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ATTORNEYS AT LAW

CONNECTICUT WORKERS' COMP UPDATE

The law firm of **Strunk Dodge Aiken Zovas (SDAZ)** provides you with our **FALL 2024 WORKERS' COMPENSATION LAW UPDATE**. We wish to all a happy and healthy Thanksgiving holiday! Please feel free to share this update with your colleagues. If someone inadvertently has been left off our email list and would like to receive future updates, they can contact **Jason Dodge** at jdodge@ctworkcomp.com or 860-785-4503.

STRUNK DODGE AIKEN ZOVAS NEWS

Strunk Dodge Aiken Zovas celebrates its 10th anniversary in 2024! We thank all of our clients for their continued support of our law firm and we look forward to assisting you in the future regarding the defense and administration of workers' compensation claims.

Courtney Stabnick of SDAZ has been named **2024 "Lawyer of the Year"** by Best Lawyers for litigation-insurance in the Hartford region**.**

Attorneys Anne Zovas, Lucas Strunk, Richard Aiken, Heather Porto, Philip Markuszka, Courtney Stabnick, Jason Dodge and Richard Stabnick of SDAZ have been selected by their peers for recognition of their professional excellence in Workers' Compensation- Employers in the 31st edition of *The Best Lawyers in America*.

Strunk Dodge Aiken Zovas has been named by Best Lawyers as a 2024 Tier 1 "Best Law Firm." Best Lawyers is the oldest and most respected lawyer ranking service in the world. The U.S. News – Best Lawyers® "Best Law Firms" rankings are based on a rigorous evaluation process that includes the collection of client and lawyer evaluations, peer review from leading attorneys in the field, and review of additional information provided by law firms as part of the formal submission process.

On October 23, 2024 **SDAZ' Attorney Colette Griffin** was on the panel at the CBA event "Successful Women Attorneys Share Their Stories." It was an evening filled with stories about the role of women in the law and how it has changed over time and in some instances why further change is still needed. Women in a few different practice areas offered their perspective on our roles. The common thread was the need for women to support one another in our career development and personally. It was an uplifting and energizing meeting

Attorney Christopher Buccini of SDAZ has been named Chairman of the Workers' Compensation Section of the Connecticut Bar Association. Best wishes to Chris in this prestigious position!

Attorneys Richard Aiken, Jason Dodge, Lucas Strunk and Anne Zovas were named Super Lawyers for 2024 in the field of workers' compensation law. **Attorneys Christopher D'Angelo, Ariel MacPherson Philip Markuszka and Matthew Sacco of SDAZ** were named "Rising Stars" in workers' compensation law.

Attorneys Anne Zovas, Richard Aiken, Lucas Strunk, Jason Dodge and Richard Stabnick of SDAZ have received an AV rating by Martindale-Hubbell. Martindale-Hubbell states that the AV rating is "The highest peer rating standard. This is given to attorneys who are ranked at the highest level of professional excellence for their legal expertise, communication skills, and ethical standards by their peers."

Attorney Richard Aiken of SDAZ again organized the 26th Annual Verrilli-Belkin Workers' Compensation Charity Golf Event at Shuttle Meadow Country Club on Monday September 9, 2024. This event is for Connecticut Bar Association Members. The golf tournament has been able to raise thousands of dollars for charities throughout the years.

Strunk Dodge Aiken Zovas has been named the Connecticut representative of the National Workers' Compensation Defense Network. The NWCDN is a nationwide network of workers' compensation defense law firms that partner with other attorneys to

provide clients with expertise, education, and guidance in the field of workers' compensation. Only one firm per state is selected for this prestigious organization. If representation is needed in a state outside of Connecticut, the NWCDN network provides a vetted list of law firms that can provide excellent legal assistance to clients of **SDAZ.**

Kids' Chance of Connecticut had their annual golf event on September 30 at Glastonbury Hills Country Club. It was a beautiful day for golf. Through the generosity of the golfers and sponsors, we were able to successfully raise money for scholarships for the children of workers who have sustained significant work-related injuries. **Strunk Dodge Aiken Zovas** was a sponsor and **Attorneys Phil Markuszka and Jason Dodge of SDAZ** volunteered at the event.

SDAZ is pleased to announce that **Attorney Matthew C. Sacco** has joined our firm. Attorney Sacco received his Bachelor of Arts degree in music with a concentration in opera performance from Western Connecticut State University in 2019. He graduated from the University of Connecticut School of Law in 2022. Attorney Sacco represents self-insured and insured employers as well as municipalities before the Connecticut Workers' Compensation Commission. Attorney Sacco was named by Super Lawyers to its Rising Stars list for workers' compensation in 2024. Attorney Sacco is a member of the Connecticut Bar Association.

We are also pleased to announce that Attorney Sarah Leone has joined our firm this Fall. Attorney Leone received her Bachelor of Arts degree in geography from Central Connecticut State University in 2011, and Master of Science in Geography in 2016. After working in higher education for a number of years, she decided to pursue a new career, and obtained her J.D. from Quinnipiac University School of Law with honors in 2024. She was admitted to the Connecticut Bar in November 2024.

While in law school, Attorney Leone participated in Quinnipiac University's Veteran's Clinic. Throughout her time in the clinic, she assisted veterans suffering from service related injuries in obtaining disability benefits, by representing them in administrative law hearings before the Veteran's Benefits Administration. She received the award for Excellence in Clinical Legal Education for her work. She is a member of the Connecticut Bar Association.

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You can now follow us on Facebook at https://www.facebook.com/Strunk-Dodge-Aiken-Zovas-709895565750751/

SDAZ can provide your company with seminars regarding Connecticut Workers' Compensation issues. Please contact us about tailoring a seminar to address your needs.

We do appreciate referrals for workers' compensation defense legal work. When referring new files to SDAZ for workers' compensation defense please send them to one of the attorneys' email: azovas@ctworkcomp.com, raiken@ctworkcomp.com, lstrunk@ctworkcomp.com, jdodge@ctworkcomp.com, HPorto@ctworkcomp.com, cgriffin@ctworkcomp.com, nberdon@ctworkcomp.com, cstabnick@ctworkcomp.com, cbuccini@ctworkcomp.com, pmarkuszka@ctworkcomp.com, cdangelo@ctworkcomp.com, amacpherson@ctworkcomp.com, rstabnick@ctworkcomp.com, or by regular mail. We will respond acknowledging receipt of the file and provide you with our recommendations for defense strategy.

Please contact us if you would like a copy of our laminated "Connecticut Workers' Compensation at a glance" that gives a good summary of Connecticut Workers' Compensation law to keep at your desk.

LEGISLATIVE UPDATE

In the 2024 session several bills were considered that addressed workers' compensation, but no statutes were passed. Some of the legislation considered (but not passed) included raising the number of weeks for permanency of the cervical spine (now 117 weeks versus 374 for the lumbar spine), requiring carriers to file a notice to

terminate prescription medication before cutting off drugs unilaterally, making medical providers provide health records timely or face potential fines, and disallowing municipalities from reducing pension benefits due to the receipt of permanency benefits.

CONNECTICUT WORKERS' COMPENSATION COMMISSION NEWS

IS THE REBUTTABLE PRESUMPTION OF EXECUTIVE ORDER 7-JJJ STILL IN PLACE FOR COVID-19 CLAIMS?

On July 24, 2020, Governor Lamont issued Executive Order 7-JJJ which established a rebuttable presumption in favor of COVID-19 injuries if the injury occurred between March 10, 2020 and May 20, 2020 and was sustained by an "essential employee." This changed the burden of proof for a workers' compensation claim in Connecticut; generally, a claimant has the burden to prove causation and compensability of a claim**.** Murchison v. Skinner Precision Industries, Inc., 162 Conn. 142, 151-52 (1972);

Governor Lamont's power to issue Executive Order 7-JJJ is derived from the Connecticut Legislature's enactment of Connecticut General Statutes §28-9. In that statute, the Governor is given the power to proclaim a civil preparedness emergency and issue an order modifying or suspending a statute, however, the Governor's power to modify the statute is for a period "**not exceeding six months unless sooner revoked ...."** § 28-9(b)(1). Executive Order 7-JJJ went into effect on July 24, 2020; the Governor stated in the order it was to "**remain in effect for six months."** If Executive Order 7-JJJ ended in 2021 and is therefore no longer in place or operable then a valid argument can be made that the rebuttable presumption of Executive Order 7-JJJ no longer is applicable.

The Connecticut Supreme Court in the case of *Casey v Lamont*, 338 Conn. 479 (2021), confirmed that the Executive Orders issued by the Governor during the pandemic were not permanent changes to the statute. Id., 664-65. In *Casey*, the plaintiffs questioned the constitutionality of the Executive Orders which required them to provide only "take out" service at their pub; due to this order the plaintiffs were forced to shut down their business. Id., 653. Ultimately, the Supreme Court determined that the Orders and Statute were not an unconstitutional delegation of legislative powers to the Governor, to wit, a violation of the Separation of Powers, Connecticut Constitution, Article Second. In reaching the decision that the Executive Orders passed constitutional muster, the Court noted that §28-9 provided limits as to how long the Executive Order can be in place: "Finally, the governor's actions have temporal limitations, namely, the period of time the modification or suspension may be enforced is **limited to six months**. Therefore, any actions the governor takes under subsection (b)(1) are temporary, that is, he cannot modify or suspend any statutes or regulations permanently." Id., 664-65. Accordingly, Executive Order 7-JJJ has specific time limits to its application, six months, and cannot be applied after that period has run. Per *Casey*, the Executive order ended in 2021; to suggest otherwise would make Executive Order 7-JJJ a permanent modification of the statute,

something forbidden by the language of §28-9 and the actual words of Executive Order 7-JJJ. If Executive Order 7-JJJ is applied now, more than six months after it was signed, then the Order may be a constitutional violation of the Separation of Powers.

The legislature post the termination of Executive Order 7-JJJ has had ample opportunity to permanently codify through statutory modification Executive Order 7-JJJ. The legislature has chosen, however, not to modify the statute to amend the burden of proof in a COVID-19 workers' compensation claim for essential workers/health care workers.

Based on the above, Executive Order 7-JJJ and its rebuttable presumption in favor of compensability of COVID-19 may no longer be in place. Although many COVID-19 claims have been resolved there remain some that were not fully litigated. For those that are continuing to defend these types of claims they may wish to consider the argument that the Executive Order is no longer in place.

ADMINISTRATIVE LAW JUDGES MOVING

Judge Zachary Delaney resigned from the Connecticut Workers' Compensation Commission as of October 4, 2024. Judge Delaney has taken a position at Travelers. We extend our best wishes to Judge Delaney in his next endeavor. Both claimants and respondents appreciated the professional manner in which Judge Delaney administered over Workers' Compensation claims. All parties will miss his guidance.

In view of Judge Delaney's departure, Judge Fatone will now be moved to the First District in Hartford. Judge Fenlator will preside in the Sixth District in New Britain. Judge Blake and Colangelo will be splitting their time between the Third District in New Haven and the Fourth District in Bridgeport.

Judge Barton likely will be retiring at the end of 2024. Once he does retire, there will be three judgeships which will have to be filled.

MEMORANDUM 2024-07

Memorandum 2024-07 has been issued by Chief Administrative Law Judge Morelli regarding maximum compensation rates. The Chairman has ordered that the maximum total disability rate for injuries occurring after October 1, 2024 is **$1,654.00** (based on the estimated average weekly wage of all employees in Connecticut). The maximum temporary partial/permanent partial disability rate for accidents after October 1, 2024 is **$1,191.00** (based on the average weekly earnings of production and related workers in manufacturing in Connecticut).

BURIAL EXPENSES

As of January 1, 2024, the burial fee for deaths covered under the Workers' Compensation Act is $13,885.25 based on the overall 2023 CPI-W increase for the

northeast of 3.2%. Connecticut General Statutes Section 31-306 was amended in 2021 to reflect that the compensation for burial benefits will be adjusted by the percentage increase in the consumer price index for urban wage earners and clerical workers in the Northeast as defined in the United States Department of Labor's Bureau of Labor Statistics.

https://portal.ct.gov/WCC/Home-News/Workers-Compensation-News/2024/2024-Burial-Expense-Adjustments

MILEAGE REIMBURSEMENT

As of January 1, 2024, the mileage reimbursement rate is 67 cents per mile.

As of January 1, 2023, the mileage rate had been 65.5 cents per mile. Prior to that the rate had been at 62.5 cents per mile since July 1, 2022

https://portal.ct.gov/WCC/Home-News/Workers-Compensation-News/2024/2024-Mileage-Reimbursement-Rate-Rises

MEMORANDUM 2024-05

The Chairman has issued the following new memo which stated that physicians can charge for causation or permanency opinions in a denied case:

Effective July 1, 2024, a treating physician who is asked to provide a causation opinion or a Permanent Partial Disability (PPD) rating on a **denied** claim may charge up to $400 for this report. The report must be affirmatively requested by the patient or their representative, and the patient would be responsible for payment. As with standard special report fees, if a physician feels that an additional fee is warranted, they may seek permission to charge that higher rate from an administrative law judge. However, physicians considering requesting additional fees should keep in mind that the patient bears the responsibility for payment and should proceed accordingly.

The Professional Guide for Attorneys, Physicians, and Other Health Care Practitioners and the Payor and Medical Provider Guidelines to Improve the Coordination of Medical Services will be updated to reflect this change.

MEMORANDUM 2024-04

Effective June 14, 2024, the following changes have been made to WCC forms:

- Form 30C has been updated with “Check, if Firefighter Cancer Claim pursuant to C.G.S. Chapter 568” and “Check, if Firefighter Cancer Claim pursuant to C.G.S. Section 7-313p” to help WCC better track Firefighter Cancer claims pursuant to **Public Act No. 22-139**. Language on Post Traumatic Stress Injuries has also been updated to reflect such injuries are pursuant to C.G.S. Section 31-294k.
- Form 30D has been updated with “Check, if Firefighter Cancer Claim pursuant to C.G.S. Chapter 568” and “Check, if Firefighter Cancer Claim pursuant to C.G.S. Section 7-313p” to help WCC better track Firefighter Cancer claims pursuant to **Public Act No. 22-139**.
- The Hearing Request Form has been updated to allow the option for an email address to be added under the Injured Worker section.
- Voluntary Agreement Form has been updated with “Check, if C.G.S. Sec. 5-142”to help WCC better identify wage calculations which are pursuant to C.G.S. **Sec. 5-142**.
- WCR-1: Rehabilitation Request Form has been updated with options to either fax or email the form to Rehabilitation Services in addition to mailing or submitting the form in-person. An optional line has also been added for applicants to add their email address.

Effective June 14, 2024, the following form is now available:

- Indemnity Only Stipulation and What it Means.

MEMORANDUM 2024-03

Effective July 1, 2024, wage statements should be attached to all Voluntary Agreements. If the claimant is concurrently employed, wage statements from all employers should be included with the submission. Failure to attach a wage statement(s) will result in the rejection of the Voluntary Agreement.

MEMORANDUM 2024-02

2024 *Official Connecticut Fee Schedule for Hospitals and Ambulatory Surgical Centers* effective April 1, 2024 has been issued by the Workers’ Compensation Commission.

To order, please contact OPTUM360 at 1-800-464-3649, option 1, or visit **https://www.optum360coding.com/reference-products/workers-compensation/**, keyword “Connecticut”.

MEMORANDUM 2024-01

The Commission has immediately suspended the mediation program and is beginning a review of the guidelines for the program. The suspension is due to "parties failure to comply with the program guidelines and misuse of the program."

We are sure that we will hear more about this in the future. We hope that the Commission will be able to begin the program again. In the meantime, there are a number of private mediation services that are available to assist in resolving claims. Please contact us if you have any questions about private mediation.

https://portal.ct.gov/WCC/Workers-Compensation-News/Commission-Memorandums/2024/Memorandum-No-2024-01

NEW WORKERS' COMPENSATION PORTAL

A new Worker's Compensation portal has been established at this site:

https://wccct.govqa.us/WEBAPP/_rs/(S(ee5fdcqgfjppdvhg3ssjxq1e))/supporthome.aspx

The old Worker's Compensation website remains in place. However, this new portal will allow a search of managed care plans for a particular date of injury. Also, workers' compensation coverage searches and requests for workers' compensation files and freedom of information requests can be performed through this new portal. The prior worker's compensation history of an individual and information concerning a particular file (forms filed, hearing requests, hearings held, voluntary agreements approved) can be searched through this portal as well. Information regarding self-employers in the system can also be reviewed.

https://portal.ct.gov/WCC/Home-News/Workers-Compensation-News/2023/Records-and-Information-Request-Service

The Commission does have a website where you can look up such information as to whether a hearing is assigned, list of all claims for an employee, status of a Form 36, and interested parties. This is quite a useful site and is a different website than the Commission's main site. It can be found at:

http://stg-pars.wcc.ct.gov/Default.aspx

NEW COMPENSATION REVIEW BOARD PANEL

The new CRB panel beginning January 1, 2024 will be Administrative law Judges Delaney and Schoolcraft along with Chief Administrative Law Judge Morelli.

MEDICARE NEWS FROM CMS

LIFE EXPECTANCY TABLES

Beginning February 24, 2024, CMS will utilize the CDC's "Table 1: Life Table for the total population: United States, 2021" for the Workers' Compensation Medicare Set Aside life expectancy calculation.

CASE LAW

New rules for oral argument at the Compensation Review Board! There will be a clock set up for oral argument and the parties will only be allowed fifteen minutes for their presentation.

EILEEN POST V. RAYTHEON TECHNOLOGIES/PRATT & WHITNEY, 6524 CRB-8-23-12 (September 6, 2024)

The claimant alleged that she fell at work on the company premises on February 14, 2022 causing a fracture to her left leg. While the respondents acknowledged that the claimant fell at work they denied liability in the case. The respondents contended that the claimant's injury did not "arise out of" her employment; rather, respondents asserted that the claimant's fall was because of a pre-existing, non-occupational foot drop. The claimant had several prior left hip surgeries which caused a foot drop. As a result of this, the claimant became more susceptible to falling. The claimant did wear a brace on her left ankle to stop falls although she admitted that it was uncomfortable. The claimant fell at a restaurant outside of work in January 2022, one month before the work accident. A fellow worker testified that he saw the claimant prior to the work accident, and she was having difficulty walking. The claimant came in to work early in the morning and was walking to her workstation at the time of the fall. Following the fall, the claimant reported to numerous medical providers that she had fallen on rock salt. At the formal hearing, however, the claimant acknowledged that she did not see any rock salt at the time of her fall but did say that there had been rock salt outside of work as she entered the premises. The claimant also testified at the formal hearing that there may have been a small puddle of water on the floor where she fell. The claimant did not know why she fell, however. The respondents presented the testimony of Dr. Raymond Sullivan, a foot

specialist, who opined that the claimant's pre-existing left foot drop was a substantial factor in causing her fall at work. The Administrative Law Judge concluded that Dr. Sullivan's testimony was persuasive that the claimant's foot drop was a substantial factor in causing the fall. The Judge found there was no credible or persuasive evidence that there was rock salt on her shoe when she fell or that there was water on the floor. The Judge dismissed the claim concluding that the fall was caused solely by her left foot drop condition. The Compensation Review Board affirmed the dismissal on appeal finding that the record was "devoid of evidence that any workplace condition or activity contributed to the claimant's injury." The Board found that the respondents had successfully rebutted any presumption of compensability. This case is now on appeal to the Appellate Court of Connecticut. **This claim was successfully defended by Attorney Jason Dodge of SDAZ.**

VITTI V. CITY OF MILFORD, 6515 CRB-7-23-9 (August 30, 2024)

The claimant was seeking interest pursuant to Connecticut General Statutes §31-295(c), 31-301c(b), or 31-300 due to a delay in his permanent partial disability benefits. On February 1, 2018 the commissioner made a determination that the claimant reached maximum medical improvement on November 21, 2013 and provided a 23% impairment rating to the heart. Because there was conflict over the award, the claimant's counsel notified the respondent on March 14, 2018 that the claimant "did not wish to get paid until all appeals are concluded." The CRB concluded that interest is not payable under §31-301c(b) because the respondent's appeal for compensability had no effect on the "sum certain," however, the claimant's appeal for the award did. The CRB also concluded that §31-295 does not apply. The claimant asserted that because their provider issued a 23%, and the respondent's examiner issued a 12% rating, there was a meeting of the minds for the 12% rating. The CRB held that because the claim was still subject to litigation, and there was no way it could be inferred that the claimant would have accepted the 12% rating, a claim for interest could not be made. Additionally, because of the notice from claimant's counsel to withhold payment, the claimant was estopped from making any claims for interest until all litigation concluded.

JANE DOE V. XYZ, (Judge Oslena, JULY 23, 2024)

The claimant, a night attendant at a hotel, alleged an unwitnessed foot injury caused by a falling coffee carafe. She reported the injury late and was ultimately diagnosed with a fracture in her foot. Three months later, claimant had a sudden onset of left knee pain. She went to the physician treating her for her foot fracture who opined that the claimant had an altered gait from the foot injury that was causing pain in her arthritic

knee. The Respondents fully denied the claim as the injury was unwitnessed and reported late.

The claimant attended an RME and did not mention that she had an altered gait before this date of injury. RME physician related both the left knee and the right foot. Claimant was recommended for a total knee replacement which was related to the altered gait caused by the foot injury. Respondents' Counsel met with claimant's assistant manager who advised that claimant had an altered gait before the work injury. The assistant manager was deposed and testified consistently. The RME physician was deposed and testified that the claimant never told him that she walked with a limp prior to this date of injury and indicated that his opinion might be different if she had given him an accurate history. At the formal hearing, claimant testified that she walked with a limp before the work injury and that she wasn't sure if she told her doctor or the RME doctor that. The deposition of claimant's manager and the RME doctor came in as exhibits. The respondents argued that the opinions relating the left knee complaints were unreliable and not credible because the claimant never told the doctors that she walked with a limp prior to this injury.

The ALJ found the right foot fracture to be compensable but dismissed the left knee claim on the basis that the doctors' opinions relating the knee complaints were not credible because the claimant did not provide an accurate history of a previously altered gait. A motion to correct was filed by claimant's counsel and was objected to by Respondents' counsel. The motion to correct was denied. No appeal followed. **Attorney Ariel MacPherson of SDAZ successfully defended this case.** The name of the claimant has been changed for confidentiality purposes.

COCHRAN V. DEPARTMENT OF TRANSPORTATION, 220 Conn. App. 855 (August 8, 2023) and MARTINOLI V. STAMFORD POLICE DEPARTMENT, 220 Conn. App. 874 (August 8, 2023),

The appeals in the "retirement" cases of **COCHRAN V. DEPARTMENT OF TRANSPORTATION, 220 Conn. App. 855 (August 8, 2023) and MARTINOLI V. STAMFORD POLICE DEPARTMENT, 220 Conn. App. 874 (August 8, 2023)**, were argued before the Connecticut Supreme Court on September 23, 2024. We expect decisions to be issued by the Court in these important cases in early-2025. In **Cochran**, the Appellate Court held that a worker who is retired and took himself out of the workforce was not entitled to a claim for total disability benefits made post-retirement. The claimant sustained a compensable back injury in 1994. Surgery was performed in June 1994; a further back surgery was performed in April 1995. A voluntary agreement was issued and approved in 1995 for 29.5% of the lumbar spine. On April 1, 2003 the claimant, at age 54, took an incentivized early retirement from the employer. The plaintiff had no intention of returning to work. In 2013 the claimant had back surgery with an allegedly unauthorized New York physician. A CME by Dr. Dickey in 2017 gave the "lightest" work capacity to the claimant. Dr. Sabella, a vocational specialist, found the claimant unemployable. The trial judge found the 2013 back surgery related and ordered a three-month period of total disability following the 2013 surgery and ongoing total disability beginning on December 30, 2017. The CRB affirmed the decision. The Appellate Court reversed the Board

decision; in doing so, the Court stated it had plenary review over the case (meaning that they did not have to defer to the CRB below regarding the application of the law). The Court's decision stated that: "he elected to remove himself from the workforce where he had no intention of returning and more than 10 years later sought to obtain Section 31–307(a) benefits. We cannot conclude the plaintiff is entitled to Section 31307(a) benefits when he removed himself from the workforce with no intention of returning."

In **MARTINOLI V. STAMFORD POLICE DEPARTMENT**, the claimant sustained a compensable heart condition in January 1999. He retired at age 64 in October 1999. In 2015, at age 80, he sustained a stroke and claimed entitlement to total disability at that time. The Judge and CRB found the stroke related to the initial claim and awarded total disability benefits to the retiree. The Appellate Court, however, reversed and said a retiree was not entitled to claim total disability benefits post-retirement.

It is uncertain what the Supreme Court will do in these cases. Whatever the outcome, it will significantly affect the value of claims for older injured workers who choose to take a voluntary retirement. We will advise you immediately once the Supreme Court issues its decisions.

WATERBURY V. BRENNAN, 228 CONN. APP. 206 (2024)

The Appellate Court affirmed a summary Judgment ruling in favor of the City of Waterbury which found that the municipality, per union contract, was entitled to a credit against the permanent partial disability award of the heart for Section 7-433c benefits based on the disability pension that the injured worker had received. In view of the contractual credit no permanency was owed.

JANET BRENNAN, EXECUTRIX (ESTATE OF THOMAS BRENNA) v. CITY OF WATERBURY, 228 CONN. APP 231 (2024)

In this longstanding heart and hypertension case under Connecticut General Statutes Section 7-433(c), the Compensation Review Board affirmed that an estate was entitled to payment of a permanent partial disability award of 77.5% of the heart, however, the Board remanded the case for further findings regarding mandatory interest under Connecticut General Statutes Section 31 – 295(c) and order for penalties for undue delay in violation of Connecticut General Statutes Sections 31–288 and 31–300. This case had previously been heard by the Connecticut Supreme Court, Brennan v. City of Waterbury, 331 Conn. 672 (2019). The Supreme Court dealt with the issue as to whether the estate of a decedent was entitled to a permanent partial disability award. The Supreme Court had found that "***matured*** section 7–433c benefits-those that accrued during the claimant's lifetime-properly passed to the claimant's estate." (Emphasis supplied.) Id., 693. The case had been remanded to the Administrative Law Judge for further findings regarding the permanent impairment award. At the formal hearing, evidence was presented that the parties had a meeting of the minds regarding an award for permanent impairment of the heart for 77.5% with a maximum medical

improvement date of October 13, 1993. The evidence revealed that the claimant had received two advances totaling 77,182.32 against the award; there was also some evidence that the claimant may have received weekly advances against permanency from the date of maximum medical improvement until his retirement in 1995. The former risk manager for the municipal employer, testified that there was an agreement as to the permanent impairment award. Additionally, documentary evidence between the parties confirmed this. Notwithstanding this agreement between the parties, no written award was ever approved by the Commission. After the rating had been issued the parties had discussed settlement of the case but no agreement had ever been reached. Apparently, the claimant's condition deteriorated and during the period February 19, 2003 through his death on April 20, 2006 the claimant received total disability payments. At the trial level, the Administrative Law Judge concluded that there was an agreement for 77.5% of the heart which was owed to the estate of the decedent; additionally, the Administrative Law Judge determined that mandatory interest was owed under Section 31–295(c) and that there had been undue delay in violation of Sections 31–288 and Section 31–300. No specific monetary award was issued either for the interest or undue delay penalty. The Compensation Review Board exhaustively reviewed the facts in the case and determined that there was an agreement for 77.5% of the heart, that it had matured, and that the estate was entitled to the award. On the other hand, the Board stated that it was unclear as to when interest would have been owed under Section 31 – 295(c) and therefore remanded the case to the Trial Judge for determination as to when the mandatory interest would be triggered. Regarding the penalties for undue delay, the CRB also remanded that to the Administrative Law Judge for further findings. The Board noted that the issue of undue delay had not been listed as an issue for the formal hearing and that the Trial Judge had not ordered a specific amount to be paid. The City of Waterbury took this appeal to the Appellate Court seeking review of finding that the award had matured during the lifetime of the decedent, that statutory interest was owed, and that there was unreasonable delay and contest of the claim. The Appellate Court held that the issue was moot based on the decision in *WATERBURY V. BRENNAN, 228 CONN. APP. 206 (2024)* (see above), which concluded that nothing was owed because the City was entitled to a credit against the permanency owed, per contract, based on the pension benefits received be the decedent. Since the credit was greater than the permanency, no additional benefits, including interest, were owed.

KILLARD V. BROCK INDUSTRIAL SERVICES, 6512 CRB-7-23-8 (October 25, 2024)

This case concerns an insulator injured in a workplace slip and fall who claimed compensable injuries to his cervical spine, hip, and hernia, with accepted injuries to his upper arm and shoulder. The Administrative Law Judge deemed the cervical spine and hernia injuries compensable but denied the hip injury claim, citing pre-existing conditions. Both parties appealed parts of the decision.

The claimant argued the judge erred in denying the hip injury claim, but the Compensation Review Board upheld the decision, noting the hip condition was pre-existing, with prior medical records from 2017-2018. The claimant also challenged the admission of a late report by Dr. Clinton A. Jambor, arguing due process violations, but

the Board found no violation, due to the fact that the claimant had an opportunity to respond but did not act. The Administrative Law Judge allowed the claimant additional time to cross-examine Jambor but noted that the claimant did not avail himself of this opportunity.

The respondents argued that the evidence did not support the claimant's position that the work injury was a substantial factor in the development of the hernia. They contended that the judge should have relied on their expert, Dr. John P. Amodeo, who opined that the hernia was unrelated to the work incident. The Administrative Law Judge found the claimant's treating physician, Dr. Teresa A. Esposito, more credible. Esposito opined that the claimant's work contributed to the hernia's worsening, and the judge found this evidence persuasive. The Compensation Review Board upheld the judge's decision, finding sufficient evidence to support the compensability of the hernia.

The Compensation Review Board upheld the Judge’s decision, affirming the cervical spine and hernia injuries as compensable while denying the hip injury claim due to lack of proof and pre-existing conditions.

SABIA V. VALERIE MANOR INCORPORATED, 6520 CRB-5-23-12

At issue was whether the Administrative Law Judge was required to credit the opinion of a commission or respondent medical examiner if they determine that the treating physician’s opinion is more persuasive. The claimant sustained an injury to her finger that spread to her wrist and other fingers in 2021, when a tendon ruptured in her right hand. She previously underwent surgery for this same hand in 2009, however, the claimant’s treating physician opined that these new symptoms are different than what she treated for in 2009, but rather the tendon rupture the claimant experienced was likely caused by significant repetitive motion. The claimant underwent both a commission medical exam as well as a respondent medical exam. The respondent’s examiner opined that the injury was unrelated to the workplace, and the commission’s examiner believed that while the rupture did happen at work, it could have happened anywhere. The Administrative Law Judge weighed the evidence and found that the evidence proffered by the claimant’s treating physician was the most credible and persuasive and provided benefits to the claimant. The respondents then argued that the Administrative Law Judge erred by failing to weigh the other opinions more heavily, and that the evidence used was inadequate to support an award of benefits. The CRB however found that the Administrative Law Judge was “well within his discretion” to find the treating physician’s opinion more credible than the commission or respondents examiner, and that unless the administrative law judge’s opinion is “without evidentiary support, contrary to the law, or based on unreasonable or impermissible factual inferences,” it must stand.

TARTAGLIONE V. CITY OF DERBY, 6529 CRB-7-24-2 (October 25, 2024)

The claimant began working as a police officer for the City of Deby in 2016, and testified in the summer of 2019 he began experiencing lumbar pain. He attributed this pain to sitting long periods of time in his police cruiser with a bad seat, wearing a heavy gear belt, and the weight of his bulletproof vest. The claimant's treating physicians opined that his complaints were either caused by a work-related injury or were a work-related aggravation of a pre-existing condition. Both the respondent's medical examiner and commission's medical examiner found that there was insufficient evidence linking the lumbar spine condition to the claimant's work, as there was a clear disc herniation dating back as far as 2006, when the claimant was a college student. The Administrative Law Judge weighed all the medical opinions as well as the claimant's prior involvement in both high school and college football and power training. The Administrative Law Judge found that while the claimant was credible, the testimony that he did not recall any prior injury or treatment was inconsistent with the evidence. In addition to the testimony, the Administrative Law Judge did not find the claimant's treating physicians credible or persuasive since there was documentation of a disc herniation in 2006 and dismissed the claim. The claimant appealed on the basis that it was erroneous for the Administrative Law Judge to not rely on the treating physicians' opinions, however the CRB stated that an administrative law judge's opinion may only be overturned "if they are without support, contrary to the law, or based on unreasonable or impermissible factual inferences." The CRB stated it was a "reasonable conclusion from the evidence presented," and that no error was made by the administrative law judge.

ACRONYMS USED IN CONNECTICUT WORKERS' COMPENSATION:

ACRONYMS/ABBREVIATIONS	MEANING OR USE
ALJ	Administrative Law Judge.
AOE	Arising from employment.
App Ct	Appellate Court.
AWW	Average weekly wage. Generally, the average wage we use based on the gross earnings from 52 weeks of wages before work accident.
AX	Abbreviation of accident in medical or adjuster notes.
CHIRO	Abbreviation for chiropractor.
CME	Commission Medical Exam. An exam scheduled by the Judge to address issues re diagnosis, work capacity, mmi and causation. Usually scheduled after conflicting doctor opinions are produced by the parties.
CMS	Centers for Medicare and Medicaid Services. Amongst other things, CMS reviews Medicare set aside accounts (MSA's) to determine if they properly protect Medicare's interest in settlement of workers' compensation claims.
COE	Course of employment.

CR	Compensation Rate. The actual rate on weekly basis paid to an injured worker. Calculated based on the injured worker's tax filing status and applying that to the average weekly wage.
CRB	Compensation Review Board. Three-member board that reviews on appeal workers' compensation decisions from Judges.
DEPO	An oral statement under oath where attorneys on both sides are allowed to pose questions to the deponent.
DJD	Degenerative joint disease.
DOI	Date of injury.
EE	Employee
ER	Employer
ESI	Epidural Steroid Injection. Used by pain management specialists to treat spine injuries.
FCE	FUNCTIONAL CAPACITY EVALUATION: Generally, an examination performed by a physical therapist to determine what restrictions an injured worker has regarding work capacity.
FD	Full duty.
FROI	First report of injury.
HX	Abbreviation for history in medical notes.
IND	Indemnity: the weekly wage loss payment made to an injured employee.

LD	Light duty.
MBB	Medial Branch Block. Injection to spine by pain management specialist. Usually, a precursor to RFA procedure.
MCP	Medical Care Plan. A list of doctors that have been approved by the Chairman office for an employer; injured workers for an approved MCP must treat with only the doctors in the MCP. In general, most employers do not have an approved MCP.
MMI	Maximum medical improvement. The point where functionally there is likely not going to be improvement in the future. It is our goal to get the employee to this point as early as possible.
MSA	Medicare Set-aside account. The amount of money set aside for future medical treatment at the time of settlement of a work injury. Often, the MSA is reviewed and approved by CMS.
NCM	Nurse case manager. A nurse assigned by an insurance carrier to assist the injured worker in scheduling tests, exams, PT and surgery.
NOA	Notice of appearance: generally filed by counsel with commission and all parties when they enter the case.
OH	Occupational health.
OTC	Over the counter, generally refers to non-prescription medications
OTC	Occupational therapy.
PA	Physician Assistant
PPD	Permanent partial disability. The level of ratable impairment to a particular body part; usually only given at mmi.

PT	Physical Therapy
RFA	Radiofrequency Ablation. Surgical procedure using radiofrequency waves to create heat and kill tissues. Can be used for spine pain.
RME	Respondent medical examination (used to be called Independent medical Examination: IME). An examination scheduled by the respondents/employers/carriers to address work capacity, causation, permanency, maximum medical improvement etc.
RPI/Rep Trauma	Repetitive trauma injury such as carpal tunnel or hearing loss claim.
SED	Sedentary duty.
SOL	Statute of Limitations, generally referring to the time period within which a civil claim in superior court can be filed.
SSDI	Social Security Disability (not regular retirement benefits). A federal program for disabled individuals. Generally, people receiving this benefit are on Medicare and receive monthly indemnity payments.
STIP	Abbreviation for stipulation: generally, refers to full and final settlement document approved by the Administrative Law Judge.
Sup Ct	Supreme Court
SX	Abbreviation for surgery.
TKR	Total knee replacement.
TP	Temporary partial disability. Paid to injured employee when they are capable of light or sedentary work and not their regular job.

TT	Temporary Total disability. Paid when an injured employee cannot perform any work.
WCC	Workers' Compensation Commission