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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 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](mailto:jdodge@ctworkcomp.com) or 860-785-4503.

### STRUNK DODGE AIKEN ZOVAS NEWS

**Attorney Jason Dodge of SDAZ has been named by Best Lawyers as the 2023 "Lawyer of the Year" for workers' compensation law-employers in the Hartford region.** 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, Richard Aiken, and Heather Porto of SDAZ** have been selected by their peers for recognition of their professional excellence in the 29<sup>th</sup> edition of *The Best Lawyers in America*.

**Attorney Richard Aiken of SDAZ has been named the recipient of the Pomeranz-O'Brien award from the Connecticut Bar Association.** The Pomeranz-O'Brien Award is presented to a practitioner who has, over the course of a career, exhibited excellence in the practice of workers' compensation law, and/or made outstanding and extraordinary contributions to the practice. It is named for Edward Pomeranz, an early pioneer in the practice of workers' compensation law and Ed O'Brien, Sr., an accomplished practitioner who also served the state as workers' compensation commissioner. Attorney Aiken is a former Chair of the Connecticut Bar Association's Workers' Compensation Section and runs the CBA Golf Event every year that donates generously to Food Share. The award will be given to Rick at the CBA Golf Event on September 15. Congratulations to Rick!

At the June 2022 Connecticut Legal Conference of the Connecticut Bar Association **Attorney Lucas Strunk of SDAZ** provided a legislative update to the Workers' Compensation Section of the CBA. **Attorney Jason Dodge of SDAZ** presented a review of important Supreme and Appellate Court decisions that have been issued in 2021-2022 to the Section. **Attorney Colette Griffin**, Chair of the Workers' Compensation Section of the CBA, was the moderator of the presentation.

**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 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.

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. 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>

**Save the date!** Kids' Chance of Connecticut will be having its annual Golf Event on Monday September 26, 2022 at Glastonbury Hills Country Club in Glastonbury, 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. For the 2022-2023 academic year KCOC has awarded scholarships totaling \$35,000. 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](http://www.kidschanceofct.org).



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 legal work. When referring new files to SDAZ for workers' compensation defense please send them to one of the attorneys' email: azovas@ctworkcomp.com, raiken@ctworkcomp.com, lstrunk@ctworkcomp.com, jdodge@ctworkcomp.com, HPorto@ctworkcomp.com, nberdon@ctworkcomp.com, cstabnick@ctworkcomp.com, cbuccini@ctworkcomp.com, pmarkuszka@ctworkcomp.com, cdangelo@ctworkcomp.com, rstabnick@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	Courtney Stabnick, Esq	860-785-4501
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
		Richard T. Stabnick, Esq.	860-785-4550

## LEGISLATIVE UPDATE



### 2022 LEGISLATIVE REPORT

Lucas D. Strunk  
Strunk Dodge Aiken Zovas, LLC  
200 Corporate Place, Suite 100  
Rocky Hill, CT 06067  
(860)785-4500  
lstrunk@ctworkcomp.com

The Connecticut legislature short session ended May 4, 2022. Despite the short session, a number of workers' compensation related bills were proposed. The two Senate bills which garnered most of the attention focused on an attempt to adopt the recommendations of the task force created by Special Act 21-35 to study cancer relief benefit for firefighters (SB-313), and a bill which proposed expanding workers' compensation coverage for all employees sustaining post-traumatic stress injuries (SB-321). I will herein provide a summary of the legislature's final action relative to these bills and on other matters germane to the workers' compensation practitioner.

**PUBLIC ACT 22-139 “An Act Concerning Adoption of the Recommendations of the Task Force to Study Cancer Relief Benefits for Firefighters”** As of the preparation of this report, the new law was on the governor's desk. The new law, however, is of much lesser potential benefit than the underlying Senate bill. **Senate Bill No. 313** as originally drafted was expansive legislation that would have created a rebuttable presumption to the benefit of firefighters who developed cancers beyond those listed in Section 31-294j of the Act. Six circumstances would have rebutted the “presumption.”

1. The firefighter worked less than five years on or after February 1, 2017;
2. There was physical examination upon entry into service which revealed evidence of the claimed cancer or a propensity for such cancer;

3. Failure to have an annual physical subsequent to entry into service;
4. Use of cigarettes or other tobacco products within 15 years of diagnosis;
5. Failure to use respiratory protection and other PPE for five consecutive years; and
6. The claimed cancer is not one known to result from heat, radiation, or known carcinogen as determined by IARC or the National Toxicology Program of the United States Department of HHS. Additionally, the provision would have covered firefighters who developed disease no later than five years after the end of service.

The comprehensive provisions of the proposed law called for a number of safety measures and adoption of best practices to prevent cancer. The legislation directed the appropriation of \$1.2 million to fund the Firefighter Cancer Relief Account (7-313k), required Workers' Compensation Commission to record all claims of firefighters due to cancer diagnosis with an annual report to the Labor Committee; repealed language that barred a firefighter from receiving funds from the Firefighter Cancer Relief Program if receiving workers' compensation benefits; required the provision of two sets of turnout gear to be provided to firefighters under guidance of CONN-OSHA; required the comptroller to conduct a feasibility study when providing pension benefits to firefighters in circumstances when service years are not met due to early retirement resulting from a cancer diagnosis; and would have expanded 31-284b benefits beyond employee to covered dependents.

The proposed bill did provide departments with the ability to purchase a separate private insurance policy to cover the exposure as long as comparable benefits to our Act were provided.

As noted above, the negotiation process and concerns with the cost of the proposed legislation, however, led to significant amendment of the original bill. **Public Act 22-139** mandates that the Joint Counsel of Connecticut Fire Services Organization in consultation with the Connecticut State Firefighter's Association develop a joint plan for maintenance and remediation of toxic substances on turnout gear which plan must be submitted to the Commission of Fire Prevention and Control by July 1, 2023. That commission will thereafter advise fire departments on implementation of the plan. The law mandates that a fire department must adopt a plan within 90 days of the approved plan released by the commission. The Workers' Compensation Commission will now need to maintain a record of all workers' compensation claims made by firefighters with cancer diagnosis. The commission will provide a report summarizing those records to the Joint Standing Committee of the General Assembly relating to labor.

The Cancer Relief Fund statute, § 7-313i, was amended to reflect that payment of wage replacement benefits to a firefighter shall not create a presumption that the cancer is "work related." Payments from the Fund are not to be construed as diminishing the firefighter's rights to benefits or the rights or defenses of the employer under Chapter 568.

The comptroller is directed to conduct a study on the feasibility of providing pensions to firefighters who do not meet the required service due to a qualifying work-related cancer or death. The study is to include an examination of the feasibility of implementing a prorated benefit for such firefighters.

Effective January 1, 2024, each municipality within the state is mandated to contribute \$10.00 per firefighter to the Cancer Relief Account with the exception that the municipality need only contribute funds for those members who have submitted to annual physicals failing to reveal cancer or a propensity for cancer and have not used cigarettes within the last 15 years or have worked less than five years. Please note that as of July 1, 2022, qualifying firefighters are now eligible to apply for wage replacement benefits.

I anticipate that as commission reports summarizing cancer claims are received and reviewed that further legislation will be proposed.

**Public Act 22-89 "An Act Concerning Minor and Technical Changes to the Workers' Compensation Act"** codifies **House Bill 5250** as proposed by the Chairperson's Office of the Commission. The changes are to be effective from passage and were signed by the governor May 24, 2022. The bill corrects references throughout the Act to the Chairman who is now designated Chairperson. The new law also directs that filings under § 31-275 to be included or excluded from coverage under the Act shall now be filed with the Chairperson's office and not the local administrative law judge. The new law also confirms that notices under the Workers' Compensation Act shall be filed by registered or certified mail.

**Senate Bill 321 "An Act Expanding Workers' Compensation Coverage for Post-traumatic Stress Injuries for all Employees"** ultimately did not come to a vote and remained on the foot of the Senate calendar. The bill which was reported out of the Labor Committee, 13-0, and had significant support in the Appropriations Committee, did not have a final physical note attached that would have projected the cost to the State of Connecticut and municipal employers. The quickly advancing close of the session and other priorities including the governor's budget likely precluded fiscal analysis. I would anticipate that the bill will resurface in next year's longer session.

A number of other bills relevant to the practitioner did not make significant progress beyond the Labor Committee, although **House Bill 5251 "An Act Concerning Workers' Compensation for Dispatchers"** that would have provided portal-to-portal coverage did reach the house calendar. **Senate Bill 222 "An Act Requiring Notice of Discontinuing Prescription Medicine Under a Workers' Compensation Claim"** which would have required a Form 36 to discontinue prescription medications did not advance. Similarly, **Senate Bill 212 "An Act Concerning Permanent Partial Disability Benefits and Pension Offsets"** which would have impacted certain municipalities and fire districts that offset permanent partial disability benefits against pensions failed.

Practitioners who represent individuals who have lost time from work due to COVID-19, however, should be aware that the Implementer Bill or Governor's Budget Bill (**Public Act**



22-118), at Section 205 contains changes to the **"Essential Workers' COVID-19 Assistance Program"** established by **Public Act 21-2**. The Assistance Program codified as Section 31-900 has been amended to expand the definition of essential employee to include those in Phase 1C as defined in the CDC's Prevention Advisory Committee on immunization practices. Additional eligible employees, therefore, would include those in the transportation industries, logistics, waste water treatment, finance, information technologies, legal, media, public safety, public health, and engineers. The amendments include the elimination of a possible double recovery as a result of payments under the State's Paid Leave Program. The law extends the deadline for application for assistance from July 20, 2022 to December 31, 2022.

Some of the difficulties with the rather strict interpretation and review of applications have been addressed in the new law by now allowing the administrator to award partial payments while other aspects of the application are reviewed or subject to requests for additional information. Further, a disability or unemployment claim will not prevent assistance as long as there is an offset for the money received.

The window of eligibility for assistance remains those who contracted the disease between March 10, 2020 and July 10, 2021. The new additions to the law, however, mandate that the administrator review prior denied or pending claims and make new determinations of eligibility.

Of note, with respect to the commission and in particular our administrative law judges were resolutions confirming the reappointment of Judge Peter Mlynarczyk, Judge Brenda Jannotta, and confirming the nomination of our newest administrative law judge, Zachary Delaney. Congratulations to all. Also of note is that Judge Mlynarczyk, Judge Dilzer and Judge Oslena were named to be members of the Judicial Review Counsel.

Please note that the complete text of all public acts, proposed bills and analyses are available on the General Assembly website, [cga.ct.gov](http://cga.ct.gov).

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## **CONNECTICUT WORKERS' COMPENSATION COMMISSION NEWS**

### **Administrative Law Judge News:**

New Administrative Law Judge Zachary Delaney of West Hartford has begun presiding in the Fifth District in Waterbury.

Attorney Nancy Bonuomo has been presiding as interim Administrative Law Judge.

**Mileage rates:**

Not surprisingly, as on January 1, 2022 the mileage rate increased to 58.5 cents per mile. As of July 1, 2022 that rate has increased further to 62.5 cents per mile.

**Mediation within the Commission:**

Memorandum 2022-05 has been issued by the Workers' Compensation Commission updating the guidelines for mediation in the Commission. The following Judges have agreed to participate in the mediation process: Scott A. Barton (District 5/Waterbury), Carolyn M. Colangelo (District 3/New Haven), Daniel E. Dilzer (District 6/New Britain), Maureen E. Driscoll (District 3/New Haven), Brenda D. Jannotta (District 4/Bridgeport), Peter C. Mlynarczyk (District 8/Middletown), Michelle D. Truglia (District 4/Bridgeport), and William J. Watson III (District 1/Hartford).

**Revisions to Forms 30C and 30D:**

Memorandum No. 2022-04 has been issued which states:

Pursuant to Public Act 22-139, the Workers' Compensation Commission (WCC) is required to maintain and report a record of all workers' compensation cancer claims made by firefighters. In order to accurately collect and record this data, WCC Form 30C "Notice of Claim for Compensation" and Form 30D "Dependents' Notice of Claim" have been revised. The revision of WCC Form 30C also includes a change to reflect post-traumatic stress injuries made pursuant to C.G.S. Section 31-294k. Please use the most recent revisions of Forms 30C and 30D and check the appropriate box(es) when filing new claims.

**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

**Voluntary Agreements:**

We have confirmed that while voluntary agreements are preferred to be on green paper they can be submitted on white paper.



## **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.

## **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](mailto:WCC.Forms@ct.gov).

## **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**

When providing authorization to a medical provider for a particular treatment it is always a good idea to carbon copy the claimant's attorney or claimant. Sometimes a claimant is not aware that treatment has been authorized and therefore does not schedule the treatment; this may delay recovery from the injury, prolong the respondent's payments, and cause unnecessary hearings to occur.

## **CASE LAW**

### **MARTINEZ V. DATTCO, INC., 601079956 (June 15, 2022)**

The claimant is a bus driver for the employer and sustained injuries to her right shoulder, neck and back at work. She was paid permanent impairment for her injuries. The claimant is working. She came under the care of Dr. Fejos who recommended pain medication including tramadol, cyclobenzaprine, meloxicam and gabapentin; he also

recommended injection therapy. A CME was ordered with Dr. Krompinger who suggested that the claimant would be at maximum medical improvement after some physical therapy and provided ratings of 3% of the neck and back. Dr. Krompinger concluded that the proposed injections and medication was palliative treatment. The trial Judge dismissed the claim for injections and medication based on the opinion of Dr. Krompinger. **Attorney Jason M. Dodge of SDAZ** successfully defended the case in behalf of the respondents.

### **Buchanan v. Greenwood Industries, Inc., 800203788 (August 9, 2022)**

The claimant, a roofer, alleged an October 2018 left knee injury while cleaning around a dumpster. Although the claimant seemed certain as to the date his injury occurred, his recollection changed as records were produced by the employer which emphasized that the injury was unreported in contradiction to the claimant's contention that he reported on the date of the accident. The claimant's ultimate testimony focused on a day he worked with one particular individual. The claimant maintained that he had a conversation with a supervisor after reporting the injury who told him to "come back Monday and see how it feels." The employer put forth evidence by way of documents and witnesses to establish the date worked with the coworker was a Tuesday, that the accident could not have occurred as claimed, and the nature of the work performed post that date through December 2018 which directly refuted the claimant's contentions. Claimant has a prior injury to the same knee for which he underwent surgeries and which he settled by stipulation in February of 2019 just after he filed a new Form 30C in January of 2019. Further MRI as reviewed by treating physician and RME reflected degenerative changes attributed to prior surgeries with a disputed question of whether same had been accelerated by the alleged new injury. The trial judge ultimately concluded that the documentary evidence and witnesses produced by the employer required him to conclude that the claimant had failed to meet his burden of proof. The claim was dismissed. **Attorney Lucas Strunk of SDAZ** successfully defended the case for the respondents.

### **WHITE V. CITY OF WATERBURY, 6441 CRB-5-21-9 (May 31, 2022)**

The Compensation Review Board affirmed the finding and dismissal of this claim involving a fireman's injury at home while preparing to get ready for his shift. The claimant had been asked to do a shift at Station 5 at 8 p.m. on March 22, 2020. The claimant's normal Fire House was Station 2. The claimant brought home with him his gear bag which resembled a hockey bag and weighed about 50 pounds. He brought the bag home with him so that he would not have to stop at Station 2 to pick it up before going to Station 5 for his shift; the claimant was not directed by the employer to bring

the bag home. The claimant testified that the reason why he brought the bag home was to shorten his commute. The claimant hurt his leg at home at 6:30 p.m. carrying the bag down stairs while getting ready for his shift. The Administrative Law Judge concluded that the claimant's injury occurred at home and not during his commute; therefore, the claimant was not covered by the so-called "portal-to-portal" provisions of General Statutes Section 31-275(1)(A)(i). The Judge also concluded that the claimant bringing the bag home was not a mutual benefit to both him and the employer; rather, he determined that bringing the bag home was for the "sole benefit and convenience of the claimant." The CRB affirmed the dismissal.

### **TORRES V. CITY OF HARTFORD, CRB-6-21-12 (May 31, 2022)**

The claimant sustained a compensable injury in a motor vehicle accident and benefits for both indemnity and medical were paid by the municipal employer totaling \$17,215.95. The claimant pursued a third party claim against the tortfeasor and a settlement, prior to a lawsuit, was reached for \$25,000. The claimant asserted that pursuant to General Statutes § 31-293(a) the workers' compensation lien should be reduced by one-third. The Administrative Law Judge determined that the lien should not be reduced for two reasons: 1) no lawsuit had been filed and, 2) the employer was a political subdivision of the State of Connecticut. The Judge's decision interpreted the language of Section 31-293(a) which states, in pertinent part: "If the action has been brought by the employee, the claim of the employer shall be reduced by one-third of the amount of the benefits to be reimbursed to the employer, unless otherwise agreed upon by the parties, which reduction shall inure solely to the benefit of the employee, except that such reduction shall not apply if the reimbursement is to the state of Connecticut or a political subdivision of the state including a local public agency, as the employer, or the custodian of the Second Injury Fund." The claimant asserted that the Judge's decision was an absurd result because the claimant received no recovery from the claim after deduction of attorney's fees, costs and the workers' compensation lien. The CRB determined that the Judge had no choice but to award the full lien back to the employer based on the statutory language since the employer was a political subdivision of the State. Interestingly, the Board in footnote 5 of the decision stated that notwithstanding that the claimant had not filed a lawsuit the Board would have allowed a reduction in the lien by one-third if the employer had not been a political subdivision. The CRB disagreed with the Judge's decision that the employee's failure to file a lawsuit barred reduction of the lien by one-third, but the Board found that to be harmless error. While this is dicta on the part of the CRB, it is contrary to the position taken by many employers; to wit, that reduction of the lien by one-third should not occur if the claimant has not filed a lawsuit.

### **ARRICO V. CITY OF STAMFORD, 212 Conn. App. 1 (April 26, 2022)**

The claimant had two compensable back injuries; the claimant also had pre-existing conditions including colitis, acid reflux and a seizure disorder. The claimant was awarded 16 percent of the back for the first injury. After the second injury the Trial Judge found that the claimant had achieved maximum medical improvement and granted a Form 36 awarding an additional 5 percent rating (total of 21 percent). She also determined that the claimant's present condition was not due to the compensable injuries and that additional medical treatment was not the responsibility of the respondent. On appeal the CRB determined that the issue of medical treatment was not an issue for the formal hearing and remanded the case to address ongoing medical treatment. The CRB affirmed the Finding regarding maximum medical improvement and the rating but remanded the case to the Commissioner to address causation issues and whether the claimant was totally disabled or not. The CRB found that the Commissioner's handling of the evidence in the case was "unorthodox" and stated that the substantial factor test should be applied on the issue of causation. On appeal from the Board decision, the Appellate Court affirmed the CRB decision and remand. Notwithstanding the approval of the Form 36, the Court noted the Judge had failed to determine that the claimant could in fact work. The Court agreed that the issue of medical treatment should not have been addressed by the Judge since it was not an issue at the formal hearing. The Appellate Court found that there is no rule that states the medical treatment provided post maximum medical improvement is palliative. Finally, the Court denied the claimant's request that General Statutes Section 51-183c apply and that a new trial de novo be ordered with a new Judge; the Court found that statute does not apply to workers' compensation claims.

### **DESMOND V. YALE/NEW HAVEN HOSPITAL, 212 Conn. App. 274 (May 3, 2022)**

The plaintiff in Superior Court brought a claim under General Statutes Section 31-290a against the employer. The claimant alleged in her complaint that the defendant sought to delay or terminate her medical treatment and discriminated against her as a result of her having filed and maintained a worker's compensation claim by intentionally or deliberately engaging in fraudulent, deceptive, misleading, and misrepresentative conduct including surveillance of the claimant and her family, fabricated allegations regarding the claimant's health and medical treatment, delayed payment for medical treatment, reduction in benefits and then worsening of her medical condition. The employer sought to strike all counts of the lawsuit contending that the claim was barred by the exclusivity provisions of General Statutes section 31-284(a). The trial court agreed that the counts that had been filed alleged bad-faith processing of the claimant's workers' compensation claim and did not allege adverse employment actions that would have been allowed under Section 31-290a; the trial Judge granted a Motion to Strike the counts. On appeal to the Appellate Court the finding of the Trial Judge was sustained citing *DeOliveira v. Liberty Mutual Insurance Company*, 273 Conn. 487 (2005): "causes of action alleging bad faith processing of workers' compensation claim are barred by

exclusivity provision of act.” The Court noted that although the claimant labeled her allegations as discriminatory violations of Section 31– 290a, the “labels placed on the allegations by the parties are not controlling.” The claim for damages under Section 31– 290a was therefore dismissed.

**BEULAH GARDNER V, STATE OF CONNECTICUT/DEPARTMENT OF MENTAL HEALTH & ADDICTION SEVICES, 6434 CRB-5-21-6 (June 3, 2022)**

The claimant sustained a compensable left hand injury on April 19, 2016. She underwent two surgeries to the hand. Dr. Ashmead, the treating physician, rendered an opinion on March 11, 2020 that the claimant had attained maximum medical improvement within an 8 percent rating for the left wrist. Also, Dr. Ashmead indicated the claimant continued to have work limitations and could not lift greater than 20 pounds. The respondents, based on Dr. Ashmead’s report filed a Form 36 seeking to establish maximum medical improvement and begin permanency payments. Claimant’s counsel, however, objected to the Form 36 contending that the claimant was entitled to ongoing temporary partial benefits and that the Trial Judge could, in his discretion, order temporary partial benefits under the provisions of General Statutes section 31–308(b). The trial judge noted the claim was “novel” but concluded that the claimant had achieved maximum: improvement and that the Form 36 should be approved for permanency benefits. On appeal, the compensation review board affirmed the ruling of the trial judge that permanency benefits were owed and not ongoing temporary partial benefits.

**TINNERELLO V. ELECTRIC BOAT CORPORATION, 6437 CRB-2-21-7 (June 16, 2022)**

The claimant sustained a compensable back injury on June 5, 1984. He underwent numerous surgeries, became paralyzed, and ultimately died on October 1, 2016. A widow’s claim was initially pursued in the Longshore and Harbor Workers’ Compensation Act (LSHWA). The Judge in the LSHWA claim found that “a causal connection has been established between the Decedent’s 1984 work-related injuries and his ultimate death in 2016” and awarded federal benefits to the widow. A claim was pursued in the Connecticut workers’ compensation commission and the widow alleged that the doctrine of *collateral estoppel* (issue preclusion) applied and that the State Judge was bound by the LSHWA decision. The State ALJ and the CRB agreed finding that there was sufficient evidence in the record to show that the LSHWA had applied a “substantial factor” standard, notwithstanding that there was no specific evidence that the work was a substantial factor in the demise of the employee. The respondent in the State forum had alleged that the LSHWA judge had not applied a substantial factor standard and therefore *collateral estoppel* should not have applied.

**Fieldhouse v. Regency Coachworks, Inc., 21 Conn. App. 662 (2022)**

This case involved the issue of whether a timely claim for benefits was filed pursuant to Connecticut General Statutes Section 31-294c(a). The claimant fell at work on November 27, 2015 and was assisted up by her supervisor from the floor. She was given permission by the supervisor to leave work early and obtain medical treatment but she was not directed to go to any particular medical facility. No bills were paid by the employer within one year of the accident. No hearings were requested within one year of the incident and no written Notice of Claim was filed until 2017. The claimant did reach out to the insurance agent for the employer and asked to file the claim; the agent completed a First Report of Injury for the claimant before the one year anniversary of the accident and told the claimant she had two years to file a claim. The carrier for the employer on November 22, 2016 took a statement from the claimant and issued a prescription card to her, and the carrier assigned a file number within one year of the accident. Also, the carrier in March 2017 advised the claimant they were arranging a Respondent's Medical Examination for her. The trial commissioner dismissed the claim but on appeal to the CRB the decision was reversed. The CRB held that under the "totality of the circumstances" the claimant substantially complied with the notice of claim requirements of General Statutes Section 31-294c. In reaching their decision the CRB cited the case of Hayden-Leblanc v. New London Broadcasting, 12 Conn. Workers' Comp. Rev. Op. 3, 1373 CRD-2-92-1 (Jan. 5, 1994). The Appellate Court affirmed the CRB ruling that the claim was timely filed based on the "totality of the circumstances" noting the filing of the first report, the taking of a statement by the insurance carrier, and the fact that the claimant received multiple pieces of correspondence from the carrier within one year of the claim.