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CONNECTICUT WORKERS' COMP UPDATE

The law firm of **Strunk Dodge Aiken Zovas (SDAZ)** provides you with our Spring 2021 **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 in our role as an "essential" place of business as defined by Governor Lamont has remained open throughout the Covid-19 pandemic providing service and guidance to our clients in this difficult time. We wish good health to all our colleagues throughout the workers' compensation community.

The Connecticut Workers' Compensation Commission through the leadership of Chairman Morelli has also remained open for business. Although most hearings are being done telephonically, some formal and CRB hearings may be held in person. The Commission and the Governor have been able to move quickly to make changes in order to accommodate claimants and respondents. We are hopeful that in the next few months the Commission will open up for in-person hearings.

STRUNK DODGE AIKEN ZOVAS NEWS

The 2021 Edition of the *U.S. News – Best Lawyers* "Best Law Firms" rankings were publicly announced. **Strunk Dodge Aiken Zovas has been recognized as a Tier 1 "Best Law Firm" for the 2021 edition.**

Attorneys Lucas Strunk, Richard Aiken, and Jason Dodge of SDAZ have been named *Best Lawyers 2021* in New England and Connecticut. Best Lawyers is the oldest and most respected lawyer ranking service in the world. For 40 years, *Best Lawyers* has assisted those in need of legal services to identify the lawyers best qualified to represent them in distant jurisdictions or unfamiliar specialties.

Attorneys Lucas Strunk and Jason Dodge of SDAZ will be presenters at the Annual Connecticut Legal Conference for the Connecticut Bar Association in June 2021. Attorney Strunk will provide a legislative report to the Workers' Compensation Section of the CBA; Attorney Dodge will present a review of significant case law in the area of workers' compensation during the period 2020-2021.

Attorney Philip Markuszka of SDAZ will be joining the Board of Directors of the Hartford County Bar Association. He will be sworn in next month and looks forward to helping them in their future endeavors.

Partners Anne Zovas, Richard Aiken, Jason Dodge, and Lucas Strunk of SDAZ have been named to Connecticut Super Lawyers for 2020. **Attorneys Philip Markuszka and Christopher D'Angelo of SDAZ** have again been named Connecticut 'Rising Stars' for Super Lawyers 2020.

Attorney Katherine Dudack of SDAZ has been named to the Editorial Board for Compensation Quarterly. Compensation Quarterly "is an independent and non-partisan publication which tracks developments in the area of workers' compensation as practiced in the State of Connecticut." Attorney Dudack does an excellent job of editing this newsletter as well!

SDAZ is a sponsor of **Kids' Chance of Connecticut.** Kids' Chance of Connecticut provides educational scholarships to the children of Connecticut workers who have been seriously or fatally injured in a work-related accident. If you are aware of a child who may qualify for a scholarship to a college or technical school please go to the following website for an application www.kidschanceofct.org. For the academic year 2020-2021 Kids' Chance of Connecticut awarded eight scholarships to students going to college. If you have any questions about Kids' Chance of Connecticut or would like to become part of our organization please contact **Jason Dodge or Phil Markuszka of SDAZ. Kids' Chance of Connecticut will hold its annual golf outing at Wampanoag Country Club in West Hartford on September 27, 2021.**

Attorney Anne Zovas of SDAZ is co-chairing a Run/Walk in memory of Joseph Cassidy and all proceeds benefit The Hartford County Bar Foundation. **Attorneys Katherine Dudack and Philip Markuszka of SDAZ** are also members of the race committee. This year the event will be virtual and includes 5K, 10K, Kids' Run and walk options. Participants can choose to run/walk anywhere and at any time from Saturday, May 22, 2021 through Monday, May 31, 2021. There is also the option to become a sponsor. All money raised through this event and direct solicitations are distributed to the poor, disabled, and homeless throughout Hartford County. For more information on registering for the Run/Walk or to become a sponsor, please visit: https://hartfordbarfoundation.org/registration-2021-joseph-j-cassidy-memorial-virtual-5k-10k-road-race-kids-run-family-walk/

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, HPorto@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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LEGISLATIVE UPDATE

As of April 16 our legislative liaison **Attorney Lucas Strunk of SDAZ** reports there are five pieces of legislation very much in play at the General Assembly. The summary is as follows:

House Bill 6478 "An Act Concerning Workers' Compensation". This bill would make significant changes to the Workers' Compensation Act starting in Section 1 by repealing and substituting for Section 31-308a language that would allow for an award under Section 31-308a not to exceed the lessor of five times the duration of the employee's PPD or 780 weeks. The bill specifically notes that the Commissioner shall determine whether the employee's disability is substantial enough to allow for an award past the duration of the original PPD.

Section 2 of the proposed law codifies the Governor's Executive Order regarding Section 31-290a, adding provisions that in addition to discharge, discipline of an employee who exercises rights under the Act being prohibited, also prohibited is deliberately misinforming or deliberately dissuading an employee from filing a claim.

At Section 3 the proposed law speaks to disputes regarding medical, surgical aid or hospital or nursing services and calls for a Notice of Controversy (Form 43?) to be filed with copy to the provider. Any party can then request a hearing. It is noted that payment of a medical bill is not admission of liability. The Section also notes that the dispute shall not affect notice provisions under Section 31-294c.

At Section 4 COVID-19 claims are addressed creating the rebuttal of presumption for all of those individuals who died or were unable to work from March 10, 2020 through the end of the declaration of the Public Health and Civil Preparedness Emergency or any extension thereof. COVID-19 is presumed to be an occupational disease and the presumption is created so long as a positive test or diagnosis by licensed physician, PA or APRN is provided to the employer.

Similar to the prior Executive Order, the presumption shall not apply to an employee who

for 14 consecutive days prior to death or disability worked solely at home or had no interaction with other employees. The presumption would not apply if the employee was the recipient of an individual written offer to work solely from home but who then chose to work at an employer's site.

There is a provision that allows the employer to rebut by proving employment was not a direct cause of the occupational disease by a preponderance of the evidence. Such evidence must be produced within 10 days of Notice to Contest. If rebutted the Commissioner shall decide compensability in accord with established practices of causation. The law does note that pre-existing conditions shall have no bearing on the merits of the claim.

Employees who do not gain the benefit of the proposed new law still have traditional claims under Chapter 568.

The bill provides that "the reapportionment of the levels of the burden of proof between the parties is a procedural change intended to apply to all existing and future COVID claims." There is, therefore, a retroactive provision.

The bill also requires the reporting on COVID-19 claims like that reflected in the prior Executive Order. The Chairman's office is to report monthly on the number of claims, rulings, voluntary agreements, dismissals, petitions for review, and stipulations as well as the time it took to schedule a hearing and the time for any adjudication.

Finally, the bill amends Section 31-306 to increase burial expenses from $4,000.00 to $20,000.00 for all death on or after the effective date of the Act. In addition, each January 1st the burial expense shall be adjusted based on the Consumer Price Index for Urban Wage Earners and Clerical Workers in the Northeast with no seasonal adjustment, as calculated by the United States Department of Labor's Bureau of Labor Statistics. The bill also provides an allowance of $20,000.00 for all deaths due to COVID-19 contracted during the Public Health and Civil Preparedness Emergencies. The effective date of the Act is from passage.

Substitute Senate Bill No. 141 "An Act Establishing a Task Force to Study Cancer Relief Benefits for Firefighters" is a modification of an earlier bill seeking to establish presumptions for cancers contracted by Firefighters. The bill would establish the Task Force to study cancer relief benefits for Firefighters. This study is to include, but is not limited to, an examination of the adequacy of the cancer relief program established pursuant to Section 7-313j and the feasibility and implications of providing workers' compensation and other benefits including death benefits to Firefighters who are diagnosed with cancer acquired as a result of occupational exposure to noxious fumes and poisonous gases. Among the members of the Task Force will be an individual with expertise in the State's Workers' Compensation Program, one with expertise in cancer research, as well as a representative of the Firefighters Labor Organization. Both municipal paid and volunteer Fire Departments will be represented by a member as well. The twelve member Task Force is to report its findings and recommendations to the Labor Committee not later than January 1, 2022 at which time the Task Force will terminate.

Senate Bill No. 660 "An Act Expanding Workers' Compensation Benefits for Certain Mental or Emotional Impairments Suffered by Health Care Providers in Connection with COVID-19" amends Sections 31-275 and 31-294k and would be effective upon passage. The bill expands eligibility for workers' compensation benefits in the case of post-traumatic stress injuries to cover Emergency Medical Services personnel, all Department of Correction employees, 911 Emergency Dispatchers (telecommunicators), and under certain circumstances Health Care Providers who are exposed to the same types of qualifying events currently in place with the provision that the observed death would be due to or as a result of COVID-19.

The file copy review of the Legislation notes that personal care assistants under State Funded programs are also included; however, the bill does not amend people working in a private dwelling for less than 26 hours per week and therefore the legislation raises a coverage issue in that regard. Otherwise, the same restrictions and qualifications apply to this expanded group as applied previously to Police Officers, Parole Officers, and Firefighters.

As a side note, also be aware that there is a pending bill vote favorably out of the Judiciary Committee **(Raised Bill 1059)** and currently at the OLR and OFA entitled **"An Act Concerning the Correction Accountability Commission, the Office of the Correction Ombuds, the Use of Isolated Confinement, Seclusion and Restraints, Social Contacts for Incarcerated Person and Training and Workers' Compensation Benefits for Correction Officers."**

The bill at Sections 5-8 adds "Correction Officer Employed by Department of Corrections" to the class covered by PTSD. It amends Sections 32-294k, 31-294h and 7-294ff to include corrections officers in the requirements for coverage and to allow for the benefits of mental health and wellness. This bill may well make it to the floor of the Senate as well.

Senate Bill No. 907 "An Act Concerning Minor and Technical Changes to the Workers' Compensation Act" is a third attempt to enact changes by the Chairman and the Legislative Initiative Committee discussed during two prior sessions. The changes include the title of Administrative Law Judge for the Commissioners, the reduction in quarterly meetings of the Advisory Board, the elimination of a full-time salaried Director for the Statistical Division and an update to audio recordings of Formal Hearings. Technical changes eliminate reference to the Second Injury Fund transfer of liability and the repeal of outdated Sections of the Workers' Compensation Law.

House Bill 6391 "An Act Concerning the Insurance Department's Recommendation Regarding the General Statutes" is a wide-ranging bill addressing suggestions by the Insurance Commissioner affecting issues from insurance for data security law through documentation by health care centers and insurers of lives covered. The bill does eliminate annual reporting by the Insurance Commissioner to the Joint Standing Committee of the General Assembly on a number of topics. Those topics include a report from the Workers' Compensation Fraud Unit within the Office of the Chief State's Attorney.

All of the above bills have now made it to either the House or Senate calendars and could be subject of a vote. Whether continued negotiations will lead to amendment of the bills remains to be determined. One school of thought suggests that the bills were drafted in a manner so that compromise was possible and benefits would be expanded at least in some fashion. Whether the current makeup of the House and Senate is such that the bills become law as drafted is also a possibility.

Commissioner Barton's reappointment has passed both Chambers of the Assembly. The Governor's Executive Orders have been extended to May 20, 2021 and as a result so has the elimination of timelines and changes implemented by the Chambers.

As always, the status and full text of the bills can be viewed on General Assembly Website, cga.ct.gov.

WORKERS' COMPENSATION PRACTICE TIP

When defending a workers' compensation claim one of our goals is to have the employee attain maximum medical improvement (MMI) at an early stage in order to avoid ongoing temporary partial wage loss claims under Connecticut General Statutes Section 31-308(a). Generally we see most doctors rate a patient for MMI one year post the date of accident or surgery, whichever is later. For a lumbar discectomy or laminectomy, however, the medical protocols of the Connecticut Workers' Compensation Commission suggest that MMI can be achieved six months post-surgery (page 29 of protocols). This can be brought to the attention of the treating physician to perhaps have the claimant rated and moved on to permanency payments.

CONNECTICUT WORKERS' COMPENSATION COMMISSION NEWS

Dr. Peter McAllister of New England Institute for Neurology & Headache is no longer accepting workers' compensation patients, per Chairman Morelli's memo of March 9, 2021. Dr. McCallister should not be used for RMEs and should be deleted from any approved medical care plans. The Commission will no longer be using him for CMEs.

The Commission has updated the medical guidelines for physician assistants in Memorandum 2021-02. A physician assistant may not see a workers' compensation patient on more than two consecutive visits and may not assign a permanency rating.

The mileage reimbursement rate for travel expenses as of January 1, 2021 has fallen to 56 cents per mile.

For 2021 the panel members on appeals to the Compensation Review Board will be Chairman Stephen M. Morelli and Commissioners Maureen E. Driscoll and Brenda D. Jannotta.

Memorandum 2020-18 has been issued by Chairman Morelli as of October 1, 2020 regarding maximum compensation rates. The Chairman has ordered that the maximum total disability rate for injuries occurring after October 1, 2020 is $1,373 (based on the

estimated average weekly wage of all employees in Connecticut). The maximum temporary partial/permanent partial disability rate for accidents after October 1, 2020 is $1,174 (based on the average weekly earnings of production and related workers in manufacturing in Connecticut).

Exam Charges: Commissioner Medical Exam (CME) fee has increased to $900; Respondent Medical Exam (RME) fee is still $750.

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

CHANGES IN THE ADMINISTRATION OF WORKERS' COMPENSATION CLAIMS DUE TO COVID-19

All time requirements are hereby waived per Order of Governor Lamont's Executive Order 7K.

The 20-day requirement for payment is suspended under General Statutes Section 31-303.

The Commission has informally stated the following regarding Covid-19 testing and compensable surgeries:

> "It has come to our attention that many doctors are requiring covid-19 testing as a part of routine pre-operative physicals. Please be advised that if the testing is required for a doctor to perform an authorized surgery for a workers' compensation claimant, the testing should be covered and reimbursed."

Job searches are waived for temporary partial benefits as of Monday, March 16, 2020.

The Commission no longer approves Form 36s administratively. Objections to Form 36s that are received after 15 days will be considered by the Commission.

The requirement to send forms by certified mail is suspended. They can be sent by regular mail or fax. The Commission recommends the parties "take any measures which would support proof of delivery and receipt of any forms should subsequent substantiation be required."

Remote notarization is authorized.

Most workers' compensation hearings must be done telephonically.

The three-day rule for cancellation of Informal Hearings is suspended.

Continuances of hearings are liberally granted.

Out-of-state stipulations may be used for in-state claimants. Canvassing of the pro se claimants by phone is strongly suggested.

The Families First Coronavirus Response Act (FFCRA) provides to certain employees paid sick leave and expanded family and medical leave for specific reasons related to coronavirus. For more information regarding this go to the following link:

https://wcc.state.ct.us/download/acrobat/DOL%20FFCRA%20Poster%203-25-2020.pdf

CASE LAW

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

The Connecticut Supreme Court heard oral argument on this important appeal on **October 25, 2019. Attorney Richard Aiken of SDAZ** attended to listen to the argument. 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 Trial Commissioner and CRB 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 has been considering the claim since argument in Fall 2019. We have recently learned that the parties to the appeal are considering settlement; in view of this a decision in the case has been stayed by the Connecticut Supreme Court. If the case does settle before the Supreme Court issues a decision then we will be left with the Appellate Court ruling which finds compensable the injuries flowing from this type of non-occupational syncopal episode. We will keep you advised of this case and whether it does settle.

MARK BEERS, DECEASED, ALLISON BEERS-JACHECO, ADMINISTRATRIX V. RAYMARK INDUSTRIES, 6347 CRB-8-19-9 (February 24, 2021)

In a lengthy decision the CRB affirmed the Trial Commissioner's Finding that the Administratrix of the estate of the claimant was due to be paid total disability benefits, out of pocket medical expenses and that medical bills should be paid.

The decedent worked for Raybestos on the production side of the company during the period 1961 to 1969; during this period of time he was exposed to asbestos used in the production of brake linings.

After the decedent left the company the name of the employer was changed to Raymark Corporation from Raybestos in 1982. In 1998 Raymark filed for bankruptcy protection and apparently went out of business.

In 2016, while working for a different company, the claimant was diagnosed with mesothelioma. He pursued a timely workers' compensation claim against Raymark Corporation. Formal Hearings were held and the claimant testified; however, he died in 2018 before the record was concluded. The Administratrix of the Estate of the decedent was allowed by the Trial Commissioner to be substituted for the decedent before the record was closed. There was unopposed expert testimony presented by the Administratrix that the decedent's lung condition was due to his work at Raybestos/Raymark. The Trial Commissioner awarded total disability benefits and ordered medical bills to be paid.

Notice was sent to the employer that no representative of the employer appeared. The Second Injury Fund and Hartford Insurance were cited to the hearings. Hartford Insurance acknowledged a policy of workers' compensation coverage from 1958 to 1969 for the employer but contended it was limited to coverage for non-production workers. Hartford Insurance did not present its workers' compensation policies into evidence but did offer deposition testimony and voluminous exhibits from prior claims that showed that the employer was self-insured for production workers during the period in question. The Second Injury Fund had been a party to the prior claims and therefore the Trial Commissioner allowed the documentary evidence into the record. Part of the evidence was testimony of the Commission's record keeper that claims filed by other production employees while working at Raybestos in the 1960s were all paid by the company directly; this evidence supported Hartford Insurance's position that their coverage was limited and did not extend to the production side of the employer. Ultimately, the Trial Commissioner found that the employer had ceased to exist and was self-insured; the Trial Commissioner concluded that the Second Injury Fund was liable for award under Section 31-355(b).

The Fund appealed the decision contending that the Trial Commissioner could not award benefits since the employer had declared bankruptcy, that it was improper to make an award directly against the Fund, that the Administratrix did not have a proper claim for disability benefits, and that the decedent should have pursued a claim against a trust that had been established by the employer for asbestos claims. The CRB determined that the bankruptcy did not "shield" the Fund from liability under Section 31-355(b). The Board held that the decedent had properly pursued the disability claim before his demise and that the death of the worker should not act as a bar to the claim by the Administratrix. Moreover, the CRB found that the Trust that was established by the employer was not for workers' compensation claims. Finally, the CRB found that the Finding against the Fund directly was appropriate in the context where all parties agreed that the employer was no longer in business and that service of the Finding to the employer would be nothing more than a "procedural pantomime."

Both the Trial Commissioner and the CRB had to make difficult decisions in this case regarding coverage based on evidence that was not clear and certainly not complete. In the end, the correct decision appears to have been made.

BLAKEY V. US LABORATORIES, 6384 CRB-5-20-3 (March 11, 2021)

The claimant was involved in a compensable motor vehicle accident on August 17, 2017 when her car hit debris in the road and flipped over on Interstate 84. The claimant developed cervical complaints and ultimately underwent C4-C5 osteotomies, laminectomy, facetectomy, and foramininotomy on March 2, 2018 under the care of Dr. Luis Kolb. Importantly, the claimant had two prior cervical fusions in 1994 and 2000; at issue in the case was whether the need for 2018 surgery was due to the work accident or degeneration and adjacent disc disease caused by the prior fusion surgeries. Dr. Kolb issued a report stating that he could not opine that the motor vehicle accident was a substantial factor in the need for the 2018 surgery. A RME was performed by Dr. Taylor who suggested that the diagnostic studies following the 2017 accident were similar to findings before the compensable incident. Dr. Taylor also could not establish causation of the 2017 motor vehicle accident to the 2018 cervical surgery. The claimant sought her own expert opinion with Dr. Mastroianni, a neurosurgeon, who testified that the motor vehicle accident was the cause for the need for surgery. The Trial Commissioner found Dr. Mastroianni's testimony regarding causation not credible or persuasive. The Trial Commissioner determined that the claimant's testimony was not persuasive and that her burden of proof had not been met; accordingly, she dismissed the claim for the cervical surgery. The CRB concluded that there was sufficient evidence in the record to support the Trial Commissioner's Finding and affirmed the dismissal.

FORTIN V. SOUTHERN CONNECTICUT GAS COMPANY, 6387 CRB-3-20-4 (March 31, 2021)

The CRB in this case affirmed a finding of compensability of a right knee surgery as well as a denial of a total disability claim; both the claimant and respondent Liberty Mutual had appealed the Trial Commissioner's Finding. The claimant was hired in 1967 for the employer as a pipefitter. He had documented injuries to the right knee on October 22, 1977 and August 24, 1983 while Hartford Insurance was on the risk. For the 1977 accident the claimant underwent right knee surgery; the Commission file reflected an unsigned voluntary agreement documenting compensability of a torn meniscus. There was also a voluntary agreement in the file for the 1983 claim reflecting a permanent impairment award of 5% of the right knee. The claimant apparently also sustained a left knee injury at work on July 7, 1986. Finally, the claimant sustained an injury to his bilateral

knees on September 8, 1997. For the 1997 claim Liberty Mutual was on the risk and a voluntary agreement for 45% of both knees was approved for that claim.

The claimant was treating with Dr. Christopher Lynch and in December 2015 he rated the patient at 50% bilaterally. Liberty Mutual had a RME with Dr. Brittis on February 16, 2016. Dr. Brittis rendered an opinion regarding causation that stated "Mr. Fortin's knees are the result of multiple work related injuries that have occurred during the course of his employment. He relates clearly surgical procedures that were completed under workers' compensation oversight in the 1970s and 1980s…There is no history of knee injury that predated his employment or with other outside activities." Subsequently the claimant began treating with Dr. Lahav for his knee injuries. In a 2018 report Dr. Lahav referenced three different work injuries in 1977, 1983 and 1997 and stated "it does appear with the records provided that he did have work related injuries which has led to his posttraumatic arthritis. I do concur that the need for knee replacement stems up from injuries to the knees years ago." Liberty Mutual denied liability for a right knee surgery contending the injury was due to pre-existing problems, notwithstanding their prior agreement to pay a 45% rating.

The claimant retired at age 64 in March 2010. His primary care physician, Dr. Parker, rendered an opinion that the claimant was totally disabled as of May 9, 2016. The claimant sought benefits for total disability based on this.

Based on the medical evidence the Trial Commissioner concluded that Liberty Mutual as a carrier for the last accident on September 8, 1997 was liable for right knee surgery. The CBR on appeal affirmed that finding, noting that Liberty Mutual had agreed to voluntary agreement which substantially increased the permanent impairment, and that the opinions of Dr. Brittis and Dr. Lahav included the 1997 knee injury among the injuries causing the need for surgery. The CRB stated that "a reasonable inference to draw from this evidence in our opinion was that these witnesses opined that each of the multiple compensable injuries claimant sustained contributed to his need for knee replacements." Interestingly, there does not appear to be any medical evidence that the 1997 claim was a substantial factor in the need for surgery.

The CRB denied the claim for total disability benefits. In support of their denial the Board noted that Dr. Parker stated that the claimant had several orthopedic conditions which precluded employment (some of which were unrelated to work), that the claimant at trial was able to testify without pain or distress, and that he in testimony confirmed an ability to perform several household tasks. The CRB suggested that Dr. Parker's opinion was that the claimant could not perform his old job but this was not "conclusive proof that the claimant could not have performed some other form of remunerative work." The CRB noted that undisputed evidence of disability does not require the Trial Commissioner to adopt that evidence if he/she is not persuaded by it.

BALDINO V. RONDO OF AMERICA, INC., 6365 CRB-5-19-12 (April 7, 2021)

The CRB again affirmed a case where, on a causation issue, the Trial Commissioner had accepted the opinion of the treating doctor and rejected the opinion of the CME. The claimant was a pressman with date of hire in 1982. He alleged repetitive trauma in the course of his work lifting stacks of paper and buckets as well as bending all day long; he contended this work had caused a back injury. The treating physician, Dr. Forshaw, opined that the work was a substantial factor in the back degeneration and the claimant's need for surgery. A RME with Dr. Becker was held and he concluded the back condition was due to daily living and genetics. Dr. Wakefield performed a CME and determined that the back injury was the natural progression of degeneration in the back and not due to work. The respondents submitted evidence that the claimant had prior discrete injuries both inside and outside of work and contended that the back injury was due to those prior accidents (for which workers' compensation had not previously been claimed apparently). The CRB found that it was within the Trial Commissioner's discretion to accept Dr. Forshaw's opinion over the CME and RME; the Trial Commissioner had determined that Dr. Forshaw's opinion was more "convincing and compelling." The CRB held that the Trial Commissioner's failure to "explicitly state" the reason why he favored Dr. Forshaw's opinion over the CME was not error since there was expert testimony to support his decision. The CRB went on, in dicta, to state that where there was credible and persuasive evidence of repetitive trauma based on the claimant's testimony, as in this case, "we are not necessarily persuaded that the Commissioner was required to rely upon any expert opinion for his conclusions" (citing *Lee v. Standard Oil of Connecticut, Inc.*, 5284 CRB-7-07-10 (February 25, 2009)). Notwithstanding this comment by the CRB, it is likely that most Commissioners would require medical causation language from a doctor before establishing that a repetitive trauma claim is compensable.