COMPNEWS

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Comp rates are high in SC

Workers' compensation premium rates in South Carolina are among the highest in the southeast, according to the widely reported *2014 Oregon Workers' Compensation Premium Rate Ranking Summary*. At the same time, South Carolina seems to have stabilized its position against other states in the nation, after rapid deterioration between 2002 and 2006.

As of January 2014, Louisiana and South Carolina have the highest premium rates in the southeast at $2.23 and $2.00 per $100 of payroll. Rates in North Carolina and other states in the region are between $1.50 – $1.99.

In 2002, only nine jurisdictions in the country had lower premium rates than South Carolina; by 2006, it was a different picture as 26 jurisdictions had lower rates. In 2014, 34 jurisdictions in the country had lower premium rates than South Carolina.

Oregon's Department of Consumer and Business Services conducts the study every two years. The department says its study is based on measures that put states' workers' compensation rates on a comparable basis, using a constant set of risk classifications for each state. The study used classification codes from the National Council on Compensation Insurance.

The 2014 median value is $1.85, which is a drop of 2 percent from the $1.88 median of the 2012 study. National premium rate indices range from a low of $0.88 in North Dakota to a high of $3.48 in California. Other states with the highest rates are, respectively, Connecticut, New Jersey, New York, and Alaska. At the other end, Indiana, Arkansas, Virginia, and Massachusetts boast the lowest rates in the country.

Officials in states which rank poorly are among those who say the biennial study doesn't really say much about a state's workers' compensation system. For instance, states with more generous benefits for injured workers would likely not do well in the study. Mike Manley, research coordinator at the Oregon agency, agrees the study doesn't express the cost-effectiveness of a system.

"You have to be determining whether your system is meeting other goals, like getting people effective medical treatment, getting people back to work ... minimizing injuries and resolving disputes," he said in an interview with *Business Insurance*.

California had a stiffer reaction. "There is nothing in the Oregon study to compare the differential coverage and benefits and medical-legal appeals system that each state offers," Christine Baker, director of the California Department of Industrial Relations, told the publication. "At the extreme, a state could drastically reduce its scope and level of benefits in order to reduce costs and do "better' in the Oregon comparison," she added.

Oregon officials also caution against making too much of the study. For one, the latest rankings show 21 states within 10% of the median, and the range from highest and lowest rankings has been shrinking. Some states may have enacted reforms that have yet to show results.

"We're always trying to tell other states ... that we're describing you, we're not evaluating you. We're not saying you're doing well (or) you're doing poorly. It's a description of one aspect of your system," Mr. Manley noted to *Business Insurance*.

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Where or where did Causation go?

Two recent decisions by the South Carolina Supreme Court seem to have folks wondering what happened to the first prong (arising out of employment) necessary for proving a compensable WC claim under the South Carolina Workers' Compensation Act.

In Nicholson v. S.C Department of Social Services, Op. No. 27478 (S.C.Sup.Ct. filed January Jan. 14, 2015) (Shearouse Adv.Sh. No. 2 at 18), the South Carolina Supreme Court reversed, and found compensable, an injury sustained as a result of a fall caused by the claimant scuffing her shoe on the carpet of a level hallway on the way to a meeting. In its reasoning, the Court explained that since this was not an idiopathic injury resulting from an internal breakdown, it is compensable because it occurred while she was at work on the way to a meeting when she tripped and fell. The Court focused on the fact that the claimant was required to walk down the hallway in order to complete her job duties and in the course of those duties she was injured.

In a well- reasoned concurring opinion, Justice Pleicones disagrees with the Majority's watered down interpretation of the arising out of employment requirement.

While he concurs in the decision to reverse and find the injury compensable, he does so on the basis that substantial evidence supports the Full Commission's decision that petitioner suffered a compensable injury when her foot caught on the carpet.

He calls the Majority out for making two mistakes. First, they did not apply the "arising out of" requirement properly, and instead seem to equate it with the "in the course of" requirement. Second, they did not require that petitioner prove through evidence that the unexplained fall on a level surface was the result of special conditions or circumstances. He notes that our state is in the minority of jurisdictions that deny compensability for unexplained falls. Therefore, it is not enough that claimant only show that she was injured at work, since the fall was on a level surface. Instead, she must prove the fall was causally related (arose out of the employment).

Mike Chase
Legal Advisor, SCSIA

In a similar decision, Barnes v. Charter 1 Realty, Op. No. 27479 (S.C.Sup.Ct. filed Jan. 14, 2015) (Shearouse Adv.Sh. No. 2 at 27) the South Carolina Supreme Court reversed, and ruled compensable, an injury sustained when the claimant fell while walking down a hallway to check e-mail for another employee.

In doing so, the Court declared that since this injury was not idiopathic in nature, it's compensable simply because she was performing a work task (checking e-mail) when she tripped and fell. They explained that these facts alone meet the requirement of establishing a causal connection between her employment and the injuries she sustained.

Justice Pleicones, this time dissenting takes issue with the Majority for its misapplication of the "arising out of" employment requirement. In particular, he notes that a claimant must prove both that the injury arose out of and in the course of employment. They are not synonymous. An injury arises out of employment when there is a causal connection between the conditions under which the work is required to be performed and the injury. He notes that the majority mistakenly equates the two prongs when it concludes that claimant's fall arose out of employment solely because she was performing her job when she fell.

Whether one agrees with the majority in these decisions or not, it appears that the Court does find substantial evidence that the mechanism of the injury in each arose out of the employment (shoe catching on carpet in Nicholson; trip and fall in Barnes).

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President's note

Val Rosser
President

What good is our association?

For reasons not entirely clear, self-insured employers across the country have been losing interest in trade associations formed to advance their interests. It is common for an annual meeting of a state's self-insurers association to have more vendors present than self-insured employers, and one need not be prescient to see the damaging effect of this self-destructive trend.

I will list here the many ways in which the South Carolina Self-Insurers' Association is of value to employers. For a mere $350 in annual membership dues, a self-insured employer can join employers in the state who believe it is valuable to have an organization that looks out for their interests before the General Assembly, and speaks for them before the South Carolina Workers' Compensation Commission. If our association did not exist, employers would find it necessary to create it.

No organization in the state has a better understanding of workers' comp than our association, simply because the best lawyers and claims and rehab professionals are members of our group. We regularly call on these resources when proposing or opposing changes to the system.

Our annual conference in the spring is designed to help our members keep abreast of current and emerging trends in workers' compensation. The conference is an excellent opportunity to make contacts and learn how other organizations are dealing with the issues you might be dealing with.

Our members also receive our quarterly newsletter, which is another way of knowing what is going on in workers' compensation nationwide and in South Carolina. In the coming months, I will be looking into ways we can attract employers to our association and would appreciate suggestions from readers and other members.

Until next time,

Val

Update on Medicare Set-Asides

The National Council on Compensation Insurance recently reviewed a sample of proposed workers' compensation settlements who's MSAs have been reviewed by the Centers for Medicare & Medicaid Services. Among the key findings:

- After a period of dramatic lengthening, CMS's processing time for MSAs has recently declined.
- The ratio of CMS-approved MSA amounts to submitted MSA amounts has declined over time.
- The differences between proposed and approved MSA settlements have been largely due to prescription drug costs.
- Most MSAs are for claimants who are Medicare-eligible at the time of settlement Most of these claimants are Medicare-eligible because they have been on Social Security Disability for at least two years.
- MSAs make up about 40% of total proposed settlements. Of this 40%, prescription drugs make up half.

NCCI notes although the processing time has changed considerably over the period considered, there is no apparent trend in approved MSA amounts, and almost half of MSAs are less than $25K.

CMS recently issued guidance affecting Medicare Set-Aside proposals submitted on or after January 1, 2015. The guidance has to do with the U.S. Drug Enforcement Administration's rescheduling of hydrocodone combination products from C-III controlled substances to C-II controlled substances.

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Calendar

March 25-27, 2015	NC Association of Self-Insurers Annual Conference. Holiday Inn Resort, Wrightsville Beach
April 15-17, 2015	Members-Only Forum, SC Self-Insurers Association. Litchfield Beach & Golf Resort

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However, the explanations within the opinions once these causative factors are confirmed clearly seem to mistakenly convey that a claimant only need satisfy the "in the course of" prong to prove a compensable injury in South Carolina. Read in a different way, however, these fact-driven opinions can be read to mean simply that a claimant should only be barred from recovery when the injury results solely from some unexplained, internal breakdown of the body.

Instead, the Court could have simply stated that since they find the mechanism causing the injury arose out of employment, the claimant need only satisfy the additional requirement that it also occurred in the course of employment to prove a compensable injury.

Under our statutes and case law, in order to prove a compensable injury by accident in South Carolina, a claimant still has the burden of proving not only that an injury occurred in the course of employment, but also that it **arose out of the employment**. S.C. Code Ann. § 42-1-160(A); Crosby v. Wal-Mart, 499 SE 2d 253 (1998); Bagwell v. Ernest Burwell, Inc., 88 SE 2d 611 (1955); Miller v. Springs Cotton Mills, 82 SE2d 458 (1954).

Respondents in both Nicholson and Barnes have filed petitions for rehearing with the South Carolina Supreme Court.

This case law summary is not intended to be legal advice. Contact your SC WC defense attorney if you need an opinion on how these cases may impact your situation. For comments, you can reach Mike at mchase@turnerpadget.com or 803-227-4241.

Update on Medicare Set-Asides *continued from page 3*

Normally, C-III controlled substances require a new prescription after five refills or after six months, whichever occurs first. C-IIs require new prescriptions at intervals no greater than 30 days; however, a practitioner may issue up to three consecutive prescriptions in one visit authorizing the patient to receive a total of up to a 90-day supply of a C-II drug.

CMS says new set-aside proposals should allow for a minimum of four healthcare provider visits per year when schedule II controlled substances (including hydrocodone combination products) are used continuously, unless the visits are more frequent per medical documentation.