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ATTORNEYS AT LAW

CONNECTICUT WORKERS' COMP UPDATE

The law firm of **Strunk Dodge Aiken Zovas (SDAZ)** provides you with our Summer 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** has again been named Best Lawyers Employers' Lawyer of the year for 2019. Luke has been honored with this title three out of the last six years. Congrats to Luke for this prestigious honor!

Attorney **Anne Zovas, Jason Dodge and Rick Aiken of SDAZ** have also been named to Best Lawyers for 2019 for workers' compensation defense.

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

Attorneys Lucas Strunk and Jason Dodge of SDAZ are completing their yearly supplement to their book, "Connecticut Workers' Compensation Law." Attorneys Strunk and Dodge are co-authors with three other attorneys of the two volume workers' compensation treatise that was published originally in 2008 by Thomson/West. The book reviews all issues regarding Connecticut Workers' Compensation claims including but not limited to jurisdiction, notice of claim, compensability, and causation. The book can be obtained at:

<https://store.legal.thomsonreuters.com/law-products/Treatises/Connecticut-Workers-Compensation-Law-Vols-19-and-19A-Connecticut-Practice-Series/p/100006513>

Attorney **Phil Markuszka of SDAZ** will be having a busy Fall season as he is running for elective office for the Town Council in Glastonbury. Phil presently is on the

Commission on Aging in Glastonbury. We heartily endorse Phil in his campaign and wish him good luck.

On June 20 **Anne Zovas and Phil Markuszka of SDAZ** attended the 2019 annual meeting of the Connecticut Association for Community Transportation (CACT). Employees of Connecticut Transit attended and awards were presented to several for Excellence in Transportation including Brenda Clark-Richardson and Lee Nieves. Congrats to the awardees.

Team SDAZ completed the 50 mile ride to support ERRACE on July 13. The ERRACE organization promotes the awareness of cancer and raises funds for cancer research. Great job Team SDAZ! Attorney **Phil Markuszka**, his dad, Dr. Karl Markuszka, and sister Kathy Clemens participated along with Attorney **Anne Zovas** and husband Pete Zovas, Robert Miller (court reporter at the New Haven workers' compensation commission) and brothers Brian and Todd.

SDAZ has developed a relationship with the law firm of Weber Gallagher for referrals and assistance with work outside of the State of Connecticut. Weber Gallagher defends employers in Pennsylvania, Delaware, New York, and New Jersey in workers' compensation matters. They also routinely recover subrogation liens, perform MSA analysis and submissions to Medicare, institute fraud prosecutions, prepare and file amicus briefs and assist with legislative lobbying. Should you need any assistance with claims in the Pennsylvania, Delaware, New York, and New Jersey area please call us and we will put you in contact with the appropriate attorney at Weber Gallagher.

Registration is open for Kids Chance of Connecticut first annual golf tournament on October 1, 2019 at Wampanoag Country Club in West Hartford, Connecticut so get your clubs and putter ready! The mission of Kids' Chance of Connecticut, Inc. is to provide educational scholarships to the children of Connecticut workers who have been seriously or fatally injured in work-related accidents. Kids' Chance of Connecticut is also looking for raffle prize donations. If you are interested in golfing, volunteering or providing a donation please contact us at <https://www.kidschanceofct.org/events/>.

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:

Lucas D. Strunk, Esq. 860-785-4502
Jason M. Dodge, Esq. 860-785-4503
Richard L. Aiken, Jr., Esq. 860-785-4506
Anne Kelly Zovas, Esq. 860-785-4505
Christopher Buccini 860-785-4520

Nancy E. Berdon, Esq. 860-785-4507
Katherine E. Dudack, Esq. 860-785-4501
Philip T. Markuszka, Esq. 860-785-4510
Christopher J. D'Angelo, Esq. 860-785-4504

PRACTICE TIP

General Statutes Section 31-293 provides that if the claimant files a lawsuit against a third party responsible for his or her injuries and makes a recovery, the employer's workers' compensation lien will be reduced by one-third. Some in the claimant's bar are seeking to look beyond the plain language in the statute and claim a one-third reduction in the lien even when the employee has not filed an action. We disagree with this argument and rely on the clear language of the statute. We maintain that if no lawsuit has been filed and the case settles, then there is no one-third reduction and the employer is entitled to receive its' full lien. (There have been no decisions yet regarding this issue). Employers should seriously consider pursuing their own direct action against the responsible parties for subrogation files in order to avoid the one-third reduction. Contact **Attorney Anne Zovas** in our subrogation department if you have any questions.

CONNECTICUT WORKERS' COMPENSATION COMMISSION NEWS

At the Legal Advisory Committee meeting (attended by Attorney **Jason Dodge of SDAZ**) Chairman Morelli discussed possible increase in the rate that Commissioner Examiners can charge for exams; no decision was reached but we believe it is likely the rate will soon increase over the \$750 charge allowed presently. The Chairman also stated that the New Britain Workers' Compensation office will likely relocate in the future although nothing is definite at this point. Finally, Chairman Morelli indicated that the Workers' Compensation Commission continues to try and upgrade its computer system but there is presently no date for a transition to a new system.

There is an opening for a new Commissioner position in Norwich now that Commissioner Thomas Mullins has left the Commission. We expect the Governor to appoint a new Commissioner shortly. We will keep you posted.

There is a change in law regarding election of coverage for single-member limited liability companies. The Connecticut Workers' Compensation Commission has issued MEMORANDUM NO. 2019-02 indicating that "In light of the recent Supreme Court

decision in *Gould vs. Stamford*, 331 Conn. 289 (2019), holding that single-member limited liability companies (LLCs) are not required to elect to accept the provisions of the Workers' Compensation Act, Chairman's Memorandum 2003-02 is hereby withdrawn. The Commission has amended Forms 6B and 75 accordingly." Therefore, LLC's that are owned by one person no longer have to elect coverage under the Act; sole proprietors still have to elect coverage.

The Chairman has recently issued MEMORANDUM NO. 2019-06 which points out the distinction between the use of Utilization Review (UR) for employers with authorized medical care plans in place and the use of UR by employers and carriers where there is no medical care plan. For employers with medical care plans the employer is allowed to use UR and the medical providers must follow the appeal process of the plan. Where there is no medical care plan in place UR can be utilized but the commissioners do not have to defer to the UR findings and can make decisions on what is reasonable or necessary medical treatment; providers in this situation do not have to abide by appeal periods used by UR or submit to peer-to-peer review. The Chairman in the memo warned that "...it is imperative that payers review their utilization review policies and procedures to ensure that they remain in line with the guidelines established by the Workers Compensation Commission. In cases where there is no medical care plan in place, subjecting claimants to unnecessary UR and holding them to arbitrary time frames and appeals processes that delay treatment may subject the payer to fines and sanctions for undue delay." Where there is no medical care plan in place it may be more appropriate to obtain a RME rather than go through the UR process.

In view of Public Act 19-17 which allows for mental health claims to be pursued by police, parole officers and firefighters, in certain circumstances, the Form 30c was changed recently; the new form began to be used as of July 1, 2019.

The Workers' Compensation Commission has just received shipment of its new Bulletin No. 53, amended to January 1, 2019, which is available to the public free of charge. The Bulletin contains the entire Workers' Compensation Act, additional related statutes, workers' compensation administrative regulations, and illustrations of the most up-to-date Connecticut's workers' compensation forms. Should you need a copy of the new Bulletin please feel free to contact us and we will provide you with a copy.

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

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.

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:

CASE LAW

Woodbury-Correa v. Reflexite, 190 Conn. App. 623 (June 18, 2019).

The Appellate Court reversed the CRB and granted a Motion to Preclude in this case. The claimant filed a proper Form 30C; the respondent's filed a Form 43 with the claimant's attorney by certified mail but not a timely Form 43 with the Commission. When the respondent's did file the Form 43 with the Commission it was 3 months late and sent by fax. The Court found that in order to file a valid Form 43 it must be sent certified to the commission per General Statutes § 31-321. The Court also determined that since the employer contested the compensability of the claim (not just extent of disability) the employer could not argue that they did not have the opportunity to make payments in order to take advantage of "safe harbor" language of § 31-294c which allows delay of issuance of Form 43 for up to one year.

Brocuglio v. Thompsonville Fire District #2, 190 Conn. App. 718 (June 25, 2019).

The claimant was a fireman for the respondent fire district. The claimant sought benefits under General Statutes § 7-433c for heart and hypertension injury. In 2000, the claimant was diagnosed with pericarditis, a heart condition, and informed of this by his doctor, however, he failed to file a claim for heart disease under § 7-433c. Thereafter, in 2013, the claimant was diagnosed with having severe mitral regurgitation and underwent mitral valve replacement surgery and single coronary bypass procedure. At that time in 2013 the claimant sought benefits for heart disease and filed a notice of claim for compensation under § 7-433c. The respondents contended that since the claimant had failed to make a claim for heart disease in 2000 for pericarditis any subsequent claim for heart disease was untimely filed notwithstanding that there was evidence in the record that heart condition of pericarditis and mitral valve injury/coronary artery disease were unrelated and new injuries. The Court concluded that the heart disease claim was untimely filed in 2000 and that barred the subsequent claim in 2013. The Court stated "a claimant who forgoes filing a claim within one year of being informed by a medical professional that he or she has heart disease and who later files a claim for a different heart disease is precluded from receiving benefits under § 7-433c." The Court made clear, however, that there was a distinction between hypertension and heart disease. The implication is that failure to file a timely hypertension claim would not affect or bar a subsequent heart disease claim.

MCGINTY V. STAMFORD POLICE DEPARTMENT, 191 CONN. APP. 163 (2019)

The Appellate Court affirmed a finding in behalf of the claimant in a 7-433c claim for heart and hypertension benefits. The respondent City had defended the claim asserting that the claimant did not have a heart condition but rather had a systemic condition of

vascular disease that had manifested itself in the heart. The employer cited in support of their position the CRB decision of *Brooks v. West Hartford*, 4907 CRB-6-05-1 (January 24, 2016). The Court found that there was expert testimony documenting that the claimant had coronary artery disease and hypertension and therefore affirmed award for permanency of 26% for CAD and 24% for HTN.

Thorn v. UTZ Quality Foods, INC. 6253 CRB-5-18-3 (July 18, 2019)

The claimant sought increased compensation rate for his 2004 injury under General Statutes Section 31-307b, the recurrence statute. The CRB affirmed the denial of the claim based on the specific and interesting facts in this case. The claimant had a number of compensable injuries, including a 2004 right knee injury and a 2002 left knee injury. The claimant had last worked in 2012. The claimant before 2015 was receiving benefits under the recurrence statute and the 2012 earnings due to the left knee injury of 2002. The claimant in 2015, however, underwent a right knee surgery that was due to the 2004 claim with another carrier; benefits began to be paid off of the 2004 claim in 2015. The claimant urged the commissioner to apply the recurrence statute and allow wages based on the 2012 earnings. The commissioner and the Board however did not apply 31-307b since the claimant did not have any actual earnings in the 52 weeks before he went out for the right knee surgery; the CRB determined that 31-307b requires calculation based on actual earnings, not workers' compensation payments. The CRB affirmed the finding that the benefits should be paid off the basic compensation rate for the 2004 claim.

ARLIO V. TRUMBULL POLICE DEPARTMENT, 6284 CRB-4-18-8 (July 25, 2019)

The claimant had a compensable hypertension claim under Section 7-433c and had been paid 40% due to this. Thereafter, the claimant developed kidney issues and the commissioner and CRB affirmed that the kidney issues were causally related to the HTN claim and therefore compensable. The Board rejected the respondents' argument that the case of *Holston v. New Haven Police Department*, 323 Conn. 607 (2016), barred a claim for the kidney condition.

MALINOWSKI V. SIKORSKY AIRCRAFT CORPORATION, 6216 CRB-8-17-8 (August 26, 2019)

The CRB affirmed a finding that left knee replacement surgery was compensable based on repetitive work from 1984 to 2012. The Board went through a lengthy review of causation issues and the evidence that was presented. **Attorney Lucas Strunk of SDAZ** defended the claim. This claim may be the subject of an appeal to the Appellate Court.

SLADE V. ACCURATE STAFFING, ET. AL., 6290 CRB-8-18-9 (August 28, 2019)

After settlement was approved the employer sought to open the stipulation for the purpose of substituting the “correct” name of the employer. The claimant objected but the CRB affirmed Commissioner’s finding that there was a mutual mistake of fact regarding the name of the employer and that the correct name should be substituted on the stipulation. This type of issue could be crucial in potential third party claims since obviously tort claims against the “employer” are barred by the exclusive remedy provisions of General Statutes Section 31-284.