STRUNK · DODGE · AIKEN · ZOVAS
ATTORNEYS AT LAW

CONNECTICUT WORKERS' COMP UPDATE

The law firm of **Strunk Dodge Aiken Zovas (SDAZ)** provides you with our **SPRING 2023 WORKERS' COMPENSATION LAW UPDATE**. Please feel free to share this update with your colleagues. If someone inadvertently has been left off our email list and would like to receive future updates they can contact **Jason Dodge** at jdodge@ctworkcomp.com or 860-785-4503.

STRUNK DODGE AIKEN ZOVAS NEWS

On May 6, 2023 **Attorney Richard Aiken of SDAZ** was inducted to the College of Workers' Compensation Lawyers at a ceremony held at the Marriot Marquis Hotel in New York City. The College of Workers' Compensation Lawyers is a national organization established to honor those attorneys who have distinguished themselves in their practice in the field of workers' compensation. **Attorneys Lucas Strunk and Jason Dodge** are also Fellows in the College and they attended the induction ceremony to honor Attorney Aiken. Only fifteen attorneys in Connecticut have ever received this honor.

The Joseph J. Cassidy Memorial 5K Run/Family Walk stepped off on Saturday May 13 at the MDC reservoir in West Hartford and was a great success! **Attorneys Anne Zovas and Phil Markuszka of SDAZ** helped organize the annual event which raises funds for the Hartford County Bar Foundation, the charity arm of the HCBA. #HCBF #Charity #RoadRace2023

Attorneys Rick Aiken, Colette Griffin and Jason Dodge of SDAZ attended the CBA workers' compensation section seminar in Nashville, Tennessee on May 7-9. Dr. Tamer Ghaly provided an interesting presentation regarding interventional pain management. Judge Mlynarczyk discussed settlements and mediation in the workers' compensation system. Kudos to Attorney Jeremy Brown for putting the seminar together.

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.

Attorneys Lucas Strunk, Richard Aiken, Heather Porto and Courtney Stabnick of SDAZ have been selected by their peers for recognition of their professional excellence in the 29th edition of *The Best Lawyers in America*.

Super Lawyers have issued their rankings for 2022. **Attorney Jason Dodge of SDAZ** was named to the "Top 50" lawyers for Connecticut in all fields of law in the 2022 Connecticut Super Lawyers nomination, research and Blue Ribbon process. **Attorney Richard Aiken** was also named a Super Lawyer in the field of workers' compensation law. **Attorneys Christopher D'Angelo, Ariel MacPherson and Philip Markuszka of SDAZ** were named "Rising Stars" in workers' compensation law.

Attorneys Lucas Strunk, Richard Aiken and Jason Dodge at the College of Workers' Compensation Lawyers induction ceremony in New York City.

Strunk Dodge Aiken Zovas has been named by Best Lawyers as a 2023 Tier 1 "Best Law Firm." Best Lawyers is the oldest and most respected lawyer ranking service in the world. The U.S. News – Best Lawyers® "Best Law Firms" rankings are based on a rigorous evaluation process that includes the collection of client and lawyer evaluations, peer review from leading attorneys in the field, and review of additional information provided by law firms as part of the formal submission process.

Strunk Dodge Aiken Zovas has been named the Connecticut representative of the National Workers' compensation Defense Network. The NWCDN is a nationwide network of workers' compensation defense law firms that partner with other attorneys to provide clients with expertise, education, and guidance in the field of workers' compensation. Only one firm per state is selected for this prestigious organization. If representation is needed in a state outside of Connecticut, the NWCDN network provides

a vetted list of law firms that can provide excellent legal assistance to clients of **SDAZ**. **Attorneys Anne Zovas and Lucas Strunk of SDAZ** attended the NWCDN regional conference on May 4-5 in Charlotte, North Carolina.

Attorneys Anne Zovas, Richard Aiken, Lucas Strunk, Jason Dodge and Richard Stabnick of SDAZ have received an AV rating by Martindale-Hubbell. Martindale-Hubbell states that the AV rating is "The highest peer rating standard. This is given to attorneys who are ranked at the highest level of professional excellence for their legal expertise, communication skills, and ethical standards by their peers."

Attorney Philip Markuszka of SDAZ was approved on October 25, 2022 unanimously by the Glastonbury Town Council to serve on the Town Plan and Zoning Commission.

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 2022-2023 supplement to the Connecticut workers' compensation treatise "Connecticut Workers' Compensation Law" published by Thomson Reuters was issued in December 2022. 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-WorkersCompensation-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 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, cgriffin@ctworkcomp.com, nberdon@ctworkcomp.com, cstabnick@ctworkcomp.com, cbuccini@ctworkcomp.com, pmarkuszka@ctworkcomp.com, cdangelo@ctworkcomp.com, amacpherson@ctworkcomp.com, rstabnick@ctworkcomp.com, mbailey@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**	**Courtney C. Stabnick, Esq.**	**860-785-4501**
Jason M. Dodge, Esq.	**860-785-4503**	**Christopher Buccini, Esq.**	**860-785-4500 x4520**
Richard L. Aiken, Jr., Esq.	**860-785-4506**	**Philip T. Markuszka, Esq.**	**860-785-4500 x4510**
Anne Kelly Zovas, Esq.	**860-785-4505**	**Christopher J. D'Angelo, Esq.**	**860-785-4504**
Heather K. Porto, Esq.	**860-785-4500 x4514**	**Ariel R. MacPherson, Esq.**	**860-785-4500 x4528**
Colette S. Griffin, Esq.	**860-785-4500 x4525**	**Melissa R. Bailey, Esq.**	**860-785-4500 x4527**
Nancy E. Berdon, Esq.	**860-785-4507**	**Richard T. Stabnick, Esq., Of Counsel**	**860-785-4500 x4550**

LEGISLATIVE UPDATE

2022 LEGISLATIVE REPORT

Our 2022 legislative report can be found in the link below:

https://www.ctworkcomp.com/wp-content/uploads/2022/08/Summer-2022-work-comp-update.pdf

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CONNECTICUT WORKERS' COMPENSATION COMMISSION NEWS

NEW ADMINISTRATIVE LAW JUDGE APPOINTMENTS:

Shanique Fenlator and Benjamin Blake have been confirmed as Administrative Law Judges in the Connecticut Workers' Compensation Commission. Also the re-appointments of Chief Administrative Law Judge Stephen M. Morelli, Hon. Carolyn M. Colangelo, Hon. Daniel E. Dilzer, Hon. Maureen E. Driscoll, Hon. Jodi Murray Gregg, Hon. David W. Schoolcraft, and Hon. William J. Watson, III have been confirmed.

MEMORANDUM 2022-09:

Memorandum 2022-09 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, 2022 is $1,509 (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, 2022 is $1,108 (based on the average weekly earnings of production and related workers in manufacturing in Connecticut).

Please note that the TP/PPD maximum rate went down from $1,140 in 2021 to $1,108 in 2022.

https://portal.ct.gov/WCC/Workers-Compensation-News/Commission-Memorandums/2022-Memos/Memorandum-No-2022-09

MEMORANDUM 2022-12

The Workers' Compensation Commission has developed an online filing Form 6B for officers of a corporation or a member of a limited liability company who wishes to be excluded from workers' compensation coverage.

https://portal.ct.gov/WCC/Workers-Compensation-News/Commission-Memorandums/2022-Memos/Memorandum-No-2022-12

MILEAGE RATES:

On January 1, 2023 the mileage rate increased to 65.5 cents per mile. The rate had been at 62.5 cents per mile since July 1, 2022

REVISIONS TO FORMS 30C AND 30D:

MEMORANDUM 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.

BURIAL FEES:

As of January 1, 2023, the burial fee for deaths covered under the Workers' Compensation Act is $13,454.70 based on the overall 2022 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 Toni M. Fatone and Soline M. Oslena to sit as panel members on appeals before the Compensation Review Board for the calendar year beginning January 1, 2023.

The Commission does have a website where you can look up such information as to whether a hearing is assigned, list of all claims for an employee, status of a Form 36, and interested parties. This is quite a useful site and is a different website than the Commission's main site. It can be found at:

http://stg-pars.wcc.ct.gov/Default.aspx

CASE LAW

AJDINI V. FRANK LILL & SON, INC., 6474 CRB-4-22-4 (March 17, 2023)

The claimant alleged two separate injuries on different dates of accident with same employer. He filed two timely notices of claim regarding the accidents; both were received on May 3, 2019. The respondents issued two Form 43's in response to the claims and mailed them on May 29, 2019. The Form 43's were received by the Commission on June 3, 2019 and by the claimant on June 6, 2019. A Motion to Preclude was filed regarding both claims; the preclusion was granted by the Administrative Law Judge. On appeal the respondents contended that the disclaimers were timely issued and that the mailing of the Form 43's on May 29, 2019 was within the twenty-eight day time period required by Connecticut General Statutes Section 31-294c(b). The respondents contended that the "Mail Box Rule" applied and that the preclusion should not be granted. The respondents asserted that the mailing of the documents on May 29, 2019 met the requirement of the statute to "file with the commissioner." The CRB affirmed the granting of the Motion to Preclude and pointed out that the "Mail Box Rule" only assumes that the document is received if it is properly mailed and does not go to the issue of the timing of receipt of the mailing. The Board held that the statute required actual receipt of the Form 43 before the twenty-eight day period and that mailing the notice to contest within the twenty-eight day period was not sufficient to avoid a preclusion.

RIGGINS V. STATE OF CONNECTICUT/DEPARTMENT OF CORRECTION, 6452 CRB-6-21-11 (April 4, 2023)

The claimant alleged neck and knee injuries in a motor vehicle accident. There was a video of the motor vehicle accident. The treating doctor testified that the video of the motor vehicle accident was inconsistent with claimant's history of injury. The Trial Judge dismissed the claim because "the video evidence was inconsistent with the claimant's narrative and that the claimant's testimony was not persuasive or credible." The claimant was represented by counsel at the formal hearing and counsel filed an appeal but thereafter the claimant pursued the appeal on his own. The claimant did not file any appellate pleadings such as reasons of appeal or a motion to correct. At argument the claimant did not dispute the Judge's findings but contended he had problems with the evidence that his attorney presented. The CRB granted a Motion to Dismiss that was filed by the respondents on appeal pursuant to Practice Book 85-1 since the claimant had not filed any appellate documents. The Board in granting the Motion to Dismiss also stated that if they reached the merits of the appeal they would have affirmed the Finding of the Judge since there was sufficient evidence in the record to support the dismissal.

RIGGINS V. STATE OF CONNECTICUT/DEPARTMENT OF CORRECTION, 6452 CRB-6-21-11 (April 4, 2023)

The claimant was pro se regarding this appeal which may explain the result in this case. Prior to the formal hearing the claimant alleged that she had been underpaid for a permanent partial disability award for the ankle that was owed to her. The claimant had sustained several different injuries as a result of a number of work-accidents with permanent impairment ratings covering many body parts including the back, left hand, arm and feet. Some voluntary agreements for permanency had been approved. At the start of the formal hearing which was sought by the claimant the stated issue was "31–295 (c) penalty for late payment of PPD benefits." The claimant testified at formal hearing as well as an adjuster for the respondent, State of Connecticut. Ultimately, the Trial Judge found the testimony of the claimant not credible or persuasive and determined that the adjuster's testimony was credible and convincing. The Judge determined that the claimant had failed in her burden to prove that any amount due for permanency had been paid in an untimely manner; in fact, the Trial Judge also found that some permanency had been paid at a rate higher than the correct rate and held there was an overpayment of $2,808.50. On appeal, the Compensation Review Board concluded that the Trial Judge had gone beyond the stated issue for the formal hearing when he determined that there was overpayment. Citing due process issues, the CRB vacated the Trial Judge's Finding and ordered a trial *de novo*. The Board noted that prior to the formal hearing there was no indication that the respondent alerted the claimant that they were seeking to establish an overpayment. The Board stated "if the commission is to be asked to engage in an effort to redress prior errors made in the payment of benefits to the claimant, we believe that it would be fundamentally unfair to allow the respondent to cherry pick which mistakes it would like to rectify." Interestingly, there does not appear to be any determination by the Board that the Trial Judge's findings regarding the overpayment were in error. Essentially the claimant's request for the formal hearing was for an audit of the payments to determine if they were delayed or underpaid; a potential consequence of such an audit is the discovery of an overpayment. The Board in this case did not seem to be satisfied with that result.

WHITE v. CITY OF WATERBURY, 218 Conn. App. 711 (April 11, 2023)

The Appellate Court 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 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 downstairs 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 Appellate Court agreed with the ALJ's conclusion and affirmed the dismissal noting that just because the employer knew of the practice of employees to bring their gear home does not make it for the benefit of the employer.

GEORGE KELLY, M.D. v. STATE OF CONNECTICUT/DEPARTMENT OF MENTAL HEALTH & ADDICTION SERVICES, 218 Conn. App. 445 (April 4, 2023)

The Appellate Court affirmed the CRB ruling that the claimant was entitled to workers' compensation benefits due to injuries sustained while he was working as a staff psychiatrist and assaulted by a patient, however, the Appellate Court also affirmed the dismissal of a claim for full salary under General Statutes Section 5-142(a). Section 5-142(a) provides full salary to certain Department of Mental Health and Addiction Services employees if they are assaulted in the course of their work. The claimant was hired as a psychiatrist in 2013 to work at Connecticut Valley Hospital, a State-run mental health institution. The claimant was employed as a "per diem" psychiatrist meaning that he would be paid a higher wage but not entitled to "retirement benefits, health insurance, life insurance, paid leave, longevity or other economic benefits." In 2017 the claimant was assaulted by a patient and was totally disabled. The administrator for the State initially began paying the claimant 100% of his average weekly wage which was $7,039.63; the claimant also received voluntary agreements for a claim under Section 5-142(a). Eventually the State changed its position and contended that due to the claimant's "per diem" status he was not entitled to benefits under Section 5-142(a) and was not due any workers' compensation benefits at all. The Judge concluded that the claimant was an employee at the time of the assault and was due workers' compensation benefits; the Judge determined, however, that given the claimant's "per diem" status he was not entitled to Section 5-142(a) benefits. In reaching his decision the Judge had to consider the terms of the union contract and had to interpret changes made for the addition of "per diem" clinical staff. The Appellate Court stated: "we conclude that the commissioner reasonably concluded, on the basis of his findings, that § 5-142 had been superseded by the 1989 memorandum of agreement between the state and the plaintiff's union." The regular temporary total rate was $1,292 compared to the $7,039.63 he would have been entitled to under Section 5-142(a).

HOLBROOK V. STATE OF CONNECTICUT/DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT, 6455 CRB-1-21-12 (April 6, 2023)

The claimant fell at work on August 1, 2018 and sustained an injury to her right knee. The claimant testified that she could not recall why she fell but did note that her hair was wet

after falling on the floor; the claimant stated that she had seen other employees lose their footing in the same area previously. The claimant apparently testified that it had rained earlier in the day and the Trial Judge found this credible. The respondents contended that the claimant's fall did not arise out of her employment and was due to a pre-existing pituitary adenoma that they asserted caused dizziness and unsteady gait; there was mention of the condition in the medical records post the fall. The respondents did not submit any expert testimony that the claimant's condition was due to the pre-existing condition. The respondents contended that the case of *Clements v. Aramark*, 339 Conn. 402 (2021), (fall at work due to cardiogenic condition found not compensable) applied and that the claim should be dismissed since the injury was due to a personal infirmity and not due to anything incidental to the employment. This case was the subject of a prior CRB decision where the Board had remanded the case for further findings, HOLBROOK v. STATE OF CONNECTICUT/ DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT, 6398 CRB-1-20-8 (AUGUST 9, 2021**);** in the earlier decision the Board had stated the "Commissioner still must identify the factual basis wherein this injury arose out of her employment…such evaluation must include a determination as to how the subordinate facts link the injury to a condition of her workplace and support the legal conclusion of compensability." On remand the Trial Judge ruled that the injury was not due to a pre-existing personal condition of the claimant but was caused by a "defect in the premises." The respondents appealed contending that the medical evidence supported that the fall was secondary to an underlying personal condition and there was no evidence in the record to support that the fall was due to a defect on the premises. The Board affirmed the Finding and concluded that there was sufficient evidence in the record to support the Judge's ruling.

DESIMONE V. GRIFFIN HEALTH SERVICES, 6479 CRB-4-22-7 (April 13, 2023)

The claimant filed a Motion to Preclude the respondents regarding a March 8, 2018 date of injury for which a Form 30C was filed on October 10,2018 alleging repetitive trauma to both knees. The trial judge concluded that the respondents were precluded because no Form 43 was filed within 28 days of the Form 30C. The respondents appealed asserting that the initial Form 43 filed on April 9, 2018 was sufficient to advise the claimant that her bilateral knee claim was being denied. The trial judge found that the April 9, 2018 Form 43 cited an earlier date of injury involving a prior compensable left knee injury claim and therefore the date on the Form 43 was incorrect. The trial judge also found that the respondent did not check the occupational disease/repetitive trauma box. The respondents maintained that the claimant had sufficient information to make it clear to her that the bilateral knee claim was being denied. The respondents cited the language in the Form 43 as well as the letter that accompanied the Form 43 in which it was clear that the bilateral knees were being contested.

The CRB determined that the central issue was the sufficiency of the preemptive disclaimer filed on April 11,2028 and whether it properly advised the claimant that the respondents intended to contest the liability for a repetitive trauma injury to her knees.

The CRB reversed the trial judge and found that the Form 43 was sufficient to apprise the claimant that the claim was being disputed and therefore the respondents were not precluded.

The Review Board stated that “In reviewing the record in its totality, we simply cannot conclude that a reasonable person would not have determined that the respondents, as of their April 11, 2018 disclaimer, were contesting compensability of an injury to either knee under whatever theory of recovery the claimant advanced. “

The CRB also relied on the lack of any finding of prejudice to the claimant in furtherance of their ruling. **Attorney Colette Griffin of SDAZ** successfully defended this claim.

WICKSON V. A.C. MOORE, 6478 CRB-2-22-6 (May 1, 2023)

The claimant had a prior hearing loss and TBI before being hired by the employer. Initially the job was light duty but the claimant contended that the work over time became more difficult including stacking merchandise and unloading pallets. She worked with the employer sixteen years. On September 17, 2015 she alleged an injury to her left shoulder at work; she reported it to her supervisor but he did not fill out a report of injury for her. When she initially sought medical treatment there was no specific history provided regarding a work injury. She came under the care of an orthopedic surgeon, Dr. Anbari, who recommended reverse left shoulder arthroplasty. The claimant also began to develop right shoulder problems; she underwent a reverse right shoulder arthroplasty. The claimant sought workers’ compensation benefits both on a theory that she had a specific injury at work and repetitive trauma. Dr. Anbari supported compensability both due to the specific accident in 2015 and repetitive trauma during the course of her work. A RME, Dr. Jambor, questioned causation of the bilateral shoulder injury to work. A CME, Dr. Barnett, suggested that the 2015 incident was not well-documented; while he stated the cause of the shoulder claim was multi-factorial he could not state with any certainty the degree of contribution due to the work. The ALJ concluded that the claim was compensable based on a repetitive trauma theory and found that Dr. Anbari’s opinion credible in that regard. The ALJ concluded that while the claimant did have a 2015 incident at work it was not the cause of her bilateral shoulder injury; rather, the Judge determined that her shoulder injuries were due to the repetitive nature of her work. The CRB affirmed the decision on appeal pointing out that there was sufficient evidence in the record to support the Finding. The Board noted that the Judge could choose to accept all or a portion of an opinion by the doctors.

NAPOLITANO V. ACE AMERICAN INSURANCE CO., 219 Conn. App 110 (May 2023)

This decision from the Appellate Court dealt with the issue of cancellation of a workers' compensation policy and whether it complied with the terms of General Statutes Section 31-348; that statute indicates that cancellation of a policy is not effective until fifteen (15) days after the cancellation has been filed. In this case the employer had a series of three workers' compensation policies with the employer. Notice on March 28, 2018 was issued to the employer regarding an audit noncompliance charge. On April 5, 2018 two notices were sent to the employer stating that the employer had not complied with requests for payroll information; the second notice on April 5, 2018 indicated that the coverage would terminate on April 25, 2018. On April 10. 2018 the employer's agent advised the employer that they were compliant. An employee was injured on May 29, 2018; the carrier denied coverage and claimed that the policy had been cancelled. At a formal hearing a ALJ found that there was no coverage based on the information NCCI reported; the ALJ did not address contractual claims at the formal hearing. The employer and the second injury fund settled the compensation case with the claimant for $225,000. The employer brought a civil action against the carrier asserting claims of breach of contract, bad faith, negligent misrepresentation and promissory estoppell. At the trial level, a Judge granted a summary judgment motion filed by the plaintiff employer concluding that the notice of cancellation was not unambiguous and unequivocal as required to be effective. Additionally, the carrier's motion to strike a bad faith claim was granted. On appeal, the Appellate Court reversed and concluded that the notice was unambiguous that the policy was going to be cancelled. It determined that the notice was certain and unequivocal. The Court also determined that the motion to strike the bad faith claim was error. The Court remanded the case for further proceedings and noted that the counts regarding negligent misrepresentation and promissory estoppel were revived on remand by the ruling.