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ATTORNEYS AT LAW

CONNECTICUT WORKERS' COMP UPDATE

The law firm of **Strunk Dodge Aiken Zovas (SDAZ)** provides you with our Spring 2018 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 or 860-785-4503.

**** Case law alert: See recent Appellate Court case, CLEMENTS v. ARAMARK CORPORATION, below for important decision re "syncopal" falls at work.**

STRUNK DODGE AIKEN ZOVAS NEWS

The annual Hartford County Bar Foundation 5K Race and Walk in memory of Joseph Cassidy was held on May 12th, under threatening skies, at the West Hartford Reservoir. Hartford area judges and attorneys along with families and friends participated - and the rain held off! The proceeds from the race benefit the Foundation whose mission is to help the poor, sick and disadvantaged in the Hartford Area. Anne Zovas, a board member of the Foundation, chaired the event and SDAZ was recognized as a sponsor.

Attorney Jason Dodge of SDAZ assisted in the defense of a workers' compensation claim recently that led to the arrest of the claimant for workers' compensation fraud and perjury. The claimant alleged a work injury kept her out of work although surveillance obtained by the insurance carrier revealed that she was operating her own smoothie business. When asked at deposition if she had worked at all during the course of her time on workers' compensation the claimant denied this; the testimony was inconsistent with the surveillance and documentary evidence. See this link regarding the arrest: https://patch.com/connecticut/wethersfield/wethersfield-woman-charged-workers-comp-fraud-perjury

Attorneys Lucas Strunk, Anne Zovas, Rick Aiken and Jason Dodge have been named to Connecticut Super Lawyers for 2018. Attorney Philip Markuszka has been named to the 2018 Connecticut Rising Stars list.

We do appreciate referrals for workers' compensation defense work. 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.

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.

Our attorneys:

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 COMMISSION NEWS

There have recently been significant changes to the makeup of the Connecticut Workers' Compensation Commission. Three new commissioners have been named as well as a new Chairman. In the short term, we believe there likely will be little change in the commission and how matters are handled although the amount of time to get a hearing assigned may be delayed somewhat while the new commissioners are introduced to the system.

Stephen Morelli has been named the new Chairman of the Connecticut Workers' Compensation Commission. He takes over from John Mastropietro who has retired. Chairman Mastropietro had a long career as both Commissioner and Chairman. He led the Commission through difficult financial times and reductions in the Commission staff. The Commission is in a good position going forward because of the leadership of Chairman Mastropietro. Best wishes to Chairman Morelli in his new role and to Chairman Mastropietro in his retirement!

Also, three new Commissioners have been appointed: Maureen Driscoll of Shelton, Carolyn Colangelo of Easton and William Watson of Berlin.

Retirement News: Commissioner Robert D'Andrea was recently appointed to be a judge. You will recall that we reported on Commissioner D'Andrea being appointed a commissioner in our Summer 2017 update. We wish new Judge D'Andrea the best in his new endeavor in Superior Court.

Former Commissioner Christine Engel's retirement party was held on May 24 at the Waterbury Country Club. Chairman Morelli and Commissioner Engel's former law partner, Attorney Jeff Nicholas, both gave speeches acknowledging Commissioner Engel's numerous contributions to the Commission.

Commissioner Ernie Walker has also retired and will be given a party on July 19 at the Farmington Club. Commissioner Walker did not take long to change hats; he has started the law firm of Walker, Feigenbaum, and Cantarella with Attorneys Seth Feigenbaum and John Cantarella. Attorney Walker cannot go before the Workers' Compensation Commission until one year after his retirement. He is now willing to take on cases as a mediator, however.

Retired Commissioner Delaney is also doing mediation work. We have had success resolving cases with him as a mediator. We can provide his contact information for you if you wish to choose him as a mediator.

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/ClaimLookup.aspx

LEGISLATIVE UPDATE

Prepared by Attorney Lucas D. Strunk

This year's short legislative session was the first in memory in which no changes to the Connecticut Worker's Compensation Act were proposed. The stakeholders to our Act were quiet and although there were likely discussions and concerns raised behind closed doors, no bills were forthcoming.

Three of the State's stronger employee groups, however, the firefighters, police, and teachers did put forth proposed legislation that would be relevant to practitioners in the event alternative remedies for injured workers were considered. Although none of these proposals saw a vote in the General Assembly, the bills are worth noting giving that next year's longer session may see a reintroduction of these ideas.

SENATE BILL 278 "An Act Concerning Mental Health Care and Wellness Training and Suicide Prevention for Police Officers" was a rather detailed and comprehensive bill addressing mental health issues for police officers and public safety personnel that would have prohibited municipalities or state agencies from discharging, discipline or discriminating, or otherwise penalizing certain public safety personnel because they seek or receive mental health services. The same prohibition would apply to police officers who return their firearm while receiving mental health and would require the municipality or agency to return the officer's firearm once a licensed mental health provider deems the officer ready for duty.

The bill would also require the Department of Emergency Services and Public Protection to develop a list of thirty mental health providers with training and expertise in post-traumatic stress disorder. The bill also envisioned allowing officers to return to work within a year if certain conditions were met. Also required was development of a model to support mental health and wellness of police officers, as well as a requirement to provide mental health care and wellness training to police officers hired on or after October 1, 2018. The DESPP would also be required to maintain a database relative to police suicide.

The bill was subject of extensive discussion with objection from municipalities who were seeking a better solution to the issues associated with this problem. As noted, the discussion will continue during the next session.

RAISED BILL 5568 "An Act Concerning Notification by Contractors to School Districts Regarding Arrests or Criminal Investigations of Employees and Concerning a Cause of Action for Teachers Harmed by an Unremedied Hazardous Condition" would have amended Section 10-236a to require that a contractor under contract with a board of education inform the superintendent when an employee is arrested or under criminal investigation and create a cause of action for teachers harmed by unremedied hazardous conditions.

The bill provided that the teacher's employer previously notified in writing of a hazardous condition existing at the place of employment which was not remedied and which later causes personal injury or death would allow for a civil action against the employer. The bill allowed for a deduction against any recovery for workers' compensation benefits received. The action would have provided for an award of punitive damages, attorney's fees and costs.

The bill, introduced through the Judiciary Committee, was subject of extensive public comment which is available on the General Assembly's website.

HOUSE BILL 5070 “An Act Providing Funding for the Firefighter's Cancer Relief Fund." This bill sought to appropriate to the state treasurer the sum of $400,000.00 from the general fund for the fiscal year ending June 30, 2019. That sum would have funded the firefighter's relief account established by PA 16-10 and codified as § 16-256g of the statutes. The bill, however, was not voted out of appropriations.

Next year's session will likely generate a number of bills of interest. Within the Connecticut Bar Association Executive Committee, members are considering proposing changes that will seek to clean up or eliminate anachronistic sections of the Act that are inconsistent with our everyday practice or case law.

For this year, however, rest easy, there is no new law to learn. We will start the whole process again in January.

MEDICARE ISSUES

As of April 2, 2018 CMS has issued a new "Self-Administration Toolkit for Workers' Compensation Medicare Set-Aside Arrangements." This advises claimants about what they have to do with MSA funds including but not limited to: setting up accounts, paying bills, and keeping records of payments. This can be found at the following site

https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/Downloads/Self-Administration-Toolkit-for-WCMSAs.pdf

RECENT CASE LAW

CLEMENTS v. ARAMARK CORPORATION, 182 Conn. App. 224 (May 29, 2018)

In this important case the Appellate Court found the claim compensable, overruling the CRB and Trial Commissioner. The claimant was injured while on the campus of the employer walking to her job as a mess attendant for a vendor at the Coast Guard Academy. While going between one building to another early in the morning the claimant fainted due to "cardiogenic syncope"; she hit her head on the ground and sustained a concussion. The Commissioner and Board had dismissed the claim because the fall was due to an underlying, non-occupational cause. The Appellate Court reversed concluding that this was an issue of law that must be construed in accordance with the "remedial purpose of the Act." The Court determined that "an injury received in the course of employment does not cease to be one arising out of employment merely because some infirmity due to disease has originally set in action the final and proximate cause of the injury." The Court in support of their decision that the concussion was compensable cited the rather old Supreme Court cases of **Gonier v Chase Companies**, 97 Conn. 46 (1921) and **Savage v. St. Aeden's Church**,122 Conn. 343 (1937). The respondents undoubtedly will attempt to have this case heard at the Connecticut Supreme Court; we believe it is likely the Supreme Court will consider the case. If the Supreme Court affirms this decision it would mean that injuries that result from a fall that was precipitated by a non-occupational factor (like a fainting spell) likely will be considered compensable.

KORN v. TOWN OF GUILFORD, 6178 CRB-3-17-3 (March 21, 2018)

A police officer sought a claim under General Statutes Section 7-433c for hypertension. He was diagnosed after a stress test revealed "exercise-induced" hypertension. The respondent's examiner testified that this was not truly a diagnosis of hypertension since patients should have hypertensive blood pressure readings while in a stress test. The commissioner dismissed the case and the CRB affirmed the dismissal. Attorney Jason Dodge of SDAZ defended the case.

MELENDEZ V FRESH START GENERAL REMODELING & CONTRACTING, 180 Conn. App. 355 (2018)

In this case the Appellate Court affirmed the finding that the claimant was an employee and sustained a compensable injury. The employer attempted to defend the case

based on contention that the claimant did not qualify as an employee because allegedly he did not regularly work 26 hours per week and that he was a casual laborer. The Court found that the claimant worked regularly more than 26 hours per week for 11 weeks for the employer helping him and his wife move homes. The Court found that the employer was **personally** liable for the claim and not one of the companies he owned**.**

KEYES v. TOWN OF BRANFORD, 6183 CRB-3-17-3 ((April 25, 2018)

The CRB affirmed the trial commissioner's Finding & Dismissal that the claimant's need for medical treatment for L5-S1 disc issues was not due to the underlying compensable injury. This case involved "dueling experts"; that is, opinions of the treaters versus opinion of the respondents' examiner. The respondents' examiner found that the claimant's need for evaluation and treatment for a L5-S1 disc problem, including fusion surgery, was not causally related to the work injury but rather a result of degenerative changes. The trial commissioner found the respondents' examiner's testimony and reports more persuasive than the treaters'. The trial commissioner concluded that the claimant failed in his burden of persuasion and dismissed the claim for medical treatment for the L5-S1 disc. The CRB found that the decision of the trial commissioner was neither arbitrary nor capricious and held that the trial commissioner has the prerogative to choose what opinion he deems more persuasive and weighty.

DUNKLING v. LAWRENCE BRUNOLI, et al., 6154 CRB-5-16-11 (April 25, 2018)

At issue in this case was whether Lawrence Brunoli, Inc. ("Brunoli") had served as "principal employer" pursuant to Connecticut General Statutes Section 31-291 at the worksite where the claimant's injury occurred. The State of Connecticut Department of Transportation entered into a contract with Brunoli to act as general contractor for work on a project and permitted Brunoli to subcontract with Mid-State Metal Building Company, LLC and the claimant's employer, Connecticut Metal Structures, LLC. The trial commissioner found the claimant to be credible and determined that he had sustained a compensable injury. He also concluded that Brunoli was the "principal employer" of the claimant pursuant to Section 31-291. The CRB affirmed the trial commissioner's finding that the claimant had sustained a compensable injury on the project for which Brunoli was acting as principal employer pursuant to Section 31-291, disagreeing with Brunoli's argument that its obligations pursuant to Section 31-291 concluded as of the date of "substantial completion" of the project

MARCIA SMITH-GLASPER V. STATE OF CONNECTICUT/ SOUTHERN CONNECTICUT STATE UNIVERSITY, et al., 6179 CRB-3-17-3 (March 22, 2018)

This case involved the medical treatment exception for filing notice of a work injury. The CRB affirmed the trial commissioner's Dismissal concluding that the claimant failed to meet to the burden of persuading the trier of fact that the medical care exception pursuant to § 31-294c(c) applies to the facts of the case. The claimant filed a First Report of Injury on October 7, 2010, claiming that she had sustained an arm injury.

The claimant sought treatment after the October 7, 2010 incident with Dr. Senatus and Dr. Bernstein. Dr. Senatus diagnosed cervical stenosis and performed a discectomy and fusion on February 23, 2011. Dr. Senatus and Dr. Bernstein both opined in 2011 that the claimant's injury was not causally related to her employment. The claimant did not file a Form 30C for any of the claims including the October 7, 2010 incident. The claimant did not pursue a claim for her cervical injury and surgery until March 2015. The respondents filed a Motion to Dismiss for lack of subject matter jurisdiction due to late notice of claim in December 2015. In affirming the trial commissioner's dismissal, the CRB applied the court's finding in *Valenti v. Norwalk Hospital* noting that they will continue to uphold the decisions of trial commissioners in cases where claimants treated for ailments on their own under their employer's group health insurance and never followed up after the treatment with a written notice of claim. Filing a First Report of Injury and processing medical treatment under a group health carrier does not constitute sufficient notice to satisfy the medical care exception pursuant to § 31-294c(c).

DABBO v. BECKMAN COULTER, INC., 6174 CRB-2-17-1 (March 6, 2018)

The CRB issued a ruling on which reaffirms that medical payments by a group carrier cannot be utilized to reduce a third party moratorium. In Dabbo v. Beckman Coulter, Inc., the Board, relying on established precedent, held that neither health insurance payments nor premiums paid by the claimant for the coverage serve to reduce the moratorium. The decision confirms the rule that only medical payments made by the claimant are deducted from a third party moratorium.

VENEZIANO v. CITY OF WATERBURY, 500164326 (February 20, 2018)

In this trial level decision Commissioner Morelli (now the Chairman) dismissed this General Statutes Section 7-433c heart and hypertension claim for untimely notice. The claimant had been diagnosed with hypertension in 2010 (and told by his doctor of the diagnosis and given prescription) but did not file a claim until 2015. Attorney Jason Dodge of SDAZ defended the case.

DOUGLAS v. JACOBS VEHICLE SYSTEMS INC., 100150344 (February 13, 2018)

The claimant had a compensable back injury on February 20, 2004 and was paid permanency. The claimant sought ongoing treatment for the back injuries for years. The respondents obtained a RME that indicated no additional treatment was needed and that it was not related to the accident. A commissioner examination was held with Dr. Beiner that found that additional treatment was palliative and not related to the work accident. The commissioner dismissed the claim for further benefits. Attorney Jason Dodge of SDAZ defended the case.