STRUNK · DODGE · AIKEN · ZOVAS
ATTORNEYS AT LAW

CONNECTICUT WORKERS' COMP UPDATE

The law firm of **Strunk Dodge Aiken Zovas** provides you with our Fall 2017 workers' compensation update. 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

STRUNK DODGE AIKEN ZOVAS NEWS

In her role as a J. Coopers Fellow to the Ct Bar Foundation Attorney Anne Zovas of SDAZ participated in a roundtable discussion before law students entitled "The Grass is Greener . . . or is it?" on September 13, 2017 at the UConn School of Law. The discussion, hosted by the Honorable Barry F. Armata, addressed different types of legal practices and the assumptions made about the various types of legal lifestyles. Anne spoke on behalf of small law firm practice.

Attorney Richard L. Aiken, Jr. again coordinated the **Verrilli-Belkin Worker's Compensation Charity Golf Tournament and Dinner**. The 19th annual event was held September 14, 2017 at Shuttle Meadow Country Club in Kensington with attorneys, commissioners and sponsors participating. The proceeds from the event will be donated to Foodshare and Connecticut Food Bank.

Attorneys Lucas Strunk, Richard Aiken, and Jason Dodge have been appointed again to the Connecticut Bar Association's Workers' Compensation Section Executive Committee. Attorney Strunk is the legislative liaison and keeps the members aware of any potential changes in the law that may affect workers' compensation benefits and employers. Attorney Aiken is a former chair of the Section and is in charge of the organizing the annual charity golf tournament each September. Attorney Dodge is a member of the Amicus Committee; he monitors cases that are on appeal to determine if the Section wishes to file "friend of the court" briefs in Court.

Recently Attorneys Richard Aiken and Jason Dodge were acknowledged by the author Dr. Mark Rubinstein in his novel "The Lover's Tango." Dr. Rubenstein is a forensic psychiatrist who in the past was a treating physician, RME and Commissioner's examiner in numerous Connecticut workers' compensation claims. Since retiring from

psychiatry he has become a novelist. Dr. Rubenstein in his acknowledgement stated that his "forensic background" was used heavily in the novel and his relationship with many "stellar" attorneys including Attorneys Aiken and Dodge helped him in writing the book. Chairman Mastropietro was also acknowledged.

SDAZ was pleased to be highlighted in the August 2017 newsletter of the Connecticut Association of Community Transportation (CACT) as a member law firm. CACT is the voice and advocate for public transportation in Connecticut.

On October 21, 2017 Attorney Chris D'Angelo of SDAZ was married to Megan Duffy; a beautiful reception was held at the Saint Clements Castle in Portland. Congrats to Chris and Megan!

When referring new files to SDAZ for workers' compensation defense please send them to one of the partners' email: azovas@ctworkcomp.com, raiken@ctworkcomp.com, lstrunk@ctworkcomp.com, jdodge@ctworkcomp.com or by regular mail. We will respond acknowledging receipt of the file and provide you with our recommendations for defense strategy.

RECENT CASE LAW

FUSCO V. CITY OF NEW HAVEN BOARD OF EDUCATION, 6119 CRB-3-16-7 (October 13, 2017)

The claimant sustained compensable neck and right shoulder injuries. He was paid permanency for the neck but he continued to have problems with his right shoulder. The respondents asked the RME doctor (who later became the treating surgeon) if the claimant had a rating for permanency. The doctor stated in May of 2014 that if he were to rate the claimant's shoulder in accordance with the AMA Guidelines for Permanent Impairment, the claimant's impairment would be approximately 13 percent. The doctor did not provide language that the claimant had achieved maximum medical improvement. The claimant continued to receive wage loss benefits and the respondents filed form 36's seeking to have the claimant placed at maximum medical improvement since the surgery he had to have for the shoulder was being delayed. Eventually the claimant had shoulder surgery on May 18, 2015; six days later the claimant died. The claimant's spouse sought permanency benefits under General Statutes Section 31-308(d) claiming that maximum medical improvement had occurred in May 2014. The commissioner at the formal hearing found that a permanency award was due to the spouse and that maximum medical improvement had occurred in May 2014. The CRB affirmed the ruling but remanded the case back to the commissioner level to address the issue of whether the respondents were entitled to credit against the

spouse's permanency award for payments that had been made to the claimant from the date of maximum medical improvement. Further rulings will be issued in this case as the respondents have filed before the Board a Motion for Reconsideration re the credit issue. Attorney Anne Zovas of SDAZ defended the case for the respondents.

LANDRY V. TENNETT TREE SERVICE, INC., case #200187888 2d District (Commissioner Walker July 25, 2017)

Michael Landry worked as a ground man and driver for Tennett Tree. On 4/4/13 he was hit in the mouth with a tree branch and sustained injury to his mouth which required dental work. This incident was accepted and Mr. Landry continued to work for Tennett Tree until November 7, 2014. After his termination, he alleged additional complaints associated with the April 4, 2013 compensable injury including headaches and neck pain which was supported by medical opinion. He also requested additional extensive dental work. In addition, he claimed injuries to left hand on 2/5/14 when his glove allegedly got stuck in a wood chipper, 4/14/14 when he allegedly got hit in the head a by the a co-employee throwing down tree branches, and 11/6/14 left ankle twisting incident which was witnessed and reported. He was terminated the next day. After several depositions and sessions of Formal hearings, the Commissioner ultimately was persuaded by the Respondent's evidence. Commissioner Walker did not find the claimant credible and dismissed all claims except for the teeth and ankle, which he limited. With respect to the April 2013 mouth claim he limited any treatment to teeth numbers 22, 23 and 24 which were the originally damaged teeth. With respect to the November 6, 2014 ankle claim, he found that the claimant suffered a self-limiting incident and that no treatment was needed and no benefits were due. Attorney Nancy Berdon of SDAZ defended the case for the employer and carrier.

BARKER V. ELECTRIC BOAT, case #200177174 8th District (Commissioner Schoolcraft September 5, 2017)

In the case of Barker v. Electric Boat Corporation, the Eighth District commissioner dismissed a claim for benefits under Section 31-306 in the case of a shipyard employee with exposure to asbestos fiber. Extensive medical evidence was reviewed by three pulmonary experts on the issue of whether the claimant had developed asbestosis and whether same was a significant contributing factor to his death in the face of extensive COPD/emphysema due to cigarette use. The trial commissioner ultimately accepted the opinions of the respondents' experts whose opinions rebutted the testimony of the claimant's expert on issues associated with diagnostic film and pulmonary function studies. Lucas Strunk of SDAZ tried the case on behalf of the respondent-employer and its carriers.

COUGHLIN V. CITY OF STAMFORD, case #700158609 7th District (Commissioner Engel September 7, 2017)

In this trial commissioner decision the claimant was a City of Stamford firefighter who had a compensable hypertension claim for which he was paid 6% under General Statutes Section 7-433c. Subsequent to his retirement in 2013 the claimant developed coronary artery disease that Dr. Rocklin, a cardiologist, substantially related to the underlying hypertensive condition. The trial commissioner dismissed the claim for coronary artery disease since it was not diagnosed until post-retirement. In doing so, she cited the case of **HOLSTON V. CITY OF NEW HAVEN**, 322 Conn. 607 (2016), which stands for the proposition that causation in 7-433c claims is not an issue if there is a new injury, even if it may be related to an underlying accepted case. See also, **DICKERSON V. CITY OF STAMFORD**, case #700125069 7th District (Commissioner Truglia August 28, 2017), where a heart attack that occurred post-retirement was dismissed under Section 7-433c because it was not timely filed notwithstanding the fact that it was substantially related to an earlier accepted hypertension claim.

SOLIS V CITY OF MIDDLETOWN, 6043 CRB-8-15-10 (August 9, 2017)

Mr. Solis was a driver for the municipality who was called in for work outside of his normal shift for snow and ice removal during a snowstorm. At about 3 a.m. he punched out to go home; minutes later he was injured in a motor vehicle accident. The CRB affirmed a finding of compensability and stated that the normal going and coming rule did not apply. The Board found that since the claimant was called in for an emergency his travel on the highway was in the course of his work, even though he had punched out of the job. The CRB cited the case of Loffredo v. Wal-Mart Stores, Inc., 4369 CRB-5-01-2 (February 28, 2002) (*appeal withdrawn*, October 3, 2002) in support of the decision.

BAKER V. MOYLAN PROPERTY SERVICES, 6133 CRB-8-16-8 (August 9, 2017)

The CRB in this case affirmed a dismissal of a claim for a worker who was injured cutting down a tree. The Board found that the claimant was not an employee but rather was an independent contractor. The claimant did not have experience cutting down trees but had worked in the past with a chainsaw trimming trees. The claimant was paid in cash. In reaching the decision the Board placed significant weight on the finding that the claimant could go to and from the job as he pleased.

JOHNSON V. STATE OF CONNECTICUT, 6132 CRB-4-16-9 (August 21, 2017)

This case involved an appeal of a trial commissioner's decision which upheld the denial of a shoulder surgery by utilization review where there was a medical care plan per Admin. Reg. § 31-279-10(f) C.G.S. The claimant did not at trial place into evidence the UR decision denying the surgery and therefore the commissioner found that the claimant did not present a prima facie case. The Board confirmed that the claimant had the burden to prove that the decision of UR was "unreasonable, arbitrary or capricious."

An issue addressed by the CRB was whether additional evidence could be submitted to determine if the UR decision was correct or whether the Board had to rely solely on the evidence presented in the UR decision. The CRB held that "If a trial commissioner, upon reviewing the record, were to determine the respondent's supportive evidence was inconsistent or inconclusive, we believe that the trial commissioner would have the authority to seek any clarification or augmentation which would permit a fair decision to be reached." In this case, though, since nothing was in the record the Board affirmed the commissioner's denial of the treatment.

DOMBROWSKI V. CITY OF NEW HAVEN, 6149 CRB-3-16-10 (September 11, 2017)

In this case the CRB affirmed the trial commissioner's denial to reopen a stipulation. The claimant was pro se at the time of settlement approval (although his union representative assisted him). In addition to the stipulation the claimant was requested to sign a general release at the time of settlement. The claimant almost immediately "rejected" the check that was sent to him. The Board agreed that there was no basis for reopening the settlement. The CRB did state that the commission does not have jurisdiction over general releases that deal with issues outside of the workers' compensation forum but they did suggest that claimants be given these types of agreements before the hearing for approval so that they can review them.

KATSOVICH V HERRICK & COWELL COMPANY, INC., 6148 CRB-3-16-11 (October 4, 2017)

The claimant injured his neck at work and sought benefits under General Statutes Section 31-308(a) for temporary partial (TP). The claimant was Russian-born and he was limited in his ability to speak English. There was a dispute as to whether the employer had offered the claimant light duty or not. The claimant did not perform job searches; notwithstanding this, the commissioner ordered TP to be paid. On appeal the Board affirmed the decision. In doing so the CRB stated that being unaware of the law is not a sufficient excuse to not follow what is required to obtain benefits; on the other hand, the Board held that performing job searches is not an absolute requirement for TP benefits to be ordered. The Board allowed TP without job searches since " A claimant's skill level and fluency in the English language is a relevant consideration in determining employability…and commissioners cannot avert their eyes from the age of the claimant…. [a] commissioner may find that although a claimant has a theoretical light duty capacity, other factors and restrictions may render an employment search futile." While TP was allowed in this case we believe that this is a limited exception to the general rule that job searches must be performed in order to receive TP benefits.

DININO V. FEDERAL EXPRESS, 176 Conn. App. 248 (2017)

The claimant was injured at work when he fell between the loading dock and the truck that he was unloading. He pursued a civil claim against his fellow employee for negligent operation of a motor vehicle alleging that the truck was improperly parked. He also brought a civil case against the employer contending that his injury was

"substantially certain" to occur based on past experience with the loading dock. The trial judge granted a motion for summary judgement for the defendants that was affirmed on appeal by the Appellate Court. The Court noted that General Statutes Section 31-284 does not allow civil claims against employers due to work injuries; workers' compensation is generally the "exclusive remedy" for work injuries subject to very limited exceptions. The Court found that General Statutes Section 31-293a that allows claims against fellow employees for injuries that occur due to the *operation* of an automobile did not apply here because the vehicle was parked at the time of the injury. The Court did not consider material that the vehicle may have been running. Additionally the Court determined that there was no "substantial certainty" that an injury was going to occur to the claimant and therefore the test found in Suarez v. Dickmont Plastics Corporation, 242 Conn. 255, 257-58 (1997) was not met; therefore no civil claim was allowed against the employer. Based on this decision, the claimant's only remedy was workers' compensation.

CONNECTICUT WORKERS' COMPENSATION COMMISSION NEWS

As of October 1, 2017 new compensation rate information has been issued by the commission. The maximum rates of injuries have **not increased**, in fact, they have **decreased** (see workers' compensation at a glance chart below). In view of this, for claimants/dependents that were receiving COLA's their rates will not increase. A legal argument could potentially be made that COLA's should actually decrease, however, the commission in the past when the maximum rates have decreased has recommended that COLA rates remain the same without any decrease.

Section 31-294c of the Connecticut General Statutes, as amended by Public Act 17-141, now allows employers to designate for their employees a specific location where those employees must file any claims they may make for workers' compensation benefits. As of September 29, 2017 Chairman Mastropietro has posted a memo regarding how employers can designate a specific location for filing workers' compensation claims in Connecticut. Please contact SDAZ if you have any questions regarding how to designate a specific location for service of new claims.

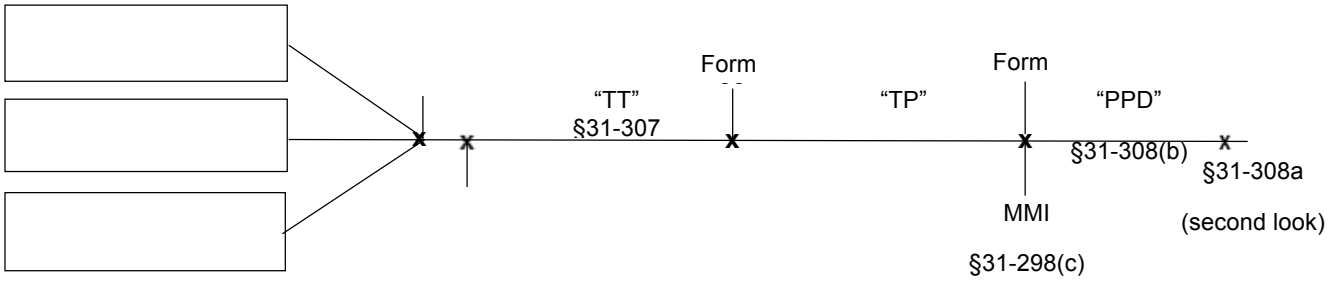
SEE BELOW OUR "WORK-COMP-AT-A-GLANCE" SUMMARY; PLEASE CONTACT US IF YOU WOULD LIKE TO RECEIVE A LAMINATED VERSION OF THIS THAT IS HANDY TO KEEP AT YOUR DESK

STRUNK • DODGE • AIKEN • ZOVAS

Lucas D. Strunk, Esq.	**860-785-4502**	**Nancy E. Berdon, Esq.**	**860-785-4507**
Jason M. Dodge, Esq.	**860-785-4503**	**Katherine E. Dudack, Esq.**	**860-785-4501**
Richard L. Aiken, Jr., Esq.	**860-785-4506**	**Philip T. Markuszka, Esq.**	**860-785-4510**
Anne Kelly Zovas, Esq.	**860-785-4505**	**Christopher J. D'Angelo, Esq.**	**860-785-4504**

CONNECTICUT WORKERS' COMPENSATION (post 7/1/93) AT A GLANCE

Commission Website: http://wcc.state.ct.us



MAXIMUM/MINIMUM COMPENSATION RATES

	Maximum Temporary Total (§31-307) (wages all)	Maximum Permanent/ Temporary Partial (§31-308) (APW)	Minimum Temporary Total* (§31-307) (*20% of maximum rate capped at 75% AWW)	Minimum Permanent/ Temporary Partial (§31-308(b))
10/1/17*	$1,287.00	$1,023.00	$257.40	$50.00
10/1/16	$1,292.00	$1,063.00	$258.40	$50.00

10/1/15	$1,256.00	$998.00	$251.20	$50.00
10/1/14	$1,175.00	$991.00	$235.00	$50.00
10/1/13	$1,184.00	$985.00	$236.80	$50.00

*max rate for D/A 10/1/87-6/30/93 is $1535.

CONCURRENT EMPLOYMENT
§31-310

1. Must be employed with both employers on date of accident
2. Only wages for simultaneous weeks included
3. Out-of-state, federal, U.S. military, self-employment or casino employment does not qualify
4. Request reimbursement Second Injury Fund within 2 years of payment

COST OF LIVING ADJUSTMENTS (COLA)
§31-307a

1. Only after 5 years of temporary total
   or
2. Permanent total/death

3. Reimbursement from Second Injury Fund for COLA paid D/A 7/1/93 and before 10/1/97 (requested within 2 years of payment)

MILEAGE PER DATE OF INJURY
§31-312

1/1/2017	53.5 cents
1/1/2016	54 cents
1/1/2015	57.5 cents
1/1/2014	56 cents
1/1/2013	56.5 cents

DEATH BENEFITS
§31-306

- $4,000.00 burial fee (§31-306(a)(1))
- Benefits paid to surviving spouse until death or remarriage (§31-306(a)(3), §31-275(19))
- If no spouse, paid to the dependent children until age 18, or 22 if fulltime student, or for life if incapacitated from earning (§31-306(5))

FORMS

- **Form 36** (certified mail) (§31-296(b)):
  - Filed to seek discontinuation or reduction in benefits or to establish maximum medical improvement (MMI)
  - Filed to seek suspension of benefits for non-compliance with medical care

- Dependent-in-fact capped at 312 weeks, limited to extent of actual support (§31-306(6))

STATUTE OF NON-CLAIM

- **Accidental Injury**: One year (tolled if medical bill paid by employer or request for hearing within one year) (§31-294c)
- **Repetitive trauma**: One year from date of last injurious exposure
- **Occupational disease**: Three years from date when doctor tells claimant disease due to work

- **Form 43** (certified mail) (§31-294c):
  - Filed to contest claim, extent of disability, extent or nature of medical care or to seek suspension of benefits for failure to attend treatment or evaluation
  - Copy to physician in cases in which medical care questioned
  - Commission medical protocols can be basis for Form 43
- **Form 42**:
  - Sent to doctor for MMI and PPD rating(s)
- **Employee Medical & Work Status Form**:
  - Sent to doctor for outline of restrictions in detail

SCHEDULED LOSS OF PERMANENT IMPAIRMENT

BACK	374	BLADDER	233	HEART	520	SMELL	17		
MASTER ARM	208	SPEECH	163	BRAIN	520	TASTE	17		
NON-MASTER ARM	194	LUNG	117	MASTER THUMB	63	SPLEEN	13		
MASTER HAND	168	CERVICAL SPINE	117	NON-MASTER THUMB	54	GALL BLADDER	13		
NON-MASTER HAND	155	KIDNEY	117	FIRST FINGER	36	TOOTH	1		
LEG	155	RIB CAGE	69	SECOND FINGER	29	PELVIS	374		
FOOT	125	OVARY	35	THIRD FINGER	21	STOMACH	260		
HEARING		TESTIS	35	FOURTH FINGER	17	DRAINAGE DUCT EYE	17 each		
BINAURAL	104	MAMMARY	35	GREAT TOE	28	DRAINAGE DUCT EYE UNCORRECTED	33 each		
ONE EAR	35	NOSE	35	OTHER TOES	9	VAGINA	35-104		
ONE EYE	157	JAW	35	CAROTID ARTERY	520	PENIS	35-104		
PANCREAS	416	UTERUS	35-104	LIVER	347	COCCYX	35		

Strunk Dodge Aiken Zovas 2017

Any questions? Feel free to give us a call 860-785-4500 or at the direct dial extensions below.

Name **Phone: (860) 785-4500** **Email**

Lucas D. Strunk	Ex. 4502	lstrunk@ctworkcomp.com
Paula Kuhn – Admin. Asst.	Ex. 4508	pkuhn@ctworkcomp.com
Jason M. Dodge	Ex. 4503	jdodge@ctworkcomp.com
Joanne McSherry – Admin. Asst.	Ex. 4500	jmcsherry@ctworkcomp.com
Richard L. Aiken, Jr.	Ex. 4506	raiken@ctworkcomp.com
Lisa Mulvey – Admin. Asst.	Ex. 4513	lmulvey@ctworkcomp.com
Anne Kelly Zovas	Ex. 4505	azovas@ctworkcomp.com
Sandy Straker – Admin. Asst.	Ex. 4511	sstraker@ctworkcomp.com
Nancy E. Berdon	Ex. 4507	nberdon@ctworkcomp.com
Katherine E. Dudack	Ex. 4501	kdudack@ctworkcomp.com
Philip T. Markuszka	Ex. 4510	pmarkuszka@ctworkcomp.com
Barbara Kalisz – Admin. Asst.	Ex. 4514	bkalisz@ctworkcomp.com
Christopher J. D'Angelo	Ex. 4504 Ex. 4512	cdangelo@ctworkcomp.com
Kathleen DeCiantis – Admin. Asst.	Ex. 4515	kdeciantis@ctworkcomp.com
Pam Sarris – Admin. Asst.	Ex. 4518	psarris@ctworkcomp.com
Elizabeth Annitto – Admin. Asst.	Ex. 4519	eannitto@ctworkcomp.com
Caitlyn Bouchard – Financial Manager	Ex. 4509	cbouchard@ctworkcomp.com
Ryan Kipfer – Scheduling Coordinator	Ex. 4517	rkipfer@ctworkcomp.com
Arman Karbassioon		akarbassioon@ctworkcomp.m