STRUNK · DODGE · AIKEN · ZOVAS
ATTORNEYS AT LAW

CONNECTICUT WORKERS' COMP UPDATE

The law firm of **Strunk Dodge Aiken Zovas (SDAZ)** provides you with our **Winter 2022 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.

The Connecticut Workers' Compensation Commission through the leadership of Chief Administrative Law Judge Morelli has remained open for business during the Covid-19 pandemic. At this time all hearings are being held in person. Masks are being required to be worn at the Commission offices.

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.**

At the June 2022 Connecticut Legal Conference of the Connecticut Bar Association **Attorney Lucas Strunk of SDAZ** will provide a legislative update to the Workers' Compensation Section of the CBA. **Attorney Jason Dodge of SDAZ** will present a review of important Supreme and Appellate Court decisions that have been issued in 2021-2022 to the Section.

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.

Attorney Philip Markuszka of SDAZ was accepted to the Board of Directors of the Hartford County Bar Association on May 18, 2021 for a three year term. Attorney Markuszka has also been appointed to serve on the Glastonbury Zoning Board of Appeals until November 21, 2021.

Partners Anne Zovas, Richard Aiken, Jason Dodge, and Lucas Strunk of SDAZ have been named to Connecticut Super Lawyers for 2021. **Attorneys Philip Markuszka and Christopher D'Angelo of SDAZ** have again been named Connecticut 'Rising Stars' for Super Lawyers 2021.

Attorney Christopher Buccini of SDAZ has been named to the Connecticut Bar Association's Workers' Compensation Section Executive Committee. **Attorneys Aiken, Strunk, and Dodge of SDAZ** are already on the Committee.

Attorney Buccini has also been appointed as an Editor to the Compensation Quarterly, a publication of the Workers' Compensation section of the Connecticut Bar Association which reviews topics and case law regarding workers' compensation in Connecticut.

Attorneys Jason Dodge and Philip Markuszka of SDAZ are Board members of Kids' Chance of Connecticut. The mission of Kids' Chance of Connecticut is to provide educational scholarships to the children of Connecticut workers who have been seriously or fatally injured in work-related accidents. If you or your organization wish to become involved in this worthy charity please contact Jason or Phil. 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.

The 2021-2022 supplement to the Connecticut workers' compensation treatise ***Connecticut Workers' Compensation Law*** published by Thomson Reuters was issued in December 2021. This two-volume treatise co-authored by **Attorneys Jason Dodge and Lucas Strunk of SDAZ**, and Attorneys James Pomeranz, Robert Carter and Donna Civitello provides a broad and historical view of Connecticut Workers' Compensation Law and discusses current issues, both in decisional law and in legislative trends. Topics addressed in the treatise include: arising out of and in the course of employment, causation, statue of non-claim, filing notices to contest liability, Motions to Preclude, third party lien rights, and Medicare and Social Security interplay with Connecticut Workers' Compensation claims. The treatise can be purchased online at:

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

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.

Our attorneys:

Lucas D. Strunk, Esq.	**860-785-4502**	**Nancy E. Berdon, Esq.**	**860-785-4507**
Jason M. Dodge, Esq.	**860-785-4503**		
Richard L. Aiken, Jr., Esq.	**860-785-4506**	**Philip T. Markuszka, Esq**	**860-785-4510**
Anne Kelly Zovas, Esq.	**860-785-4505**	**Christopher J. D’Angelo, Esq.**	**860-785-4504**
Heather Porto, Esq.	**860-785-4500 x4514**	**Christopher Buccini, Esq.**	**860-785-4520**

CONNECTICUT WORKERS’ COMPENSATION COMMISSION NEWS

Retirement News:

Administrative Law Judge Charles Senich has retired. Best wishes to Judge Senich in retirement!

Workers’ Compensation Premium Rates:

Governor Lamont has announced that rates for workers’ compensation premiums have decreased for the eighth consecutive year in Connecticut.

https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2022/01-2022/Governor-Lamont-Announces-Workers-Compensation-Rates-Decrease

Eighth District Move:

The Eighth District Workers’ Compensation Commission office in Middletown moved on December 17, 2021. The Middletown office’s new location and contact information is:

Workers' Compensation Commission
Eighth District Office
649 South Main Street
Middletown, CT 06457
Phone: (860) 344-7453
Fax: (860) 344-7487

Mileage rates:

As on January 1, 2022 the mileage rate has increased to 58.5 cents per mile.

Burial Fees:

As of January 1, 2022, the burial fee for deaths covered under the Workers' Compensation Act is $12,516.00 based on the overall 2021 CPI-W increase for the northeast of 4.3%. Connecticut General Statutes Section 31-306 was amended in 2021 to reflect that the compensation for burial benefits will be adjusted by the percentage increase in the consumer price index for urban wage earners and clerical workers in the Northeast as defined in the United States Department of Labor's Bureau of Labor Statistics.

CRB Appointments:

Chief Administrative Law Judge Morelli has appointed Administrative Law Judges Daniel Dilzer and Carolyn Colangelo to sit as panel members on appeals before the Compensation Review Board for the calendar year beginning January 1, 2022.

Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) Reference Guide

CMS has issued the Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) Reference Guide on January 2022

Section 8.1 outlines when CMS will review a MSA proposal:

CMS will review a proposed WCMSA amount when the following workload review thresholds are met:

• The claimant is a Medicare beneficiary and the total settlement amount is greater than $25,000.00; or

• The claimant has a reasonable expectation of Medicare enrollment within 30 months of the settlement date and the anticipated total settlement amount for future medical expenses and disability or lost wages over the life or duration of the settlement agreement is expected to be greater than $250,000.00.

Note: Please see Section 10.1: Section 05 – Cover Letter (E. Settlement Details) in this reference guide for more details about what information is included in determining this amount.

A claimant has a reasonable expectation of Medicare enrollment within 30 months if any of the following apply:

• The claimant has applied for Social Security Disability Benefits

• The claimant has been denied Social Security Disability Benefits but anticipates appealing that decision

• The claimant is in the process of appealing and/or re-filing for Social Security Disability

Benefits

• The claimant is 62 years and 6 months old

• The claimant has an End Stage Renal Disease (ESRD) condition but does not yet qualify for Medicare based upon ESRD.

https://www.cms.gov/files/document/wcmsa-reference-guide-version-35.pdf

Public Act 21-02

Respondents should be aware that Connecticut General Statutes Section 17b-265 regarding Medicaid liens filed by the Department of Social Services against liable third parties (which includes employers, carriers and TPA's) was amended effective July 1, 2021. The new provisions require a response to lien letters within 90 days; the failure to respond within 120 days will create an uncontestable obligation to pay all claims as submitted.

Upon receipt of a claim, response within 90 days can either: 1) be a payment, 2) a request for additional information in an effort to determine extent of obligation, or 3) a written reason for denial.

Memorandum 2022-02

This Memorandum discusses the way an employer opts out of coverage:

Connecticut General Statutes §31-275(10) sets forth the procedure to be used by an employer who opts in and/or out of coverage under the Workers' Compensation Act. On July 17, 2013, and pursuant to the authority granted to the Chairman by C.G.S. §31-321, Forms 6B, 6B-1, and 75 were amended to include the instructions that all such documents should be submitted to the office of the Chairman at 21 Oak Street, Hartford, CT 06106.

Public Act 21-76 §17(b) has further clarified the manner in which these forms may be filed. Although §1-268(d) of Chapter 15, the Connecticut Uniform Electronic Transactions Act, states that it does "not apply to any of the rules of court practice and procedure under the Connecticut Practice Book," the filing of Forms 6B, 6B-1, and 75 are administrative in nature and not legal pleadings. As such, notwithstanding the language in C.G.S. §31-275(10) that requires these documents to be sent certified mail, return receipt requested, they may now be delivered to the office of the Chairman by electronic means with proof of a delivery receipt. The email address to be used for electronic submissions of these forms is **WCC.Forms@ct.gov**.

Memorandum 2022-01

This Memorandum deals with the Workers' Compensation Commission Hospital and Ambulatory Fee Schedule:

Pursuant to C. G. S. § 31-294d(d) (as amended June 11, 2014) the following will be in effect for the pecuniary liability of the employer for services rendered by a hospital and ambulatory surgical center:

1. The hospital inpatient rate shall be 174% of the Medicare rate payable to that facility.

2. The hospital outpatient and hospital-based ambulatory surgical center rate shall be 210% of the Medicare rate payable to that facility.

3. The non-hospital based ambulatory surgical center rate shall be 195% of the hospital-based outpatient Medicare rate payable in the same CBSA (Core Based Statistical Area).

4. Where there is no Medicare rate for the services in an outpatient hospital setting, the parties shall negotiate the reimbursement rate. If negotiation is not successful, the parties may request a hearing with the Commission; however, treatment shall proceed pending same.

The Workers' Compensation Commission is working with a vendor to publish the 2022 applicable rates, rules and guidelines for this Fee Schedule. It will be available in advance of the April 1, 2022 effective date. Notice of availability will be published on our website at **https://portal.ct.gov/wcc**.

Memorandum 2021-09

This Memorandum advises the public that the title "Commissioner" has now been changed to "Administrative Law Judge." The forms and publications from the commission to the extent that they refer to a Commissioner "shall be interpreted and/or understood to mean "Administrative Law Judge."

Memorandum 2021-06:

Memorandum 2021-06 has been issued by Chief Administrative Law Judge Morelli regarding maximum compensation rates. The Chairman has ordered that the maximum total disability rate for injuries occurring after October 1, 2021 is $1,446 (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, 2021 is $1,140 (based on the average weekly earnings of production and related workers in manufacturing in Connecticut).

https://wcc.state.ct.us/memos/2021/2021-06.htm

Exam Charges:

Commission 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

WORKERS' COMPENSATION PRACTICE TIP

Utilization Review (UR) of a medical issue plays an important role in Connecticut Workers' Compensation claims where the employer has a Medical Care Plan (MCP) that is approved by the Commission. Where there is a MCP in place Utilization Review can make determinations regarding the necessity and appropriateness of medical and health care services that are sought to be approved. See Regulation 31-279-10. On the other hand, where there is no MCP in place for the employer UR plays a much less significant role. While Administrative Law Judges can certainly consider the conclusions of UR they generally place less weight on UR than the opinion of a treating physician or RME doctor. UR reports that rely on the opinions of doctors or Physician Assistants from out of state will typically not be followed. Moreover, if the medical issue goes to a Formal hearing it may be difficult to get the UR report into evidence. For these reasons, where there is no MCP in place we recommend generally that a RME be retained as opposed to using a UR report to address medical treatment issues.

CASE LAW

Orzech v. Giacco Oil Company, 208 Conn. App. 275 (October 9, 2021)

In this interesting and sad case the claimant's death by suicide was found to be compensable and widow's benefits were ordered to be paid. The claimant alleged injuries to his back, shoulder and knee due to an accident at work on November 1, 2016. While he had a serious pre-existing knee condition he claimed it became much worse after the accident and that he needed a knee replacement. That claim was denied; the claimant

did not have health coverage to pay for the knee replacement while he waited for the workers' compensation claim to be resolved. The claimant died on July 23, 2017; he was found to have alcohol in his system as well as many other drugs. A pathologist from the Chief Medical Examiner's office determined that the death was a suicide. The claimant's attorney presented psychiatric expert testimony that the claimant's suicide was substantially related to depression due to the work injuries. The respondents' examiner questioned if there was sufficient evidence to determine that the claimant did commit suicide as opposed to accidentally overdosing on medication. The CRB affirmed the trial commissioner's finding of compensable death and cited *Wilder v. Russell Library Co*., 107 Conn. 56 (1927), in support of its ruling. The CRB rejected the respondents' contention that the death was due to intervening and superseding events unrelated to the work accident. On appeal to the Appellate Court it was determined that the Board properly affirmed the trial Judge's finding awarding benefits to the spouse. The Appellate Court stated that the Connecticut Supreme Court in *Sapko v. State*, 305 Conn. 360 (2012) adopted the "direct and natural consequence rule for subsequent injury cases." This rule states: "a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury." In *Sapko* a death due to a drug overdose was found to be not compensable since it was in part due to ingestion of medication unrelated to the work accident. The Appellate Court distinguished the facts in *Sapko* from those in this case and affirmed the award of death benefits to the dependent spouse. The death in *Sapko* was determined to be due to "a superseding cause breaking the causal link between his compensable injures and his *accidental* death…." The Appellate Court noted that in *Sapko* there was no determination that the claimant had committed suicide and no finding that the claimant's alleged depression was due to the work accident, unlike in *Orzech*. The Appellate Court held in *Orzech* that there was sufficient evidence in the record to support a finding that the decedent's depression was substantially related to his compensable injury and that his suicide was substantially caused by that depression.

SERCA V. CITY OF BRIDGEPORT, 6346 CRB-4-19-9 (December 2, 2021)

In this complicated death claim the Compensation Review Board determined that the respondent municipal employer was liable for benefits pursuant to General Statutes Section 7-433c for a death claim and that COLA's were owed without reimbursement from the Second Injury Fund. The claimant was a firefighter for the City; he worked there from 1958 to 1987. On March 22, 1973 he sustained a myocardial infarction and was paid benefits. In 1992 a Finding and Award was issued for a date of accident March 22, 1973 pursuant to Section 7-433c awarding the claimant a permanent impairment award of the heart of 50%. The claimant died on August 19, 2010. A Form 30D was issued in 2012 claiming survivor benefits; the respondent contended that the Form 30D was not filed timely pursuant to Section 31-294c. The respondent did not file a responsive Form 43 until 2013. The claimant presented medical evidence that the

death was due to the prior cardiac condition that was the subject of the Finding for 50% of the heart. The Administrative Law Judge granted a Motion to Preclude and ordered widow benefits, a $4,000 burial allowance and COLA's. The respondents sought an articulation as to whether the benefits were owed under Chapter 568 or 7-433c; the Administrative Law Judge articulated that the underlying award was for benefits under Section 7-433c. (It is likely the respondent wanted the claim accepted under Chapter 568 to receive COLA reimbursement from the Second Injury Fund, a reimbursement not owed if it were Section 7-433c claim). The Administrative Law Judge determined that the Form 30D did not have to be filed since there had been an underlying claim filed timely by the decedent citing, *McCullough v. Swan Engineering*, 320 Conn. 299 (2016). On appeal to the CRB the respondents contended that the Administrative Law Judge erred in finding that the death claim was timely filed and that the claim should have been ordered to be paid pursuant to Chapter 568; the respondents also asserted that the Second Injury Fund should liable for COLA's under Section 31-306(c)(1). The Board determined that the claimant's claim was timely filed and that no widow's claim needed to be filed, citing *McCullough v. Swan Engineering, supra*. The CRB agreed that the Finding establishing a compensable death claim under Section 7-433c and not Chapter 568 was appropriate. The CRB also found, notwithstanding that the Administrative Law Judge did not directly address the issue, that the Second Injury Fund was not liable for COLA reimbursement in this 7-433c claim, citing the cases of *Bergeson v. New London*, 269 Conn. 763 (2004) and *McNulty v. Stamford*, 37 Conn. App. 835 (1995). It should be noted that the Second Injury Fund does not receive assessments from municipalities for Section 7-433c claims and therefore the Finding that no reimbursement is due from the Second Injury Fund makes sense and is consistent with the cases cited by the Board.

DIAZ v. CITY OF BRIDGEPORT, 6379 CRB-4-20-2 (November 30, 2021), appeal pending, AC 45179

In this often-litigated case, the claimant was awarded a permanent partial disability award under General Statutes Section 7-433c for his hypertensive condition that caused injury to his kidneys; the award called for a payment of 245 weeks. At the same time that he was awarded permanency benefits he was claiming he was totally disabled. The claimant sought a "commutation" or lump sum payment of the last 122 weeks of the permanency award to pay his property taxes and credit card debt. The trial Judge approved the commutation award at a discount of 3%. The municipality objected but both the CRB and Appellate Court affirmed the commutation. *Diaz v. City of Bridgeport*, 6333 CRB-4-19-6 (April 29, 2020), ***aff'ed***, 208 Conn. App. 615 (2021). After the commutation order was issued the respondents then conceded that the claimant was totally disabled and the claimant sought to have the first 123 weeks of the permanency award that had been paid reclassified as total disability benefits and not permanency. The respondents objected contending that the claimant had elected his remedy (the permanency award), there was no change of circumstances and could not now claim that those payments were actually total disability. The Administrative Law Judge noted that the claimant had always

contended he was entitled to total disability and therefore ordered the initial 123 weeks of payments to be reclassified as total disability. The CRB affirmed that decision and found that the case of *Rayhall v. Akim Co.,* 263 Conn 328 (2003), that was cited by the respondents did not support a finding that the claimant could not seek to reclassify the benefits to total disability.

Austin v. Coin Depot Corporation, ___Conn. App.___, AC 44225 (2021)

The claimant, Howard Austin, Jr., was entitled to a Cost of Living Adjustment ("COLA") in the amount of $27,059.46 and the respondent Connecticut Guaranty Fund issued a payment in that amount to the claimant care of his counsel. The check was payable to "Howard Austin." The claimant's attorney inadvertently gave the check to the claimant's father, Howard Austin, Sr., who was also a client. More than a year later, Howard Austin, Jr., sought payment of the COLA that he was not paid, contending that the check should have been issued to "Howard Austin, Jr." and not just "Howard Austin." The Voluntary Agreement in the case listed the claimant as "Howard Austin." The Administrative Law Judge and the CRB found that the respondent had fulfilled its obligation to pay the COLA. The Appellate Court affirmed the Board decision noting that "it is undisputed that the defendant delivered the retroactive lump sum COLA check to the plaintiff's agent, and, at the time the check was negotiated, the defendant had sufficient funds in its account for the check to be honored." The Court confirmed that the Administrative Law Judge did not have to apply the Uniform Commercial Code (UCC) in deciding this case.

REID v. SPEER, ____CONN. APP. ____, AC 36663 (DECEMBER 28, 2021)

The Appellate Court affirmed a finding of compensability of a right shoulder injury while shoveling snow for the employer who represented herself in the appeal. The claimant filed a timely notice of claim but the employer did not contest the claim within 28 days per General Statutes Section 31-294c; the Trial Judge granted a Motion to Preclude. On appeal the employer contended that the employee was an independent contractor and not covered by workers' compensation, however, the Judge concluded that there was sufficient evidence of "control" to prove the claimant was an employee such as time clocks being used by the employer and other evidence such "that she asserted the right to control the [plaintiff's] work, and he was no longer acting in an autonomous manner." The Appellate Court affirmed the finding that the claimant was an employee. The employer also argued unsuccessfully that she could not file a responsive timely Form 43 because to do so "would have constituted a criminal act punishable pursuant to General Statutes Section 31-290a, due to her alleged knowledge that his claim was fraudulent." The employer provided no legal support for this allegation and the Court found no merit in it.

LOVEN V. PRATT & WHITNEY, et. al., 6416 CRB-8-21-2 (December 30, 2021)

The claimant was diagnosed with lung cancer in September 2017 and alleged that it was due to exposure to asbestos at Pratt & Whitney during his work there between

1964 and 1966. In pursuing the case the claimant did not present testimony of the treating doctors; rather, in support of the claim the deposition testimony and reports of Dr. Michael Conway, a well-respected pulmonologist familiar with workers' compensation claims, and Dr. Jerrold Abraham, a pathologist were put into evidence. Both of these board-certified expert physicians concluded that the claimant's cancer was due to the asbestos exposure at work in the 1960's at Pratt & Whitney. The respondents defended the case based on the 61-page report of Dr. Milo Pulde, a physician at Brigham & Women's Hospital. Dr. Pulde was not deposed. Dr. Pulde concluded that the claimant's lung cancer was due to vasculitis-related immune dysfunction and focal interstitial lung disease, and treatment with immunosuppressant medication for the vasculitis. Dr. Pulde opined that the asbestos exposure at work was not the cause of the lung cancer. None of the doctors found that the claimant had asbestosis. All of the expert witnesses had performed file reviews and no physical examination. At the trial level, the Administrative Law Judge found the opinion of Dr. Pulde "to be the most complete and most persuasive" and dismissed the lung cancer claim. The Judge found Dr. Conway's opinion not credible since he ruled out vasculitis as a cause of the cancer based on an erroneous assumption. On appeal the CRB affirmed the decision and stated that the Judge had applied the correct "substantial factor" test in determining causation: "the substantial contributing factor standard is met if the employment materially or essentially contributes to bring about the injury or condition." The Board also determined that the Judge had appropriately considered the qualifications of the Dr. Pulde as an expert witness. The CRB stated: "expert testimony should be admitted when: (1) the witness has a special skill or knowledge directly applicable to a matter in issue, (2) that skill or knowledge is not common to the average person, and (3) the testimony would be helpful to the court or jury in considering the issues."

MARTINOLI v. CITY OF STAMFORD/POLICE DEPARTMENT, 6420 CRB-7-21-3 (January 11, 2022)

The claimant was a police officer with the City of Stamford who sustained a compensable heart condition in 1999 under General Statutes Section 7-433c. A compensation rate was established in a Finding in 1999. That same year the claimant retired. The claimant has not sought work since then. In 2018 the claimant was paid permanency of the heart of 19.25%. The parties stipulated that the claimant has been totally disabled since July 15, 2015; the claimant sought temporary total benefits as of that date under General Statutes Section 31-307. The respondents denied the claim for TT contending that a claimant who is out of the workforce is not entitled to total disability even if they cannot work; the respondents also sought a credit for any permanency they had paid and an offset under Section 31-307(e)(for Social Security Retirement benefits) and reduction for benefits owed under the so-called "cap" under Section 7-433b(b). The Administrative Law Judge ordered temporary total benefits to be paid; she indicated that

additional hearings would be held to address the credits owed. The CRB affirmed the Finding awarding TT citing Laliberte v. United Security, Inc. 261 Conn. 181 (2002) (person in prison still entitled to Section 31-307 temporary total benefits) and Mascendaro v. Fairfield, 6304 CRB-4-19-1 (March 13, 2020). The Board stated that: "We believe a reasonable interpretation of the precedent governing eligibility for Section 31-307 benefits is that once the claimant proves that he is medically incapable of performing work, his willingness to obtain employment is irrelevant."

LACHANCE V. JOE'S TIRE SHOP, ET AL, 500141600,500171400 (January 19, 2022) (trial Judge decision)

Joe's Tire Shop had accepted a December 13, 2006 lumbar spine injury, paid for three surgeries, 28% of the back and temporary total benefits for six years but they then denied liability for the back injury after the claimant had begun a new job with Monro Muffler; Joe's Tire asserted a "reverse apportionment claim" and contended the new work at Monro was repetitive trauma and that terminated Joe's Tire's liability in the claim. The claimant filed a protective Form 30c against Monro but always asserted that Joe's Tire should remain liable in the case. In support of their claim, Joe's Tire had Dr. Jambor perform a file review; he opined that the new work as a supervisor/technician at Monro was a substantial factor in the present lumbar complaints and need for treatment. Dr. Karnasiewicz (a treating physician) concluded there was no repetitive trauma at Monro and that the 2006 accident was the cause of the ongoing lumbar problems. Administrative Law Judge Dilzer in this formal hearing decision determined that Joe's Tire (Star Insurance) was liable for the lumbar spine injury and pain management treatment due to their 2006 back injury. In his decision the ALJ denied a Motion to Preclude that had been sought by Joe's Tire Shop against Monro (Travelers) for failure to timely respond; the Judge found that Joe's Tire "lacks standing to assert Preclusion of a repetitive lumbar strain against the Respondent Monro Muffler." The ALJ found Dr. Karnasiewicz' opinion persuasive on the issue of causation and concluded that Joe's Tire remained liable for the back injury and treatment. All claims against Monro were dismissed. **Attorney Jason Dodge of SDAZ** successfully defended the claim on behalf of Monro.