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May 2022

# LOUISIANA AND MISSISSIPPI WORKERS' COMP NEWSLETTER

RECENT CASES AND NEWS



## **EMPLOYER PROVED INTOXICATION, AND CLAIMANT FAILED TO REBUT PRESUMPTION THAT INTOXICATION CAUSED THE ACCIDENT**

Claimant was seriously injured when he fell 30 feet through the roof of an airplane hangar. The employer asserted the intoxication defense based on a urine test that was positive for marijuana. The compensation judge held that the employer proved that claimant was intoxicated, that intoxication was a cause of the accident, and that the claimant failed to rebut causation. Claimant appealed, asserting that employer's drug testing policy did not conform to non-workers' compensation Drug Testing Statutes and the Substance Abuse Mental Health Services Administration (SAMHSA) guidelines, and that the court erred in admitting the expert report from the employer's toxicologist, Dr. William George. Claimant further asserted that he rebutted the presumption of causation.

First, Claimant argued that the drug policy failed to set forth the methods regarding drug testing and specify under what circumstances the employee may be required to submit to testing. The court held that the employer's policy complied with the intoxication statute, in that it informed Claimant that as a result of his employment he agreed to submit to "drug screening for the presence of drugs/alcohol under the conditions of reasonable suspicion, for cause/post-incident, random testing, and post-accident testing." The court concluded that although the test was performed at the hospital and was not specifically requested by the employer, the drug screen was nevertheless done pursuant to his employer's drug testing policy. The court also held that the drug testing statutes and SAMSHA guidelines did not apply in workers' compensation cases, but only the standards set forth in R.S. 23:1081 in the Workers' Compensation Act. The results from the test were *prima facie* evidence of Claimant's intoxication at the time of the accident, and the toxicologist linked the intoxication to the cause of the accident. Claimant offered no medical evidence or expert opinion that contradicted the toxicologist's opinion. After reviewing the record, the Court interestingly indicated it would have found otherwise had it been the fact-finder, but it could not say the trial judge was manifestly erroneous in finding that Claimant failed to rebut the presumption of causation. *Griffith v. CMR Constr. & Maint. Res.*, 54,443 (La. App. 2 Cir. 4/13/22).

## Attorney Spotlight



### Heidel Schneider

Heidel Schneider grew up in Slidell, Louisiana as the eldest of six children. She attended Louisiana State University and earned her Bachelor of Arts in Political Science and Economics. For the past twenty years, she has successfully litigated Louisiana workers' compensation claims. She is admitted to all Louisiana courts, and the US Fifth Circuit Court of Appeals. Heidel has lectured with the National Business Institute regarding the handling of workers' compensation claims. When she is not practicing law, she enjoys camping, hiking, and spending time with her family.



## **BILLS OF INTEREST PENDING IN THE 2022 LEGISLATIVE SESSION**

HB 94 and SB 421: Two bills have been introduced regarding surgical implant costs.

HB 94 would tend to reduce the cost of implants, as it provides that only a hospital or ambulatory surgery center shall order and purchase the surgical implant and that the reimbursement of the implant shall be the total of the original manufacturer's invoice or authorized distributor's invoice (if the manufacturer only allows purchase through the distributor) paid by the facility plus 20%.

On the other hand, SB 421 would likely result in higher implant costs and shield any effort to reveal the amount of a markup of the original manufacturer's cost. This bill would allow providers, provider's group practices, surgical centers, or hospitals to purchase surgical implants from either original manufacturers, stocking distributors, authorized distributors, and group distributors permitted to operate in Louisiana. This bill further provides the "cost and relationship amongst providers, practices, hospitals, surgery centers, distributorships, and manufacturers is proprietary and confidential." Finally, the bill provides that cost shall be the original bill price plus 20%, cannot be subject to further "scrutiny, subpoena, or delay tactics from the carrier, and a third party reprocessor or repricing company shall not be used to underpay, untimely pay, or negotiate the rates" of the bill price.

HB 176: Whereas current law only allows an IME to address medical condition, disability status and MMI, this bill would also allow an IME to address causation disputes.

HB 467: This bill would eliminate payment of death benefits to other dependents if there are no surviving spouse, child, or dependent parent, or siblings.

HB 502: This bill provides that if a payor fails to authorize treatment or a test that was approved by the Medical Director and no 1008 Appeal was filed, a payor shall be subject to a penalty of \$50.00 for each calendar day the payor fails to authorize the treatment plus attorney fees beginning 60 days after the Medical Director's approval.

HB 306: This bill provides that an employer or insurer shall not unreasonably refuse to approve a final settlement in a third party claim. There is currently no obligation on an employer/carrier to be "reasonable" in considering offers in third party suits. Refusal to accept a proposed settlement shall be considered unreasonable if the amount of the settlement is greater than the discounted value of future compensation and medical benefits. If a refusal is considered unreasonable, then the following will occur: (1) the employer's/carrier's credit for future compensation will be reduced by 50% of that portion of a subsequent judgment obtained against the third party that is in excess of the final good faith settlement offer; (2) the employee will be entitled to reasonable attorney fees from the employer/carrier for the portion of the judgment that is in excess of the final good faith settlement offer; and (3) the limitation of the future credit shall only be applicable to the third party tendering a final good faith settlement offer, and not to the other remaining third parties, if any.



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