

## MICHAEL C. DUFF

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### EDUCATION

Harvard Law School, Juris Doctorate, June 1995

West Chester University of Pennsylvania, *summa cum laude*, B.A., Philosophy, December 1991

### PUBLICATIONS

#### Law Review Articles, Essays & Reports

*New Labor Viscerality? Work Stoppages in the “New Work,” Non-Union Economy*, SAINT LOUIS UNIVERSITY LAW JOURNAL (forthcoming 2021)

*OSHA's Next 50 Years: Legislating A Private Right Of Action To Empower Workers* (with Thomas McGarity, Sidney Shapiro, Rena Steinzor, Katie Tracy), CENTER FOR PROGRESSIVE REFORM REPORT (2020)

*Protecting Workers In A Pandemic: What The Federal Government Should Be Doing* (with Thomas McGarity and Sidney Shapiro), CENTER FOR PROGRESSIVE REFORM REPORT (2020)

*How the U.S. Supreme Court Deemed the Workers' Compensation Grand Bargain “Adequate” Without Defining Adequacy*, 54 TULSA L. REV. 375 (2019) *reprinted in* WORKERS' FIRST WATCH, WORKERS' INJURY LAW & ADVOCACY GROUP, 27-43 (Winter 2018)

*Reflections on the “Persistence of Tort” and the “Demise of the Grand Bargain”* (symposium essay), 69 RUTGERS L. REV. 1257 (2018)

*A Tale of Two Standards: Why Wyoming Courts Should Apply the Actual Substantial Evidence Standard in Wyoming Workers' Compensation Cases*, 18 WYOMING L. REV. 1 (2017)

*Facial and As-Applied Challenges to Workers' Compensation Statutes: The Elusive Inadequacy Tipping Point* (Work in Progress)

*Beyond Republic Steel: Seeing NLRA Remedies Through the Prism of the Collateral Source Rule* (Work in Progress)

*Workers' Compensation Judicial Decisional Independence* (Work in Progress)

*Comment on Chapter 4 of The Restatement of Employment Law: Principles of Employer Liability for Tortious Harm to Employees*, 21 EMPLOYEE RTS. & EMP. POL'Y J. 487 (2017)

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*Worse Than Pirates or Prussian Chancellors: A State's Authority to Opt-Out of the Quid Pro Quo*, 17 MARQ. BENEFITS & SOC. WELFARE L. REV. 123 (2016)

*The Cowboy Code Meets the Smash Mouth Truth: Meditations on Worker Incivility*, 117 W. VA. L. REV. 100 (2015)

*Alt-Labor, Secondary Boycotts, and Toward a Labor Organization Bargain*, 63 CATHOLIC U. L. REV. 837 (2014)

*What Brady v. N.F.L. Teaches about the Devolution of Labor Law*, 52 WASHBURN L. J. 429 (2013)

*New Nip in the Bud: Does the Obama Board's Preemptive Strike Doctrine Enhance Tactical Employment Law Strategies?*, 16 EMPLOYEE RTS. & EMP. POL'Y J. 143 (2012)

*Of Courage, Tumult, and the Smash Mouth Truth: A Union-Side Apologia*, 15 EMPLOYEE RTS. & EMP. POL'Y J. 521 (2012)

*Union Salts as Administrative Private Attorneys General*, 32 BERKELEY J. EMP. & LAB. L. 1 (2011)

*Labor Injunctions in Bankruptcy: The Norris-LaGuardia Firewall*, 2009 MICH. ST. L. REV. 669 (2009)

- Cited by dissent in 8<sup>th</sup> Circuit Court of Appeals, *Brady v. National Football League*, 640 F.3d 785, 797 (8<sup>th</sup> Cir. 2011)
- Cited by the United States Bankruptcy Court, District of Delaware, *In re Trump Entertainment Resorts*, 534 B.R. 93 (2015)

*Embracing Paradox: Three Problems the NLRB Must Confront To Resist Further Erosion of Labor Rights in the Expanding Immigrant Workplace*, 30 BERKELEY J. EMP. & LAB. L. 133 (2009)

*Days Without Immigrants: Analysis and Implications of the Treatment of Immigration Rallies Under the National Labor Relations Act*, 85 DENV. U. L. REV. 93 (2007)

### Books

WORKERS' COMPENSATION LAW (Carolina Academic Press, 2<sup>nd</sup> ed. 2017) (Part of the Context and Practice Series explicitly applying Carnegie principles to casebook design)

Teachers Manual for Workers' Compensation Law (Carolina Academic Press)

A TREATISE OF WYOMING WORKERS' COMPENSATION LAW (CALI eLangdell Press, 1<sup>st</sup> ed. 2019)

SECUNDA, HIRSCH & DUFF, LABOR LAW: A PROBLEM BASED APPROACH (Carolina Academic Press, 2<sup>nd</sup> ed. 2017)

LABOR, CIVIL RESISTANCE, AND THE RULE OF LAW (Work in progress)

### Book Chapters & Other Contributions to Books

*Pre-Trial Dispute Resolution of Workers' Compensation Claims* (with Judge David B. Torrey) in RESOLVING INSURANCE CLAIM DISPUTES BEFORE TRIAL (American Bar Association Tort Trial & Insurance Practice Section 2017)

*John L. Lewis and the United Mine Workers* in *THE AMERICAN MIDDLE CLASS: AN ECONOMIC ENCYCLOPEDIA OF PROGRESS AND POVERTY*, Robert S. Rycroft, Ed. (ABC-CLIO 2017)

*The Cloak (of Authority) That Will Not Fit: The 6th Circuit Upholds the NLRB's New Pre-Recognition Negotiation Rule* in *THE CHALLENGE FOR COLLECTIVE BARGAINING: PROCEEDINGS OF THE NEW YORK UNIVERSITY 65TH ANNUAL CONFERENCE ON LABOR*, Samuel Estreicher and Michael Green, Eds., Chapter 8, (Matthew Bender 2013)

### Shorter Pieces

*Challenges for Black Workers After 2020: Antiracism in the Gig Economy?*, *EMPLOYEE RTS. & EMP. POL'Y J.* (Forthcoming 2021).

*The Functional Operation of Workers' Compensation Covid 19 Presumptions*, *Workers' First Watch*, Workers' Injury Law & Advocacy Group, February 8, 2021 *available at* <https://www.wilg.org/?pg=Publications>

*All the World's a Platform?: Some Remarks on "Marketplace Platform" Employment Laws* (Vol. 50, No. 2, Winter 2021, the Brief, Magazine of the ABA Tort Trial and Insurance Practice Section)

*Can Workers' Compensation Work in a Mega-Risk World?: The Covid 19 Experiment*, 35 *ABA JOURNAL OF LABOR OF LABOR & EMPLOYMENT LAW* 17 (Winter 2021)

Review of "The Personal Responsibility Pandemic: Centering Solidarity in Public Health and Employment Law" by Lindsay F. Wiley & Samuel R. Bagenstos" in *RAPID REVIEWS: COVID-19* (MIT Press), September 14, 2020

*Workers' Compensation Exclusivity*, *WORK LAW UNDER COVID-19*, edited by Sachin S. Pandya and Jeffrey M. Hirsch, chap. 5 (2020)

*Causation in Workers' Compensation*, *WORK LAW UNDER COVID-19*, edited by Sachin S. Pandya and Jeffrey M. Hirsch, chap. 4 (2020)

*Post-Traumatic Stress Disorder (PTSD) Coverage and other Expanding Benefit Changes in the Workers' Compensation Insurance Marketplace: Academic Legal Perspective*, Annual Meeting of the National Council of Insurance Legislators, Working Paper Presented December 12, 2019, Austin, TX

*Noe Rodriguez v Brand Dairy: Balancing Equal Protection and a State's Economic Interest*, 3 *INTERNATIONAL LABOR RIGHTS CASE LAW* 106 (2017)

*Compulsory Arbitration: More Empty Preemption of State Workers' Comp?*, *TORTSOURCE*, PUBLICATION OF THE TORT TRIAL & INSURANCE PRACTICE SECTION, Vol. 19, No. 1 at 3 (Fall 2016)

*Opt-Out and ERISA's Empty Preemption of Workers' Compensation* (with Mark DeBofsky), *TORT TRIAL & INSURANCE PRACTICE SECTION NEWSLETTER* (Fall 2016)

*Workers' Compensation Laws: No Escape from ERISA Preemption?*, *LEXISNEXIS LEGAL NEWSROOM*, *WORKERS' COMPENSATION LAW* *available at* <https://www.lexisnexis.com/legalnewsroom/workers-compensation/b/recent-cases-news-trends-developments/archive/2016/05/23/workers-compensation-opt-out-laws-no-escape-from-erisa-preemption.aspx> (May 31, 2016)

*Choppy Waters Ahead: The New Environment of Law School Scholarships*, *WYOMING LAWYER*, 39-APR WYO. LAW 20 (April 2016)

*Are Workers' Compensation "Alternative Benefit Plans" Authorized by State Opt-Out Schemes Covered by ERISA?*, 45 THE BRIEF 22, A.B.A. TORT TRIAL & INSURANCE PRACTICE SECTION (Spring 2016)

- Cited by the Oklahoma Supreme Court concurrence, *Vasquez v. Dillard's*, 381 P.3d 768, 780 n.38 (Ok. 2016)

*Workers' Comp Agency Declares Oklahoma Opt-Out Statute Unconstitutional*, LEXISNEXIS LEGAL NEWSROOM, WORKERS COMPENSATION LAW available at <http://www.lexisnexis.com/legalnewsroom/workers-compensation/b/recent-cases-news-trends-developments/archive/2016/02/28/workers-comp-agency-declares-oklahoma-opt-out-statute-unconstitutional.aspx> (February 28, 2016)

*A Hundred Years of Excellence: But is the Past Prologue? Reflections on the Pennsylvania Workers' Compensation Act*, 87 PA. B.A. Q. 20 (January 2016)

- Cited by Kentucky Court of Appeals, *Choate v. Bank of Cadiz & Trust Co.*, 2016 WL 3453326

Book Review: *Defamation Law and Social Attitudes: Ordinary Unreasonable People*, by Roy Baker, 42 INT'L J. LEGAL INFO. 420 (2014)

*The Continued Relevance of the NLRA to Non-Union Workplaces under Section 7's Mutual Aid or Protection Clause*, ABA Section of Employment Litigation and Labor Relations E-Newsletter (Winter 2014) available at <http://apps.americanbar.org/litigation/committees/employment/home.html>

*Terms Matter: Reflections on the Wyoming Debate Over the Teachers' "Union" and Teacher "Tenure"*, 34 WYOMING LAWYER 16 (April 2011).

*The Debt Ceiling Debate and the Constitution: A Call for Caution*, JURIST- Forum, July 16, 2011, <http://jurist.org/forum/2011/07/davis-duff-ware-debt-ceiling.php> (with Benjamin Davis, Craig Jackson, and Leland Ware)

## **BLOGS & PODCASTS**

Founder, Co-Editor, and Author, WORKERS' COMPENSATION LAW PROFESSORS' BLOG

- Nationally recognized blog devoted to analysis of workers' compensation legal issues and discussion of teaching workers' compensation in law school
- Featured regularly in the national workers' compensation online publication "WorkCompCentral"
- Blogpost cited in the Rand Corporation's 2018 publication HOW CAN WORKERS' COMPENSATION SYSTEMS PROMOTE OCCUPATIONAL SAFETY AND HEALTH?

Appearances With Center for Progressive Reform

- Reposted Blogposts
  - *Will COVID-19 'Shock' Workplace Injury Law Like the Railroads of the Early 20th Century?*, July 2, 2020

- *Pandemic Heroes Compensation Act of 2020: Preliminary Observations on the Proposed Bill*, June 15, 2020
  - *Federal District Court Rebuffs Trump Labor Board For Shirking Rulemaking Requirements*, June 3, 2020
  - *Another Public Nuisance COVID Suit: Why is the McDonald's Case Different?*, May 21, 2020
  - *The Stimulus 'Liability' Debate: Don't Forget Texas Elective Workers' Compensation*, May 14, 2020
  - *Novel Smithfield Foods Public Nuisance Suit Dismissed Without Prejudice*, May 6, 2020
  - *The Public Nuisance Litigation in a Smithfield Foods Meatpacking Case: Workers' Compensation Implications?*, May 5, 2020
  - *President Orders Continued Meat Production; And Then There's the 13th Amendment*, April 30, 2020
  - *COVID-19: Legal Issues When Workers' Compensation Doesn't Apply*, April 21, 2020
  - *The Coronavirus and Shortcomings of Workers' Comp*, April 1, 2020
- Podcast
    - *Season 3, Episode 7: Essential Not Expendable—Protecting Workers from COVID-19 (1:04)*

Featured Guest, WORKERS COMP MATTERS, LEGAL TALK NETWORK, “Presumptions in the Age of Covid-19,” February 24, 2021

## **PRESENTATIONS & PUBLIC APPEARANCES**

Invited Panelist, “The State of Affairs for COVID- Related Workers Compensation Claims,” AFL-CIO Union Lawyers Alliance, 2021 Northeast Regional Meeting, March 10, 2021

Invited Panelist, “Workers’ Rights in the Wake of a Global Pandemic,” Seattle University Law School Journal of Social Justice (virtually), March 5, 2021

Invited Panelist, “Covid as an Occupational Disease: How Do Various States Handle These Claims?,” Workers’ Injury Law & Advocacy Group, Webinar, January 22, 2021

Invited Panelist, “A Discussion with the Law Professors, What do the Legal Academics Think About These Unusual Times We find ourselves In?,” Ametros Financial Webinar, October 27, 2020

Panelist, “Emerging Issues in the Law of Work Stoppages,” Saint Louis University Law School, St. Louis, MO (via Zoom), September 18, 2020

Invited Panelist, “Expanding Transit Worker Protection Programs,” TransitCenter, New York, NY (via Zoom), July 1, 2020

Invited Presenter, “Making a Federal Case Out of it: How Federal Preemption Can Unexpectedly Impact State Law,” Continuing Legal Education presentation, Wyoming State Bar (Federal Practice Section), June 25, 2020

Panelist, “Post-Traumatic Stress Disorder (PTSD) Coverage and other Expanding Benefit Changes in the Workers’ Compensation Insurance Marketplace,” National Council of Insurance Legislators, Austin, TX, December 12, 2019

Invited Panelist, “Federal Theories for Constitutional Challenges to Regressive Changes in Workers’ Compensation Laws,” Workers Injury Law and Advocacy Group Annual Convention, Santa Barbara, CA, October 29, 2019

Invited Panelist, “Immigration, Labor, and Modern Day Slavery,” Potter Law Club Spring Panel, Laramie, Wyoming, April 24, 2019

Invited Presenter, “Judicial Review of Administrative Decisions,” Wyoming Office of Administrative Hearings Annual Meeting, Jackson, Wyoming, September 29, 2018

Invited Presenter, “Beyond Silicon Valley: The Gig Economy Goes Low Tech,” American Association for Justice Annual Convention, Denver, Colorado, July 10, 2018

Invited Presenter, “The Madness in March Madness?: Selected Labor and Employment Controversies Related to Athletes,” Laramie County Bar Association Monthly Meeting, March 15, 2018

Keynote Speaker, “Meta Power Grabs,” Workers Injury Law and Advocacy Group Annual Convention President’s Dinner, Palm Beach, Florida, October 16, 2017

Organizer & Presenter, Wyoming Workers’ Compensation Symposia, Series of Presentations on Wyoming Workers’ Compensation Law Meant to Clarify and Restate Principles of Wyoming Workers’ Compensation Law (First Such Workers’ Compensation Presentations in History of the College of Law)

- Symposium 1 (Notice and Statute of Limitations), Laramie, Wyoming, September 22, 2017
- Symposium 2 (Scope of Coverage and Causation), Laramie, Wyoming, November 10, 2017
- Symposium 3 (Extent of Incapacity; Permanent versus Temporary; Partial versus Total Benefits), Laramie, Wyoming, February 9, 2018
- Symposium 4 (Select Administrative and Evidentiary Issues), Laramie, Wyoming, April 13, 2018

Invited Panelist, “Grand Bargain or Contract of Adhesion: The Ongoing Debate Over Benefit Adequacy, Procedural Efficacy, and Blanket Immunity in Workers’ Compensation,” Workers’ Compensation Institute, Orlando, Florida, August 8, 2017

Invited Discussant, “Integrating Workers’ Compensation Policy Experts into the Data Collection Efforts of the National Association of Social Insurance,” Washington D.C., June 7, 2017

Invited Panelist, “Top 5 Workers’ Compensation Cases in 2016,” College of Workers’ Compensation Lawyers’ Inaugural Symposium, Phoenix, Arizona, March 18, 2017

Invited Discussant, Law School Outreach Summit, Pound Civil Justice Institute, Methods to Improve Communication Between Law Schools and the Plaintiffs’ Bar, San Francisco, CA, January 6, 2017

Invited Presenter, “Comment on Chapter 4 of The Restatement of Employment Law: Principles of Employer Liability for Tortious Harm to Employees,” Labor Law Group Symposium, Indiana University, Bloomington, Indiana, November 18, 2016

Presenter, “The Corporatization of Workplace Adjudication,” ClassCrits IX Conference, Loyola University Chicago School of Law, Chicago, Illinois, October 21, 2016

Invited Presenter, “ERISA & Opt-Out,” Workers’ Injury Law & Advocacy Group Annual Meeting, Carefree, Arizona, September 26, 2016

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Invited Discussant, “The Demise of the Grand Bargain” Symposium, Rutgers Law School, September 23, 2016

Invited Panel Moderator and Presenter, “The Opt Out, the Constitution, and the Grand Compromise,” 8<sup>th</sup> Annual National Workers’ Compensation Judiciary College, Orlando, Florida, August 23, 2016

Invited Panelist, “The Opt-Out Option in Workers’ Compensation: Who Gains and Who Loses?,” Disparate Income, Wealth and Opportunity: Implications for Social Insurance, National Academy of Social Insurance, National Press Club, Washington, D.C., January 27, 2016

Invited Speaker: “Methodical Confrontation of Suspected Bias in Administrative Decision Making,” Michigan Association for Justice 2016 Workers’ Compensation/Social Security Seminar, Detroit, Michigan, January 15, 2016

Keynote Speaker, “Footholds from Free Fall,” National Labor Relations Board Union Annual Meeting, Atlanta, Georgia, October 10, 2015

Keynote Speaker, “A Hundred Years of Excellence: But is the Past Prologue?” 31<sup>st</sup> Annual Fall Section Meeting of the Workers’ Compensation Law Section of the Pennsylvania Bar Association, Centennial Celebration, Hershey, Pennsylvania, October 7, 2015

Invited Panel Moderator and Presenter, “Two Enduring Workers’ Compensation Legal-Ethical Problems: Unrepresented Parties and Undocumented Workers,” American Bar Association Section of Labor and Employment Law, Tort, Trial and Insurance Practice Section, 2015 Workers’ Compensation Midwinter Seminar and Conference, Naples, Florida, March 20, 2015

Invited Panelist, “New Frontiers in Traditional Labor Law: From Student Athletes to Social Media,” University of Denver/Ogletree Deakins Annual Speaker Event, Sturm College of Law, Denver, Colorado, February 25, 2015

Invited Presenter, “Workers’ Compensation Judicial Decisional Independence,” Workers’ Injury Law & Advocacy Group Annual Meeting, Santa Barbara, California, October 29, 2014

Invited Presenter, “The Cowboy Code Meets the Smash Mouth Truth,” University of West Virginia College of Law, Zealous Advocacy for Social Change: Transforming an Anti-Labor Environment into a Culture of Civility, Morgantown, West Virginia, October 24, 2014

Presenter, “Workers’ Compensation and a State’s Right to be Worse than Pirates and Prussian Chancellors,” University of Colorado, 9<sup>th</sup> Annual Labor & Employment Scholars Colloquium, Boulder, Colorado, September 11, 2014

Presenter, “What Brady v. N.F.L. teaches about the Devolution of Labor Law,” Washburn University, School of Law’s Business and Transactional Law Center, The Landscape of Private Sector Labor Law in the 21<sup>st</sup> Century - Changes in the Arenas of Conflict, Topeka, Kansas, February 28, 2013

Panelist, “The Role of Law in Creating the Good Employer,” United Association of Labor Education Annual Conference, Pittsburgh, Pennsylvania, March 23, 2012

Panelist, “Exploring How Access to Education and Safe, Affordable Energy Contribute to Creating a More Just Workplace,” Working Class Studies Association Annual Conference, University of Illinois-Chicago, Chicago, Illinois, June 25, 2011

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Presenter, “Collective Bargaining: What it is; What it isn't; Why it Matters,” Wyoming Continuing Legal Education Session, University of Wyoming, Laramie, Wyoming, April 16, 2011

Presenter, “Of Courage, Tumult, and the Smash Mouth Truth,” Association of American Law Schools (AALS) Annual Meeting, Author Meets Reader: Discussing Julius Getman’s Restoring the Power of Unions, Section on Labor Relations and Employment, San Francisco, California, January 8, 2011

Presenter, “Canaries in the Coal Mine: The Tactical Use of the National Labor Relations Act to Aid in the Protection of Workers Exposed to Pollutants,” Shepard Symposium on Social Justice, University of Wyoming, Laramie, Wyoming, April 8, 2010

Panelist, “Contested Case Procedures under the Wyoming Administrative Procedure Act,” Annual Meeting of the Wyoming Association of County Officials, Laramie, Wyoming, September 22, 2009

Presenter, “University of Wyoming Social Justice Research Center and My Personal Commitment to Issues of Social Justice,” Martin Luther King Jr. Day, March and Days of Dialogue, University of Wyoming, Laramie, Wyoming, January 19, 2009

Presenter, “Working in the Federal and Wyoming Legal Systems,” Casper, WY, July 17, 2008 (Wyoming Continuing Education Seminar)

Presenter, “Federal Sector Equal Employment Opportunity Law Complaint Procedures Pursuant to 29 C.F.R. 1614,” National Labor Relations Board Union Convention, Miami, Florida, October 17, 2003

Presenter, “The State of ‘Refusal to Hire’ Law in the Wake of the NLRB’s Decision in FES” International Brotherhood of Electrical Workers Regional Meeting, Pomona, New Jersey, January 16, 2003

Presenter, “Traps for the Unwary in National Labor Relations Board Regional Office Procedures,” Rutgers University School of Management and Labor Relations, Union Leadership Academy, April 2, 2001

## **MEDIA APPEARANCES**

*Quoted in* Tom Hals, “Virginia law denies benefit to some healthcare workers who refuse COVID-19 vaccine,” Reuters, April 1, 2021

*Quoted in* Braden Campbell, “Results Still a Ways Off As Amazon Union Vote Wraps,” LAW360 EMPLOYMENT AUTHORITY, March 26, 2021

*Quoted in* Mark Powell, “Ruling Shows Pot Comp Question Still State-Specific; Payers Wary of Federal Statutes,” WORKCOMP CENTRAL, March 4, 2021

*Quoted in* Mike Elk, “Amazon Offers \$2,000 ‘Resignation Bonuses’ to Bust Union Drive in Alabama,” PAYDAY REPORT, February 21, 2021

*Quoted in* Emily Brill, “High Court Ruling May Be A Boon For Benefits Access,” LAW360, February 19, 2021



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*Quoted in* Bruce Rolfsen, “Amazon Covid-19 Lawsuit Spotlights State Regulatory Power,” BLOOMBERG LAW, February 18, 2021

*Quoted in* Mark Powell, “Lack of New Business, Premium Returns Could Weigh Down Carriers in 2021,” WORKCOMP CENTRAL, February 10, 2021

*Quoted in* Robert Iafolla, “Workers’ Compensation Can Soothe Some Covid Vaccine Fears,” BLOOMBERG LAW, February 4, 2021

*Quoted in and shown in news video,* Tom Hals, “At the urging of nursing homes, a law is amended and COVID court claims are slowed,” REUTERS, January 28, 2021

*Quoted in* William Rabb, “New OSHA COVID Guidance Could Help Limit Spread, Affect Some Claims Defense,” WORKCOMP CENTRAL, January 26, 2021

*Quoted in* Mark Powell, “As Grocer Plans to Replace Drivers, Observers Question Sufficiency of Prop. 22 Benefits,” WORKCOMP CENTRAL, January 13, 2021

*Quoted in* Braden Campbell, “New Google Union Tests Novel ‘Minority’ Organizing Approach,” LAW 360, January 5, 2021

*Quoted in* Mark Powell, “State Supreme Court Says Undocumented Workers Can Get Comp Benefits,” WORKCOMP CENTRAL, January 5, 2021

*Quoted in* Virginia Jeffries, “Coronavirus (Covid-19) and vaccines: What if my employer requires me to get it?,” CLEAR HEALTH COSTS, December 11, 2020

*Quoted in* Mark Powell, “WCIRB Study Links Treatment Delays to Higher Claim Costs,” WORKCOMP CENTRAL, November 18, 2020

*Quoted in* Virginia Jeffries, “Coronavirus (Covid-19) and workers’ compensation: When your employer won’t pay up,” CLEAR HEALTH COSTS, November 13, 2020

*Quoted in* Sam Lemonick, “Who pays when a graduate student gets hurt?,” CHEMISTRY & ENGINEERING NEWS, November 1, 2020

*Quoted in* Lori Chordas, “Workers’ Compensation: On the Front Line,” BEST’S REVIEW, November 2020

*Quoted in* Beth Ewen, “How Employers Can Prepare for Rise in Pandemic-related Lawsuits,” FRANCHISE TIMES, October 28, 2020

*Quoted in* Rick Gell, “Kamala Harris should be the only Democrat to question Amy Coney Barrett for these 6 important reasons,” RAWSTORY, October 12, 2020

*Quoted in* Evan Hoopfler, “Southwest Airlines wants employees to take pay cuts. Will the unions go along?,” DALLAS BUSINESS JOURNAL, October 7, 2020

*Quoted in* Robert Iafolla, “Union Elections Hang in the Balance as NLRB Ponders Vote by Mail,” BLOOMBERG DAILY LABOR REPORT, October 7, 2020

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*Quoted in* David Sirota, “Barrett Crushed Gig Workers Weeks Before Likely SCOTUS Nomination,” THE DAILY POSTER, September 26, 2020

*Quoted in* Mark Powell, “With Presumption in Place, Investigators Could Play Role in Covid-19 Claims,” WORKCOMP CENTRAL, September 23, 2020

*Quoted in* Mark Powell, “Golden State Stands Out in Considering COVID Costs for New Rate Filing,” WORKCOMP CENTRAL, September 17, 2020

*Quoted in* Roz Plater, “Why Your Employer May Not Have to Tell You If a Co-Worker Has COVID-19,” HEALTHLINE, September 15, 2020

*Quoted in* Braden Campbell, “4 Labor Cases To Watch In The End of 2020,” LAW 360, September 4, 2020

*Quoted in* Sindhu Sundar, “Retail Workers Face Rough Road in Corporate Bankruptcies,” YAHOO FINANCE, September 1, 2020

*Quoted in* Christopher Yaszko, “When Athletes Walked, Was it a Boycott or a Strike,” BLOOMBERG NEWS, August 28, 2020 reprinted in the WASHINGTON POST of the same date

*Quoted in* Mark Powell, “Newsom's Order Creating COVID Presumption Was Unconstitutional, Defense Firm Alleges,” WORKCOMP CENTRAL, August 21, 2020

*Quoted in* Aarthi Swaminathan, “Coronavirus: Some college students returning to campus are being met with liability waivers,” YAHOO FINANCE, August 12, 2020

*Quoted in* Billy House, “McConnell Fight for Liability Shield a Key Hitch as Talks Stall,” BLOOMBERG LAW, August 11, 2020

*Andrew Kreighbaum and Fatima Hussein*, “Campus Workers Fear Contagion as Colleges Seek Legal Immunity,” BLOOMBERG LAW, August 5, 2020

*Quoted in* Mark Powell, “Study: Health Care Workers File 9 Times More COVID-Related WC Claims Than Other Groups,” WORKCOMP CENTRAL, August 4, 2020

*Quoted in* Robert Iafolla, “Employers Get Major Protections in GOP Liability Shield Bill,” BLOOMBERG LAW, August 3, 2020

*Quoted in* Josh Eidelson & Hassan Kanu, “It’s Now Even Easier to Fire U.S. Workers for What They Say,” Bloomberg Law, July 30, 2020

*Quoted in* Hailey Ross & Jason Woleben, “Signs of Price Flattening Emerging in Workers’ Compensation Market,” S & P GLOBAL MARKET INTELLIGENCE, July 24, 2020

*Quoted in* Robert Iafolla & Fatima Hussein, “No Mask, No Service Rules Leave Workers Open to Customer Abuse,” BLOOMBERG LAW, July 21, 2020

*Quoted in* David Sirota, “NY Dems Created McConnell’s Corporate Immunity Template Amid A Flood of Cash,” TOO MUCH INFORMATION, July 20, 2020

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*Quoted in* Ricardo Alonso-Zaldivar, “COVID-19 heroes must jump through hoops for workers’ comp,” ASSOCIATED PRESS, July 11, 2020

*Quoted in* Braden Campbell, “Want Workers To Sign COVID-19 Waivers? Don't Go There.,” LAW360, July 2, 2020

*Quoted in* Fatima Hussein & Jaclyn Diaz, “Covid Wrongful Death Suits Test Employer Liability to Families,” BLOOMBERG LAW, June 25, 2020

*Quoted in* David Sirota, “The Supreme Court Just Gave Corporations a License to Steal,” MOYERS ON DEMOCRACY, June 24, 2020

*Quoted in* Mark Powell, “Senator Amends Presumption Bill to Mimic Governor’s EO; Businesses Worry About Increased Costs,” WORKCOMP CENTRAL, June 23, 2020

*Quoted in* Mark Powell, “California WCIRB Moves Forward with Telecommuter Classification, Will Define Rate in August,” WORKCOMP CENTRAL, June 18, 2020

*Quoted in* Vin Gurrieri, “COVID Suits Test 'Public Nuisance' Claim In Workplace Cases,” Law 360, June 9, 2020

*Quoted in* Tom Coulter, “Committee votes to draft bill to shield businesses from COVID-19 lawsuits,” Wyoming Tribune Eagle, June 5, 2020

*Quoted in* Robert Iafolla, “McDonald’s Case Tests Nuisance Theory for Job Virus Safety,” BLOOMBERG LAW, June 4, 2020

*Quoted in* Olga Khazan, “A Hidden COVID-19 Risk Factor: Your Boss,” THE ATLANTIC, June 1, 2020

*Quoted in* David Sirota, “Cuomo gave immunity to nursing home executives after big campaign donations” THE GUARDIAN, May 26, 2020

*Quoted in* Tom Hals, “COVID-19 lawsuit takes on McDonald's like it was a rowdy bar,” REUTERS, May 26, 2020.

*Quoted in* David Dayen, “Lab Rats to Shore Up Hospital Revenue Streams,” THE AMERICAN PROSPECT, May 22, 2020

*Quoted in* Jim Sams, “More States Push COVID-19 Claims to Work Comp; Potential Cost Anyone’s Guess,” CLAIMS JOURNAL, May 19, 2020

*Quoted in* Robert Iafolla, “Workers’ Comp Systems Poised for Deluge of Covid-19 Claims,” BLOOMBERG LAW, May 8, 2020

*Quoted in* Mark Powell, “Employers, Carriers Could Bear Cost of Newsom's COVID-19 Order, but Questions Remain,” WORKCOMP CENTRAL, May 8, 2020

*Quoted in* Katy Murphy, “California labor, business groups in fierce battle over coronavirus workers’ comp change,” POLITICO, April 20, 2020

*Quoted in* Robert Iafolla, “A Legal Guide for Employers After Virus-Driven Union Layoffs,” Bloomberg Law, April 17, 2020

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*Quoted in* Braden Campbell, “Virus-Inspired Worker Uprisings May Have Lasting Impact,” LAW360, April 15, 2020

*Quoted in* Mark Powell, “WCIRB to Consider Excluding COVID-19 Claims From Experience Rating Modifications,” WorkCompCentral, April 13, 2020

*Quoted in* Fatima Hussein, “Workers’ Comp Premiums Could Skyrocket With Covid-19 Claims,” Bloomberg Law, March 30, 2020

*Quoted in* Jaclyn Diaz, “Gigging With Benefits Proposed as Answer to Existential Threat,” Bloomberg Law, March 9, 2020

*Quoted in* Robert Iafolla, “More Than Half of NLRB Regional Offices Have Top-Level Vacancies,” Bloomberg Law, March 4, 2020

*Quoted in* Camille Erickson & Nick Reynolds, “Wyoming lawmakers move to protect workers, counties, against future coal bankruptcies,” CASPER STAR TRIBUNE, Feb. 17, 2020

*Quoted in* Robert Iafolla, “More Labor Law Charges Possible Under NLRB Union Election Rule,” BLOOMBERG LAW/DAILY LABOR REPORT, January 3, 2020

*Interviewed in* Lee McDonald, “Workers’ Comp, Not Courts, Should Handle Workplace PTSD Claims,” A.M. BEST TV, Austin, TX, December 12, 2019

*Quoted in* Fatima Hussein, “‘Culture of Fear’ Grips UPS; Workers Say Injuries Underreported,” BLOOMBERG LAW/DAILY LABOR REPORT, December 4, 2019

*Quoted in* William Rabb, “From Body Armor to Opioid Disposal Bags, BWC Taking Comp Spending in New Directions,” WORKCOMPCENTRAL, October 21, 2019

*Profiled in* Member Spotlight, NATIONAL ACADEMY OF SOCIAL INSURANCE, October 2019

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*Quoted in* J. Todd Foster, “Claimants’ Attorneys: Proposed Protz Fix Unconstitutional,” WORKCOMP CENTRAL, October 12, 2017

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*Quoted in* J. Todd Foster, “Medical Ethicist Says Attorney and Doctor-Owned Pharmacy is Conflict of Interest,” WORKCOMP CENTRAL, September 26, 2017

*Quoted in* Daniel Marans, *Did the Washington Post Break a Law When it Disciplined a Reporter Over a Jeff Bezos Op-Ed?* HUFFPOST, September 15, 2017

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*Quoted in* Jim Sams, “Inaction By Lawmakers Not Always a Partisan Divide,” WORKCOMP CENTRAL, June 26, 2017

*Quoted in* Emily Brill, “Single-Payer Bill to Consider How Experience Ratings Fit into Comp Merger,” WORKCOMP CENTRAL, June 5, 2017

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*Quoted in* Emily Brill, “Appeals Court Misinterpreted Definition of ‘Willful Misconduct,’ High Court Finds,” WORKCOMP CENTRAL, March 1, 2017

*Quoted in* Bryce Covert, “The Nurses Who Lost Their Jobs Thanks to Trump’s New Labor Secretary Nominee,” THINKPROGRESS, February 23, 2017 (Note: I argued in support of the nominee)

*Quoted in* Nat Levy, “Postmates ordered to pay 2+ years of workers’ comp premiums for more than 3,000 couriers,” GEEKWIRE, December 13, 2016

*Featured in* Emily Brill, “Workers’ Comp Professor Has One Foot in Theoretical, Practical,” WORKCOMP CENTRAL, November 22, 2016

*Quoted in* Sherri Okamoto, “Unlevel Playing Field?” in WORD ON WORKERS’ COMPENSATION 2016, WORKCOMP CENTRAL, November 10, 2016

*Quoted in* J. Todd Foster, “Federal Interest in Comp Making Some Nervous, but Quick Action Unlikely,” WORKCOMP CENTRAL, October 7, 2016

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*Quoted in* Timothy Noah, “Who’s Afraid of the Persuader Rule,” POLITICO, August 3, 2016

*Quoted in* David DePaolo, “The Real Objection to Opt Out,” WORKCOMP CENTRAL, June 10, 2016

*Quoted in* Emily Brill, “Report: Opt Out in Texas Shifts \$400M-\$600M to Public, Private Payers,” WORKCOMP CENTRAL, June 10, 2016

*Quoted in* Howard Berkes, “Oklahoma Commission Declares Workers’ Comp Alternative Unconstitutional,” NATIONAL PUBLIC RADIO, February 29, 2016

*Quoted in* Karen C. Yotis, “Federalization of Workers’ Comp: Politics, Opt-Outs and Survival of the State-Based Status Quo,” LEXISNEXIS LEGAL NEWSROOM, WORKERS COMPENSATION LAW, February 19, 2016

*Quoted in* Sherri Okamoto, “Claimant Attorneys Fight Cost Cutting with Constitutional Challenges” in WORD ON WORKERS’ COMPENSATION 2015, WORKCOMP CENTRAL, November 25, 2015

*Quoted in* Moshe Z. Marvit, “Duquesne’s NLRB Filing Reads as a Brazen Threat To Adjunct Union Organizers,” IN THESE TIMES, August 3, 2015

*Quoted in* Andrew Elrod, “Inside the Case That Could Hold McDonald’s Responsible for Union-busting,” IN THESE TIMES, April 29, 2015

*Quoted in* Lisa Nagele-Piazza, “Uber, Lyft Drivers’ Wage Claims May Affect On-Demand Business Model, Attorneys Say,” BLOOMBERG BNA DAILY LABOR REPORT, April 8, 2015

*Quoted in* Richie Bernardo, “2015’s Hardest Working Cities in America.” WALLETHUB, February 2015



*Quoted in* Andrew Elrod, "How a Good Employer Supports Union Busting," THE NATION, August 15, 2014

*Interviewed by* Melodie Edwards, "Latino Workplace Safety," WYOMING PUBLIC RADIO, July 18, 2014

*Interviewed by* Mike Elk, "Former DOJ Inspector General Represents GOP NLRB Member Caught in Scandal," IN THESE TIMES, April 11, 2012

*Quoted in* Geoff Williams, "Workers' Compensation, Employers Complication," NFIB.COM, December 14, 2012

## **EXPERIENCE**

### **ACADEMIC LEGAL EXPERIENCE**

**University of Wyoming College of Law** 8/2006-present

#### **Academic Appointments**

Professor of Law 7/2012-present  
Associate Professor of Law 8/2009-6/2012  
Assistant Professor of Law 8/2006-7/2009

**University of Denver, Sturm College of Law** 1/2013-5/2013

Visiting Professor of Law

#### **Administrative Experience**

Associate Dean of Student Programs and External Relations 10/2015-9/2016

Responsible for day-to-day management of student programs, including oversight of student recruitment, admissions, and career services; supervision of external relations with a variety of entities including State Bar officials, legal employers, undergraduate pre-law advisors, and the Law School Admissions Council; catalyst for new program development responsive to rapid changes in the overall law school environment; coordination of student counseling, academic support, and Bar admissions support; and staff supervision in connection with each of these functions.

### **NON-ACADEMIC LEGAL EXPERIENCE**

**National Labor Relations Board**, Philadelphia, PA; Minneapolis, MN 9/1997-8/2006  
*Regional Office Attorney*

**McTeague, Higbee & MacAdam et al.**, Topsham, ME 9/1995-8/1997  
*Associate*

**Massachusetts Department of Industrial Accidents**, Boston, MA  
*Appeals Division Law Clerk*

6/1993-6/1995

## **HONORS, AWARDS, & PEER ORGANIZATIONS**

Winston S. Howard Distinguished Professor of Law, *University of Wyoming College of Law*, 2020-2023, a professorship established to “recognize and retain a distinguished professor of law who has outstanding abilities as a scholar and teacher.” Recipients are selected by a faculty committee and serve a multi-year appointment.

Contributing Editor, JOTWELL (Journal of Things We Like (Lots)), Worklaw Section, Organization/website “filling a telling gap in legal scholarship by creating a space where legal academics can go to identify, celebrate, and discuss the best new scholarship relevant to the law.”

Recipient, University of Wyoming Potter Law Club “2020 Most Outstanding Faculty” (Selected by third-year class).

Scholar-Member, *Center for Progressive Reform*, “The Center for Progressive Reform is a network of more than 60 acclaimed scholars from across the United States who work with a professional staff of policy analysts and communications experts to advocate for robust protections for health, safety, and the environment.”

Recipient, *2017 University of Wyoming College of Law Extraordinary Merit Award*, for “outstanding service to the College of Law and the University of Wyoming.”

Fellow, *American Bar Foundation*, “The Fellows is an honorary organization of attorneys, judges, law faculty, and legal scholars whose public and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession. Membership in The Fellows is limited to one percent of lawyers licensed to practice in each jurisdiction. Members are nominated by their peers and elected by the Board of the American Bar Foundation.”

Member, *National Academy of Social Insurance*, “The National Academy of Social Insurance is a nonprofit, nonpartisan organization made up of the nation's leading experts on social insurance. Its mission is to advance solutions to challenges facing the nation by increasing public understanding of how social insurance contributes to economic security.”

Fellow (through 2019). *College of Workers' Compensation Lawyers*, “The College of Workers' Compensation Lawyers has been established to honor those attorneys who have distinguished themselves in their practice in the field of workers' compensation. Members have been nominated for the outstanding traits they have developed in their practice of twenty years, or longer, representing plaintiffs, defendants, serving as judges, or acting for the benefit of all in education, overseeing agencies and developing legislation.”

Pound Academic Fellow, *Pound Civil Justice Institute*, Group of twenty-three legal academics from law schools across the U.S. who serve with Pound Institute Trustees to keep the Institute abreast of the latest legal trends and to assist the Institute in maintaining a relevant, meaningful dialogue with the nation's courts and law schools.

Recognition Award, *Workers' Injury Law and Advocacy Group*, September 2016, for research and writing focused on injured workers and the attempted deregulation of workers' compensation systems

Centennial Distinguished Professor of Law, University of Wyoming College of Law, 2014-2017, a professorship established to “recognize and retain a distinguished professor of law who has outstanding abilities as a scholar and teacher.” Recipients are selected by a faculty committee and serve a multi-year appointment.

## **MISCELLANEOUS CONTRIBUTIONS**

Consulted by Congressional Committee on Education and the Workforce in winter of 2016 to provide legal analysis on the intersectionality of ERISA and state workers’ compensation systems in the context of emerging and novel employee benefits models

Testified before Wyoming Legislature Select Committee on Coal/Mineral Bankruptcies, on October 14, 2019, on options to protect employees and state revenue within the parameters of federal bankruptcy law

Testified before Wyoming Legislature Joint Judiciary Committee on COVID-19 liability immunity issues

## **COURSE INSTRUCTION**

*Bankruptcy* (2019-2020)

*Employee Benefits* (2017-2018)

*Alternative Dispute Resolution in the Workplace* (2014-2015)

*Torts* (2013-present)

*Evidence* (2013, 2021-Present)

*Administrative Law* (2008-2012; University of Denver, Sturm College of Law, Spring 2013)

*Introduction to Law* (2007-2012)

*Workers’ Compensation Law* (2007, 2013-present)

*Labor Law* (2007-present; University of Denver, Sturm College of Law, Spring 2013)

*Administrative Law* (University of Wyoming College of Law, Guest lecturer, 2006)

*Alternative Dispute Resolution* (University of Wyoming College of Law, Guest lecturer, 2006)

*Contract Enforcement and Interpretation* (Rutgers University School of Management and Labor Relations, Adjunct, Spring 2002)

## **INSTITUTIONAL GOVERNANCE & SERVICE**

Student Conduct Hearing Officer, assigned by University Dean of Students to hear sensitive sexual assault case, February, 2017

Member, University of Wyoming Provost, Vice President of Academic Affairs Search Committee, Spring 2016

Member, University of Wyoming Faculty Dispute Resolution Panel, 2014-2015, Chair, Ad Hoc Hearing Committee, 2014-2015, selected by University Administration and Faculty Senate to hear sensitive faculty dismissal/sexual assault case

Member, University of Wyoming College of Law Dean Search Committee, 2014-2015

Member, University of Wyoming College of Law Honor Council, 2013-2015 (Chair, 2014)

Member, University of Wyoming University Reappointment, Tenure & Promotion Committee, 2013-2015

Faculty Consultant, University of Denver Sturm College of Law, Wagner National Labor and Employment Law Moot Court Competition, Spring 2013

Founder & Director, University of Wyoming College of Law Academic Support Program, 2006-2012

Member, University of Wyoming College of Law ABA Accreditation Committee, 2012-2013

Member, University of Wyoming College of Law Academic Policies and Procedures Committee, 2012  
Chair, University of Wyoming College of Law Bar Examination Task Force, 2012

Member, University of Wyoming Faculty Academic Standards and Rights and Responsibilities Committee, 2011-2012

Member, University of Wyoming College of Law Admissions Committee, 2007– 2011, 2014-present

Member, University of Wyoming College of Law Clinics and Skills Committee, 2011-2013

Member, University of Wyoming College of Law Marketing Committee, 2011-2013

Member, University of Wyoming College of Law Faculty Appointments Committee, 2009-2010, 2016-2017

Faculty Consultant, University of Wyoming College of Law, Appellate National Moot Court, 2006-2009, 2012

## **REPORTED LITIGATION**

*Northeast Iowa Telephone Company*, 346 NLRB 465 (2006)

*Volair Contractors*, 341 NLRB 673 (2004)

## CV of Michael C. Duff

*Smucker Company*, 341 NLRB 35 (2004)

*American Sprinkler DE*, 2002 WL 225708 (2002)

*In re Bakery Workers Local 6*, 337 NLRB 407 (2002)

*Jacee Electric, Inc.*, 335 NLRB 568 (2001)

*Neshaminy Electrical Contractors, Inc.*, 334 NLRB 994 (2001)

*Ebroadburl Realty Corp.*, 330 NLRB 70 (1999)

*Three-I Truck Line, Inc.*, 1999 WL 33452951(1999)

*BIW Deceived v. S6, Marine Workers*, 132 F.3d 824 (1<sup>st</sup> Cir. 1997)

*Ciampi v. Hannaford Brothers Co.*, 681 A.2d 4 (1996) *cert. denied* 519 U.S. 1056 (1997)

## **NON-LEGAL WORK EXPERIENCE**

**U.S. Airways**, Philadelphia, PA 3/1986-8/1992  
*Fleet Service Agent*

**Flying Tiger Line**, Philadelphia, PA 7/1983-7/1986  
*Claims Prevention Supervisor*

## **PROFESSIONAL ASSOCIATIONS**

American Bar Association, Tort Trial and Insurance Practice Section, Workers' Compensation Committee (2015-present; Vice Chair August 2015-present)

American Association for Justice (2014-2019)

Wyoming Bar Association (2014-2016)

American Civil Liberties Union, Member (2006-2012)

American Bar Association, Labor and Employment Section, Member (1995-2000; 2006-2012)

Maine Bar Association, Member (1995-1997)

## **PUBLIC SERVICE**

Board of Directors, Snowy Range Academy (K-9 Elementary School), Chair, 2015-2016; 2010-2012; Member 2014-2017)

## CV of Michael C. Duff

During my 2015-16 Chairmanship oversaw school's ascent to top academic K-8 school in Albany County School District (Wyoming) and one of the highest performing K-8 schools in state of Wyoming (est. top 5%) on statewide performance assessment.

Election Judge, County of Albany, Wyoming (2007-2010)

Panelist, American Civil Liberties Union, Wyoming Statewide Advisory Panel (2007-2012)

Advisory Board Member and Interim Director, Social Justice Research Center at the University of Wyoming, (2007-2010; Interim Director: Spring 2009)

Faculty Consultant, University of Wyoming United Multicultural Council (2007-2008)

Board Member, Board of Zoning Appeals, Golden Valley, Minnesota (2004-2006)

## **BAR ADMISSION**

Maine 1996