



ALABAMA SELF-INSURERS

— A S S O C I A T I O N —

VOLUME 4

SPRING 2012

ASIA Objectives

ASIA is committed to a workers' compensation program that:

- Adequately compensates the employee with a work-related injury
- Recognizes fair limitations on employer responsibility
- Provides for an appropriate distribution of the compensation dollar
- Reduces litigation
- Is dedicated to eliminating abuses within the system
- Operates within the bounds of reasonable and necessary regulations

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Charles Carr (L) and ASIA president Charles Hough (R) pose with Judge Tommy Bryan, Chief Justice Chuck Malone, Judge Terri Thomas and Judge Terry Moore at ASIA Winter Workshop

ASIA Receives Recognition from the Alabama Law Foundation

The Alabama Law Foundation, administrators for the Kids' Chance Scholarship Fund, appreciates the Alabama Self-Insurers Association's strong and steady support of Kids' Chance.

Thanks to ASIA's generosity, Kids' Chance is helping young people whose parent or parents have been permanently disabled or killed on the job attend college or technical school. From the very start of the program in 1993, ASIA has understood that when a parent is killed or disabled in an on-the-job accident, a family's ability to afford the cost of higher education is compromised. In the tough economic climate of 2011, tuition continues to rise, and Kids' Chance Scholarships continue to present opportunities to these students that might not otherwise be available.

ASIA began its support in 1993, providing \$1000 for the new program; that year, three scholarships were awarded. During the ASIA Workshop in 2011, ASIA president, Allane Hybart, presented Tracy Daniel, Executive Director of the Alabama Law Foundation, with a check for \$10,000. This support will help send over 20 students to institutions of higher learning—schools where they are preparing to fulfill their career dreams. The successful program, which has awarded over \$500,000 in scholarships, has assisted over 50 young people to complete their degrees. For example, Jessica Merchant, the current Counselor of Student Affairs with the University of Montevallo, credits Kids' Chance with helping her finish her education. Jessica also specifically acknowledges ASIA for inspiring her to gain skill and confidence in public speaking. Jessica explains her first address was as a new Kids' Chance recipient to participants at an ASIA conference. There are many success stories of Kids' Chance graduates who now work a variety of professional positions such as teachers, surgical nurses, and forest rangers. Beyond providing scholarship assistance to young people, ASIA's generous support has helped make Alabama's communities safer, healthier, more caring places to live.

The Alabama Law Foundation thanks the Alabama Self Insurers Association for the generous support in the past and present. The Alabama Law Foundation is proud to be the administrator of this successful program and looks forward to a successful future working with ASIA for Kids' Chance Scholarship Fund.

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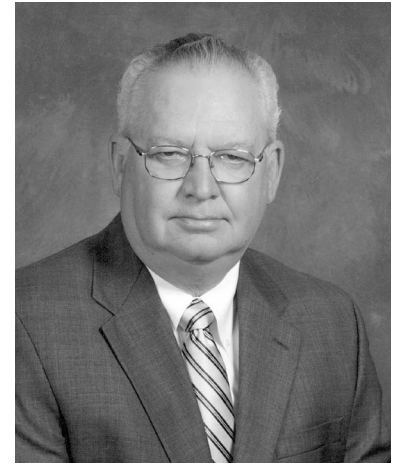
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**The Alabama Self-Insurer is a quarterly publication
of the Alabama Self-Insurers Association:
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A Word from the President... *Charles Hough*



Looks like we are jumping from a warm winter straight into summer. The temperatures have risen quickly and school will be out before we know it. This time of year I always start thinking about the ASIA Summer Conference and spending some quality time with my peers in the workers comp arena. The Summer Conference will be held August 12-14

at the beautiful Hilton Sandestin. The hotel has just finished a multi million dollar make over and I know everything will be first class for ASIA.

The ASIA Program Committee met recently and has planned another interesting array of speakers and topics. Among the highlights at the Summer Conference we always look forward to hearing updates on Alabama case law and how those decisions can impact worker's compensation. We have several lawyers on the program to cover updates, new legislation and Alabama's immigration law. We have a number of Alabama's leading surgeons on the agenda to discuss changes in technology and medical procedures that can get injured employees back to work sooner. We have invited Attorney General Luther Strange to close the conference with an update on what he is doing to stop fraud in worker's compensation. Look for registration materials soon and invest in your future by attending this enlightening and interesting conference.

Speaking of the Program Committee, they received rave reviews for putting together another successful Winter Workshop. The evaluations were great and our speakers were very interesting. We have already booked the Cahaba Grand for the 2013 Winter Workshop for January 17-18. I speak for the entire ASIA Board of Directors when I express our appreciation to Marion McQueen, Chair of the Program Committee for all of her work to make ASIA's two conferences so successful each year.

One of the most gratifying aspects of being president of ASIA is standing back and watching the members of the Board working to improve the organization and workers compensation in Alabama. Your ASIA Board members are committed to the task and eager to help ASIA members do their jobs even better. Please contact me or any of the ASIA Board members if we can help you in any way.

Finally, I wanted to urge all ASIA members to watch for regular updates on the Alabama Legislature. The ASIA office sends out a Legislative Newsletter during the session that will alert members to legislation that may impact Alabama employers. ASIA put together a group of employers and attorneys who recently met with Rep. Paul DeMarco to voice their concern over HB 104. HB 104 was originally intended to provide some relief to Alabama employers in cases involving a drug or alcohol defense. Unfortunately, the bill was amended in a House committee and made it unacceptable to employers. At press time for this article, ASIA was still working to get the bill corrected. We are also following recent developments on the immigration issue and will share information on that issue as soon as we learn what direction the Legislature is headed.

Charles

Comparing Alabama Workers' Compensation Law to Our Neighboring States

Steve Prelutsky • Hall Booth Slover & Smith, Atlanta, GA

Jeremy Trousdale • Carr Allison, Birmingham, AL

Trey Harden • Carr Allison, Tallahassee, FL

Doug Bagwell • Carr Allison, Jackson, MS

Alabama, Georgia, Florida and Mississippi have considered and occasionally passed workers' compensation legislation over the last several years. Because so many of the ASIA members have claims in neighboring states, we thought it might be beneficial to compare some of the most important aspects of the workers' compensation laws of Alabama, Florida, Georgia and Mississippi to see how they compare.

Just as an example, we compared notes to see what a permanent total award would likely settle for in all four states. We considered a hypothetical 35 year old man who was almost certain to be found totally disabled (or the equivalent) in each state whose earnings qualified him for the maximum benefits available under each state's laws. In Alabama, though the full present value payout for that claim would be \$603,583.14, because the award to the employee (as opposed to attorneys fee to his counsel) can't be ordered payable in one lump sum by the judge, the settlement value might be between \$300,000 and \$350,000. In Georgia, that amount would be between \$250,000 and \$275,000. In Mississippi, that amount would be between \$130,000 and \$140,000. Florida would offer the highest value. The present value payout would be over \$1 million with the settlement value between \$630,000 and \$750,000.

We then looked at a death award. We again considered a hypothetical 35 year old male employee with a wife and two 10 and 12 year old children. In Alabama, the lifetime payout would be \$377,500 or a lump sum payment of \$307,617 in most cases. In

Georgia, the settlement value would be between \$175,000 and \$250,000. In Mississippi the value would be between \$130,000 and \$140,000. In Florida, the death benefits are capped at \$150,000.

For those of you that have claims in all 4 states, the following is a more in-depth analysis of some of the basic issues in workers' compensation in all 4 states.

Permanent Total Disability

Permanent Total Disability in Alabama

A Circuit Court Judge determines all issues of workers' compensation disability. Permanent total disability, explained in §25-5-57(a)(4), does not mean complete helplessness but rather the inability to perform the work of one's trade or inability to obtain reasonably gainful employment. "Gainful employment" means employment similar in remuneration to that earned prior to the injury. The Judge will consider evidence of multiple factors in determining whether an injured worker is permanently totally disabled to include the worker's testimony and medical evidence of physical restrictions, limitations, and impairments. The Judge could also consider vocational factors such as the worker's age, education, work experience and work history. The loss of sight in both eyes or the loss of both arms at the shoulder is considered prima facie evidence of permanent total disability.

ASIA Calendar of Events

AUGUST 12-14, 2012

ASIA Summer Conference

Hilton Sandestin Beach Golf Resort & Spa • Destin, FL

JANUARY 17-18, 2013

ASIA Winter Workshop

Cahaba Grande Conference Center • Birmingham, AL

AUGUST 10-12, 2013

ASIA Summer Conference

Hilton Sandestin Beach Golf Resort & Spa • Destin, FL

AUGUST 9-11, 2014

ASIA Summer Conference

Hilton Sandestin Beach Golf Resort & Spa • Destin, FL

A worker who is awarded permanent total disability is entitled to 66-2/3% of his Average Weekly Wage (AWW), subject to the applicable minimum and maximum weekly benefit based upon the date of the injury. Minimum and maximum amounts change annually on July 1. Currently the minimum is either \$204.00 or the full AWW, whichever is less, and the maximum weekly benefit is \$755.00. Permanent total disability benefits are paid as long as the worker is permanently disabled which is usually for life. Benefits are paid weekly or in another mutually agreed schedule. Permanent total disability benefits cannot be ordered paid in a lump sum unless the employer/carrier defaults on the periodic payments.

Permanent Total Disability in Georgia

In Georgia, there really is no Permanent Total Disability determination. Rather, an injured Claimant can request a catastrophic designation. O.C.G.A. § 34-9-200.1 defines catastrophic injury. A catastrophic injury is:

Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;

Amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage;

Severe brain or closed head injury as evidenced by:

Severe sensory or motor disturbances;
Severe communication disturbances;
Severe complex integrated disturbances of cerebral function;
Severe disturbances of consciousness
Severe episodic neurological disorders; or
Other conditions at least as severe in nature as any condition provided in subparagraphs (A) through (E) of this paragraph;

Second or third degree burns over 25 percent of the body as a whole or third degree burns to 5 percent or more of the face or hands;

Total of industrial blindness; or

(A) Any other injury of a nature and severity that prevents the employee from being able to perform his or her prior work and any work available in substantial numbers within the national economy for which such employee is otherwise qualified.

A Claimant who is awarded a catastrophic designation is entitled to lifetime indemnity benefits, as long as the work injury continues to meet the definition of catastrophic injury.

Effective July 1, 2005, a Claimant who is designated as having a catastrophic injury under the "catch all" subsection (6)(A), when they reach the age of eligibility of retirement benefits, there is a rebuttable presumption that the injury is no longer a catastrophic injury. Basically, this would allow the suspension of indemnity benefits.

The Claimant has the burden of proving that their injury rises to a catastrophic designation. In most cases, the Claimant utilize a vocational rehabilitation specialist to show that the Claimant is

unable to perform his or her prior work and any work available in substantial numbers within the national economy for which the Employee is otherwise qualified.

Permanent Total Disability in Mississippi

An Administrative Judge of the MWCC decides all issues including nature and extent of disability, such as permanent total disability. If the Administrative Judge determines that the employee is unable to earn wages in the same or other employment due to the work-related injury, the employee may be awarded permanent total disability. The Administrative Judge considers multiple factors in this determination such as medical evidence, including physical and vocational restrictions, employee age, education, work experience and work history. Often vocational experts are hired by both employee and employer to provide testimony and evidence on the issue. Permanent total disability is also statutorily defined to include the total loss or loss of use of both hands, feet, arms, eyes, legs or any combination of those scheduled members with no reference to loss of wage earning capacity.

An employee who is awarded permanent total disability is entitled to 66-2/3% of his AWW, subject to the applicable minimum of \$25.00 per week and the weekly maximum benefit which is currently \$436.68 for up to 450 weeks, making the overall maximum benefit award for permanent total disability for the year 2012 total to \$196,506.00. The award is typically paid out on a bi-weekly basis.

A lump sum payment is possible and is governed by Miss. Code Ann Sec. 71-3-37, which provides that the Commission is the sole judge as to whether a lump sum payment should be made for future benefits. The employer/carrier has the option to make a lump sum payment for past benefits. If a lump sum is awarded, the future benefits are reduced to present day value using a 4% discount rate.

Permanent Total Disability in Florida

An injured worker is presumed to be permanently totally disabled if he suffers a spinal cord injury that results in severe paralysis of an arm, leg or the trunk; the amputation of an arm, hand, foot or leg; a severe brain or closed head injury; or second or third degree burns to 25% of body or 5% of the face or hands. An employer/carrier may rebut this presumption by proving that the injured worker is capable of performing at least sedentary employment within a fifty mile radius of his home.

In all other cases, an injured worker has the burden of proving that he is incapable of performing at least sedentary work within a 50 mile radius of his home. Alternatively, an injured worker can prove entitlement to permanent total disability benefits by presenting evidence of permanent work related physical restrictions, coupled with an exhaustive but unsuccessful job search or permanent physical restrictions that, while alone are not totally disabling, when combined with vocational factors, preclude an injured worker from engaging in at least sedentary employment.

An injured worker has the burden of proving permanent physical restrictions by objective medical findings. Further, vocational evaluations, labor market surveys and job placement services are essential in almost all cases to either prove or disprove an injured

worker's entitlement to permanent total disability benefits.

Permanent total benefits are equal to 66 2/3% of an injured worker's average weekly wage, however, an injured worker is also entitled to a 3% cost of living increase every year. In most cases, permanent total disability benefits continue until an injured worker reaches age 75. A judge of compensation claims does not have the authority to award a lump sum payment of benefits, but the parties are free to negotiate a full settlement.

Death Benefits

Death Benefits in Alabama

If a deceased worker has no dependents at death, the employer owes a one time payment of \$7,500 to the deceased worker's estate. If the deceased worker has one total dependent, then the dependent is entitled to 50% of the AWW. If there are two or more total dependents, then the dependents are entitled to 66 2/3% of the AWW. The distribution of the weekly benefits to multiple dependents is decided by a Circuit Court Judge. There are three categories of dependents: wholly, total and partial. Spouses and children under 18 or physically or mentally incapacitated from earning are presumed wholly dependent. A spouse, child, parent, grandparent, sibling, mother-in-law, or father-in-law can be a total or partial dependent. A determination of the amount of support received from the deceased worker determines the percentage of benefit.

The death benefits are payable only for a maximum of 500 weeks and are subject to the same minimum and maximum as disability cases. Dependent benefits to a spouse cease upon remarriage if before 500 weeks and to a child once he/she reaches 18, unless physically or mentally incapacitated. All benefits are subject to the same minimum and maximum weekly amounts as set out in the permanent total disability section above. In addition to those compensation benefits, there is a \$3,000.00 burial allowance.

Death Benefits in Georgia

Death benefits in Georgia are controlled by O.C.G.A § 34-9-265. The first determination is whether or not the deceased had any dependents. Dependency is defined under O.C.G.A § 34-9-13. Please be advised that there are two types of dependents, whole dependents and partial dependents. A conclusively presumed dependent is a wife or husband and a child as long as the child is under 18 or enrolled full time in High School; the child is over 18 and is physically or mentally incapable of learning a livelihood; or the child is under the age of 22 and is a full time student or the equivalent in good standing enrolled in a post secondary institution of higher learning. O.C.G.A. § 34-9-13. If there is a whole dependent, then no partial dependents are entitled to benefits.

As far as total compensation, death benefits do include funeral expenses not to exceed \$7,500.00. The sole dependents are then entitled to the weekly compensation to which the Claimant would be entitled. In addition, if the surviving spouse is the sole dependent, and there is no other dependent for 1 year or less after the death of the Employee, then total compensation for indemnity benefits can not exceed \$150,000.00

If there are no dependents, then the Employer/Insurer would have to pay no more than \$10,000.00 to the State Board of Workers' Compensation.

The dependency of a spouse and of all partial dependents shall terminate at age 65 or after the payment of 400 weeks of benefits whichever provides greater benefits. O.C.G.A § 34-9-13(e).

Death Benefits in Mississippi

The calculation applicable to death benefits is fraught with too many contingencies to cover every scenario in a presentation of this nature. Stated briefly, however, a widow is entitled to 35% of the decedent's average weekly wage and children are entitled to 10% of the decedent's average weekly wage, so long as the total payable to all dependents does not exceed 66 2/3% of the decedent's average weekly wage. Widows and children are in a preferred category, and if they do not take the full 66 2/3%, then there are secondary categories of dependents who may qualify such as parents, grandparents, brothers, sisters, etc., each of whom take 15% of the decedent's average weekly wage. Other contingencies making the situation confusing include the fact that in the event there is no widow, the children's portion is 25% of the decedent's average weekly wage each, again subject to the overall 66 2/3% maximum; if the surviving spouse dies or remarries, then children's benefits are increased from 10% to 15%.

The death benefits are payable only for a maximum of 450 weeks and are subject to the same minimum and maximum as disability cases. In addition to those compensation benefits, there is a \$2,000.00 funeral allowance and a \$250.00 widow's lump sum payment to be made.

Death Benefits in Florida

Death Benefits are limited to \$7,500.00, for funeral expenses and up to \$150,000.00 in compensation benefits for all classes of dependents. Additionally, compensation benefits for all dependents cannot exceed 66 2/3% of the decedent's average weekly wage.

A surviving spouse, with no children is entitled to receipt of 50% of the average weekly wage, while a surviving spouse with children is entitled to 66 2/3%. Each surviving parent is entitled to 25% of the average weekly wage, during the continuance of dependency, and dependant siblings and grandchildren are entitled to 15%.

Lifetime Medical Benefits?

Lifetime Medical Benefits in Alabama

In addition to compensation/indemnity benefits, an injured worker is entitled to lifetime medical benefits for a compensable injury. The employer is required to pay the reasonable and necessary medical and surgical treatment, physical rehabilitation, medicine, medical and surgical supplies, crutches, artificial members and other apparatus resulting from the accident/injury. There is no limit to the duration or amount of medical benefits, but the benefits are subject to a Fee Schedule set by the Alabama Department of Industrial Relations. The only way to close the medical benefits is by settlement approved by a Judge or Ombudsman with the Alabama Department of Industrial Relations.

Lifetime Medical Benefits in Georgia

In Georgia, the Employer/Insurer must provide the Employee entitled to benefits such medical, surgical and hospital care and other treatment, items and services which are prescribed by a licensed physician that are reasonably required and appear likely to affect a cure, give relief or resolve the employee to suitable employment. O.C.G.A. § 34-9-200. The Employer/Insurer is obligated to provide the treatment as long as the cause of the treatment is the work-related injury.

Medical benefits can be closed upon settlement of the claim.

Lifetime Medical Benefits in Mississippi

In the event of a covered work-related injury or occupational disease it is the obligation of the employer to provide reasonable and necessary medical care and supplies to aid in process of the employee's recovery. Medical benefits are unlimited in duration and amount, subject to the Mississippi Workers' Compensation Medical Fee Schedule and subject to the applicable limitations found in Miss. Code Ann. 71-3-35 and 71-3-53. The employer/carrier pays directly to the medical provider upon proper bill submission. Medical benefits can be closed out or left open by agreement upon settling the indemnity portion of the claim.

Lifetime Medical Benefits in Florida

The employer/carrier must provide the injured worker all medically necessary remedial treatment care, and attendance for such period as the work injury and or the process of recovery requires. This treatment, however, does not include chiropractic services in excess of 24 treatments or that is rendered more than 12 weeks from the initial date of chiropractic treatment. The chiropractic treatment provision does not apply, if the employer/carrier authorizes additional chiropractic care or the injured worker is catastrophically injured.

An employer/carrier is only obligated to provide treatment if the industrial accident remains the major contributing cause of the need for the treatment, and the need for treatment is established by objective physical findings. Further, medical benefits can be closed out or left open by agreement of the parties, upon settling the indemnity portion of the claim.

Consideration of "Pain" in Augmentation of an Award

Consideration of "pain" in Alabama

Pain, in and of itself, is not compensable. Pain as it limits an injured worker's ability to function can be in the degree of disability awarded to an injured worker. The most specific area in which it effects a disability is in the area of attempts to remove a scheduled member injury (See §25-5-57(a)(3)a. - finger, hand, arm, foot, leg, etc.) to the body as a whole in an attempt to receive an award of permanent total disability. Injuries to the specific body part under the schedule are not subject to permanent total disability awards. However, there is a pain exception. If the pain to the scheduled member is totally, or virtually totally, physically disabling, the worker may be entitled to benefits outside the schedule and ultimately permanent total disability. Pain experienced by a worker that is abnormal, constant and severe is not

sufficient. It must be completely, or almost completely, physically debilitating.

Consideration of "pain" in Georgia

In Georgia, pain, in and of itself, can be compensable. To be compensable, the Administrative Law Judge just has to believe that the Claimant is in pain and the pain is the direct result of the work-related injury. Please be advised that this finding can be made without any objective evidence. However, to combat this, Employer/Insurer are encouraged to get an Independent Medical Examination in hopes that the physician reports that the Claimant's complaints of pain are exaggerated or there is symptom magnification. In addition, a Claimant in Georgia can be awarded a percentage of permanent partial disability based on pain alone.

Consideration of "pain" in Mississippi

Pain, in and of itself, is not compensable. An injury which produces pain but does not prevent the employee from performing the duties of his job is not compensable for the period during which that employee continues to work. Unresolved and/or persistent symptoms of post-injury pain can certainly be causally related but the pain must result in a disabling condition to be compensable. Credible complaints of disabling pain following the work-related injury, even in circumstances where there is no objective medical evidence to explain the source of the pain symptoms, may serve as a foundation for a disability award.

Consideration of "pain" in Florida

Pain or other subjective complaints, alone, are not compensable. Instead, the provision of medical and indemnity benefits must be based on objective relevant medical findings. "Objective relevant medical findings are those that correlate with the subjective complaints and that are confirmed by a physical examination or diagnostic testing.

Attorneys Fees

Attorney Fees in Alabama

All attorney fees must be set or approved by a Judge through award or settlement and are subject to a maximum of 15% of the compensation benefits awarded or paid to the worker. There is no fee awarded on obtaining payment or settlement of medical expenses. If a claim is litigated, the trial judge may award the attorneys fees (subject to the 15% limitation) as a lump sum discounted to a 6% present value. Only the attorneys fee portion may be ordered payable in one lump sum, the employer/carrier always has the right to pay the claimant's weekly benefits on a future weekly basis.

Attorney Fees in Georgia

In Georgia, if an attorney fee exceeds \$100.00, then the State Board must approve the Attorney fee contract. In addition, the Board will not approve any fee in excess of 25% of the Claimant's award of weekly benefits or settlement. There is also a provision for being awarded assessed attorney's fees. If assessed, the fees are in addition to the compensation paid to the Claimant. To be assessed, the Administrative Law Judge has to determine whether the defense of the claim, in whole or in part is without reason-

able grounds. In addition, the Administrative Law Judge can assess attorney's fees if a timely controvert is not made or timely payments are not made to a Claimant. Finally, an Administrative Law Judge can award assessed attorney's fees against a Claimant for being unreasonable.

Attorney Fees in Mississippi

If an attorney's fee exceeds \$200.00 then he must seek approval from the Commission. Work is typically on a contingency basis and filing of an attorney's fee contract with the Commission and receipt of the form acknowledgment from the Commission is considered approval of the fee arrangement, subject to not more than 25% of the total award of compensation due the claimant. The fee must be fair to both claimant and his attorney and the Commission may not always approve the maximum amount of 25%, but, more often than not, the standard approved fee is 25%.

The fee is applicable to weekly benefits and penalties and interest awarded but not to medical benefits. If the case is one which

involves death benefits, funeral expenses and the lump sum payment of \$250.00 to the surviving spouse are not included in the fee calculation.

Attorney Fees in Florida

Claimant attorney's fees are limited to 20% of the first \$5,000.00 of benefits secured, 15% of the second \$5,000.00 in benefits, and 10% for benefits to be provided during the first 10 years after the claim is filed. Claimant attorney's fees are reduced to 5% of the total benefits that are to be provided more than 10 years after the claim is filed. A claimant's attorney can also earn up to \$1,500.00 for securing medical benefits over the life of the claim.

All attorneys' fees must be approved by a judge of compensation claims, and the judge cannot award a fee that deviates from the statutory guidelines.

The Carr Allison Offices may be reached by calling (800) 822-2006.



COMP1 One's Laura Christopher and Beth Couch visit with Carr, Allison's Jeremy Trousdale at Winter Workshop



Tim Donahue, Mary Holden and Mike Perley visit after Tim's Presentation at Winter Workshop

National Council of Self-Insurers News

Larry Holt, Executive Director • National Council of Self-Insurers

A federal appeals court decision that allows Medicare to claim nearly half of a man's liability settlement could hinder insurers' ability to settle such claims and may be an issue that reaches the U.S. Supreme Court.

In a 2-1 ruling last month, a panel of the 6th U.S. Circuit Court of Appeals in Cincinnati said Medicare should recoup \$62,300 of Vernon Hadden's \$125,000 liability settlement from a 2004 auto accident.

The claim was based on \$82,000 in medical bills that Medicare paid as a result of Mr. Hadden being hit by a truck owned by Pennyriple Rural Electric Cooperative Corporation of Hopkinsville, Kentucky.

Attorneys for Mr. Hadden argued that Pennyriple's settlement represented only 10% of his total damages, while an unidentified driver, who caused the Pennyriple driver to swerve and hit Mr. Hadden, a pedestrian, was 90% responsible for the accident. Consequently, the victim's attorneys argued that only 10% of the Pennyriple settlement should be dedicated to Medicare reimbursement.

The appeals court disagreed in a split decision, saying that Mr. Hadden was obligated by the Medicare Secondary Payer Act "to reimburse Medicare the full amount that it demanded of him." Medicare Secondary Payer compliance experts say the ruling in Vernon Hadden vs. USA could have a chilling effect on settlement awards and judgments in the liability and workers' compensation arenas.

"It can adversely impact the ability of the parties to settle," said Roy Franco, co-chair of the Washington-based Medicare Advocacy Recovery Coalition. "Because if Medicare gets the entire pie, what's left for everyone else?"

The above is from an article by Sheena Harrison in the December 5, 2011 issue of Business Insurance.

States will likely confront the pricing of repackaged pharmaceutical drugs this year along with other practices that employers consider needless cost generators.

An attempt by Oklahoma employers to gain the right to opt out of their state's workers' compensation system, a popular practice



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in neighboring Texas, also will be a major legislative effort during 2012.

But unlike last year, which produced comprehensive reform legislation in states such as Illinois, Michigan and Montana, 2012 will probably not provide sweeping reform efforts due to the attention on national elections, said Peter Burton, Senior Director for State Relations of the National Council on Compensation Insurance, a NCSI member. "That is not to say there is not going to be much state-by-state activity but it will be more focused than in 2011," Mr. Burton said.

A substantial issue to receive attention is the pricing of repackaged drugs dispensed by doctors.

In 2010, former Florida governor, Charlie Crist, vetoed a bill that would have limited how much doctors can receive for dispensing repackaged prescription drugs to workers' compensation claimants. Last year, a similar Senate bill died in a budget committee. But a bill, sponsored by Representative Matt Hudson of Naples, passed through Florida's House Insurance and Banking Subcommittee in December for the 2012 legislative session. The bill would limit doctor dispensing charges.

Since Florida now has a new governor and the issue has gained more attention, the bill could pass this year.

"Other state workers' compensation commissioners are looking at the pricing of repackaged drugs. I think a lot of states will be jumping on this issue," said Mr. Burton.

States, where insurers and self-insurers would like legislation capping the prices doctors charge for dispensing W.C. pharmaceuticals, include Hawaii, South Carolina and Louisiana, said Rita Nowak, VP of commercial lines and workers' comp for the Property Casualty Insurers Association of America. "When you look at the repackaged drugs issue, you are seeing exorbitant costs added on. It's more than opportunistic pricing," said Ms. Nowak. In Oklahoma, meanwhile, the Senate President Pro Tempore, Brian Bingman, is sponsoring a bill that would allow employers to opt out of the state workers' comp system. Unlike Texas, which allows "non subscribers" to opt out of its workers' comp system, the legislation under consideration in Oklahoma would require employers opting out to provide a benefit plan meeting Employer Retirement Income Security Act (ERISA) requirements, said Becky Robinson of the Oklahoma Injury Benefit Coalition. This may lead to fewer claims, Ms. Robinson added.

Under ERISA, employers need to provide workers with substantial notification of benefits they are entitled to upon injury and must meet certain deadlines to provide those benefits.

Tennessee is another state where a significant change may occur. Business is proposing the establishment of an administrative workers' comp court system, which would eliminate worker injury disputes being heard in civil court.

Recent reports, though, say reform advocates and the governor may want to wait until 2013 to propose broader changes to Tennessee's workers' comp system. Their thinking is that while reform of the system is needed, a substantial revision needs to be done deliberately.

In Maine, a sweeping reform bill introduced in 2011, is expected to be considered in 2012. The legislation would change the state's benefit structure, agency operations and governance.

The above information is from a recent article in Business Insurance, written by Roberto Cenicerros, Senior Editor.

Members of National Council of Self-Insurers, State Self-Insurance Guaranty Fund Administrators, Conferees at 2012 and 2011 NCSI Annual Meetings:

The 2012 annual meeting of the National Council of Self-Insurers will be from June 3 to 6 at the Ritz-Carlton in Key Biscayne, FL. The State Self-Insurance Guaranty Fund Administrators and interested others will meet at 2 pm on Sunday afternoon, June 3.

The focus of the Guaranty Fund meeting will be a Preliminary Injunction against the Missouri Department of Labor and Industrial Relations and the Missouri Private Sector Individual Self-Insurers Guaranty Corporation by the Honorable Louis H. Kornreich, United States Bankruptcy Judge in the State of Maine. In this case, the debtor or company who has filed for Chapter 11 Bankruptcy is the Prime Tanning Corporation (referring to leather), which has operations in Missouri and Maine.



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If the injunction becomes permanent the safety of State Guaranty Funds' security monies will be endangered. Monies identified for workers' compensation claimants may be awarded to creditors of the company filing for bankruptcy. This issue is significant to every state self-insurance guaranty fund and every self-insured employer.

Mike Winter, Executive Director of the Missouri Private Sector Individual Self-Insurers Guaranty Corporation, will moderate the Sunday afternoon session. Other speakers will be from states where the future value of claims covered by self-insurance is high. Additionally, the speaker at the Monday, June 4, luncheon of the NCSI meeting will be Mark Wilhelm, President of Safety National, which issues bonds to self-insured companies to allow them to meet regulatory security requirements.

For more information about the National Council of Self-Insurers meeting, go to the 2012 Annual Meeting page of the NCSI web site – www.natcouncil.com. If you have any questions, please contact me by email at natcouncil@aol.com or by phone at 908-665-2152.

Mobile man gets home confinement for cheating workers compensation fund

Published: Monday in the Mobile Press Register on January 30, 2012

MOBILE, Alabama -- A federal judge last week sentenced a local man to probation and six months' home confinement for defrauding Alabama's workers compensation fund.

Chief U.S. District Judge William Steele ordered Ronald Wayne Maddox to serve the home confinement as part of a five-year probation term.

Ronald Wayne Maddox, all agree, had a genuine injury when he began collecting workers comp. But in pleading guilty to making a false statement to obtain a benefit, he admitted that he falsified workers compensation fund travel forms to inflate the distance he drove to doctor's appointments.

He was living in Baldwin County at the time.

Federal prosecutors in Mobile alleged that Maddox illegally collected \$78,246 from April 2003 until January of last year; the two sides ultimately agreed to a figure \$69,000.

Defense attorney Arthur Madden said his client was working as a firefighter when he suffered severe injuries during a fall from the roof of a hangar at the Pensacola Naval Air Station in 2003.

The underlying compensation claim in this case was a legitimate claim," he said. Maddox apologized for his conduct. "I just ask for mercy from the court," he said.



HealthMed's Lynn Foshee and Rachel Rutland enjoy the Winter Workshop tradeshow with Alabama Power's Leigh Blackwell and Jeff Cofield

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