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CONNECTICUT WORKERS' COMP UPDATE

The law firm of **Strunk Dodge Aiken Zovas (SDAZ)** provides you with our Fall 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.

STRUNK DODGE AIKEN ZOVAS NEWS

On October 4 Attorneys Jason Dodge, Anne Zovas, Katie Dudack, Phil Markuszka, and Chris Buccini attended the kickoff event for **Kids' Chance of Connecticut**, a charity that provides scholarships to the children of seriously or fatally injured workers' compensation claimants. The event was held at the Rockledge Country Club in West Hartford and included a silent auction. Many folks in the workers' compensation community attended including representatives from Travelers and PMA as well as attorneys on both sides of the bar. Through the generosity of those that did attend, the charity is hoping to issue their first scholarships in the Spring of 2019. If you or your company is interested in contributing or volunteering for this worthy charity please contact Jason Dodge or go the Kids' Chance of Connecticut website kidschanceofct.org

Fraud Arrest! A Manchester janitor was arrested on October 12, 2018 with a charge of Fraudulent Claim or Receipt of Benefits and Perjury in violation of Sections 31-290c and 53a-156. The employee sustained a back injury while working for a cleaning company but allegedly continued to work with another janitorial service while on workers' compensation benefits. **Attorney Jason Dodge** defended the workers' compensation claim, took the claimant's deposition and made the referral to the Fraud Control Unit for prosecution. For more details go to http://www.courant.com/breaking-news/hc-br-manchester-fraud-charge-1013-story.html

The Connecticut Bar Association's (CBA) Workers' Compensation Section recently issued the following press release regarding the 20th Annual Verrilli-Belkin Workers' Compensation Charity Golf and Dinner Event at Shuttle Meadow Country Club held on September 13. "More than $200,000 has been raised, over the life of the tournament, for Connecticut Food Bank and Foodshare. This annual event is named after former Commissioners Frank J. Verrilli and Howard H. Belkin, who were avid golfers.

More than 120 commissioners, workers' compensation practitioners, and staff members of the Workers' Compensation Commission offices played golf and sponsored this year's tournament, which raised over $10,000. Event sponsors included Commissioners Salerno and Truglia, as well as retired Commissioners Engel, Mastropietro, Waldron, and White. In attendance were Commissioners Morelli and Dilzer and Mrs. Louise Belkin, wife of the deceased golf event's namesake. "For the past 20 years, both claimant and respondent attorneys of the Workers' Compensation Section of the CBA, in conjunction with the Workers' Compensation Commission, have come together in a collegial environment to play golf and attend a reception to successfully raise money for two very worthy charities, Connecticut Food Bank and Foodshare," said **Richard L. Aiken, Jr**., Chair of the golf event (**and partner at SDAZ**). The Connecticut Food Bank and Foodshare partners with the food industry, food growers, donors, and volunteers to distribute food to people across Connecticut."

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

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

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.

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CONNECTICUT WORKERS' COMPENSATION COMMISSION NEWS

Chairman Mastropietro was recently (and reluctantly) honored at his retirement party on September 20th at La Bella Vista in Waterbury. It was a sellout event with members of both the claimants' and respondents' bar in attendance as well as numerous physicians. Newly appointed Chairman Stephen Morelli and Compensation Review Board Chief Law Clerk Nancy Bonuomo gave speeches in honor of the Chairman. The Chairman was presented with a number of gifts, including new luggage for the trips that

he and his wife hope to take with his new found free time. Chairman Mastropietro's leadership will be greatly missed.

Commissioner Nancy Salerno's retirement party will be held at La Bella Vista in Waterbury on December 6 at 5:30 p.m. You can register online at the www.ctbar.org or call 860-612-2006.

The new wage and rate memorandum has been issued by the Commission and can be found at https://wcc.state.ct.us/memos/2018/2018-06.htm The maximum rate for TT for injuries after October 1, 2018 now is $1298 (an increase from prior max rate of $1,287). The maximum rate for permanency and TP is now $1,046 (up from $1,023).

As of October 1, 2018 the number of exemptions do not have to be listed on filing status forms; this is due to the new federal tax law changes.

The commission in Memorandum 2018-07 has now provided formulas, depending on the date of accident, for calculation of the compensation rate for employees that do not have FICA or Medicare deductions. This can be found at https://wcc.state.ct.us/memos/2018/2018-07.htm

We have confirmed with the Commission that Form 43's can be signed electronically for those adjusters that work remotely at home.

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

CASE LAW

CLEMENTS V. ARAMARK CORPORATION, 182 Conn. App. 224, cert granted, 330 CONN. 904 (September 25, 2018)

The Connecticut Supreme Court has agreed to hear the appeal in this important case. As we reported in our Spring 2018 update, the Appellate Court found this 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 Supreme Court will consider this limited issue on appeal: "Did the Appellate Court properly determine that the condition causing the plaintiff's injury did not need to be ''peculiar'' to her employment; Labadie v. Norwalk Rehabilitation Services, Inc., 274 Conn. 219, 238, 875 A.2d 485 (2005), quoting Larke v. John Hancock Mutual Life Ins. Co., 90 Conn. 303,

310, 97 A. 320 (1916); in order for her injury to arise out of her employment for purposes of workers' compensation benefits?'' We do not expect a final decision until late 2019 in this case. The respondents are now represented by Horton, Dowd, Bartschi, and Levesque, a prominent appellate law firm.

FILOSI V. ELECTRIC BOAT CORPORATION, 330 Conn. 231 (September 18, 2019)

The Connecticut Supreme Court affirmed a decision of the Compensation Review Board reversing the trial commissioner's dismissal of a lung claim. The Court affirmed application of collateral estoppel as a bar to the respondents' defense of the claim brought under the Connecticut Act in a case previously found compensable under the federal Longshore Act. The Court held that under the circumstances of this case, the federal administrative law judge had found the claimant's medical experts credible. Those experts had testified that the asbestos exposure was a substantial contributing cause to the lung cancer in question. As such, the Court believed that the administrative law judge's finding complied with Connecticut's standard of causation notwithstanding the administrative law judge's lack of citation to case law or articulation of the actual standard he applied in reaching his decision. The Court held that the rationale for collateral estoppel was not undermined by the circumstances of this case given the testimony found credible by the administrative law judge. The Court did not directly address why the administrative law judge would have applied a higher standard than required under the Longshore Act, only noting that if the administrative law judge had erred, collateral estoppel still applied. **Attorney Lucas Strunk of SDAZ** defended the case.

DAHLE V. STOP & SHOP SUPERMARKERY CO., LLC, 185 CONN. APP. 71 (2018)

The claimant sustained an August 8, 2003 compensable shoulder injury. As of the date of the accident the Connecticut Workers' Compensation Act still had in place General Statutes 31-307(e) which provides for an offset for total disability for Social Security retirement benefits (the statute was eliminated in 2006). The claimant in this case contended that her medical treatment for shoulder surgery was delayed and that because of that her offset for Social Security payments should be waived since if she had received the medical treatment earlier she would not have been on Social Security and therefore the offset would not have applied. The Appellate Court affirmed the CRB decision that the offset had to apply and the request for a waiver of the offset could not be granted as there was no basis in the law to make such a request. The Court noted that an earlier decision by the Board in 2009 denying medical treatment had not been appealed and was the law of the case. Since 31-307(e) was in place as of the date of

the accident if had to apply based on the date of injury rule: the rights and liabilities of the parties are determined based on the statutes in effect as of the date of the injury.

DIAZ V. DEPARTMENT OF SOCIAL SERVICES, 184 CONN. APP. 538 (2018)

The claimant's request for surgical authorization and TT benefits was dismissed in this case. The claimant had prior motor vehicle accidents that caused a low back and neck injury; cervical surgery was recommended before the work accident. The claimant alleged that due to bad ergonomic conditions at work her neck and back injuries were aggravated. The employer accepted this claim and issued voluntary agreements for 30% of the neck and 5% of the low back. The claimant then sought authorization for neck surgery allegedly due to the work "accident." The respondents had a RME with Dr. Mushaweh who opined that the bad ergonomic condition was not a substantial factor in the surgery. The commissioner, CRB and Appellate Court accepted Dr. Mushaweh's opinion dismissing the claim for TT benefits and surgery, notwithstanding the voluntary agreements that have been issued accepting the permanency. Based on this case employers do not have to accept ongoing medical treatment due to an accepted accident if they develop credible medical evidence that suggests that the treatment is not substantially related to the work.

Dominguez v. New York Sports Club, 6210 CRB-7-17-18 (August 28, 2018)

In this case the CRB overruled a commissioner's ruling that denied a motion to preclude. The Board concluded that the carrier had failed to file a timely disclaimer; when the disclaimer was finally filed the carrier maintained that the injury was not compensable. At the formal hearing the carrier contended that they had not been asked to pay any medical bills or indemnity during the 28 day period after the notice of claim was filed and therefore the so-called "safe-harbor" provisions of Section 31-294c that allow for denial to be issued up to one year after notice issued should apply. The carrier cited Dubrosky v. Boehringer Ingelheim Corp., 145 Conn. App. 261 (2013), cert denied, 310 Conn. 935 (2013), in support of their position. The CRB concluded that after the notice was issued the carrier failed to take any action indicating that they accepted compensability of the claim and therefore they could not claim the "safe harbor" provisions applied to them. Given this case, if a notice of claim is not timely denied a carrier, if they do issue a subsequent denial, may wish to indicate that the claim is accepted and that they are merely raising issues re extent of liability.

DICKERSON v. CITY OF STAMFORD, 6215 CRB-7-17-8 (September 12. 2018)

In this case the CRB reversed a finding of the trial commissioner which had dismissed a claim for a heart attack since no claim for benefits was filed within one year of the heart attack. The CRB determined that the myocardial infarction was due to an underlying accepted hypertension injury that had been accepted under Section 7-433c while the claimant was employed as a police officer. Notwithstanding that the MI occurred after the claimant's retirement the Board held that he could pursue the claim. The CRB refused to agree with the respondent's contention that the case of Holston v. New Haven Police Dept., 323 Conn. 607 (2016), should apply to the claim (in Holston the Supreme Court had allowed a heart attack claim to be pursued under Section 7-433c despite the fact it was substantially related to an underlying, untimely filed hypertension claim). An appeal was filed to the Appellate Court on September 28, 2018 from this decision, AC 42161.

EVELYN BANKS v.HCR MANOR CARE, INC., 6227 CRB-6-17-10 (OCTOBER 3, 2018)

In this case the claimant left her position as a CNA in 2008. In 2012 she, through her conservator, filed a notice of claim for a November 2011 date of accident described as "Frontal Temporal Dementia"; on the form 30c the box for an occupational disease was checked off. The claimant alleged that her prior "job stress" had caused the injury. At the trial level the commissioner dismissed the claim as untimely filed pointing out that the notice was filed more than three years after her last date of employment. The CRB reversed the commissioner and concluded that the notice might not be untimely filed if the claimant was not told by a doctor until 2011 that her "injury" was due to her work, citing Ricigliano v. Ideal Forging Corp., 280 Conn. 723 (2006). The Board remanded the case based on concerns that the claimant be given due process to allow the claimant the opportunity to prove her case was an occupational disease and that her claim was timely filed.

JAMES M. HANKARD v. STATE OF CONNECTICUT DIVISION OF CRIMINAL JUSTICE/OFFICE OF THE CHIEF STATE'S ATTORNEY, 6226 CRB-8-17-10 (October 17,2018)

The claimant had a compensable hypertension claim that caused a stroke. The employer questioned the extent of permanent impairment due to the stroke. The

Commissioner at informal hearing had ordered a RME to be done within 15 days of October 2016 but the RME was not done until January 2017; in view of this at formal hearing the respondent was not allowed to present the testimony or report of the RME. The Commissioner awarded a 25% award based on opinion of the treating doctor. The State appealed the award contending there was not sufficient evidence in the record of the rating because the Form 42 had stated 20-25% and not 25%. The CRB affirmed the ruling of permanency and that the employer did not have the right to present the RME opinion into evidence. Moral to the story is that employers should get timely RME's if they want to contest cases.