COMPNEWS

A Publication of the South Carolina Self-Insurers Association, Inc. | Winter 2016

Wearable devices can prevent accidents

Wearable devices such as vests and belt clips, among others, are attracting investments from insurers who believe such safety devices can prevent workplace accidents. Some insurers even see a role for wearable devices in returning injured employees to work.

AIG, one of the largest insurers in the country, stirred a lot of interest recently when it announced its "strategic investment" in New York-based Human Condition Safety. The company is among the startups piloting sensor technology which can alert workers of impending hazards and accidents.

Insurance broker Marsh uses the following example: Consider two electricians working on construction projects. Both wrongly assume the power to the circuits they're working on has been shut down. One taps in and suffers severe burns. Across town, in a similar situation, another worker is about to do the same when a sensor in his vest lights up and emits a high-pitched warning, alerting him the power is still on and thus allowing him to work without incident.

Sensors can be life-saving in another common scenario: if a worker wanders into the path of a forklift, sensors can warn both the wayward employee and the forklift driver. Sensors can also capture body movements and identify bad habits – such as improper lifting techniques – and help employers develop best practices to reduce injury rates, improve productivity, and promote safety.

Crane Worldwide Logistics tested one such product to measure the number of high-risk lifts performed per day – an average of 140 – and identify the riskiest time of day, which turned out to be before lunch and an hour before the end of a shift. "With additional training and real-time feedback, the Houston-based transportation and logistics services provider saw an 84% reduction in the number of high-risk lifts performed per shift," according to *Business Insurance*.

"It just makes a lot of sense," says Haytham Elhawary, CEO of Kinetic, a New York-based company that created a wearable safety device for industrial workers. "Right now the data insurance companies have is mostly after the fact – it's once a claim has happened, once an injury has happened. (A wearable safety device) gives you data about risk, before an injury has happened. The next logical step is to gather this type of data," he told the publication.

Some observers foresee that employers who adopt state-of-the-art devices may be able to secure better pricing from insurers or obtain coverage on better terms. *Business Insurance* adds one model familiar to many consumers and insurers is the way Allstate Insurance Co. promotes its *Drivewise* device, which drivers plug into their vehicles and earn rewards for safe driving behaviors such as avoiding high speeds and hard stops.

"We think there's a big future in wearables," says Adam Bellin, director of business development at Human Condition Safety. "Most safety-related data going forward will be real-time and mobile, provisioned through wearable sensors. And for the most progressive companies, we predict that real-time, onsite data will be critical to success," he told Marsh.

INSIDE THIS ISSUE

Judicial Notes

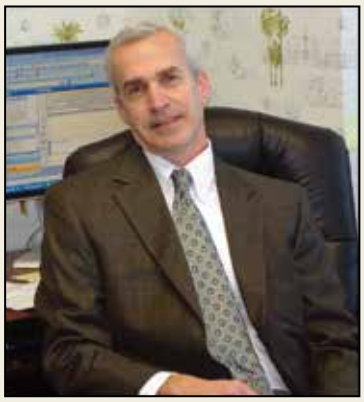
Objective Evidence of Change of Condition

The South Carolina Court of Appeals recently handed down a case reversing the Full Commission which may impact the way Commissioners decide change of condition cases.

In *Russell v. Wal-Mart*, (Op. No. 5376, Ct. App. Jan. 20, 2016), the court of appeals reversed the Full Commission which relied on medical records to "objectively" find that there was no change of condition. The claimant worked at Wal-Mart as an assistant store manager. One day at work, Russell was lifting something and injured her back. Russell received an MRI and was diagnosed with a back strain and degenerative disc disease at L5-S1; however, Russell was able to continue working with a heavy-lifting restriction.

Ten months after being released at MMI, Russell filed a Form 50 for a change of condition. The single Commissioner found that Russell suffered a change of condition and ordered medical care and temporary total disability benefits. The Full Commission reversed, stating that they gave "more weight to the medical records, the diagnostic tests, and the testimony of the medical experts."

They concluded that the preponderance of the evidence indicated that there was no objective difference between the Claimant's MRI before and after the original award. The Full Commission added that the claimant's testimony was self-serving and conclusory and thus gave it limited weight.



Mike Chase
Legal Advisor, SCSIA

In its opinion reversing the Full Commission, the South Carolina Court of Appeals noted that "there is no requirement in the Workers' Compensation Act that the evidence relied upon by the Commission be either subjective or objective," merely that by a preponderance of the evidence that there was a change of condition. The court further noted that while the language of the Full Commission order indicated they were relying on both subjective and objective evidence, the record was clear that they relied solely on the objective evidence.

The court pointed to the testimony from two doctors who opined that there was a change of condition for the worse. The court, being mindful of its own standard of review on appeal for factual findings, concluded that the Full Commission erred as a matter of law by only relying on the MRI reports and not the testimony of the doctors.

The impact of this case is clear. When preparing proposed orders, attorneys should include more reasoning and explanation in greater detail of why certain evidence was given greater weight by a Commissioner in comparison to other evidence. The Commission cannot rely solely on objective or subjective evidence when ruling on a claim for change of condition. While the Commission can weigh the evidence, the court has made it clear that both objective and subjective evidence must be considered.

This article does not constitute legal advice. You should seek the counsel of your attorney concerning the application of this case to your particular situation. Please e-mail any comments to Mike at mchase@turnerpadget.com

President's note

Brian Teusink
President

A harmful precedent for employers

The South Carolina Self-Insurers Association will file an amicus curiae brief with the Court of Appeals supporting an appeal by defense attorney Brooke Payne of Lueder, Larkin & Hunter in the case of *Barry Adickes v. Philips Healthcare*. Employers everywhere should be aware of the harmful implications of this case.

As Ms. Payne explains, although the statute providing for partial wage loss disability benefits specifically states "In no case shall the period covered by such compensation be greater than 340 weeks from the date of accident," the Full Commission in this case awarded permanent partial disability benefits up through 487 weeks from date of accident, ignoring an extended period of time after the accident where the injured worker continued to work. The Commission awarded 340 weeks from the conclusion of the injured worker's employment, instead of from the date of accident.

The difference greatly increases the award. If the statute had been applied as written, the employer would be able to offset the 340 weeks of partial wage loss disability by the wages paid to the injured worker during the period of continued employment. The claimant would have been awarded $99,393.72 in wage loss benefits, instead of the $239,672.80 awarded by the Full Commission.

This is of course not the first time the self-insurers association is getting involved in efforts to protect the interests of self-insured employers. Indeed, advocating for employers is the *raison d'être* of our association. If our association did not exist, self-insured employers would find it necessary to create an association to look after their interests in the ever-changing landscape of workers' compensation

All the more reason then for self-insured employers to support the association by joining or renewing membership. For a mere $350 per year, you can help amplify the voice of employers in South Carolina.

Another way you can help the association - and help yourself – is by attending our upcoming Members-Only Forum, set for April 6-8 at Hilton Myrtle Beach Resort at Kingston Plantation. Once again, we have a terrific program focusing on emerging developments in healthcare and workers' compensation and in the always-changing employee benefits arena. Visit the Calendar link on our website at: scselfinsurers.com/calendar.htm for more information on the program and how you can register to attend.

See you in April,
Brian

SC Provider Perspective

On payment models in workers' comp

By AnnMargaret McCraw*

This column is in response to the Fall 2015 issue of this newsletter which highlighted a WCRI study under the headline *"Healthcare providers gaming workers' comp."* WCRI concluded providers who are paid preset or bundled prices are more likely to declare an injury work-related because under workers' compensation they can bill on a fee-for-service basis.

The study focuses on capitation arrangements common in the 1980s and 1990s that were inherently flawed and did incentivize providers to increase profit margins. Today's payment alternatives are radically different as they prioritize shared risk and care coordination to enhance outcomes. Providers have the opportunity to share in savings when they reduce costs and achieve better outcomes.

continued on page 4

Calendar

Mar. 30–Apr.1, 2016	NC Association of Self-Insurers Annual Conference. Holiday Inn Resort, Wrightsville Beach
April 6-8, 2016	Members-Only Forum, SC Self-Insurers Association. Hilton Myrtle Beach Resort.

COMP NEWS

COMP NEWS
is published quarterly by the
SC Self-Insurers Association, Inc.

www.scselfinsurers.com

EDITOR AND WRITER

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

Payment models *continued from page 3*

WCRI warns the shift away from fee-for-service in the health insurance market makes workers' compensation "an inviting target." This conclusion reveals a fundamental misunderstanding of today's alternative payment models that require payers and providers to work closely as partners to improve quality and efficiency while simultaneously reducing costs. Although some of these models include "bundled" prices for some episodes of care, most also include additional incentives for providers to share in the savings when the overall cost of care is reduced by eliminating unnecessary or duplicative services.

The WCRI study suggests a perverse incentive for physicians to shift patients into workers' compensation in pursuit of higher reimbursement. Ironically, WCRI has also documented that physician reimbursement in SC is among the lowest in the nation. Although workers' compensation rates are generally higher than group health insurance plans, the administrative burden associated with workers' compensation offsets the additional revenue.

For example, in 2015 workers' compensation claims represented 12% of the total filed by our practice and required 4 full-time staff members to facilitate the authorization and claims follow-up process. In contrast, 7 full-time staff members are able to accomplish the same work for the remaining 88% of claims filed to group health plans. Additionally, our average days in accounts receivable for workers' compensation claims is 47, compared to 15 for private health insurance claims.

Indeed, contrary to WCRI's assertion, busy practices may well consider limiting their exposure to injured workers rather than attempting to transfer patients with other coverage into the comp system.

The real question is whether workers' compensation in South Carolina can engage physicians in meaningful partnerships. Can we establish a payment system that empowers physicians to manage the utilization of procedures, ancillary services, and rehabilitation to achieve improved outcomes at a reasonable cost? Can more carriers seek to eliminate unnecessary delays in treatment authorizations and simplify administrative requirements?

The physicians of our practice and the SC Orthopaedic Association stand ready to partner with other stakeholders toward that end. Will you join us?

**CEO, Midlands Orthopaedics (a member of Arcis Healthcare, LLC)*