

Members-Only Forum set for May 13–15

Second Injury Fund phase-out, Medicare on the agenda

The Members-Only Forum of the South Carolina Self-Insurers Association is set for May 13-15, 2009 at the Litchfield Beach & Golf Resort on Pawleys Island. Look for registration details in the mail within the next couple of weeks.

The popular annual event is open only to exhibitors and members of the association. The conference will begin with registration and a reception on Wednesday, May 13. The educational programs are scheduled from 9:00 a.m. - 12:00 p.m. on May 14 & 15. A golf tournament is scheduled for Thursday afternoon, to be followed by a group dinner at the beach club and live music by popular entertainer Bil Krauss.

The registration fee of \$215 per individual will cover the opening-day reception, group breakfast on both days, and group dinner on Thursday. Dress for all events is business casual.

Among the topics on the agenda for the two-day program:

- Medicare's mandatory reporting requirements for workers' compensation

- Second Injury Fund assessments as the fund phases out
- Panel discussion with Chairman Andrea Roche and Commissioners
- How to establish a successful wellness program

Another issue of particular interest to self-insurers is how the Second Injury Fund plans to assess employers and insurers as it begins winding down operations.

- Risk management's new imperatives
- Labor law and healthcare changes under the Obama administration

"Our Members -Only Forum is an excellent opportunity for networking and for exchanging news and views about workers' compensation," notes David Keller, president of the self-insurers' association. "We will be discussing current developments and emerging

trends with some of the most experienced and knowledgeable observers in the field," he adds.

The annual conference is a valuable forum also for exhibitors because of the conference's small size and the opportunity to meet face-to-face with self-insured employers, TPAs, and attorneys active in workers' compensation. Exhibitor fees are \$300 for members and

\$900 for non-members. Please contact Msalahuddin@sc.rr.com for details.

One emerging issue in workers' compensation is how to comply with the mandatory reporting requirements laid out in Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) Effective July 1, 2009 self-insured plans or their third-party administrators must report "the identity of a Medicare beneficiary whose illness, injury, incident, or accident was at issue as well as such other information specified by the Secretary (of Health and Human Services) to enable an appropriate determination concerning coordination of benefits, including any applicable recovery claim."

Entities that fail to comply with the reporting requirements could be subject to penalties of \$1,000 for each day for each individual for whom the reporting requirements have not been satisfied. The

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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:

- Staying over at a hotel for the night following the end of a business meeting was not a "substantial deviation" which would prevent the dependents of an employee who was killed in a hotel fire from receiving death benefits. *Ardis v. Combined Insurance Company* [Court of Appeals].
- Under current law, a notice of appeal must be served upon the Workers' Compensation Commission within thirty (30) days after receipt of a decision to be appealed. *Skinner v. Westinghouse* [Supreme Court]. Note: The court reached a different result in this case, but it involved the law as it was written prior to July 1, 2006.
- Where the single commissioner awarded benefits, the full commission denied benefits, and then the circuit court reversed and awarded benefits again, the claimant's right to statutory interest began 30 days after the circuit court's order. *Johnson v. Sonoco Products Company* [Supreme Court].
- Where there was substantial evidence in the record negating the presence of a brain injury, a circuit court judge erred in reversing that portion of the Full Commission's findings to the effect that the claimant sustained no brain injury. *Pack v. South Carolina Department of Transportation* [Court of Appeals]. The claim, however, was remanded by the Court of Appeals to the Workers' Compensation Commission for further factual findings with regard to the alleged brain injury and the alleged psychological injury.

President's Column

What does the future hold?



David Keller

I have come to the presidency of the Self Insurers' Association at a momentous time in our industry and in our country. Who would have thought last April, when we met for the Members-Only Conference, that the world financial markets would be where they are today? That volatility has brought, and is bringing, a lot of uncertainty to us all.

From the legislative perspective, there is a proposal in the House to limit benefits available to illegal aliens, but otherwise, the legislative front is quiet. The legislature is primarily dealing with a state budget crisis and will likely do little else this year. This is good and bad. The good is, the system won't be "tinkered" with. The usual claimants' bar call for physician choice and other similar items are falling on deaf ears this year. The bad aspect is there are things that still need to be fixed and adjusted. There are even some minor technical changes which need to be made, but which the legislature won't address. Further, initial indications are that the cost of the system still continues to rise, even with the "fixes" of 2007.

Things are also in flux at the Commission. The legislature is dealing with slashing budgets and the Commission will likely suffer. As

most of you know, this is particularly onerous on the Commission because it is a small agency. So far the legislature has avoided serious cuts, but the Budget and Control Board has traditionally used across-the-board cuts to deal with budget crises after the legislature adjourns. Only time will tell what the final cut backs will look like; and certainly no one knows what effect the Congressional "stimulus" package will have on the equation.

For the self-insurers' association, many of our best friends and supporters have been forced to move to other endeavors, either because of layoffs or professional reasons. However, the time for us to be diligent watchdogs of our industry is more important now than it has ever been. The economic changes which are occurring will undoubtedly affect the workers' compensation system. The calls for health care, banking and insurance reform by President Obama stand to bring about substantial changes in the way we operate.

To that end, I hope all of you will be present at the 2009 Members-Only Conference, May 13 -15. We have a superior program planned, and we will have the opportunity to meet and network. I am counting on seeing you in May. ■

*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. ■

Members-Only Forum

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first step for reporting entities will be to register with CMS via an online secure Web site, which is still under development.

Is this a big deal? What is the most important thing for employers to know about it? Travis Smith of Burns, White & Hickton will focus on the implications of the recent mandates from Medicare

Another issue of particular interest to self-insurers is how the Second Injury Fund plans to assess employers and insurers as it begins winding down operations. Eddie Gunn, interim director of the fund and chief-of-staff at the Budget & Control Board, will address the issue on Friday, May 15.

The Second Injury Fund is slated to close July 1, 2013, when all obligations and activities will be transferred to the Budget & Control Board. ■

Sponsorships available at Members-Only Forum

As in years past, the following sponsorship opportunities are available at the 2009 Members-Only Forum of the South Carolina Self-Insurers Association:

Platinum	-	\$1,000
Gold	-	\$750
Silver	-	\$500
Bronze	-	\$300

We will recognize sponsors in meeting materials and on a banner displayed at the conference. Please contact Moby Salahuddin, executive director, at msalahuddin@sc.rr.com or 803-794-2080.

NCCI foresees fewer claims because of job losses

The National Council on Compensation Insurance foresees fewer workers' compensation claims as a result of ongoing job losses in the U.S. economy.

In its *Gauging the Economy* newsletter, the group says the weak outlook for employment is likely to lead to fewer claims, "especially in the more cyclically sensitive (and hazardous) manufacturing and construction sectors." The recession means fewer workers are employed in hazardous industries and companies will let go of their least-experienced workers first, which has the effect of increasing the skill-level of the remaining workforce.

Similarly, wage gains are expected to slow in 2009, reflecting both weak labor demand and rising unemployment rates. Economists foresee the unemployment rate rising to 9% a year from now, compared to the December 2008 unemployment rate of 7.2%. "The moderation in wage increases suggests some slowing in the rate of growth of indemnity severity, since changes in indemnity benefits are tied to wage movements in most states," according to the NCCI.

At the same time, medical costs continue to increase, albeit at a slower

pace. The Medical Care component of the Consumer Price Index is expected to increase 3.8% in 2008 from 4.4% in 2007. Some modest acceleration is expected in 2009, to 4.6%, according to forecasts from Moody's Economy.com. "Higher medical care inflation will place further upward pressure on medical severity, which is

also being impacted by substantial increases in utilization (reflecting both the quantity and mix of medical care goods and services)," NCCI notes.

Not everyone shares NCCI's view that claims decrease during a recession. A recent article in *Business Insurance* quoted some risk managers and claims professionals as saying that even legitimate claims are difficult to

resolve when the injured worker doesn't have the option of returning to a job.

"Other laid-off employees may reopen old claims or file new ones for soft-tissue injuries, back pain and other ailments as an alternative income source, depending on state statutes of limitation for bringing claims," said Pam Ferrandino, executive vp and casualty practice leader for Willis HRH in New York.

However, data from the Insurance Information Institute backs up NCCI's view. Workplace injury incidence rates declined during the past four recessions. ■

The recession means fewer workers are employed in hazardous industries and companies will let go of their least-experienced workers first...

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.



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First increase since 1986

Commission doubles fines and penalties

The South Carolina Workers' Compensation Commission anticipates raising approximately \$800,000 in additional revenue by doubling fines and penalties for late filings. The new penalties go into effect April 1, 2009

Fines for late filings would increase from \$100 to \$200 per occurrence, while the fine for carriers that fail to provide notice of final payment will increase from \$25 to \$50. Failure to provide a report of coverage to the commission within 30 days of the inception date of the coverage would also double, from \$100 to \$200.

In fiscal 2008, the last year for which complete figures are available, the Commission raised nearly \$1.1 million from various fines and penalties. Of this total, commercial insurers paid \$319,000 in fines for being tardy in reporting coverage. Fines for failing to file Form 18, a periodic report every six months on all open claims, totaled nearly \$290,000.

The South Carolina Chamber of Commerce is not happy over the prospect of new fines. According to a story in *WorkCompCentral*, the chamber is considering the possibility of asking the legislature to stop the fines. Otis Rawl, president and CEO of the state chamber, said he has referred the new penalties to the chamber's Human Resources Committee for review.

Gary Thibault, executive director of the commission, points out fines and penalties have not increased in nearly 25 years and the increase is less than the rate of inflation for that period of time. "If all parties follow the requirements of the Workers' Compensation Act they won't incur any fines or penalties and the increase will have little to no impact," he says. ■

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