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Client Bulletin #426

Fee reimbursement schedule upheld, statute of limitations on Second Injury claims

S.C. WORKERS' COMP UPDATE

By David H. Keller
Greenville Office

The South Carolina Supreme Court has issued two significant workers' compensation opinions in the past week and a half.

Fee Schedule Upheld

In the **first case**, the Court reversed the determination of a circuit court that outpatient surgery centers were not bound by the fee schedule established by the state Workers' Compensation Commission.

The Plaintiffs were challenging a change in reimbursement rates that had been imposed in 2006, contending that the change was a "contested case" entitling them to a hearing with the procedures set forth in the South Carolina Administrative Procedure Act. Because the change was imposed without a hearing, their due process rights were violated, they said. They also argued that they had a property interest in the rates that was protected by the South Carolina Constitution.

Both the circuit judge and the Supreme Court agreed that the Plaintiffs did not have a constitutionally protected "property interest" sufficient to require a contested case proceeding.

However, the circuit judge found in the Plaintiffs' favor on the "contested case" issue. Both parties appealed, and the Supreme Court agreed to hear the case without requiring the parties to go through the Court of Appeals first.

The Supreme Court reversed the circuit court, holding that the right to alter rates in the fee schedule for outpatient surgery centers had already been granted to the Commission under Regulation 67-1304, which was approved by the legislature in 1997. Therefore, the Court held that the change in rates in the fee schedule in 2006 was a valid exercise of authority by the Commission.

The Court did not address the payment of fees which were made to outpatient and ambulatory surgical centers since October 1, 2006, when the fee schedule was originally set to go into effect. However, the Court approved the Commission's fee schedule rate of 140% of Medicare reimbursement.

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September 17, 2010

Second Injury Claims Have 10-Year Statute of Limitations

In another case construing the Workers' Compensation Reform Act, passed in 2007, the Court **held** that there was a 10-year statute of limitations on claims for reimbursement from the state Second Injury Fund. The decision is significant because the Fund is scheduled to be shut down in 2013, and employers are combing their old files to recover what reimbursement they can in the meantime. The Court's decision will obviously limit employers' ability to recover based on these old cases.

In a **1993 decision**, the Court held there was no statute of limitations on such claims. However, the Court noted the 1993 decision only addressed the issue of whether the two year statute of limitations applied to Fund cases. The court noted that all civil matters must have an ending date or claims could never be closed. Therefore, the court looked to the civil statutes of limitation and held the 10 year, general statute applied to Fund claims since the legislature had not otherwise specified a limitations period for such claims.

The Court held that the 10-year limitations period begins to run from the date that the employer or carrier provides the Fund with notice of a potential claim.

If you need assistance in applying these decisions to your company, or with any other workers' compensation related issue, please contact **David Keller** in the **Greenville Office**, or the Constangy attorney of your choice.

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