



### COMPLIMENTARY SEMINAR INVITATION

On September 23, 2005, Crandall, Wade & Lowe invites you to attend a seminar entitled *"What an Adjustor Needs To Know About Defending A Personal Injury Claim/Lawsuit,"* which will be presented by attorney, Richard M. Koep.



The seminar will be presented at the Warner Center Marriott, pictured above, located at 21850 Oxnard St., Woodland Hills, CA 91367.

Registration will begin at 8:45 a.m. The seminar will begin at 9:15 a.m. and last approximately 1 hour.

A complimentary breakfast will be served.

Please **RSVP** with James A. Rossi of Crandall, Wade & Lowe (818-871-9900 ext. 304 or send an email to RossiJ@cwllaw.com) by September 15, 2005.

### ABOUT RICK KOEP

Rick Koep is a senior partner in the Calabasas office of Crandall, Wade & Lowe. Rick has litigated 77 jury trials. He has beaten his pre-trial statutory offer (a feat that entitles his clients to their litigation costs) in 71 of the 77 jury trials and he has obtained 52 defense verdicts. Rick has successfully tried cases against many of the premier plaintiff attorneys in Southern California.

Rick was honored by being named a "Southern California Super Lawyer" for both 2004 and 2005. This identifies him as being among the "top 5%" of the Southern California Bar. He was also listed as a "Southern California Super Lawyer" in Los Angeles Magazine in February 2004 and February 2005.

### RECENT TRIALS

In July 2005, Rick Koep, of our Calabasas office, completed a jury trial in Ventura Superior Court. The plaintiff alleged that Rick's client was responsible for the injuries he sustained in a two car motor vehicle accident. Specifically, the plaintiff sustained multiple fractures and residual knee pain, which allegedly requires knee replacement surgery. Plaintiff also alleged a loss of earnings claim. After deliberation, the jury returned a verdict in the amount of \$8,993, which was below the pre-trial statutory offer made by Rick's client. Therefore, the plaintiff is now liable for the defense fees, including expert fees, incurred by Rick's client.

### WORKERS' COMPENSATION: APPLYING NEW APPORTIONMENT LAWS

In *Kleemann v. WCAB and Department of Justice* (2005) 2005 DJDAR 2485, the Court of Appeals held that sections 4663 and 4664 of the Labor Code, enacted on April 19, 2004, applied to pending cases prospectively from the date of enactment of S.B. 899, regardless of the date of injury.

In *Kleemann*, the petitioner claimed industrial injuries from work as a special agent for the State of California. After his claim was tried and submitted to the WCJ for a decision, the Legislature enacted S.B. 899, which added sections 4663 and 4664 to the Labor Code. Section (a) of 4663 required that apportionment of permanent disability be based on causation, and Section 4664 directed that the employer only be liable "for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment", among other things. (Under the repealed section 4663, disability from aggravating a preexisting non-disabling disease process may have been compensable without apportionment).

As a result of the enactment of S.B. 899, the WCJ vacated submission to address the new apportionment requirements. *Kleemann* petitioned the WCAB for a ruling that the new sections did not apply, but the WCAB remanded to the WCJ for a final decision.

Therefore, the issue before the Court of Appeals was whether the new Labor Code sections applied retroactively to injuries preceding the enactment of S.B. 899.

The Court of Appeals based their conclusion on the legislative intent expressed in Section 47 of S.B. 899, which stated that any amendment, addition or repeal under the