

## *Second Injury Fund*

# Assessment will be \$189 million

## *Two-payments option likely*

Insurers and self-insurers in South Carolina will likely again have the option of paying their Second Injury Fund assessment in two payments, with the first payment due on November 1, 2006. The Second Injury Fund, which expects to mail assessment notices no later than early September, says the 2006 assessment will be \$189 million.

The agency is taking a more PR-savvy approach this time, following the debacle last year when insurers and self-insurers were stunned to learn the total assessment would be nearly double the amount it had been in 2004, jumping from \$127 million to \$253 million. In the ensuing uproar, the SC Self-Insurers Association persuaded the Budget and Control Board to give insurers and self-insurers until June 1, 2006 to make the second payment, and to reduce the total 2005 assessment by 30 percent.

The Budget and Control Board responded to the popular outcry but it was opposed every inch of the way by Doug Crossman, former executive director of the Second Injury Fund, who argued the board has no authority to make such changes. This time around, the Second Injury Fund is signaling it would be much more receptive and has made a point of

publicizing its monthly payouts to alert everyone about the eventual assessment.

Indeed, as early as April 2006 the fund announced the total assessment for fiscal 2006 would be between \$180-190 million and it would be due in two payments. "We are giving everybody more information so they can plan accordingly," says Mike Harris, deputy director at the fund.

This fall's approximately \$189 million assessment would have been closer to \$113 million, he says, if the fund had collected all of last year's \$253 million assessment. The lower total would have been more in line with the \$127 million assessment in 2004 and \$133 million in 2003.

Albeit slowly, Second Injury Fund assessments are expected to decline largely because in June 2003 South Carolina eliminated the "unknown condition" clause. Mr. Harris reports that total claims accepted by the fund have declined from 185 cases per month in fiscal 2004 to 160 a month in 2005 to 97 a month in fiscal 2006. "In the long-term our prediction about declining assessments is going to be true," he says.

In the here and now, employers are

leaving few stones unturned in seeking and filing reimbursable claims because of the widespread sense the fund may be eliminated. Average monthly payouts by the fund jumped from \$9.7 million in fiscal 2004 to \$13.9 million in 2005. In recently concluded fiscal 2006, the payouts averaged \$12.3 million per month, reaching \$14.6 million in June, the last month of the fiscal year. In July 2006, the payout was only \$6.7 million.

If payouts remain low for the next several months – and therefore herald a lower assessment for September 2007 – it is conceivable this year's \$190 million assessment may be reduced.

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## APPEALING RESULTS

By Sam Painter

Listed below are brief summaries of points of law made by South Carolina appellate courts in recent decisions that are of general interest to workers' compensation self-insurers:

- A workers' compensation commissioner lacks statutory authority to award attorneys' fees as a litigation expense. Baxter v. Martin Brothers [Supreme Court].
- Driving all over South Carolina and handling workers' compensation matters is an "unusual and extraordinary condition of employment" that can result in compensable stress and a bad back. Smith v. NCCI, Inc. [Court of Appeals].
- A doctor's letter changing his opinion as to the date of MMI based on viewing a surveillance tape is not admissible as newly discovered evidence on appeal. Martin v. Rapid Plumbing [Court of Appeals].
- In cases where a controversy exists, the Workers' Compensation Commission has the discretionary power to appoint a physician to whom the claimant went to on his own as the authorized treating physician. Martin v. Rapid Plumbing [Court of Appeals].
- The Workers' Compensation Commission has the discretion to order that a partial lump sum be paid from a lifetime benefits award. Thompson v. South Carolina Steel Erectors [Court of Appeals].
- An employee's injury that occurred while performing repairs on his own truck but while on the employer's premises, during working hours and while using the employer's equipment arose out of employment. West v. Alliance Capital [Court of Appeals].

**\*And sometimes not so appealing.** These points of law are presented subject to the following disclaimer: Fairly summarizing a point of law in a sentence or two is often difficult. Sometimes it is impossible. Before relying on any of the points of law discussed, you should review the entire decision, and check to see if the case has been subject to further appeal.

### President's Column

#### Workers' comp reform will be an issue again in 2007

The start of the 2007 legislative session is a lively one with a brochure making the rounds accusing insurance companies of scheming to dilute workers compensation benefits due injured workers. The subtle brochure notes, "That way, they can continue to collect high premiums from employers and pay out less benefits to workers."

Employers have also been busy, notably in deliberations of the South Carolina Civil Justice Coalition, working on establishing their legislative agenda for 2007. High on the list is Workers Compensation Reform repeal of various Supreme Court decisions, fraud, and stabilizing awards. The Civil Justice Coalition is also seriously considering working towards Appeal Bond Reform, Caps on Damages, and opposing the False Claims Act. Although the Civil Justice Coalition has not made any final decisions, indications are the group will propose a broad legislative agenda, as it did (unsuccessfully) in 2006.

There are two broad views on how the SC Self Insurers Association should proceed in 2007. One - join ranks with the Civil Justice Coalition and press for repeal of the Second Injury Fund, adoption of the AMA guidelines, tighter definition of an "accident," repeal of *Dodge v. Bruccoli*, repeal of *Brown v. Bi-Lo*, and repeal of *Tiller v. National Healthcare*, among others. The second is for the SC Self Insurers to march forward on its own with a narrower agenda, while supporting the coalition on points they



Jerry Johnson, ARM, AIC

agree on and not taking a position on issues where we have "no dog in the fight."

In years past, the SC Self Insurers association has pressed for abolishing the Second Injury Fund, lobbied to do away with *Brown v. Bi-Lo* and kept its focus to few other issues. Proponents of this strategy believe we have a better chance of succeeding if we pursue a few specific goals, rather than push for an overly broad agenda.

What do you think? Email me at [jerryjohnson@wellmaninc.com](mailto:jerryjohnson@wellmaninc.com) or send your views to our executive director Moby Salahuddin at [msalahuddin@sc.rr.com](mailto:msalahuddin@sc.rr.com).

# Job-related injuries continue to decline

Occupational injury and illness incidence rates continue to decline nationwide, as illustrated in the chart below from the National Safety Council's *Injury Facts, 2005-2006 Edition*.

South Carolina's nonfatal occupational injury and illness incidence rate in 2003, the latest year for which figures are available from the U.S. Bureau of Labor Statistics, was 4.4 (per 100 full-time workers using 200,000 hours as the

equivalent). The comparable incidence rate for all private industry in the country was 5.0. North Carolina and Georgia had rates of 4.0 and 4.3, respectively, while Alabama had a rate of 4.6 and Florida's rate was 5.0.

**OCCUPATIONAL ILLNESS AND INCIDENCE RATES, BUREAU OF LABOR STATISTICS, UNITED STATES, 1983-2004**



Note: Beginning with 1992, all rates are for nonfatal cases only.

## CALENDAR

- August 31, 2006* NCCI's State Advisory Forum, 9:00 a.m. – 12:00 p.m. Columbia Metropolitan Convention Center. Registration is free and required.
- October 22 – 25, 2006* 30<sup>th</sup> Annual Educational Conference on Workers' Compensation. Hilton Head Marriott Beach & Golf Resort, Hilton Head. Hosted by the SC Workers' Compensation Educational Association.
- November 2, 2006* General Membership Meeting, SC Self-Insurers Association. Seawell's, Columbia.

## Hospital payment system announced

*Expected to save employers up to \$60 million per year*

**O**n June 26, 2006 the South Carolina Workers' Compensation Commission approved a new payment system for healthcare facilities treating workers' compensation patients. Effective October 1, 2006, healthcare facilities will be paid 40% more than what the federal Medicare program pays for inpatient and outpatient services.

The Commission's decision, taken in response to rapidly rising health care charges for workers' compensation, is expected to save employers as much as \$60 million a year. Virtually every state is grappling with steep increases in health care charges and in response most states have been adjusting their payment systems. South Carolina is one of several states that have adopted a "Medicare plus" model. Thus, for inpatient care Maryland pays 9% more than Medicare, Hawaii pays 10% more, California pays 20% more, and New York and Tennessee pay 50% more than Medicare.

"The new payment system is a meaningful step towards moderating health care costs in workers' compensation," says David W. Huffstetler, chairman of the Commission. He notes that between 2000-2005, inpatient procedures for workers' compensation injuries declined by 8.0% but hospital charges increased 118.6%. Over the same period, outpatient procedures in

workers' compensation declined 9.6% and outpatient charges rose 64.2%.

The new payment system was recommended by the Commission's Hospital Advisory Committee, which consisted of the following:

- David F. Adcock, MD, MPH, medical consultant to the Commission
- Jeri Boysia, Companion Property & Casualty Insurance Co.
- William R. Calamas, Capital City Insurance Company
- Thomas D. Cockrell, SC Hospital Association
- Lewis Creel, Alcoa Primary Metals
- William Floyd, MD, SC Medical Association
- Leonard E. Forrest, MD, SC Medical Association
- Jerry Johnson, SC Self-Insurers Association
- Jerry Parrish, Anderson Area Medical Center
- Thomas C. Salane, Turner, Padgett, Graham & Laney
- Robin E. Tester, SC Budget & Control Board
- Gary R. Thibault, SC Workers' Compensation Commission

The South Carolina Hospital



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Association has vigorously protested the new payment system. Representatives from five South Carolina hospitals appeared before the commission and expressed concerns about the proposed plan and how the decrease in hospital reimbursement would result in additional cost shifting to other payors and the potential for decreased access for injured workers. SCHA says that changing to a Medicare + 40% payment system will result in direct reduction in payment for most services.