

Sanford v. Commission

Governor comes around to Commission's view

Nearly a year after he shook up South Carolina's workers' compensation system with a series of executive orders, Governor Mark Sanford has conceded he does not have the authority to tell the commission how to rule in workers' compensation cases.

In September 2007, the governor issued an executive order directing commissioners to strictly apply AMA Guides in awarding disability benefits. He followed that up with several orders, either amplifying or modifying the first executive order, along with issuing an executive order that the Commission must ensure all payments to attorneys are fair and reasonable.

A month later, the seven commissioners unanimously ruled they could not abide by the order directing them to apply the AMA Guides because the order violates state law. There's long been a consensus among workers' compensation attorneys that the governor in all likelihood exceeded his authority in issuing the executive order.

The two parties had been negotiating for several months, notwithstanding their request in January 2008 to the state Supreme Court that it step in and resolve the impasse. In mid-July,

the governor and the commission formally told the Supreme Court they've reached an understanding and asked the court to dismiss the case.

Under the terms of the agreement, which have yet to be approved by the court, the governor accepts that "the Commission has and individual Commissioners have the sole authority to determine, in accordance with the law, the substance, language, timing, and content of any Order issued by the Commissioners in their quasi-judicial capacity, subject to review by the Appellate Courts." The governor also accepts the legitimacy and appropriateness of the Commission's October 25, 2007 order in which commissioners ruled the governor's order was in violation of state law.



Gov. Sanford

One upshot of the recent agreement and the controversy surrounding it is that there will likely be more publicity about attorney fees. The governor has directed the commission to provide his office, on a quarterly basis, with copies of all orders with regard to attorney fees in contested cases.

The commission was poised to comply with this request in December 2007

but was stopped when claimants' attorney Katharine Williams obtained a temporary restraining order from United States District Judge Ross B. Anderson. Among various grounds, Ms. Williams argued the governor's executive orders violate the due process and equal protection provisions of the state and federal constitution.

"The restraining order has since expired but all parties are awaiting the Supreme Court's ruling on that specific matter.."

The restraining order has since expired but all parties are awaiting the Supreme Court's ruling on that specific matter. At press time, there was no indication when the court might review the agreement between the governor and the commission and rule on making attorney fees public.

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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:

- Although the record showed that an employee was required to have his own vehicle at work, the Court of Appeals declined to adopt or apply "the required vehicle rule" as an exception to the rule that injuries which occur while an employee is going to or coming from work are not compensable. *Whitworth v. Window World* [Court of Appeals].
- Injured truck driver for a common carrier was the "statutory employee" of a manufacturer with whom the common carrier had contracted, making workers' compensation the driver's exclusive remedy against the manufacturer. *Posey v. Proper Mold & Engineering, Inc.* [Court of Appeals].
- Allowing a non-employee to drive the employer's dump truck was an impermissible deviation from the claimant's duties, and thus the claimant's injuries while riding as a passenger in the vehicle did not arise out of and in the course of employment. *Houston v. Deloach & Deloach* [Court of Appeals].
- The medical statute does not give a unilateral right to claimants to select their treating physicians. *Turner v. DHEC* [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

Looking ahead to the 2009 conference

In just a few short weeks we will begin planning our 2009 Members Only conference, set for May 13-15, 2009 at Litchfield Beach & Golf Resort. Those of you who attended the 2008 conference will recall we had exhibitors for the first time ever and, encouraged by the enthusiastic response we had from our members, we intend to make this an annual tradition. So, start planning now and help us make the 2009 conference the biggest ever.

Speaking of traditions – our self-catered dinner on Thursday night was a big hit this year so David Benenhaley and yours truly will once again don apron and cap and serve up another unforgettable dinner. Joining us in keeping the tradition going will be Bil Krauss, and a cast of intrepid dancers and singers from the floor.

We are looking for speakers and would welcome your

suggestions. In particular, the program committee is considering having a keynote speaker open the conference so drop us a line if you know or have heard someone impressive.

Finally, I would once again ask for your help in recruiting members for



Hugh McAngus

the South Carolina Self-Insurers Association. I believe most of you would agree that if our association did not exist it would be necessary to create it. Our ranks have thinned somewhat in recent years, partly because of mergers and business closings but perhaps

also because of lack of interest among employers. Given the current dismal outlook for the economy, we need your help more than ever to maintain a viable presence. ■

NCCI analysis

Fewer claims in South Carolina, but more severe

The latest figures from the National Council on Compensation Insurance tell an old story: there are fewer and fewer claims in South Carolina and higher and higher indemnity and medical losses.

In 2006, the most recent year for which complete figures are available, there were 1,005 claims per 100,000 workers in South Carolina, compared to 1,086 claims in 2005, and 1,218 in 2004. In 2002, there were 1,269 claims per 100,000 workers in the state.

Indemnity losses per case were \$27,719 in 2006, compared to \$25,000 in 2005 and \$23,863 in 2004. In 2002, indemnity losses per case were \$20,427.

Similarly, medical losses per case were \$22,907 in 2006, compared to \$20,699 in 2005 and \$19,055 in 2004. In 2002, medical losses per case were \$15,306.

It is much the same story nationally. In 2006, there were 1,063 claims per 100,000 workers, compared to 1,139 in 2005 and 1,222 in 2004. In 2002, there were 1,328 claims per 100,000 workers. To illustrate how far we have come, nationwide there were 1,857 claims per 100,000 workers in 1994.

Similarly, indemnity losses per case nationwide were \$19,084 in 2006, compared to \$18,179 in 2005 and \$17,705 in 2004. In 2002, indemnity losses amounted to \$16,757 per case.

Medical losses nationwide amounted to \$23,952 in 2006, compared to \$22,054 in 2005 and \$20,187 in 2004. In 2002, medical losses per case totaled \$17,727. In 1994, medical losses per case were \$9,081 while indemnity losses per case totaled \$9,813.

Compared to North Carolina and Georgia, there are more work-related injuries in South Carolina. In 2006, for instance, there were 1,005 claims in South Carolina, compared to 794 for North Carolina and 818 for Georgia.

Indemnity losses per case in 2006 amounted to \$27,719 in South Carolina, while in North Carolina they amounted to \$37,799 per case and \$27,840 in Georgia. Medical losses per case in South Carolina were \$22,907, compared to \$26,835 in North Carolina and \$25,343 in Georgia.

A new chairman, two new commissioners at the agency

Commissioner Andrea C. Roche took over as chairman of the South Carolina Workers' Compensation Commission on June 30, 2008, the same day commissioners Avery B. Wilkerson and Thomas Scott Beck joined the agency.

Former chairman David W. Huffstetler continues to serve as commissioner, along with commissioners Susan S. Barden, G. Bryan Lyndon, and Derrick L. Williams.

"My first priority is to make sure things continue to run as smoothly as they have been running the last few years," says chairman Roche. "We have substantially reduced hearing times, and we are tracking information so much better now thanks to our new computer system. I think we all dream of the day we can go paperless," she says.

Chairman Roche says she will do what she can to streamline the dockets and move cases more quickly towards a resolution. "Our workers' compensation system continues to improve and, in particular, we have high hopes that employers will see a favorable impact from the new hospital payment system. We also expect it won't be long before we start seeing results from the reform legislation passed in 2007," she says.

The publicity leading up to last year's reform legislation is what drew Commissioner Thomas Scott Beck to the agency. "I read about it in the newspapers and decided to submit my name to the governor. I didn't expect anything would come of it but I figured it couldn't hurt," he says.

An assistant attorney general in the state Attorney General's Office at the time, Commissioner Beck is a former member of the South Carolina House of Representatives (1996 – 2000). He received his Bachelor of Science Degree from Penn State University and his JD from the University of South Carolina School of Law in 1999, when he turned 41 years old.

Law school was even more demanding because it had been years since he was an undergraduate and he was no longer used to

the rigors of academic life. At the same time, Commissioner Beck says he enjoyed some advantages from his years of experience on the police force in Pennsylvania and on the security team for the Savannah River Site in Aiken. He had an outstanding career as a police officer in Pennsylvania, where he was named law enforcement officer of the year and cited for his work with juvenile delinquents.

Commissioner Beck smiles when he considers that after years of presenting cases before the bench, he is now serving on the bench. "I am looking forward to my new role," he says.

Like Commissioner Beck, Commissioner Wilkerson's career has also turned full circle. Early in his career he was a claims examiner at the South Carolina Workers' Compensation Commission, and later served as mayor of Cayce for 18 years. A graduate of Newberry College, Commissioner Wilkerson was vice president at County Banc Insurance and is a past president of the Municipal Association of South Carolina and the Lexington Municipal Association.

"As mayor, my biggest challenge was communications. The public does not see all the work that goes on behind the scenes and sometimes people think we just come in and vote on issues. When we don't communicate effectively we have major problems," he says.

He has been a quick study at the commission, thanks to his background in claims and the insurance industry. Although much of his new work is familiar, he is adjusting to the new dynamics of the position. On his way to hearing cases in Charleston the other day, Commissioner Wilkerson kept getting calls from the parties eager to explore every avenue right up to last minute.

"I had 10 or 12 cases when I started from Columbia. By the time I reached Summerville, all but one had dropped off," he recalls.



CALENDAR

<i>October 19-22, 2008</i>	32nd Annual SCWEA Educational Conference on Workers' Compensation. Marriott's Hilton Head Resort. Hilton Head Island
<i>November 6, 2008</i>	General Membership Meeting, SC Self-Insurers Association, Inc. Seawell's Columbia.
<i>December 3, 2008</i>	NCCI's South Carolina State Advisory Forum. Columbia Metropolitan Convention Center.
<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.



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General Membership Meeting set for November 6

The South Carolina Self-Insurers Association will hold its annual General Membership Meeting on Thursday, November 6, 2008 at Seawell's in Columbia, from 9:30 a.m. – 12:00 p.m. We will mail you registration details and the program agenda as we get closer to the date.

NCCI's SC Advisory Forum set for December 3

The National Council on Compensation Insurance will hold its 2008 South Carolina State Advisory Forum on December 3, 2008 at the Columbia Metropolitan Convention Center.

These forums are designed to promote education and provide a greater understanding of both national and state workers compensation issues. As customary, NCCI will focus on state-specific information and speak in greater detail on:

- ◇ Proposed/enacted state legislation
- ◇ The residual market
- ◇ State system cost drivers
- ◇ NCCI studies and economic information

2009 Members Only will be held May 13-15 at Litchfield

We are looking forward to seeing you at our 2009 Members Only Conference which will be held May 13-15 at Litchfield Beach & Golf Resort. Please contact us early if you are interested in being an exhibitor or a sponsor.