

NCCI files for a 0.3% cut in loss costs

In a rare bit of good news for South Carolina's employers, the National Council on Compensation Insurance said in November it had filed for a 0.3 percent cut in workers' compensation loss costs effective July 1, 2009.

The proposed cut in loss costs, which is based on experience in 2005 and 2006, would be the first in South Carolina since 2001. Spokesmen for the South Carolina Chamber of Commerce and the South Carolina Small Business Chamber of Commerce indicated they expect more cuts in subsequent years as the state's workers' compensation system begins to benefit from legislative reforms passed in 2007.

Along with the proposed decrease in loss costs, another indication of the favorable climate is continued declines in market share of the assigned-risk pool. The residual market accounted for 14.6% of the total market in 2004, 12.1% in 2005, and 9.7% in 2006. NCCI calculates the assigned-risk pool now accounts for 7.7% of the total market. .

The rate agency said a major reason it was able to file for a rate decrease are savings from the hospital payment system the South Carolina Workers' Compensation Commission implemented in October 2006. NCCI estimates the payment system is

saving insurance carriers about \$53 million per year.

Gary Thibault, executive director of the commission, said his agency puts the total savings to South Carolina employers at approximately \$98 million per year. NCCI's estimate is lower, he said, because it does not include savings to companies self-insured for workers' compensation. NCCI collects data only from insurance carriers.

"Workers' compensation rates have been falling across the country, thanks to declining injuries among virtually all industries and all age groups."

The proposed decrease in loss costs is in sharp contrast to NCCI's recent filings. In early 2007, NCCI filed for a 23.7% increase to be effective in December 2007 but settled for a 9.8% increase. In December 2006, an administrative law judge approved an 18.4% increase. NCCI had asked for a 32.9% increase.

Although sharply reduced from the original request, the December 2006 increase was the third consecutive double-digit increase for South Carolina, as the insurance department had approved increases of 11.4% in 2004 and 17.5% in 2003.

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Carolina employers have benefited from the trend, but not to the same extent as employers in other states.

In 2000, South Carolina was ranked 49 on Oregon's widely reported annual Workers' Compensation Premium Rate Rankings (48 states had higher premium rates than South Carolina). By 2006, South Carolina had slipped to 25th on the Oregon premium rate rankings, a deterioration which drew the ire of employers, insurers, self-insurers, and various groups which pushed for reform in the 2007 legislative session.

The slide continues. According to the 2008 Oregon ranking, released in October 2008, only 12 states have higher workers' compensation rates than South Carolina. The Palmetto State is ranked 13th on the report, which ranks all 50 states plus the District of Columbia for rates that were in effect in January 2008. Premium rates were the highest in Alaska, which was ranked number one.

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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:

- An independent intervening cause sufficient to break the chain of causation (falling down the steps at home) was a defense to an employee's knee injury claim. *Sanders v. Wal-Mart* [Court of Appeals].
- An intraocular implant, although corrective in nature, is not a "corrective lens" as contemplated by the workers' compensation regulation (R.67-1105) providing that compensable loss of vision is based on reading without the use of corrective lenses. *Johnson v. Beauty Unlimited Landscape Co.* [Court of Appeals].
- A "repo man" was an employee and not an independent contractor under the four factor test of control [1. Right of Control, 2. Furnishing of Equipment, 3. Method of Payment, 4. Right to Fire] *Paschal v. Price, et. al.* [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

South Carolina turns the corner

NCCI's latest rate filing, proposing a modest loss cost decrease next year, is welcome news for South Carolina's employers and business groups, many of whom have been up in arms over the cost of workers' compensation premiums.

Perhaps nothing is more indicative of the turmoil we've seen in our workers' compensation system than the fact that in recent years all branches of our government have been drawn into addressing workers' compensation issues. The state's Administrative Law Court stepped in a couple of years ago to adjudicate a hotly contested rate filing from NCCI. In 2007, the General Assembly rolled up its sleeves and passed comprehensive legislation in response to widespread protests by business and insurer groups. In early 2008, Gov. Mark Sanford and the South Carolina Workers' Compensation Commission asked the state Supreme Court to step in and resolve their differences over use of the AMA Guides.

Perhaps most ironically, the workers' compensation system may have turned a corner because of reforms implemented by the Commission. I am referring to the agency's hospital payment system which is credited with saving

employers close to \$100 million since its implementation in October 2006.

The South Carolina Self-Insurers Association can also claim a small measure of credit. We were instrumental in getting legislation passed which calls for the orderly dissolution of the Second Injury Fund. Assessments levied by the fund were a chronic source of complaint from employers and with good reason. In 2005, SIF assessments totaled \$253 million. This year they dropped to \$105 million.

At long last South Carolina employers have something to cheer about. Many long-time observers believe our workers' compensation system is running more smoothly than now than it has in recent years.



Hugh McAngus

On a personal note: this is my last column as president as my two-year term ends December 31, 2008. It has been a pleasure, and I particularly appreciate the enthusiastic response from our supporting members/exhibitors at the 2008 Members Only Forum. It was the first year we opened up the event to exhibitors and it proved to be a resounding success, as all registrants – employers, lawyers, TPA's, supporting members – appreciated the network and socializing opportunities.

We will have an even better Members Only Forum in 2009. I hope to see you there. ■

Thibault stepping down as executive director

Gary Thibault, executive director of the South Carolina Workers' Compensation Commission since 2005, will leave the agency in March 2009 to pursue other interests. He joined the agency in 1988 as head of its insurance & medical services department.

"For the past several years I had been toying with the idea of doing something different," says Mr. Thibault, 55, who holds an MBA and a graduate degree in public administration. "It occurred to me now is as good a time as any. Our workers' compensation system is functioning smoothly and we've begun to see the fruits of our hospital payment system, one of the biggest-ever initiatives at the Commission," he adds.

The National Council on Compensation Insurance credits the agency's hospital payment system for saving employers and carriers in South Carolina nearly \$53 million per year since its implementation in October 2006. That total does not include the favorable impact on companies self-insured for workers' compensation, as self-insured companies don't report figures to the NCCI.

Mr. Thibault will continue to work with the commission as a consultant and will advise it on medical cost-containment issues, an expertise which goes back nearly 30 years when he was appointed executive director of the Three Rivers Health Systems Agency. In the 1980s health system agencies were charged with controlling duplication of expensive medical services. They were phased out under President Ronald Reagan.

"When I joined the commission in 1988, I could not have foreseen the tremendous impact healthcare costs would have on workers' compensation," he says. "It is difficult to get a handle on this issue because it so complex, multifaceted,

and one wants to be fair to all parties - employers, insurance carriers, and medical providers."

Although some hospitals and the South Carolina Ambulatory Surgery Center Association have vigorously protested the payment system, Mr. Thibault drew high marks from the South Carolina Small Business Chamber of Commerce and legislative leaders involved in reforming workers' compensation. Frank Knapp, Jr., president of the small business chamber, praised Mr. Thibault as "a dedicated, professional state employee" and Senators John Land III, D-Manning, and Larry Martin, R-Pickens, lauded his competent work at the agency.

"The Commission is thankful for the leadership he provided and for the many accomplishments the Commission saw during his tenure," says Andrea Roche, Commission chairman. "His experience and expertise are well regarded in the workers' compensation community, both statewide and nationally. His reputation for impartial, objective analysis was matched by his understanding of the issues."

Apart from the hospital payment system, Mr. Thibault says he is pleased with the progress the commission has made in hearing cases and appeals in a timely manner. "Our docket is up-to-date with single commissioner hearings being held, on average, with 98 days of the hearing request. And we are up-to-date with



Gary Thibault

appellate hearings as well," he says. The agency is also making steady progress in converting to a new, multi-million dollar computer system.

Mr. Thibault was a familiar speaker at various forums interested in workers' compensation, including gatherings of the South Carolina Self-Insurers Association. Always affable, well-prepared, and accommodating, he was for many years the well-regarded face of the workers' compensation commission.

"I am looking forward to my next career. If the right opportunity comes along, I would be excited again at the chance to make a difference in the public or private sector," he says.

CALENDAR

<i>March 18-20, 2009</i>	North Carolina Association of Self-Insurers Annual Meeting & Educational Conference. Holiday Inn Sunspree Resort, Wrightsville Beach.
<i>April 19-23, 2009</i>	RIMS 2009 Annual Conference. Orange County Convention Center. Orlando.
<i>May 13-15, 2009</i>	Members Only Forum, SC Self-Insurers Association. Litchfield Beach & Golf Resort.

Healthcare reform likely, will impact workers' comp

Perhaps one of the most unexpected developments following Senator Barack Obama's election is the rapidly growing consensus among observers that broad healthcare reform is on its way, perhaps with legislation approved within months after the inauguration.

Major changes to healthcare, the largest industry in the U.S., have long been considered impractical because of objections from one large interest group or another. Skeptics recall the big push for reform in President Bill Clinton's first term and its ignominious defeat.

But this time the political and economic landscape is different. Democrats are more united and President-elect Barack Obama has picked skilled insiders - Rahm Immanuel as White House chief of staff and former Senate majority leader Tom Daschle as head of Health and Human Services - to shepherd legislation through Congress.

"The result is a degree of party unity and excitement unseen by Democrats since Lyndon Johnson's time," notes Jeff Goldsmith, among the most astute of healthcare observers. "The Clinton health reform debacle proved conclusively that, given time, the health care "dragon" will eventually awaken, and gum Obama's proposal, or that of anyone else, to death."

"Time is the enemy of health reform. The Presidential stack of chips will certainly shrink as time passes; it will never be greater than it is at Inauguration in the midst of a scary economic crisis," he argues.

Washington is already astir over the sweeping proposal unveiled November 12 by Sen. Max Baucus (D-Montana), chairman of the powerful Senate Finance Committee. The Baucus plan would extend universal healthcare coverage and also foresees changes in the healthcare delivery system to improve quality and control costs.

The National Council on Compensation Insurance notes "if history is a guide, workers compensation will likely follow and be affected by group health initiatives." For instance, NCCI adds, payment methods adopted by Medicare and cost-containment measures introduced by managed care companies soon became a way of life in workers' compensation too.

"It seems likely that newer cost control programs such as pay for performance and pay per claim, that are being discussed for health care, likely will also begin to appear in workers compensation in the future," NCCI says. ■

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EDITOR & WRITER

Moby Salahuddin
215 Holly Ridge Lane
West Columbia, SC 29169
E-mail: msalahuddin@sc.rr.com
Telephone: 803-794-2080
Fax: 803-939-8366