INTER-OFFICE MEMORANDUM

TO: ATTORNEYS & CLIENTS

FROM: W. Joseph Truce

DATE: November 3, 2006

RE: **George's Attorney Terrorizes Adjusters**

From the Lobby Bar at the Hyatt:

George the Bartender was in the kind of mood that meant more gin and less vermouth in my martini. A positively beaming George told me that he was overjoyed to learn that the Hyatt's insurance carrier was late with his last permanent disability advance. When I asked why George explained that the insurance company was now in penalty and his attorney had just phoned to tell him that he was going to get a financial bonanza**.** I told George that this was impossible as L.C. 5814 as amended by SB 899 now only penalizes carriers up to 25% of the amount **actually delayed** and this would be a pittance if only one p.d. check was late. **George smiled and told me that he has a really smart attorney who terrorizes insurance carriers by issuing personal subpoenas for adjusters to appear at trial and that this tactic so frightens claims adjusters and carriers that they will pay anything to avoid an appearance at the WCAB.** After receiving my second martini I explained to George that the WCAB has discouraged this tactic in a panel decision in **Ward v State of California. In Ward (enclosed) a panel of the Board observed that before ordering an adjuster to appear at trial the party issuing the subpoena must show good cause that the testimony of the adjuster is necessary. In Ward the issue involved a L.C. 5814 penalty and the untimely payment of benefits and the Board observed that a benefit printout might well provide the same evidence that would be given by the adjuster. The Board went on to caution that taking an adjuster out of his/her office "may be detrimental to the handling of claims of other injured workers..." This panel decision was issued in 1996 but I still use this case when seeking to quash a subpoena issued to an adjuster for one of our clients. Pursuant to L.C. 5703 decisions of the WCAB can be used as evidence on similar issues.----joe truce**