HISTORY LEADING TO THE INSTANT DISPUTE**

21. For many months, Plaintiff has been publishing the Texas Workers' Compensation Law Blog, (hereinafter "The Blog") as a means for the scholarly discussion and

dissemination of information concerning recent legal developments in the field of Workers' Compensation law in Texas. The Blog is available on the internet at the URL "texasworkerscomplaw.com" A copy of the landing page, or initial page of Plaintiff's Blog is attached as Exhibit "B."

22. On or about February 7, 2011, Plaintiff received a Cease and Desist order from the Texas Department of Insurance, Division of Workers' Compensation, finding him in violation of Texas Labor Code § 419.002, for "inappropriately using the words 'Texas' and 'Workers' Comp' in the internet URL <http://www.texasworkerscomplaw.com/>" Plaintiff was ordered to immediately discontinue in order to come into compliance. Plaintiff was held to be in violation of Texas Labor Code § 419.002 without benefit of a hearing, and with no meaningful or adequate modicum of due process. A copy of this "Cease and Desist" order is attached as Exhibit "C." While the letter does seem to contain an invitation to provide a written response if "you feel that a violation did not occur," Plaintiff would show that this is an illusory offer, as there is no means for, procedure for, or right to a hearing on, or an appeal from a determination of violation of § 419.002.

**D. PLAINTIFF'S STATEMENT OF JURISDICTIONAL ALLEGATIONS ESTABLISHING STANDING, RIPENESS AND A RIGHT TO RELIEF**

23. The challenged legislation, coupled with the administrative flaws and lack of procedure, purport to restrict and restrain the Plaintiff's freedom of political and commercial speech protected under the First Amendment of the United States Constitution, and impose restrictions which directly impair and chill the First Amendment protected activities of the Plaintiff.

24. At no public hearing held pursuant to the purported adoption of § 419.002, no substantial competent evidence, nor any legitimate or methodologically sound data, evidence, or



testimony whatsoever was introduced by the State to indicate that there was any legitimate governmental interest in restricting the use of the words “Texas” “Workers” and “Compensation” from being used together in the spoken or printed word, whether commercially or non-commercially, or to support any of the restrictions at issue herein, as related to the alleged perceived problems sought to be regulated by the challenged legislation.

25. Plaintiff has a clear legal right to the use of the words “Texas” “Workers” and “Compensation” and variations thereof, as well as the shape of the state of Texas, in commercial and non-commercial speech, without interference by the Defendants or their agents, servants or employees. Such lawful use may be restrained and/or terminated only after Plaintiff has been afforded due process of law, as guaranteed by the Fourteenth Amendment of the United States Constitution and Plaintiff has been denied due process of law by the proposed prior restraint on a First Amendment protected form of speech imposed by the challenged statute, and the flawed and unconstitutional enforcement of the same by the Commissioner.

26. Plaintiff asserts that his position, as set forth in this Complaint, is legally sound and supported by fact and law. The Defendants’ legislation and actions, however, have created a bona fide controversy between the parties, and Plaintiff is in doubt as to his rights, privileges, and immunities with respect to the challenged legislation and the manner in which the legislation is administered through the Commissioner. Plaintiff requires, therefore, a declaratory judgment declaring his rights, privileges, and immunities. There is a clear, present, actual, substantial, and bona fide justiciable controversy between the parties.

27. Plaintiff is and will be threatened with prosecution for engaging in political and commercial speech using the words “Texas” “Workers” and “Compensation” together, and will be subjected to severe governmental penalties. Alternatively, Plaintiff will be required to

abandon or substantially alter the form and content of the First Amendment protected activity, as well as the advertisement and dissemination of information about his law practice, and, if he is no longer allowed to use the URL “texasworkerscomplaw.com,” Plaintiff will be deprived of a protected property interest in the URL at issue. As a result, Plaintiff would experience significant loss of business reputation and good will that he has developed for his businesses, and would be caused severe financial hardship and damages, in addition to the irreparable harm caused by the deprivation of First Amendment rights at issue.

28. Plaintiff has no adequate remedy at law. No amount of money damages could adequately compensate the Plaintiff for the irreparable harm described herein. The challenged statute is also one which affects others, in addition to the Plaintiff, and circumscribes protected First Amendment interests of the public at large.

29. Plaintiff and his agents, employees, and the public at large will suffer irreparable injury if injunctive relief is not granted, and Defendants are permitted to enforce the provisions of the challenged legislation against the Plaintiff. The loss of rights guaranteed by the First Amendment is so serious that, as a matter of law, irreparable injury is presumed and, in such an instance involving the loss of First Amendment rights, damages are both inadequate and unascertainable.

30. The public interest would best be served by the granting of injunctive relief, and the issuance of a mandatory injunction prohibiting the administrative enforcement action against Plaintiff, since the public interest is disserved by permitting the enforcement of invalid statutes which interfere with the Plaintiff’s and the public’s rights under the First Amendment to the United States Constitution.

31. All conditions precedent to the institution and maintenance of this cause of action have occurred or have been performed, and no administrative remedies or waivers are available to the Plaintiff that are not themselves futile or rife with procedural infirmities, or are not subject to the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367. The flaws alleged herein against the challenged legislation are facially unconstitutional, in addition to being unconstitutional as applied.

32. The acts, practices and jurisdiction of Defendants as set forth herein, were and are being performed under color of state law and therefore constitute state action within the meaning of the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. § 1983.

33. Plaintiff seeks no direct monetary damages against the Defendants herein, but rather seeks merely declaratory and injunctive relief, together with reasonable and necessary attorneys fees connected to the application for declaratory and injunctive relief, so this case is not foreclosed by the Eleventh Amendment to the United States Constitution.

#### **COUNT I**

34. The State's challenged legislation, Texas Labor Code §§ 419.002-004 violate the rights guaranteed Plaintiff by the United States Constitution, on its face and as applied, in that these Regulations abridge and restrain the Plaintiff's rights to free expression, in violation of the First Amendment.

#### **COUNT II**

35. The State's challenged legislation violated the rights guaranteed by Plaintiff by the United States Constitution, on its face and as applied, in that it constitutes a prior restraint on such speech, in violation of the First Amendment.

**COUNT III**

36. The State's challenged legislation violates the rights guaranteed Plaintiff by the United States Constitution, on its face and as applied, in that it constitutes an impermissible "chilling effect" on constitutionally protected speech, in violation of the First Amendment.

**COUNT IV**

37. The State's challenged legislation violates the rights guaranteed Plaintiff by the United States Constitution, on its face and as applied, in that it denied equal protection of the law in that the legislation is arbitrary, oppressive and capricious and unreasonably requires the Plaintiff to submit to controls not imposed on other similarly situated businesses or individuals, both locally and throughout Texas.

**COUNT V**

38. The State's challenged legislation violates the right guaranteed Plaintiff by the United States Constitution, on its face and as applied, in that it acts in a way arbitrary and capricious as applied to the Plaintiff's business and personal activities.

**COUNT VI**

39. The State's challenged legislation violates the right guaranteed by Plaintiff by the United States Constitution, on its face and as applied, as an unlawful exercise of the state's police power in that there is no substantial relationship to any legitimate governmental objective, resulting in the fact that there has been no proper predicate for the basis of the challenged legislation.

**COUNT VII**

40. The State's challenged legislation violates the rights guaranteed Plaintiff by the United States Constitution, on its face and as applied, in that it is overly broad in its application

to any and all forms of speech, and any type of business activity or document, prohibiting the usage of the described terms.

**COUNT VIII**

41. The State's challenged legislation violates the rights guaranteed Plaintiff by the United States Constitution, on its face and as applied, in that it lacks adequate procedural safeguards.

**COUNT IX**

42. The State's challenged legislation violates the rights guaranteed Plaintiff by the United States Constitution, on its face and as applied, in that it contains restrictions on First Amendment freedoms that are overbroad and far greater than are essential to the furtherance of any alleged government interest.

**COUNT X**

43. The State's challenged legislation violates the rights guaranteed Plaintiff by the United States Constitution, on its face and as applied, in that it grants unbridled discretion to the administrative officials in the enforcement of its provisions, and the Commissioner has utilized this unbridled administrative discretion to knowingly and intentionally deprive Plaintiff of his constitutional rights.

**COUNT XI**

44. Plaintiff had a contractual relationship for the purchase of the exclusive rights to use the internet URL "texasworkerscomplaw.com" which he intended to be used as a communicative forum for expression of political and governmental related thought and discourse. The actions of the Defendants, as described herein, impair the agreement which was entered into by the Plaintiff, first, by completely frustrating the use of the subject URL for any

usage, including the Plaintiff's desired usage, and second, by implementing restrictions which impose a chilling effect and prior restraint on the exercise of expressive activities as contemplated by the Plaintiff, as well as imposing a direct, content based restriction on the information Plaintiff can publish on his website, in violation of the First Amendment, and Article I, Section 10 of the United States Constitution.

**COUNT XII**

45. The State's challenged legislation, coupled with its application by the Commissioner, amounts to a taking of property without due process of law and without just compensation, thus violating the Fifth Amendment to the United States Constitution.

**COUNT XIII**

46. The application of the State's challenged legislation by the Commissioner to the Plaintiff's internet domain name, is pre-empted, wholly or in part, by Title 15, United States Code § 1125(d), the Anti Cyber Piracy Consumer Protection Act (ACPCA) which provides the exclusive remedy for any dispute regarding use of a domain name, and which also provides exceptions for uses protected under the First Amendment to the United States Constitution.

**PRAYER TO ENTITLEMENT TO ATTORNEY'S FEES PURSUANT TO 42 U.S.C. SECTION 1988**

47. In their legitimate desire to pursue the rights and privileges guaranteed by the Constitution and laws of the United States, the Plaintiff has employed the undersigned to bring this action and has agreed to pay a reasonable fee for same, which fees and costs should be awarded to Plaintiff pursuant to 42 U.S.C. § 1988.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court GRANT the following relief:

- (a) Declaring the Defendants' challenged legislation, Texas Labor Code § 419.002 to be violative of the aforementioned federal constitutional and statutory provisions;
- (b) Appropriately set and hold a hearing, and preliminarily enjoin Defendants from applying and enforcing the challenged legislation, in whole or in part, against the Plaintiff, with the subsequent entry of a permanent injunction after proper administration of the complaint herein;
- (c) Awarding any and all attorney's fees and costs as authorized by law;
- (d) Awarding such other and further relief as this Court deems fit, just and equitable.

**DATED this 22<sup>nd</sup> day of February, 2011.**

Respectfully submitted,

By:



HOGAN LAW FIRM, PC

Robert S. Hogan

State Bar No. 00796767

Victor Rodriguez, II

State Bar No. 24063577

1801 13th Street (79401)

P.O. Box 2277

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ATTORNEYS FOR THE PLAINTIFF



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LABOR CODE  
TITLE 5. WORKERS' COMPENSATION  
SUBTITLE A. TEXAS WORKERS' COMPENSATION ACT  
CHAPTER 419. MISUSE OF DIVISION NAME

**GO TO TEXAS CODE ARCHIVE DIRECTORY**

*Tex. Lab. Code § 419.001 (2010)*

§ 419.001. Definitions

(a) In this chapter:

(1) "Representation of the division's logo" includes a nonexact representation that is deceptively similar to the logo used by the division.

(2) "Representation of the state seal" has the meaning assigned by *Section 17.08(a)(2), Business & Commerce Code*.

(b) A term or representation is "deceptively similar" for purposes of this chapter if:

(1) a reasonable person would believe that the term or representation is in any manner approved, endorsed, sponsored, authorized by, the same as, or associated with the division, the department, this state, or an agency of this state; or

(2) the circumstances under which the term is used could mislead a reasonable person as to its identity.

**HISTORY:** Enacted by Acts 2005, 79th Leg., ch. 265 (H.B. 7), § 3.287, effective September 1, 2005.

**EXHIBIT "A"**





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LABOR CODE  
TITLE 5. WORKERS' COMPENSATION  
SUBTITLE A. TEXAS WORKERS' COMPENSATION ACT  
CHAPTER 419. MISUSE OF DIVISION NAME

**GO TO TEXAS CODE ARCHIVE DIRECTORY**

*Tex. Lab. Code § 419.002 (2010)*

§ 419.002. Misuse of Division's Name or Symbols Prohibited

(a) Except as authorized by law, a person, in connection with any impersonation, advertisement, solicitation, business name, business activity, document, product, or service made or offered by the person regarding workers' compensation coverage or benefits, may not knowingly use or cause to be used:

(1) the words "Texas Department of Insurance," "Department of Insurance," "Texas Workers' Compensation," or "division of workers' compensation";

(2) any term using both "Texas" and "Workers' Compensation" or any term using both "Texas" and "Workers' Comp";

(3) the initials "T.D.I."; or

(4) any combination or variation of the words or initials, or any term deceptively similar to the words or initials, described by Subdivisions (1)--(3).

(b) A person subject to Subsection (a) may not knowingly use or cause to be used a word, term, or initials described by Subsection (a) alone or in conjunction with:

(1) the state seal or a representation of the state seal;

(2) a picture or map of this state; or

(3) the official logo of the department or the division or a representation of the department's or division's logo.

Tex. Lab. Code § 419.002

**HISTORY:** Enacted by Acts 2005, 79th Leg., ch. 265 (H.B. 7), § 3.287, effective September 1, 2005.



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LABOR CODE  
TITLE 5. WORKERS' COMPENSATION  
SUBTITLE A. TEXAS WORKERS' COMPENSATION ACT  
CHAPTER 419. MISUSE OF DIVISION NAME

**GO TO TEXAS CODE ARCHIVE DIRECTORY**

*Tex. Lab. Code § 419.003 (2010)*

§ 419.003. Rules

The commissioner may adopt rules relating to the regulation of the use of the division's name and other rules as necessary to implement this chapter.

**HISTORY:** Enacted by Acts 2005, 79th Leg., ch. 265 (H.B. 7), § 3.287, effective September 1, 2005.



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TITLE 5. WORKERS' COMPENSATION  
SUBTITLE A. TEXAS WORKERS' COMPENSATION ACT  
CHAPTER 419. MISUSE OF DIVISION NAME

**GO TO TEXAS CODE ARCHIVE DIRECTORY**

*Tex. Lab. Code § 419.004 (2010)*

§ 419.004. Civil Penalty

(a) A person who violates Section 419.002 or a rule adopted under this chapter is liable for a civil penalty not to exceed \$ 5,000 for each violation.

(b) The attorney general, at the request of the commissioner, shall bring an action to collect a civil penalty under this section in a district court in Travis County.

**HISTORY:** Enacted by Acts 2005, 79th Leg., ch. 265 (H.B. 7), § 3.287, effective September 1, 2005.



POSTED ON JANUARY 29, 2011 BY JOHN GIBSON

John E. Gibson is a trial lawyer with over 13 years experience trying workers' compensation, personal injury, products liability and

## The Presumption of Intoxication

Recently, I won a workers compensation jury trial on whether or not my client was intoxicated at the time of his injury. Intoxication cases are extremely difficult to win due to both the definition of intoxication and the way that the Division of Workers Compensation decides intoxication cases. There is a strong public policy in favor of maintaining a drug free workplace. However, the Texas Constitution guarantees all persons the right to seek legal remedies for injuries that were not their fault. This is the first of a few posts I plan on making which point out that in our rush to crack down on drugs, the Division and even the courts of the State of Texas have failed to follow the law.

C O N T I N U E R E A D I N G . . .

TAGS: [Compensation](#), [Division of Workers Compensation](#), [Texas](#), [Workers](#), [comp](#), [intoxication](#)

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POSTED ON DECEMBER 4, 2010 BY JOHN GIBSON

## Injuries While Traveling To and From Work

Well, this blog has gone neglected for quite a while. Not by choice, but due to my health. A few months ago, I was driving to a continuing education seminar roughly five hours away. I was running late and so I never stopped for a snack or a beverage. Shortly after I arrived at the seminar, I noticed I had developed a minor cough. In the following weeks, that cough turned more serious and culminated in my being hospitalized for a week in critical condition with blood clots that nearly killed me. I am still on blood thinners which affect my energy level, but its time to have enough energy to work on this blog. And what better subject that to discuss the compensability of injuries occurring while driving to and from someplace for work. Yesterday, the Texas Supreme Court addressed this very issue in the case of *Leordeanu vs. American Protection Insurance Company*, 2010 WL 4910133.

C O N T I N U E R E A D I N G . . .

TAGS: [Texas Supreme Court](#), [coming and going](#), [course and scope](#), [dual purpose](#), [home](#), [injury](#), [travel](#)

■ ■ ■ [Comments](#) ■ [Trackbacks](#) ■ [Share Link](#)

POSTED ON JUNE 5, 2010 BY JOHN GIBSON

## Tex Supreme Court Refuses to Overturn Stop Loss Ruling

For the attorneys that follow this blog, in a decision that should surprise no one, the Texas Supreme Court refused to review the decision in *Texas Mutual Insurance Co. vs. Vista Community Medical Center, LLP*. Practitioners will recall that this is the Austin Court of Appeals decision from 2008 that invalidated the stop-loss exception.

Hospitals that treat workers' compensation patients in Texas are reimbursed under the state's workers' compensation in-patient fee schedule. The 1997 fee schedule, which was repealed in 2008, included a stop-loss exception. Under the stop-loss exception, hospitals could be paid more than the fee schedule if they met certain criteria. The dispute between Texas Mutual and Vista centered on those criteria. Texas Mutual argued that the stop-loss exception should be applied to admissions involving charges of more than \$40,000 and "unusually extensive services." Vista countered that the exception applied to all admissions for which they charged more than \$40,000.

The stop-loss rule has since been repealed. However, many fee disputes remained outstanding under the old rule.

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- New Maximum and Minimum Weekly Benefit Rates Out
- Conflicts of Interest and Confidentiality--The Importance of Hiring a Lawyer
- No Benefit Review Conferences or Contested Case Hearings Today or Tomorrow

### Links

- Workers Comp Central
- Workers Comp School
- National Council on Compensation Insurance
- Texas Employment Lawyers Association
- OSHA Aboveground
- Alltop
- Texas Legislature Online
- Texas Politics

### Blogs

Alabama Mutual Case News

### Contact Us

How can we help? Any information you provide is considered confidential and will not be shared outside of our firm.

Comments

### More Blogs

- Adventure of Strategy - Rob Millard
- Advertising & Marketing Lawyer & Attorney - Sheppard Mullin Law Firm
- Advertising & Marketing Lawyer & Attorney : Reed Smith Law Firm
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- Advertising Lawyers & Attorneys - Reed Smith Law Firm
- Alabama Employment Lawyer & Attorney - Sirote & Permutt Law Firm
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- Arizona DUI Lawyer & Attorney - Koplow & Patane
- Arizona Eminent Domain Lawyer & Attorney - Zeitlin & Zeitlin Law Firm

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POSTED ON MAY 22, 2010 BY JOHN GIBSON

### Illegal Immigration and Workers Compensation

With all the discussion over Arizona's tough stance on undocumented aliens, a renewed interest has been undertaken regarding Texas' stance on these aliens in a workers' compensation context.

C O N T I N U E R E A D I N G . . .

TAGS: Compensation, Division of Workers Compensation, Texas, Workers, aliens, benefits, illegal, undocumented

Comments (2) Trackbacks Share Link

POSTED ON FEBRUARY 20, 2010 BY JOHN GIBSON

### What to Watch For if You Are an Independent Contractor

According to a [New York Times article](#), the feds are cracking down on employers that classify employees as independent contractors.

C O N T I N U E R E A D I N G . . .

TAGS: Workers Comp Fundamentals, independent contractor, insurance, premiums, workers compensation

Comments Trackbacks Share Link

POSTED ON FEBRUARY 16, 2010 BY JOHN GIBSON

### What To Do When You Are Injured On The Job

When injured on the job be sure and follow these steps:

1. Immediately report the injury to your supervisor. Make sure that the injury is properly logged or recorded by your supervisor.
2. Request medical attention for your injury and take note of the names of the doctors who are treating you. Remember, you are **not required** to see a company doctor.
3. Make sure to get contact information from any witnesses. If possible, use your phone to take photographs of the accident site. Take photographs of your injuries as well, both before and after treatment.
4. Do not sign anything, or give any recorded statements, until you have spoken with an experienced workers compensation lawyer. You may be signing away your rights without even knowing it.
5. If you are injured, stop working until released to work by your doctor. Additional labor could severely aggravate your injury. If your doctor releases you to light duty, you do not have to return to work unless your employer agrees in writing to abide by your doctor's restrictions.
6. Contact an experienced workers compensation attorney as soon as possible after your injury.

TAGS: Workers Comp Fundamentals, injury, injury on the job, workers comp, workers compensation

Comments Trackbacks Share Link

POSTED ON FEBRUARY 6, 2010 BY JOHN GIBSON

### Top Ten Most Unusual Comp Cases in 2009

Larson's Workers' Compensation Reporter, the premier name in workers' compensation legal reporters, has issued their list of the [top ten most bizarre or unusual workers compensation cases in 2009](#). Among the highlights:

An Illinois man was awarded benefits for a displaced fracture through the right femoral neck when he attempted to dislodge a bag of potato chips from a vending machine for a female worker by giving the machine a "shoulder block."

A Missouri court upheld a denial of death benefits to the beneficiaries of a workers comp fraud investigator who was killed in a car wreck on the job. Alcohol and speeding were determined to be the causes.

Its important to remember that these lists are sensational by nature and not indicative of most workers compensation claims. Nevertheless, they do make for interesting reading, especially for those of us in the field of workers' compensation law.

Alabama Workers' Comp Blog

Course & Scope: Connecticut Workers Comp

Delaware Detour & Frolic

Georgia Workers Comp Blog

Georgia Workers Compensation Blog

Illinois Workers Compensation Law

Insurance Scrawl

KCA's Workers' Compensation & Employment Law Blog

Managed Care Matters

Pennsylvania Comp Blog

Pennsylvania Workers Comp Blog

Weekly Toll

Workers Comp Insider

Workers Comp Zone: Oakland Comp Blog

Workers Compensation Blog

Arizona Family Law Lawyer & Attorney - Nirenstein Garnice Soderquist PLC

Arizona Nursing Home Lawyer & Attorney - Solomon & Relihan Law Firm

Arizona Personal Injury Lawyer & Attorney - Solomon & Relihan Law Firm

Arizona Probate Lawyers & Attorneys - Nirenstein Garnice Soderquist Law Firm

TAGS: [Compensation](#), [Workers](#), [Workers Comp Fundamentals](#), [unusual](#) [Comments \(1\)](#)  [Trackbacks](#)  [Share Link](#)

POSTED ON JANUARY 30, 2010 BY JOHN GIBSON

## New Study Shows Major Deficiencies in Texas Workers' Compensation

A new study by the Cambridge, Mass. based Workers Compensation Research Institute (WCRI) shows that Texas has major deficiencies in the amount of benefit payments and the overutilization of insurance carriers on cost containment efforts.

Medical costs per workers' compensation claim in Texas were stable in 2007, following several years of dramatic decreases. However, in several key areas Texas showed key areas of poor performance in workers compensation, according to a new study by WCRI.

The study, *Monitoring the Impact of Reforms in Texas: CompScope™ Benchmarks, 10th Edition*, said that after 2006, Texas medical costs per claim were 19 percent lower than the typical study state for claims with more than seven days of lost time. Fee schedule decreases combined with increased management of medical care by payors through utilization review and other means were behind the decline.

At the same time, though, WCRI reported that medical cost containment expenses per claim continued to grow rapidly in Texas, even after medical costs began to decline. At an average of \$2,818, Texas had the highest medical cost containment expenses per claim among the study states in 2007/2008, 37 percent higher than typical. This means that even though the state legislature enacted reforms to contain costs, insurance carriers were aggressively seeking to reduce legitimate costs even further.

The study noted that indemnity benefits per claim rose ten percent in 2007, largely due to a nearly 25 percent increase in the maximum benefit for statutory weekly temporary total disability. But, despite this significant increase in the maximum benefit, the percentage of workers whose benefits were limited by the maximum was 17 percent, more than double the percentage in the typical study state. Thus, Texas lags far behind other states in calculating the maximum benefit paid under workers comp.

The study also found that from 2002 to 2006 indemnity benefits per claim decreased 9 percent overall, largely the result of a decrease in the duration of temporary disability. Since 2002, WCRI said the average duration of temporary disability for injured workers in Texas declined by more than three weeks for claims at an average of 36 months of experience, likely related to the decrease in medical utilization under HB 2600 and payor focus on managing medical care.

In addition, the study said Texas had lower permanent partial disability/lump-sum payments compared to the typical study state.

The Workers Compensation Research Institute is a nonpartisan, not-for-profit membership organization conducting public policy research on workers' compensation, health care, and disability issues. Its members include employers, insurers, governmental entities, insurance regulators and state administrative agencies in the U.S., Canada, Australia and New Zealand, as well as several state labor organizations.

TAGS: [Compensation](#), [Insurance Carriers](#), [Texas](#), [WCRI](#), [Workers](#), [workers comp](#) [Comments](#)  [Trackbacks](#)  [Share Link](#)

POSTED ON JANUARY 23, 2010 BY JOHN GIBSON

## When Is It Against the Law to be Fired?

Texas is an employment at-will state. What this means is that your employer can fire you at any time for any reason because your employment is at the will of the employer. However, there are situations where your employer cannot fire you. Often times when a workers' compensation claim is filed, the injured employee is worried about his/her job and rightfully so, since the employment is at-will. But here are some things to watch for to use as leverage in keeping your job:

1. Race/Sex/Age/Religious Discrimination - you cannot be fired for one of these reasons.
2. Public Whistleblowers - you cannot be retaliated against for blowing the whistle on a public employer.
3. Refusing to commit a crime.
4. Jury Service - You cannot be fired for missing work for jury duty.
5. Subpoena Compliance - You cannot be fired for missing work for obeying a subpoena to appear in court.
6. Military Duty - You cannot be fired for missing work for military duty.
7. Voting - You cannot be discriminated against for voting.
8. Union Membership - You cannot be denied employment based upon union membership.
9. Because Your Employer has been given a Child Support Withholding Order.
10. Agricultural Laborer Protections - Agricultural workers cannot be discriminated against for seeking information or working with authorities regarding hazardous chemicals in use.
11. Handling Hazardous Chemicals - Likewise, anyone who handles chemicals of more than 55

gallons or 500 pounds is protected.

- 12. Nursing Home Workers - nursing home employees are protected from reporting abuse and neglect that takes place in the facility.
- 13. Health Care Facility Workers - You are protected from reporting abuse, neglect, illegal, unethical or unprofessional conduct of persons associated with health care facilities.
- 14. And finally, you cannot be fired or discriminated against for filing a workers' compensation claim.

If you have been fired and you believe one of these exceptions to the at-will nature of you employment applies to you, then you should seek out a lawyer as soon as possible.

TAGS: [Compensation](#), [Employment Law](#), [Texas](#), [Workers](#), [fired](#), [law](#)

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POSTED ON SEPTEMBER 22, 2009 BY JOHN GIBSON

## New Maximum and Minimum Weekly Benefit Rates Out

The new maximum and minimum weekly benefit rates for 2010 have been published. The rates can be found [here](#).

TAGS: [Division of Workers Compensation](#), [IIBS](#), [SIBS](#), [TIBS](#), [benefits](#), [impairment](#), [income](#), [supplemental](#), [temporary](#)

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### Texas Workers Compensation Law Blog

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Texas workers' compensation lawyer & attorneys John Gibson + Associates, PC, offering services related to on-job injuries, disability, workers' comp benefits and insurance, serving Lubbock, Amarillo, Odessa, Midland, San Angelo and all throughout TX.





## Texas Department of Insurance

### Division of Workers' Compensation - System Monitoring & Oversight

7551 Metro Center Drive, Suite 100, MS-8 • Austin, Texas 78744-1645

•512-804-4000 • 512-804-4710 fax • www.tdi.state.tx.us

2/7/2011

JOHN E GIBSON  
1320 AVE Q  
LUBBOCK, TX 79401

Re: DOCUMENT ID: 936445  
INJURED EMPLOYEE: NA  
EMPLOYER: NA  
CARRIER: NA  
DATE OF INJURY: NA  
CLAIM NUMBER: NA  
CARRIER NUMBER: NA  
SUBJECT: John E Gibson

Dear John E Gibson:

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) has received a complaint pertaining to the above-referenced workers' compensation claim relating to: Misuse of TDI-DWC name and/or logo.

Texas Labor Code §419.002(a) provides that except as authorized by law, a person, in connection with any impersonation, advertisement, solicitation, business name, business activity, document, product or service made or offered by the person regarding workers' compensation coverage or benefits, may not knowingly use or cause to be used: (1) the words "Texas Department of Insurance," "Department of Insurance", "Texas Workers' Compensation," or "division of workers' compensation"; (2) any term using both "Texas" and "Workers' Compensation"; or any term using both "Texas" and "Workers' Comp"; or (3) the initials "T.D.I."; or (4) any combination or variation of the words or initials, or any term deceptively similar to the words or initials described by Subdivisions of (1) – (3). Additionally, Texas Labor Code §419.002(b) provides that except as authorized by law, a person, subject to Subsection (a) may not knowingly use or caused to be used a word, term, or initials described by Subsection (a) alone or in conjunction with: (1) the state seal or a representation of the state seal; (2) a picture or map of this state; or (3) the official logo of the department or the division or a representation of the department's or division's logo.

After a review of documentation related to this complaint, the TDI-DWC has determined that: Gibson + Associates, PC Law Firm is inappropriately using the words "Texas" and "Workers Comp" in the internet URL <http://www.texasworkerscomplaw.com/>, and must immediately discontinue in order to come into compliance.

**Available evidence indicates that a violation has occurred and that there is continued non-compliance. Prior to any enforcement action, you are requested to provide evidence that you have come into compliance with the duty of the Texas Labor Code or Texas Administrative Code rules described above within 10 calendar days after receiving this notice. If you feel that a violation did not occur, please provide a written response with sufficient evidence that supports your position.**

EXHIBIT "C"

02-07-11:03:28PM;

:5128044278

# 3/ 3

Texas Labor Code § 415.021(a) authorizes the IDI-DWC to assess an administrative penalty not to exceed \$25,000 per day per occurrence. Each day of noncompliance constitutes a separate violation. However, if evidence of compliance has not been received by the due date and the violation has not been refuted, continued noncompliance will compound the seriousness of the violation.

If you have any questions, please contact us and reference the above Document ID number assigned to this complaint.

Sincerely,



Myrna Marinelarena  
System Monitoring & Oversight  
Telephone: (512) 804-4735