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ATTORNEYS AT LAW

CONNECTICUT WORKERS' COMP UPDATE

The law firm of **Strunk Dodge Aiken Zovas** provides you with our July 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

Anne Kelly Zovas has been honored to recently be named a James W. Cooper Fellow of the Connecticut Bar Foundation. The Bar Foundation is a non-profit organization that develops and oversees programs to enhance understanding and improvement of the law and gives funding to enable the poor to have access to legal services. The Fellows are involved in various projects that further the mission of the Foundation. The James W. Cooper Fellows nominate outstanding Connecticut lawyers, judges, and teachers of law to become Fellows.

The 2017 Cassidy Memorial Road Race was held on May 6 at the West Hartford Reservoir. There were almost 100 runners and walkers participating including area attorneys, judges and law students, along with friends and family members. The event is chaired by Anne Zovas in her role as Board Member/Past President of the Hartford County Bar Foundation. The proceeds of the race benefit the HCBF. The Foundation provides grants to support the poor, disabled and homeless in the Hartford area.

Lucas Strunk was recognized by *Best Lawyers*[™] as the 2017 Workers' Compensation Law-Employers "Lawyer of the Year" in the Hartford, Connecticut region. Attorneys Richard Aiken and Jason Dodge have been recognized by *Best Lawyers in America*[™] in 2017 in the area of Workers' Compensation Law-Employers. Strunk Dodge Aiken Zovas has been named by *U.S. News-Best Lawyers* in its "Best Law Firms" ranking, Tier Two for 2017. All of the partners in SDAZ have been AV rated by Martindale-Hubbell.

Anne Zovas has recently been named a top-rated workers' compensation attorney by *Super Lawyers*. Attorney Philip Markuszka has been named by *Super Lawyers* as a 'Rising Star.' Phil joins Attorneys Zovas, Aiken, Strunk and Dodge in *Super Lawyers*.

Attorneys Lucas Strunk and Jason Dodge recently submitted to Thomson West Publishing their supplements for the workers' compensation treatise, **Connecticut**

Workers' Compensation Law. This book is an overview of all relevant issues in Connecticut Worker's Compensation and is updated yearly. The treatise can be purchased at:

legalsolutions.thomsonreuters.com/law-products/Treatises/Connecticut-Workers-Compensation-Law-Vols-19-and-19A-Connecticut-Practice-Series/p/100006513

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.

LEGISLATIVE UPDATE

The dust has apparently settled on the substantive legislation to be passed by the legislature this year. At the time of preparation of this report the legislature had still not passed a state budget. Therefore, the implementer bill associated therewith has not been finalized. At times, the implementer can include substantive or procedural changes to the Act and same will be monitored.

Most likely, however, the following reflects the relevant 2017 legislation.

PUBLIC ACT 17-27 “An Act Concerning Withholding Workers’ Compensation Income for Child Support.” This new law effective January 1, 2018 repeals Section 52-362 and substitutes language that expands the employer’s duties to notify the carrier or administrator of a child support obligation by including any withholding order with the First Report of Injury sent to the carrier or administrator so that such carrier shall then withhold funds as required and forward same to Support Services which in turn must then provide those funds to the appropriate party.

PUBLIC ACT 17-141 “An Act Concerning the Provision of Notice of a Claim for Compensation by an Employee to an Employer or a Workers’ Compensation Commissioner.” The Act amends Section 31-294c effective October 1, 2017 so that private employers (other than the state or a municipality) may opt to post a notice of where compensation claims shall be sent. The new provisions are an attempt to address difficulties with processing notice of claims that can lead to motions to preclude. Under the new provisions the employer is required to post notice of the address where its other labor law posters are prominently displayed. The employer must also forward the address to the Workers’ Compensation Commission which will post the address on its internet site. The employer is responsible for verifying the accuracy of the information on the site. The twenty-eight day time period for purposes of a response to a notice of claim will begin to run on the date the employer receives written notice at the posted address.

PUBLIC ACT 17-97 “An Act Concerning Exceptions to the Ten-Year Repose Period for Certain Product Liability Claims.” The new law effective October 1, 2017 amends Section 52-577a and broadens the exception to the ten-year statute of repose by allowing claimants who received workers’ compensation benefits to proceed in the same manner as other plaintiffs.

PUBLIC ACT 17-131 “An Act Preventing Prescription Opioid Diversion and Abuse.” While not directly relevant to the Workers’ Compensation Act, it may provide options to the workers’ compensation practitioner facing the issues created by a claimant with opioid abuse difficulties. The Act increases data sharing between state agencies, facilitates the destruction of unused prescription medication, and seeks to reduce the use of opioid medications. The provisions of interest address prescribers abilities to obtain certification for Suboxone and other medications to treat opioid use disorder and effective January 1, 2018 mandates that group health insurance policies cover in-patient detoxification services and medically necessary managed intensive in-patient detoxification services as described in the most recent edition of the American Society of Addiction Medicine treatment criteria for addictive, substance-related and co-occurring conditions.

As always, full copies of the text of these public acts is available at the legislature’s website www.cga.ct.gov.

RECENT CASE LAW

Deborah Lionetti Lodata v. Paul G. Messineo, LLC., WCC 601059044 (Commissioner Truglia, June 26, 2017)

In this trial commissioner ruling, Commissioner Truglia denied a request for cervical surgery based on her conclusion that the surgery was not necessary. The commissioner also denied the claimant’s contention that payments for a bankruptcy debt and to the bankruptcy trustee from the proceeds of a third party civil action served to reduce the respondent’s moratorium. The trial commissioner determined that the respondents were not liable for a chiropractic fee for treatment that was performed post maximum improvement; in doing so the commissioner considered the treatment unauthorized. The respondents were represented by Attorney Jason Dodge of Strunk Dodge Aiken Zovas.

Pederzoli v. United Technologies/ Pratt & Whitney, 6129 CRB-8-16-19 (July 18, 2017)

This case involved a death claim of a longtime employee of an aircraft engine manufacturer who alleged that he was exposed to asbestos at work that caused him to

develop mesothelioma. The evidence of actual exposure to asbestos was questionable with witnesses indicating that there could have been exposure to asbestos at work; there seemed to be a lack of direct evidence that the claimant was actually exposed to asbestos that would have caused his condition. The commissioner at trial dismissed the claim and concluded that the claimant failed to provide evidence of “injurious exposure” to asbestos. On appeal the CRB reversed the finding and remanded the case for further proceedings; the Board determined that the commissioner applied the wrong legal standard of causation since he did not determine whether the exposure to asbestos was a substantial contributing factor to the development of the mesothelioma. The Board noted that the standard applied by the commissioner was used only in General Statutes Section 31-299b cases in determining who the last employer is.

Palacios v Dual-Lite et al., 6078 CRB-8-16-3 (February 23, 2017)

In this case the Compensation Review Board affirmed a commissioner’s ruling that the employer on the risk initially for a March 7, 2003 left thumb injury was responsible for the claimant’s present condition and not ten years of intervening alleged repetitive trauma with another employer. Dr. Duffield Ashmead’s testimony was relied on by the Board and commissioner when he testified that “his diagnosis was osteoarthritis of the left and right hands with principal involvement at carpometacarpal and interphalangeal joint levels. He opined that once the degenerative process is set in motion, the role of substantive injurious exposure becomes much less relevant and the degenerative process takes on a life of its own. The claimant’s subsequent work activities did not play a significant role in her deteriorating condition.” Therefore, if a defense is raised that subsequent employers are responsible for an injury there must be credible medical proof that the subsequent work was a substantial factor in causing the present condition. Attorney Philip Markuszka successfully defended this case prior to his joining Strunk Dodge Aiken Zovas.

Wilson v. Capital Garage, 6109 CRB-2-16-6 (May 16, 2017)

This case before the CRB dealt with the issue of a Motion to Preclude. The respondents in this lung injury case had failed to issue a disclaimer. Pursuant to the Supreme Court Case of *Donahue v. Veridigm*, 291 Conn. 537 (2009), the claimant still had to prove that he had a *bona fide* case (valid compensable claim) before the commissioner in order to be entitled to benefits even if the respondents failed to issue a disclaimer. At the formal hearing the commissioner seemed to suggest that he agreed that the claimant had proven causation but he elected to have a commissioner’s exam to address issues of permanency. When the commissioner’s examiner, Dr. Gerardi, issued a report that the claimant’s condition was not substantially due to work the commissioner adopted this opinion and dismissed the claim. The claimant on appeal objected because he had not been given any notice that the commissioner had questioned the causal relationship of the injury to work. The Board agreed with the claimant and indicated that the claimant should have been made aware that the commissioner examiner’s opinion could be used to dismiss the claim. The CRB stated that “In the present case, a reasonable person could misconstrue the trial

commissioner's March 23, 2015 statements as constituting a final opinion as to the compensability of his injuries. We believe due process in this case should permit additional latitude to the claimant to enable him to challenge the evidence the commissioner relied upon to dismiss this claim." The Board said that the commissioner in a Motion to Preclude can get a commissioner's exam but the claimant should be aware that the report could be used to refute whether it was a bona fide claim. The case was remanded to the commissioner for a de novo hearing (new trial).

Magistri v. New England Fitness Distributors, 6089 CRB-2-16-4 (May 10, 2017)

The claimant was driving an automobile in the course of his work and was involved in motor vehicle accident which caused him to sustain injuries. The accident was substantially due to an underlying sleep apnea condition that the claimant had. The Board affirmed the trial commissioner's award of benefits notwithstanding the sleep apnea condition. The CRB held that "In the present case, the trial commissioner could have reasonably determined that the claimant's sleep apnea would not have led to his injuries had he not been operating his employer's motor vehicle at the time when this medical condition occurred." This case arguably is inconsistent with **Clements v. Aramark Corp., 6034 CRB-2-115-10 (2016), appeal pending, No. AC 39488**, where the Board affirmed the dismissal of injuries that occurred at work when the claimant fell at work and hit her head due to an underlying cardiac condition. The Clements case is presently on appeal to the Connecticut Appellate Court. It is hoped that the Court in Clements will limit the liability for employers where the claimant's injuries are directly related to a non-occupational, underlying health problem. A decision in Clements is expected in early 2018.

Deforest v Yale New Haven Hospital, 6075 CRB-3-16-2 (April 6, 2017)

The CRB affirmed an award of compensability in a lunch-time injury case. Here the claimant was injured on a public street going from her employer's premises to her car that was parked in a garage. The claimant was going to the garage to get money for a coffee later in the day. The garage was determined to be a company sponsored parking lot. In finding the matter compensable the Board seemed to place great weight on the fact that the employer had acquiesced to this activity. The CRB stated that "It is also self-evident that the respondent knew that the claimant would traverse public roads and sidewalks between where she parked and where she worked. The claimant therefore was injured at a location where the respondent directed her to be, or where, at a minimum, it had acquiesced to her presence."

Ouellette v. Lane Bryant, Inc., 6122 CRB-6-16-8 (July 7, 2017)

This case provides some potential defense to so-called "parking lot" injuries; it also seems to be in conflict to a certain extent with the **Deforest** case listed above. The claimant was leaving the store where she worked; she fell on a sidewalk in front of the store and near the parking lot where her car was parked. The sidewalk and the parking

lot were not owned by the employer; the employer's store was part of a strip mall. The CRB affirmed the trial commissioner's dismissal of the case. The Board noted that the commissioner found that the claimant's activities at the time of the fall were not incidental to her employment. The CRB made clear that they would give deference to the commissioner's findings. Based on this case, parking lot injuries that occur before or after work in a strip mall area may arguably not be compensable.

Rowland v Town of Woodbridge, 6087 CB-3-16-3 (March 31, 2017)

The claimant was a volunteer firefighter who was injured on the job and awarded benefits under General Statutes Section 7-314a and 7-314b. He claimed increased lost wages for a carpentry job that he had through his own limited liability company. The commissioner and the Board denied the claim for extra wages pointing out that the claimant had failed to file prior to the injury a Form 75 opting to have workers' compensation coverage. This finding is consistent with other rulings of the Board strictly requiring single member limited liability company owners to file Form 75's in order to be entitled to benefits under the Workers' Compensation Act. There is no specific statutory language requiring Form 75's to be filed by LLC's to opt into coverage, however; this issue will likely be litigated in some future Appellate Court case.

CONNECTICUT WORKERS' COMPENSATION COMMISSION NEWS

Commissioner Robert D'Andrea and Commissioner Brenda Jannotta have been appointed by Governor Malloy as new commissioners. Both started presiding over cases in June.

Commissioner D'Andrea is a former state prosecutor and has worked in private law practices in the fields of municipal law, tax appeals, planning and zoning, litigation, and residential and commercial real estate transactions in multiple countries.

Commissioner Jannotta graduated from the University Of Connecticut School Of Law and since 2006 has been the Program Manager at the Office of Rail in New Haven, Connecticut. While there she where she was involved in the management of transit security programs, development of policy and funding activities affecting rail transit in the state, reviewing and interpreting federal and state statutes and regulations, and monitoring the activities of Metro-North and Amtrak.

Due to budgetary issues with the State of Connecticut there has been discussion of closure of the Seventh District Workers' Compensation office in Stamford and reallocating the files there to other districts. Representatives of claimants in the southwest corner of the State have opposed this move arguing that it would require lengthy travel to hearings for their clients. No final decision has been made yet; we will keep you posted on any changes.

The Workers' Compensation Commission has issued revised guidelines for mediation by workers' compensation commissioners effective July 1, 2017. The highlights of the guidelines are: 1) the request for mediation must be made through the Chairman's office on Oak Street in Hartford, 2) three choices of commissioners for mediation must be given to the Chairman, 3) a choice of full or half-day mediation should be made, and 4) cancellation requests made later than 14 days before the mediation will bar the case from further mediation before the commission. The commissioners who have agreed to do mediation work are the Honorable Scott A. Barton, Randy L. Cohen, Daniel E. Dilzer, Christine L. Engel, Peter C. Mlynarczyk, Stephen M. Morelli, Nancy E. Salerno, Charles F. Senich, Michelle D. Truglia and Ernie R. Walker.

We have found mediation in general to be a success with the commissioners. There is no cost associated with the commission mediation as compared to private mediation companies which will cost in the range of \$1,500 to \$2,500.

The new workers' compensation statutes book, Bulletin Number 52, has recently been issued. If anyone wants a copy of the book please contact us and we will make sure that you receive a copy.

Dr. Peter Barnett of Glastonbury, a respected orthopedic surgeon specializing in shoulders and knees, is retiring. Dr. Barnett in the past has assisted the commission in his role as a treating physician, RME, and commissioner's examiner. Best wishes to Dr. Barnett in his retirement.

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

CONNECTICUT WORKERS' COMPENSATION (post 7/1/93)

AT A GLANCE

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 <u>capped</u> at 75% AWW) | Minimum Permanent/ Temporary Partial (§31-308(b)) |
|----------------|--|---|---|--|
| 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 |
| 10/1/12 | \$1,172.00 | \$1,001.00 | \$234.40 | \$50.00 |

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

FORMS

- \$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))
- Dependent-in-fact capped at 312 weeks, limited to extent of actual support (§31-225(7))

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

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 Paula Kuhn – Admin. Asst. | Ex. 4502 Ex. 4508 | lstrunk@ctworkcomp.com pkuhn@ctworkcomp.com |
| Jason M. Dodge Joanne McSherry – Admin. Asst. | Ex. 4503 Ex. 4500 | jdodge@ctworkcomp.com jmcsberry@ctworkcomp.com |
| Richard L. Aiken, Jr. Lisa Mulvey – Admin. Asst. | Ex. 4506 Ex. 4513 | raiken@ctworkcomp.com lmulvey@ctworkcomp.com |
| Anne Kelly Zovas Sandy Straker – Admin. Asst. | Ex. 4505 Ex. 4511 | azovas@ctworkcomp.com sstraker@ctworkcomp.com |
| Nancy E. Berdon Karla Morton Larson – Admin. Asst. | Ex. 4507 Ex. 4516 | nberdon@ctworkcomp.com kmlarson@ctworkcomp.com |
| Katherine E. Dudack Emily Miroslaw – Admin. Asst. | Ex. 4501 Ex. 4512 | kdudack@ctworkcomp.com emiroslaw@ctworkcomp.com |
| Philip T. Markuszka Barbara Kalisz – Admin. Asst. | Ex. 4510 Ex. 4514 | pmarkuszka@ctworkcomp.com bkalisz@ctworkcomp.com |
| Christopher J. D’Angelo Emily Miroslaw – Admin. Asst. | Ex. 4504 Ex. 4512 | cdangelo@ctworkcomp.com emiroslaw@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 |

