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**MATTIONI, LTD.**  
COUNSELORS AT LAW

# Newsletter

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## Independent Medical Examination and Workers' Compensation

By Regina Parker, Esquire



An IME may be conducted to determine compensability, the extent of disability and necessity of treatment, and to evaluate permanent disability or loss of earning capacity. An IME also provides the insurance company or employer with independent verification as to whether the employee's medical condition is related to the work injury. Because the injured employee is not a patient or client of the independent examiner, no patient-physician or patient-client privilege exists.

During an IME, the doctor conducts an interview of the employee, performs an appropriate physical examination, and observes the employee's general appearance.

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When workers' compensation benefits are paid to an employee due to a loss of earning capacity as a result of a work related injury, the insurance company or self-insured employer has the right to request that the injured worker submit to an Independent Medical Examination or "IME." An IME is a medical examination conducted by a vocational expert selected and paid for by the insurance company or self-insured employer.

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### Disclaimer

The content of this Newsletter has been prepared by Mattioni, Ltd. for informational purposes only and should not be construed as legal advice. The material in this Newsletter is not intended to create and receipt of it does not constitute, a lawyer-client relationship, and readers should not act upon it without seeking professional counsel.

## Maritime Law and the Impact on our Lives

By Eugene Mattioni, Esquire

This article will be the first of a series explaining concepts of admiralty and maritime law that touch upon our daily lives. Some examples include the following: 1) if you were to take a cruise, the ticket purchased is a maritime contract. It can limit the time within which you can bring a claim to one year and limits the place where you can file suit; 2) if you rent a "wave runner" at the seashore or on a navigable river, it is a vessel subject to maritime law. The owner can limit his liability to the value of the wave runner pursuant to applicable maritime law; 3) salvage of historical artifacts and treasure on the bottom of the sea and rivers are governed by maritime law.

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The doctor questions the employee about his/her ailment, the treatment the employee has had for the injury, and whether or not the employee had any prior or subsequent injuries. The IME doctor determines if the employee smokes, drinks, uses illicit drugs or has other health or lifestyle issues that will impact the employee's ability to recover. The employee's symptoms and complaints are evaluated and a determination made regarding whether the symptoms and complaints are consistent with the manifestations of the injury claimed. The doctor also looks for any signs of exaggeration or deception by the employee. The IME report will contain an opinion as to whether the employee is malingering or intentionally exaggerating symptoms.

The physical examination is not limited to observations of physical touching the employee. It may also include all reasonable medical procedures and tests necessary to permit a provider to determine the extent of an employee's disability. Diagnostic testing such as an MRI may be part of a physical examination if it is proven that the test is necessary, involves no more than a minimal risk, and is not unreasonably intrusive.

An employee may be requested to submit to a physical examination at any time after an injury. It has generally been accepted that an employer is entitled to a physical examination every six months or twice per year. Refusal to attend an IME without reasonable cause or excuse may result in a suspension of benefits during the period of refusal.

There are a number of ways within which an employer can stop or modify benefits, however, an insurance company or employer cannot unilaterally stop payment of benefits. Despite the findings of the independent medical examiner, disability is presumed to continue until demonstrated otherwise. In the majority of instances, to stop or modify benefits requires litigation before a Workers' Compensation Judge,

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and the insurance company or employer must obtain an order from the Judge to change the payment status of workers' compensation benefits. In most instances, an IME will be used to either support or refute an employee's disability claim. If for example, the independent medical examiner determines that the employee has fully recovered from the work injury, the employer will likely file a Petition to Terminate Compensation Benefits in order to stop payment of benefits. If the IME doctor finds that the employee has not completely healed but is capable of working in a modified duty position, then the employer will likely file a Modification or Suspension Petition seeking to change the payment of wage loss benefits. This article does not discuss the many ways in which an employer can reduce an employee's benefits, not does it discuss the employee's rights and/or defenses which an employee might have in order to preserve his or her benefits.





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Ownership and rewards related to the artifact or treasure are governed by maritime law; 4) maritime law also governs the shipment of goods in transit on the sea and navigable rivers such as fruits, cars, electronics and many raw materials; 5) accidents involving vessels, boats, tankers or barges, at sea and on our navigable rivers, are governed by maritime law; 6) people who work on vessels such as seamen, longshoremen, people who work in our harbors, shipyard workers, and even those who prey on seafarers such as pirates and criminals are governed by maritime law. In many instances, our courts are protective of those who make their living on the sea because of the hazardous nature of their work. Our workers' compensation laws are premised on ancient maritime codes providing maintenance and cure for seamen injured in the service of a vessel; and 7) most of our law of pollution and protection of our harbors and rivers find their genesis in a maritime disaster or casualty. We all recall the grounding of the Exxon Valdez which led to the enactment of the oil pollution act of 1990 mandating that responsible polluters clean up and establish funds to pay for cleanup. These are but a few examples of maritime law impacting our lives.

The admiralty and maritime law of the United States has been adopted from the rich seafaring history of England, Europe and the Mediterranean states and early traders. Since colonial times, the United States has thrived on maritime commerce. It is also the foundation of our modern insurance industry starting at a coffee house at Lloyds of London where members began insuring ships and their cargoes. The Constitution uses the term "admiralty and maritime jurisdiction" without defining them. In England "maritime" referred to cases on the high seas whereas, "admiralty" meant primarily cases of a local nature. Today we have blended the terms and they are often interchanged. Admiralty courts were a prominent feature in the prelude to the American Revolution. By example, the phrase in the Declaration of Independence, "For depriving us in many cases, of the benefits of Trial by Jury" refers to the practice of Parliament giving the Admiralty Courts power to enforce the Stamp Act in the American Colonies. Admiralty Courts did not, as is true today, grant trial by jury.

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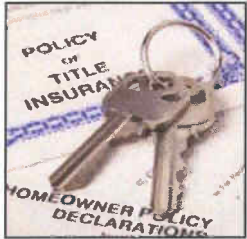
The maritime law includes acts committed on navigable waters and contracts and transactions connected with shipping employed on the seas or navigable waters. Peculiar to admiralty are suits “in rem” against a vessel, which are confined exclusively to our federal courts. Thus a suit can be captioned, John Smith v. The Motor Vessel Seven Seas. Ships can be arrested and seized and sold to pay debts of their owner. Liens for goods and services supplied to vessels can attach against a vessel.

The admiralty and maritime law is also international in scope governed by Conventions and Treaties to which the United States is a signatory, and enforced by the United States Coast Guard. We look forward to sharing with you some of the rich history, law and tradition of the Admiralty and Maritime Law of the United States.



## **It is Important to Consider Title Insurance when Buying a Home**

*By Robert W. Weidner, Esquire*



The most important investment most people make is a home purchase. Whether a first time purchase, upgrading, or downsizing, the event is full of numerous risks. There are concerns about the quality of new home construction, or the condition of an existing one. Buyer's seldom think about title insurance and it is not generally covered by realtors. You might assume that the house is being sold by its legitimate owner, with good title. However, risks to the contrary are real and substantial.

To minimize risks, you might rely on the realtor (usually representing the seller who is paying his commission), or in Pennsylvania on the disclosure statement issued to provide information about the home's condition. Various inspections can be made such as for termites, radon and mold, and other efforts made to determine whether the house purchased is as represented or assumed. You may want to hire a professional housing inspector for a comprehensive review of the premises. Special contract provisions may be included to escape the deal if inspections reveal unacceptable conditions.

But what about title? How does a purchaser protect against title defects such as unrecorded liens and encumbrances which could destroy the investment? How do you know that you will really own the property after closing the deal? One way to provide some protection is to purchase title insurance from a reputable title company.

There are many ways that a home buyer's title may be compromised and ownership rendered uncertain. The title process and issuance of insurance provides some protection. It is standard for U.S. lenders to require that a borrower be able to demonstrate good and sufficient title to a property used to secure a loan to purchase the home.

Title coverage is a form of indemnity insurance which may protect against financial losses resulting from defects in title or, as to a lender, things that may render a mortgage invalid or unenforceable. Usually, the purpose is to protect the owner's or lender's property interest.

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Mortgage lenders generally require insurance for the loan amount. Owners will secure coverage for the property value.

When an application is made, a title search and examination of public records affecting title will be made. The review includes documents filed with the recorder of deeds for previous ownership, mortgages and recorded liens, mechanics liens, judgments, delinquent taxes, child support, bankruptcies, probate documents, and other records that may have provisions impacting title. In the normal transaction the title report will reveal the matters of record, and will be removed, excluded or accepted by the insurer to allow the transaction to proceed.

If a prior lender had a recorded mortgage which was not satisfied at closing, the mortgage would remain a lien that would diminish your interest and, if not paid, could result in foreclosure. It is possible that somewhere in the title chain, an invalid or questionable conveyance of all or a part of the property occurred. This could mean that the buyer will not own the property because the seller didn't have good title. The seller can only convey the title that it has. Also, use restrictions, easements and other conditions may exist effecting your ability to use the property as intended.

Lenders generally require the results of the title search, and that a reputable company be willing to issue a title policy. If a problem arises after the purchase, the owner or lender will look to the title insurer to make good on the loss to the extent of the coverage. The title insurer may defend a lawsuit attacking title or may reimburse the loss up to the coverage limit. Title insurers have developed separate standard policies for both owners and lenders.

Because title issues can be complex, and the nature and extent of what a title coverage insures against in a given case can be varied and difficult to ascertain, it is important to have legal representation and to consider title insurance when buying a home.





## Firm News and Updates

**We are pleased to announce that Heidi G. Villari, Esquire, has joined the Firm as a Shareholder.**

**Heidi G. Villari, Esquire**, a graduate of Widener University School of Law and Villanova University. She is a civil litigator with significant major trial experience in federal and state courts in Pennsylvania and New Jersey. Her practice has focused on representation of diverse clients involving construction defects and accidents, complex product and premises liability, truck, bus and other motor vehicle accidents involving serious personal injury and death claims.

Ms. Villari also represents business clients where charges of negligent supervision and related general litigation matters are involved. She has more than 14 years of successful litigation and trial experience. Her previous experience includes serving as a law clerk in the Philadelphia Court of Common Pleas and as House Counsel for The Mountebatten Surety Company, Inc., a Zurich Financial Group Company, where she provided legal counsel related to surety, construction, commercial law, subrogation, lien laws, and hands on analysis of claims related to contractor defaults and the multiple issues related to performance, claims payments and possible takeover agreements, among other matters.

Ms. Villari will practice out of both the Philadelphia and Swedesboro offices of the firm on litigation and trial matters in state and federal courts. She is a welcome addition to Mattioni, Ltd., where she is expected to add a new dimension to its litigation practice.

**Michael Mattioni, Esquire**, has been elected to the Board of Directors of the Maritime Academy Charter School of Philadelphia. The High School's objective is to prepare students for careers in the maritime transportation and allied industries and businesses.

Mr. Mattioni was also the featured guest speaker at the **Commercial Real Estate Investors of PA** group in September. Mr. Mattioni addressed the investor group on commercial real estate and land use issues in Philadelphia and its surrounding counties. Mr. Mattioni has developed a substantial practice in the area of real estate including land use planning and development. He regularly appears before boards and commissions in applications for zoning and land use approvals in Philadelphia and the surrounding counties of Pennsylvania and Southern New Jersey.

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