

Workers' Compensation

Collins & Lacy SM QUARTERLY
ATTORNEYS AT LAW

Fall 2008

Termination of the Second Injury Fund: Important Dates You Need to Know

The South Carolina Second Injury Fund (SIF) is a State agency that reimburses carriers and employers for the payment of workers' compensation benefits when injured workers have pre-existing conditions that increase their level of disability. In appropriate cases, the Fund reimburses all compensation payments after payment of 78 weeks of compensation, half of all medical payments after the first \$3,000.00 during the first 78 weeks after the accident, and all medical benefits beyond 78 weeks.

The July 1, 2007 revisions to the Act, terminate the SIF as of July 1, 2013. Likewise, the new Act set forth important deadlines for carriers and employers to know in order to seek reimbursement from the SIF prior to its demise.

Please note the following dates on your calendars:

- | | |
|---------------------------|---|
| July 1, 2008: | Last day an injury could have occurred for SIF reimbursement; |
| December 31, 2010: | Last day to notify the SIF of a potential claim; |
| December 31, 2010: | Last day the SIF can accept a claim; |
| July 1, 2013: | The SIF is terminated. |



As these dates near, please also keep in mind the three requirements to qualify for reimbursement. The requirements are as follows:

1. The injury must combine with or aggravate a pre-existing permanent physical impairment to substantially increase medical expenses and/or compensation payment or the injury would not have occurred but for the presence of the prior impairment.
2. The pre-existing impairment must be permanent and of such seriousness to constitute a hindrance or obstacle to employment.
3. The employer must have prior knowledge of the pre-existing condition.

Please review your files for injuries dated prior to July 1, 2008 and confirm you have placed the Second Injury Fund on notice when necessary. Please note, notice must be given to the Fund in writing before 78 weeks of compensation have been paid.

Should you need any assistance in notifying the Second Injury Fund or in seeking recovery from the SIF, please do not hesitate to contact one of the lawyers at Collins & Lacy.

IMPORTANT DATES

INSIDE THIS ISSUE

- | | |
|--|---|
| South Carolina Case Law Updates | 2 |
| Form Tips | 3 |
| Firm Announcements | 4 |

South Carolina Case Law Updates

Death By Willful Intention Is Not Compensable

Harvey sustained a work-related injury to his right knee and back. He later claimed an aggravation of a pre-existing psychiatric condition as a result of the work-related injury. Harvey did have a history of mental illness and substance abuse problems. However, five years prior to the work-related accident Harvey's psychiatric condition was stable and under control without the use of medication. Following his injury, Harvey's psychological condition worsened and ultimately resulted in his committing suicide. Harvey's mother brought a claim for death benefits. Cisson Construction Co., Harvey's employer, admitted the knee and back injury as compensable but denied the aggravation of a pre-existing psychiatric condition claim.

In deciding Thompson ex. Rel. Harvey v. Cisson Construction Co. the single commissioner found that Harvey's work related injury did aggravate his pre-existing psychiatric condition, the aggravation was compensable, and the suicide was the result of Harvey's severe psychiatric condition brought on by his compensable injuries. The appellate Panel affirmed. On appeal, the Court of Common Pleas reversed holding that 42-9-60 bars Claimants from recovering from death by suicide when the death was "occasioned by Claimant's willful intent to kill himself."

The Supreme Court affirmed the Court of Common Pleas decision. The Court held "the test in South Carolina for evaluating compensability is whether the employee's suicide was the result of willful intent." The statutory bar of 42-9-60 applies unless substantial evidence supports a finding that willful intent is negated by "spontaneous, impulsive, or instinctive conduct, without deliberate or formed intention, or without conscious volition to produce death." Harvey's willful intention, as an independent variable, "broke the chain of causation between the work-related injury and suicide."

Immigration Reform and Control Act Does Not Preempt State Law Permitting Illegal Aliens to Recover Workers' Compensation

Curiel filed a workers' compensation claim after he sustained a work related injury to his eye. Curiel was an illegal alien working for Environmental Management Services doing demolition work. Environmental Management denied the claim contending that Curiel was not entitled to benefits citing The Immigration Reform and Control Act of 1986. The IRCA prohibits the hiring of unauthorized aliens or the tendering of fraudulent documents to obtain employment. Curiel admittedly was an illegal alien who used fraudulent documents to obtain his employment. South Carolina law, for the purposes of workers' compensation, defines an employee as every person engaged in employment including aliens and also minors, "whether lawfully or unlawfully employed."

In deciding Curiel v. Environmental Management Services, the single commissioner, the Commission, and the Circuit Court all found Claimant was entitled to benefits under the Workers' Compensation Act. The Supreme Court agreed holding that the Immigration Reform and Control Act did not preempt S.C. Code Ann. 42-1-130 which entitled illegal aliens to benefits.

Leisure Activities During Business Trip Found to Be Within Course and Scope of Employment

The deceased was an employee of Combined Insurance Company. While working as a sales representative for Combined the employee attended a sales meeting approximately five hours away from his hometown. The meeting took place on Saturday, January 14 in a hotel where the employer paid for a room for the employee for both Friday and Saturday nights. The employer did not dispute that the employee's presence at the hotel was directly related to and caused by the employee's employment with the employer.

On Saturday night after the last meeting concluded the employee and his girlfriend left the hotel to go shopping, bowling, and to eat dinner. They returned to the

hotel around 11:30 and watched a movie in their room. The couple was awakened by a fire alarm early Sunday morning and attempted to leave the hotel. The employee was unable to escape the thick smoke and consequently died from smoke inhalation. The employee's mother initiated this workers' compensation claim.

The single Commissioner found the employee's decision to remain on Saturday night in the hotel where the meeting was held to be a reasonable decision. The single Commissioner stated that the employee would have been required to travel five hours after a complete day of training had he not stayed Saturday night. The single Commissioner found that the employee sustained a compensable fatal injury. The Commission affirmed the single Commissioner and the Circuit Court affirmed.

On appeal, the employer contended that the employee's death occurred outside the course and scope of employment because the employee died after the meetings had ended, away from the employer's premises, and at a time when the employer exercised no control over the employee's activities. The Court differentiated the case at bar from Brownlee v. Wetterau Food Serv., 288 S.C. 82, 339 S.E.2d 694 (Ct.App. 1986). In Brownlee the employee was killed in a car accident while returning from a venture that the employer had not sanctioned and had no control over. In the case at bar, at the time of the employee's death, he was in a hotel where the meetings took place and sleeping in a room paid for by the employer.

The Court also noted that even if the employee's after-hour activities were substantial deviations from the course and scope of employment, the employee's death occurred at the hotel. As such, any deviation was cured or abandoned by the time of the accident. Citing the personal comfort doctrine, the Court further found that sleeping was necessary to the employee's life, comfort, and convenience and it was a reasonable decision to spend Saturday night in the hotel.

Finally, the Court discussed the employer's contention that the dual purpose doctrine does not bring the employee's death within the course and scope of his employment because he substantially deviated from the business purpose of the trip at the time of his death. The Court found while the employee may have engaged in some personal activities during the business trip, his travel and hotel stay were solely for the benefit of his employer and in the absence of the sales meeting, the employee would not have made the trip at all. The Court of Appeals affirmed the Circuit Court, Commission, and single Commissioner's decision finding the employee's claim compensable.

Form Tips

WHICH FORM DO I USE? FORM 16 OR 16A?

Many changes resulted from the adoption of the Workers' Compensation Reform Bill of 2007. Everyone is learning to cope, but one area that merits revisiting is using the correct form, especially the correct Form 16.

The effective date is the key.

The General Assembly had to set an effective date for the reforms. New laws, for the most part, are only applied retroactively. In workers' compensation, the law in effect on the day of the accident controls. So the General Assembly inserted the proviso that unambiguously states the changes do not apply to accidents occurring before the reforms effective date. As we now know, that date is July 1, 2007. As cumbersome as it was, accidents that occurred before July 1, 2007, fell under the old law; accidents that occurred on or after July 1, 2007, fell under the new.

Changes in the law required changes in some forms.

One of the changes in the statute was to Section 42-15-60 which governs medical benefits. Added was the requirement that all awards for permanency include a finding whether further medical care must be provided and, if so, what treatment or modalities are required. The Form 16, which is an agreement for permanent disability approved by a commissioner, had to be changed to reflect this new requirement. We now have the Form 16A (see insert). Comparing the Form 16A to the Form 16, they read differently but the information required to complete both is basically the same except the addition of medical information.

If additional medical treatment is required, get a Form 14B.

Where the authorized treating physician has recommended additional medical treatment, the Form 16A requires a physician's statement or a Form 14B be attached. So there is no confusion, it is strongly recommended you get a Form 14 B filled out by the doctor outlining the recommended medical treatment.

Practice tip: put the correct Form 16 in the file.

A good practice would be to note the date of the accident when the file is opened and place in the file jacket the correct form, either the Form 16 for accidents occurring before July 1, 2007, or the Form 16A for accidents occurring on or after July 1, 2007. That way, when the case is resolved, the correct form will be used.

A Salute to Football Season.... Tailgating Trivia

- There are 3 theories regarding the origin of Tailgating -
 - Theory 1:** Tailgating dates back to the very first college football game between Rutgers and Princeton in 1869, when fans traveled to the game by carriage, grilling sausages and burgers at the "tail end" of the horse.
 - Theory 2:** Tailgating began at Yale in 1904 when a train of private railcars with Yale fans on board stopped at the station, causing the fans to become hungry and thirsty after their walk to the stadium. The idea to bring picnic hampers of food for the next game was born.
 - Theory 3:** Tailgating started in Green Bay, Wisconsin in 1919 when the Packers were formed. Farmers would back their pickup trucks around the edge of the field, and drop their tailgates to sit on and eat
- The Florida-Georgia game in Jacksonville, FL lays claim to the world's largest cocktail/tailgate party.

THE TYPICAL TAILGATER....

- is a male between the ages of 18 and 44
- travels less than one hour to the stadium
- attends/hosts 6-10 tailgating parties each season
- begins setting up 3-4 hours before kick-off
- spends more than \$500 each season on tailgating food & supplies

Source: www.tailgating.com

COLUMBIA

P.O. Box 12487
1330 Lady Street • (29211)
Columbia, SC 29201
P•803.256.2660
F•803.771.4484

GREENVILLE

P.O. Box 5819
37 Villa Road, Suite 500 (29615)
Greenville, SC 29606
P•864.282.9100
F•864.282.9101

www.collinsandlacy.com

**Workers' Compensation
Practice Group**

Ellen M. Adams.....	803.255.0416
Christian E. Boesl.....	803.255.0453
Suzy Boulware Cole.....	864.282.9102
Peter H. Dworjanyan.....	803.255.0404
Rebecca K. Halberg.....	803.255.0456
Stanford E. Lacy.....	803.255.0434
Aisha G. Taylor.....	803.255.0480
Donald L. Van Riper.....	864.282.9103

Collins & Lacy News

Collins & Lacy Expands to Myrtle Beach

We are pleased to announce the opening of our new office in Myrtle Beach, SC. In February of 2008, the firm opened a new office in Greenville, SC, marking the beginning of our strategic expansion to more effectively serve clients throughout the entire state of South Carolina. The new Myrtle Beach office brings the total number of offices to three. William A. Bryan, Jr. will serve as the resident shareholder in the Myrtle Beach office. The new office is located at 1500 Highway 17 N. Suite 204, Surfside Beach, SC 29575. The phone number is 843.477.0500.



Five Collins & Lacy Attorneys Named To 'Best Lawyers in America'

Joel W. Collins, Jr., Stanford E. Lacy, Gray T. Culbreath, Ellen M. Adams, and Jack D. Griffeth have been selected for inclusion in the 2009 edition of *The Best Lawyers in America*. Published biennially since 1983, *The Best Lawyers in America* is widely regarded as the definitive referral guide to the legal profession in the United States.



Collins



Lacy



Culbreath



Adams



Griffeth

Collins & Lacy Welcomes Two New Attorneys

Collins & Lacy, P.C. is pleased to announce that Jonny McCoy and Claude T. Prevost have joined the firm as associates. Jonny will be practicing in Workers' Compensation, and Claude will be practicing in the areas of Commercial Litigation, Construction, and Premises Liability.



McCoy



Prevost

**Collins & Lacy, P.C.
Attorney Profile
STANFORD E. LACY**



Stan Lacy is not only listed among the best workers compensation defense attorneys in America by Best Lawyers, but he also teaches workers' compensation law at the University Of South Carolina School Of Law as an adjunct professor. "Teaching workers' compensation law is one of my favorite things," offers Stan. "I've been teaching for so long, students in my first class have already retired."

Originally from Atlanta, Georgia, Stan attended public schools and graduated from West Fulton High School in 1962. His ambition was to be an astronaut, so he studied aerospace engineering at the University of Virginia. In 1965, Stan learned for the first time he was red-green color blind. The condition was slight, but it was enough to keep him out of flight school. Stan earned his BAE and USAF commission in 1967 and entered the Air Force where he took the flight physical seven times, each time failing the color vision test. Giving up his dream of becoming an astronaut, Stan left the Air Force in 1971 and entered law school at the University of South Carolina. In 1974 he graduated in the top 10% of his class. After spending two years as a Federal Public Defender and working in private practice for a number of years, Stan joined with Joel to form Collins & Lacy and the firm has been growing since.

Stan has had a distinguished career as a workers' compensation defense attorney. Former South Carolina Governor Carroll Campbell appointed Stan to the Advisory Committee for the Improvement of Workers' Compensation Laws in South Carolina, where he worked with the legislature to review and revise legislation affecting the state's workers' compensation system. Stan also served two terms as President of the Workers' Compensation Educational Association and has been a Board member off and on for almost ten years. He is often described as an attorney who practices law with a sense of humor. He enjoys looking at the contradictions within the legal system and highlighting the funny aspects of law in the annual Lacrapo presentations each year at the Educational Conference.

In his free time, Stan enjoys driving his 1952 MG and sailing at Lake Murray. He also spent many years working with the Boy Scouts in various capacities from Cub Scout den leader to District Chairman. Stan and his wife, Connie have three grown children and attend Church of the Cross Episcopal where he is on the Mission Committee. They love to travel and enjoy working together on home projects.