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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 2019 **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

Attorney Lucas Strunk of SDAZ attended the induction ceremony for new members of the College of Workers' Compensation Lawyers in Coral Gables, Florida on March 16, 2019. The College of Workers' Compensation Lawyers is a national organization that has been established to honor those attorneys who have distinguished themselves in their practice in the field of workers' compensation. In Connecticut ten attorneys have been honored with induction to this prestigious group of lawyers. **Attorney Jason Dodge of SDAZ** is also a member of the College.

On June 10, 2019 the attorneys of SDAZ attended the Connecticut Bar Association Legal Conference, an all-day seminar at the Connecticut Convention Center. Attorney General William Tong, Lt. Governor Susan Bysiewicz, and Chief Justice Richard Robinson spoke. **Attorney Lucas Strunk of SDAZ** made a presentation to the Workers' Compensation Section of the CBA regarding legislative updates from the Spring 2019 legislative session (see SDAZ Updates section at our website for a specific link re legislative changes for this year).

On March 29, 2019 a fundraising event for Kids' Chance of Connecticut was held at the Hooker Brewery in Bloomfield. Kids' Chance of Connecticut is a charity that provides scholarships to the children of workers who have serious or fatal work-related injuries. Vin Armentano, President of KCOC and Senior Vice President at Travelers, spoke briefly at the event along with **Jason Dodge of SDAZ** who is the Scholarship Chair and Treasurer of KCOC. The fundraiser was attended by **Anne Zovas, Chris Buccini, Chris D'Angelo and Phil Markuszka of SDAZ. Attorney Markuszka** is in charge of marketing and social media for KCOC. Former Commissioner Ernie Walker and now a partner in Walker, Feigenbaum and Cantarella has joined the Board of KCOC.

Kids' Chance of Connecticut has issued five scholarships for the 2019-2020 academic year. **SAVE THE DATE**: KCOC will hold its first Charity Golf Tournament on October 1, 2019 at Wampanoag Country Club in West Hartford.

Attorney Phil Markuszka of SDAZ was appointed by the Glastonbury Town Council on April 9th for a two and a half year term to serve on the Commission on Aging. The Commission is tasked with promoting neighborhood cohesion and maximizing opportunities for residents to be active and engaged with their neighbors, family and friends across all generations.

Attorneys Lucas Strunk, Richard Aiken and Jason Dodge of SDAZ were honored with the "Best Lawyers" designation for the Hartford region in Best Lawyers 2019 survey results magazine.

The annual Joseph Cassidy Memorial 5k Run/Walk was held on May 4; the race is sponsored by the Hartford County Bar Foundation and was chaired by **Attorney Anne Zovas** of SDAZ. **Attorneys Katie Dudek and Phil Markuszka** ran in the race; Pam Sarris of SDAZ joined the walkers. Proceeds of the race go to the Hartford County Bar Foundation which supports the needy and disadvantaged in the Hartford Area.

On May 5-7 **Partners Luke Strunk, Jason Dodge, Rick Aiken and Anne Zovas of SDAZ** attended the annual Workers' Compensation Retreat sponsored by the Connecticut Bar Association in Chatham Ma. The seminar featured presentations by Dr. Jerrold Kaplan of Gaylord Hospital regarding traumatic brain and spinal cord injuries and Dr. Jonathan Woodhouse speaking about neuropsychological testing. Chairman Stephen Morelli addressed the evolution of pain management.

As of July 2019 SDAZ will celebrate our fifth year anniversary! We have grown from a four attorney firm to nine attorneys presently.

FRAUD CONVICTION! 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. The claimant pled guilty on March 7, 2019 to Larceny in the 4th degree and is presently reimbursing the carrier for payments. She received one year in jail, execution suspended, and probation for 3 years. See this link regarding the arrest: https://patch.com/connecticut/wethersfield/wethersfield-woman-charged-workers-comp-fraud-perjury

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.

Our attorneys:

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PRACTICE TIP

If you have claimant who is on TT or TP that achieves maximum medical improvement and they have a work capacity you should **immediately** file a form 36. Failure to do so may delay the establishment of the maximum medical improvement date and cause you to not receive credit for payments against the permanency award.

CONNECTICUT WORKERS' COMPENSATION COMMISSION NEWS

The mileage rate as of January 1, 2019 is 58 cents per mile; this is an increase from last year.

Former Commissioner Nancy Salerno has joined Litigation Alternatives as a mediator along with retired Commissioner Toby Doyle.

As of March 26, 2019 the following Workers' Compensation Commissioners are available for mediation: Scott A. Barton, Randy L. Cohen, Carolyn M. Colangelo, Daniel E. Dilzer, Maureen E. Driscoll, Brenda D. Jannotta, Peter C. Mlynarczyk, Charles F. Senich, Michelle D. Truglia, and William J. Watson III.

While no legislation was passed this year regarding sanctions for unreasonable contest or attorney's fees for undue delay (although there was proposed legislation to address this and potential civil claims against carriers), the Workers' Compensation Commission may be taking up these issues themselves. We have been advised that the Commissioners will be meeting on July 19, 2019 to address the issues of unreasonable

contest and undue delay. We suspect that the Commission may become more proactive when considering these issues at hearings in the future.

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

CASE LAW

BRENNAN V. CITY OF WATERBURY, 331 CONN. 672 (May 14, 2019)

The decedent was entitled to Section 7-433c benefits for heart and hypertension. Before his death he was rated but there was no approved award for permanency as he was trying to negotiate a settlement with the City. He did receive some advances from the City against permanency. There were ratings in the file of 50%, 75% and 80% before his demise. The claimant went on total disability benefits for a period of time before his death. After his death the widow sought benefits for the matured permanency award in both her capacity as executrix of the estate of the decedent and personally. The City claimed the estate of the decedent did not have right to receive the matured permanency award. The Supreme Court concluded that the estate of the decedent did have a right to receive the matured permanency award if it were due. The Court determined, however, that based on the facts in the case it was uncertain if the permanency award was owed or whether maximum medical improvement was attained; the Court found there was no meeting of the minds re the amount of the rating. The Court remanded the case below to determine if the award had matured, the amount of the rating and who was owed the money if it were due.

GOULD V. STAMFORD, 331 CONN. 289 (2019)

In this case the Connecticut Supreme Court established a new test for determining whether the owner of a single-member limited liability company should be considered an employee under the workers' compensation act in Connecticut. Rather than apply the normal "right to control" test for employability, the Court held that "the test is whether the member performed services for the company and was subject to the hazards of the company's business." The Court also found that a single member LLC did not have to file a Form 75 to elect workers compensation coverage in accordance with Section 31-275 (10); the Court distinguished single-member LLC"s from sole proprietors (who do have to elect coverage). The Court effectively overruled Commission Memorandum 2003-02 which required single-member LLC's to file Form 75's if they wanted to elect coverage. This memo caused problems in certain cases, however, where single-member LLC's purchased coverage but inadvertently did not file a Form 75.

RAUSER V. PITNEY BOWES, ___CONN. APP. ___, AC41025 (JUNE 11, 2019)

The Appellate Court affirmed a dismissal of a claim for a claimant who was injured on a business trip in Spokane, Washington. The Court found that the claimant had made a substantial deviation from his work when he was assaulted after coming out of a bar around midnight. The claimant had begun the evening attending an employer-sponsored get together for drinks and dinner. The business dinner ended at 8 pm but thereafter the claimant and others went to another bar for further drinking and socializing. While at the second bar the claimant appeared intoxicated and said inappropriate things to female associates. After leaving the bar late in the evening the claimant was assaulted and sustained serious injuries. The claimant alleged that notwithstanding the deviation that at the time of the assault he was back on route to his car and hotel and that his injuries should be compensable. There was question as to whether the claimant actually going back to the hotel where he was staying or going off to do something else. In the end the Court determined the claimant had not sustained his burden of proof and affirmed the dismissal. The lesson to be taken from this case is that not all injuries that occur while on business trips are compensable.

PERRY v. CITY OF DANBURY, 6209 CRB-4-17-8 (February 25, 2019)

The CRB affirmed a dismissal of a hypertension claim under Section 7-433c due to untimely notice. The claimant filed a notice of claim in 2003 for benefits but the respondents contended pursuant to the Supreme Court case of Ciarlelli v. Hamden, 299 Conn. 265 (2010), that the notice was untimely since the claimant had been diagnosed with hypertension more than one year prior. The commissioner had found credible the respondents' examiner, Dr. Krauthammer, who concluded that the claimant had been diagnosed and told he had hypertension more than one year prior to notice of the claim being filed; the commissioner did not find credible the treating physician's opinion about when the claimant had been told he had hypertension. Based on the "totality of the evidence" the CRB stated the commissioner's dismissal of the claim was reasonable.

TOMASZEK v. NORTON'S AUTO & MARINE SERVICES, 6249 CRB-1-18-3 (March 1, 2019)

The claimant filed an appeal more than twenty days after the Finding and Dismissal was issued. The CRB dismissed the case for untimely appeal. No motion to correct was filed. The Commissioner had dismissed the claim for a back surgery being related to an earlier accepted injury for which the claimant had previously received a 22% award.

QUINONES v. R.W. THOMPSON COMPANY, INC., 188 Conn. App. 93 (2019)

The claimant's motion to preclude was denied by the trial commissioner and the finding was affirmed by the Appellate Court. The Court acknowledged that the respondents had not filed a Form 43 in response to two Form 30c's that had been filed but the Court determined that the respondents did not have to file a denial since benefits had been paid within 28 days of the filing of the notice of claim and, pursuant to Section 31-294c, the respondents had up to one year to issue a denial. Also, the Court determined the Commissioner (who took over the case for another Commissioner who had passed away) was able call for a further hearing to have the claimant testify and not just rely on the transcripts from the initial hearings in the case.

RIVERA v. PATIENT CARE OF CONNECTICUT, 188 Conn. App. 203 (2019)

The claimant sustained compensable psychiatric, right ankle, and hip injuries and was on total disability status. The respondents filed a Form 36 to place the claimant at maximum medical improvement for the right leg condition but stated that they were not seeking to terminate TT benefits that were being paid for the other injuries. With that caveat the Commissioner approved the Form 36 but the claimant continued on TT. The claimant appealed contending that the respondents were attempting to shift the burden to the claimant re work capacity. The Court disagreed and affirmed approval for the Form 36. Based on this, where there are many accepted body parts respondents should file Form 36 when one body part reaches mmi just to establish that body part is at mmi even if it means TT must continue for the other body parts. As you know, permanency cannot actually begin to be paid until a claimant is at maximum medical improvement on all body parts and the claimant has a work capacity.

AYNA v. GRAEBEL/CT MOVERS, INC., 6214 CRB-7-17-8 (March 2, 2019)

The Board affirmed a denial of permanent total status in a case where vocational experts testified. Notwithstanding the fact the claimant was not fluent in English the Commissioner determined he had a work status. Evidence that the claimant traveled between the U.S. and his native Turkey several times as well as to New Jersey and Maryland while injured and disabled seemed to play a role in the decision.

LEFEVRE V TPC ASSOCIATES, INC., 6255 CRB-4-18-3 (March 26, 2019)

The CRB affirmed that an employer was precluded from contesting a claim for significant injury for coronary arrest when the employer did not contest timely a Form 30c. The Board did not agree that the employer's payment of $20,000 to a "GoFundMe" page for the employee within 28 days of the notice of claim constituted compensation such that the employer could claim that it had up to one year to contest under the so-

called “safe harbor” provisions of 31-294c(b). Based on this, it appears that the CRB will strictly construe what constitutes payments for compensation under the statute.

MANGIONE V WEST HARTFORD, 6268 CRB-6-18-4 (April 12, 2019)

In this case the CRB found compensable a claim for mitral and aortic valve disorder under Section 7-433c, reversing a commissioner decision that the injury did not constitute heart disease because it was due to bacteria that invaded the heart. The claimant’s hypertension claim was dismissed as not timely filed but the CRB concluded that did not bar the heart claim from being pursued. This has been appealed to the Appellate Court in AC 42883.

MARTINOLI V. CITY OF STAMFORD, 6271 CRB-7-18-5 (APRIL 24, 2019)

The CRB affirmed a finding of compensability of atrial fibrillation that became symptomatic **sixteen years** after the police officer’s retirement. The Board found the condition was compensable under Section 7-433c because it was substantially related to a prior accepted claim under 7-433c for coronary artery disease and hypertension that was accepted while the officer was employed. The Board again distinguished the case of Holston v. New Haven Police Department, 323 Conn. 607 (2016), in support of their decision. This has been appealed to the Appellate Court in AC 42889.

BIGGS v. COMBINED INSURANCE COMPANY OF AMERICA, 6247 CRB-7-18-2 (April 12, 2019)

The CRB affirmed a dismissal of this claim for hip injury where the claimant fell in her driveway going to her car to get to work. The claimant alleged that she was a traveling salesman with a home office and had worked there earlier in the morning and that her injury was in the course of her work. The trial commissioner dismissed the claim in part due to the fact the claimant did not provide any tax documentation of a home office.

COSTANZO V. CITY OF STAMFORD, 6274 CRB-7-18-5 (May 3, 2019)

The claimant was a police officer with Stamford who was awarded benefits under Section 7-433c for hypertension. He developed kidney problems associated with the HTN and was awarded benefits for this while still employed for the City. He retired and then died due to complications due to the kidney problems. The City contested the claim arguing that widow benefits were not owed. The Board affirmed the commissioner’s finding in behalf of the widow concluding that the death was derivative of an accepted injury and the fact that the death occurred post retirement was not a defense.

AYALA-LOPEZ V. FMP TRANSPORT, LLC., 6275 CRB-4-18-5 (MAY 23, 2019)

The CRB affirmed a dismissal that concluded the claimant driver was an independent contractor and not an employee. The claimant worked as driver for a company that carried mail for the U.S. Postal Service. At first the claimant used her own truck but then she rented a truck from the alleged employer when her own truck broke down. The claimant could use substitute drivers at any time and would pay the subs in cash. The Board determined that there was sufficient evidence in the record to support the dismissal.

GENTLE V. CITY OF STAMFORD, 6264 CRB-3-18-4 (MAY 30, 2019)

In yet another Stamford 7-433c decision the Board affirmed a claim for death benefits. The deceased police officer had a compensable heart and hypertension claim. He was paid 51% of the heart while living. He retired in 2005 and died in 2014 due to cardiac arrest. The commissioner accepted medical testimony that the underlying compensable heart and hypertension condition was a significant factor in the claimant's death; the CRB rejected the City's argument that the claim was unrelated or that the claim could only be made while the employee was actually working with the City.

LIONETTI V. MESSINEO, 6207 CRB-7-17-7 (JUNE 7, 2019)

The claimant was a driver who sustained neck and back injuries in a motor vehicle accident. The claimant pursued a third party claim from which she netted about $150,000. She asserted that the moratorium should be reduced by amounts that she had to pay to a bankruptcy trustee, personal debts paid out of the bankruptcy, as well as other medical bills she claimed were due to the work accident. The CRB affirmed the commissioner's finding that the moratorium should not be reduced by the personal debts, the bankruptcy trustee fee or the medical treatment that was not deemed reasonable or necessary. The Board did reverse the commissioner's finding that had denied authorization for cervical surgery; the commissioner found that the surgery was reasonable but not necessary and had dismissed the claim based on that finding. The CRB determined that the standard for medical treatment was "reasonable OR necessary" medical treatment and concluded that since there was sufficient evidence in the record to support the reasonableness of the surgery it should be authorized (subject to the high moratorium/credit). **Attorney Jason Dodge of SDAZ defends this claim.**