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ATTORNEYS AT LAW

CONNECTICUT WORKERS' COMP UPDATE

The law firm of **Strunk Dodge Aiken Zovas (SDAZ)** provides you with our **Winter 2024 WORKERS' COMPENSATION LAW UPDATE**. Please feel free to share this update with your colleagues. If someone inadvertently has been left off our email list and would like to receive future updates, they can contact **Jason Dodge** at jdodge@ctworkcomp.com or 860-785-4503.

STRUNK DODGE AIKEN ZOVAS NEWS

Strunk Dodge Aiken Zovas celebrates its 10th anniversary in 2024! We thank all of our clients for their continued support of our law firm and we look forward to assisting you in the future regarding the defense and administration of workers' compensation claims.

Strunk Dodge Aiken Zovas has been named by Best Lawyers as a 2024 Tier 1 "Best Law Firm." Best Lawyers is the oldest and most respected lawyer ranking service in the world. The U.S. News – Best Lawyers® "Best Law Firms" rankings are based on a rigorous evaluation process that includes the collection of client and lawyer evaluations, peer review from leading attorneys in the field, and review of additional information provided by law firms as part of the formal submission process.

Courtney Stabnick of SDAZ has been named **2024 "Lawyer of the Year"** by Best Lawyers for litigation-Insurance in the Hartford region.

On December 14, 2023 **Attorney Anne Zovas of SDAZ** was elected by the Board of Governors of the College of Workers' Compensation Lawyers as a Fellow of the College of Workers' Compensation Lawyers. The induction ceremony will be held in March 2024 at the Union League Club in Chicago. The College of Workers' Compensation Lawyers is a national organization established to honor those attorneys who have distinguished

themselves in their practice in the field of workers' compensation. Only fifteen attorneys in Connecticut have ever received this honor. Attorney Zovas' founding partners **Lucas Strunk, Jason Dodge and Richard Aiken of SDAZ** are also Fellows in the College.

Attorney Jason Dodge of SDAZ was named by Best Lawyers as the **2023 "Lawyer of the Year"** for workers' compensation law-employers in the Hartford region.

Attorneys Lucas Strunk, Richard Aiken, Heather Porto, Philip Markuszka, Courtney Stabnick, Jason Dodge and Richard Stabnick of SDAZ have been selected by their peers for recognition of their professional excellence in Workers' Compensation-Employers in the 30th edition of *The Best Lawyers in America*.

Attorney Christopher Buccini of SDAZ has been named the new Vice-Chairman of the Workers' Compensation Section of the Connecticut Bar Association. In 2024 he will be in line to be the Chairman of the Section. Congratulations to Chris!

Attorney Richard Aiken, Jason Dodge and Anne Zovas were named Super Lawyers for 2023 in the field of workers' compensation law. **Attorneys Christopher D'Angelo, Ariel MacPherson and Philip Markuszka of SDAZ** were named "Rising Stars" in workers' compensation law.

Strunk Dodge Aiken Zovas has been named the Connecticut representative of the National Workers' compensation Defense Network. The NWCDN is a nationwide network of workers' compensation defense law firms that partner with other attorneys to provide clients with expertise, education, and guidance in the field of workers' compensation. Only one firm per state is selected for this prestigious organization. If representation is needed in a state outside of Connecticut, the NWCDN network provides a vetted list of law firms that can provide excellent legal assistance to clients of **SDAZ**.

Attorneys Anne Zovas, Richard Aiken, Lucas Strunk, Jason Dodge and Richard Stabnick of SDAZ have received an AV rating by Martindale-Hubbell. Martindale-Hubbell states that the AV rating is "The highest peer rating standard. This is given to attorneys who are ranked at the highest level of professional excellence for their legal expertise, communication skills, and ethical standards by their peers."

Super Lawyers issued their rankings for 2022. **Attorney Jason Dodge of SDAZ** was named to the "Top 50" lawyers for Connecticut in all fields of law in the 2022 Connecticut Super Lawyers nomination, research and Blue Ribbon process.

Attorneys Jason Dodge and Philip Markuszka of SDAZ are Board members of Kids' Chance of Connecticut. The mission of Kids' Chance of Connecticut is to provide educational scholarships to the children of Connecticut workers who have been seriously or fatally injured in work-related accidents. If you or your organization wish to become involved in this worthy charity please contact Jason or Phil. If you are aware of a child who may qualify for a scholarship to a college or technical school please go to the following website for an application www.kidschanceofct.org.

You can now follow us on Facebook at <https://www.facebook.com/Strunk-Dodge-Aiken-Zovas-709895565750751/>

SDAZ can provide your company with seminars regarding Connecticut Workers' Compensation issues. Please contact us about tailoring a seminar to address your needs.

We do appreciate referrals for workers' compensation defense legal work. When referring new files to SDAZ for workers' compensation defense please send them to one of the attorneys' email: azovas@ctworkcomp.com, raiken@ctworkcomp.com, lstrunk@ctworkcomp.com, jdodge@ctworkcomp.com, HPorto@ctworkcomp.com, cgriffin@ctworkcomp.com, nberdon@ctworkcomp.com, cstabnick@ctworkcomp.com, cbuccini@ctworkcomp.com, pmarkuszka@ctworkcomp.com, cdangelo@ctworkcomp.com, amacpherson@ctworkcomp.com, rstabnick@ctworkcomp.com, or by regular mail. We will respond acknowledging receipt of the file and provide you with our recommendations for defense strategy.

Please contact us if you would like a copy of our laminated "Connecticut Workers' Compensation at a glance" that gives a good summary of Connecticut Workers' Compensation law to keep at your desk.

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LEGISLATIVE UPDATE

Public Act 23-35

Codified as §31-294k, this new law expands workers' compensation coverage for PTSI (formerly PTSD) to all employees effective 1/1/24.

As was the case with prior individuals covered in this section of the law, the diagnosis must be confirmed by a board-certified psychiatrist or psychologist who has experience diagnosing and treating post-traumatic stress injury.



Limited Benefits

Section 31-294k provides a defined and limited benefit to the extent medical treatment and total or partial incapacity benefits cannot exceed 52 weeks from date of diagnosis.

There are no permanent partial disability benefits.

No award shall be made beyond four years from date of the qualifying event.



Qualifying Events

- ▶ Views a deceased minor;
- ▶ Witnesses the death of a person or an incident involving the death of a person;
- ▶ Witnesses an injury to a person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of any other intervening cause;
- ▶ Has physical contact with and treats an injured person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of any other intervening cause; or
- ▶ Witnesses a traumatic physical injury that results in the loss of a vital body part or a vital body function that results in permanent disfigurement of the victim.



Causation Questions

- ▶ A qualifying event must be a substantial contributing factor in causing the injury.
- ▶ The PTSD injury must not result from disciplinary action, work evaluation, job transfer, lay-off, demotion, promotion, termination, retirement or similar action of the eligible individual.
- ▶ Prior language in 531-294 suggesting that the Qualifying Event and not another event was the primary cause of the disorder was removed in 2021.
- ▶ The diagnosis must meet the criteria as specified in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders" (DSM-5).



* * * * *

Health Care Providers were covered after 3/10/2020

Section 31-294k was amended in 2021 (PA 21 -107) to include "Health care providers".

Defined: (A) A person employed at a doctors' office, hospital, health care center, clinic, medical school, local health department or agency, nursing facility, retirement facility, nursing home, group home, home health care provider, any facility that performs laboratory or medical testing, pharmacy or any similar institution; or (B) A person employed to provide personal care assistance, as defined in Section 17b -706, in or about a private dwelling, provided such person is regularly employed by the owner or occupier of the dwelling for more than twenty -six hours per week.



Coverage of Health Care Providers

NOTE: As one can see, the law covers Health care providers in a wide range of health related occupations for those cases after March 10, 2020 in cases in which the provider engaged in activities dedicated to mitigating or responding to the state's public health crisis.



Qualifying Events for Health Care Providers

Benefits under this section were provided for those providers who had contact with, witnessed or treated a person with COVID19 which resulted in a fatality or loss of vital body function.

The health care provider will qualify for benefits in the event he or she:

1. Witnesses the death of a person due to COVID19 or due to symptoms that were later diagnosed as COVID19;
2. Witnesses an injury to a person who subsequently dies as a result of COVID-19 or due to symptoms that were later diagnosed as COVID19; or
3. Witnesses a traumatic physical injury that results in the loss of a vital body function of a person due to COVID-19 or due to symptoms that were later diagnosed as COVID19.



Expanded coverage for Telecommunicators

Public Act 23-80 amends Section 31-275(1)(A) by adding a paragraph (iii) effective October 1, 2023. The new law expands so called “portal to portal” coverage to telecommunicators who now join police officers, firefighters, and Department of Corrections employees as exceptions to the usual coming and going rule.

Telecommunicators as defined in Section 2830 of the General Statutes (911 emergency dispatchers) who perform this task for public agencies or private agencies as defined in General Statute Section 2825 (those who use enhanced and next generation telecommunication systems) and who receive or process 911 calls fall within the definition of those covered by the new law.



A Telecommunicator will be deemed to be in the course of employment as follows:

1. When a telecommunicator is subject to emergency calls while off duty by the terms of such telecommunicator's employment;
2. When responding to a direct order to appear at such telecommunicator's work assignment under circumstances in which nonessential employees are excused from working; or
3. Following two or more mandatory overtime work shifts on consecutive days.



Course of “employment” defined:

- ▶ In the course of his “employment” is defined as encompassing such individual's departure from such individual's place of abode directly to such individual's duty and then return directly to such individual's place of abode after duty.
- ▶ The legislative history notes that the intent of the new law is to provide coverage for the employee who is traveling between home and the workplace. History suggests therefore that injuries at the abode would need be analyzed under more traditional workers' compensation law.



CONNECTICUT WORKERS' COMPENSATION COMMISSION NEWS

BURIAL EXPENSES

As of January 1, 2024, the burial fee for deaths covered under the Workers' Compensation Act is \$13,885.25 based on the overall 2023 CPI-W increase for the northeast of 3.2%. Connecticut General Statutes Section 31-306 was amended in 2021 to reflect that the compensation for burial benefits will be adjusted by the percentage increase in the consumer price index for urban wage earners and clerical workers in the Northeast as defined in the United States Department of Labor's Bureau of Labor Statistics.

<https://portal.ct.gov/WCC/Home-News/Workers-Compensation-News/2024/2024-Burial-Expense-Adjustments>

MILEAGE REIMBURSEMENT

As of January 1, 2024, the mileage reimbursement rate is 67 cents per mile.

As of January 1, 2023, the mileage rate had been 65.5 cents per mile. Prior to that the rate had been at 62.5 cents per mile since July 1, 2022

<https://portal.ct.gov/WCC/Home-News/Workers-Compensation-News/2024/2024-Mileage-Reimbursement-Rate-Rises>

MEMORANDUM 2024-01

The Commission has immediately suspended the mediation program and is beginning a review of the guidelines for the program. The suspension is due to "parties failure to comply with the program guidelines and misuse of the program."

We are sure that we will hear more about this in the future. We hope that the Commission will be able to begin the program again. In the meantime, there are a number of private mediation services that are available to assist in resolving claims. Please contact us if you have any questions about private mediation.

<https://portal.ct.gov/WCC/Workers-Compensation-News/Commission-Memorandums/2024/Memorandum-No-2024-01>

MEMORANDUM 2023-09

This memo addresses legal fees between claimants and their counsel. As of January 1, 2024 counsel fees for new attorney fee agreements will increase from 20 to 25%. Requests for fees greater than 25% will not be allowed. For prior fee agreements which had the legal fee rate at 20% those will not be affected by this memorandum.

<https://portal.ct.gov/WCC/Workers-Compensation-News/Commission-Memorandums/2023/Memorandum-No-2023-09>

NEW WORKERS' COMPENSATION PORTAL

A new Worker's Compensation portal has been established at this site:

[https://wccct.govqa.us/WEBAPP/rs/\(S\(ee5fdcqqfjppdvhg3ssjxq1e\)\)/supporthome.aspx](https://wccct.govqa.us/WEBAPP/rs/(S(ee5fdcqqfjppdvhg3ssjxq1e))/supporthome.aspx)

The old Worker's Compensation website remains in place, however, this new portal will allow a search of managed care plans for a particular date of injury. Also, workers' compensation coverage searches and requests for workers' compensation files and freedom of information requests can be performed through this new portal. The prior worker's compensation history of an individual and information concerning a particular file (forms filed, hearing requests, hearings held, voluntary agreements approved) can be searched through this portal as well. Information regarding self-employers in the system can also be reviewed.

<https://portal.ct.gov/WCC/Home-News/Workers-Compensation-News/2023/Records-and-Information-Request-Service>

The Commission does have a website where you can look up such information as to whether a hearing is assigned, list of all claims for an employee, status of a Form 36, and interested parties. This is quite a useful site and is a different website than the Commission's main site. It can be found at:

<http://stg-pars.wcc.ct.gov/Default.aspx>

Memorandum 2023-08

The Form 42 has been revised. The new Form 42 includes “a check box indicating “Check, if total impairment rating, inclusive of any prior ratings, for body part.” The box should be checked when the rating is for the total impairment inclusive of any previous ratings for the body part. The box should not be checked when the rating is in addition to a previous rating. The revised form can be obtained from our [Online Forms](#) page.”

<https://portal.ct.gov/WCC/Workers-Compensation-News/Commission-Memorandums/2023/Memorandum-No-2023-08>

MEMORANDUM 2023-05:

Memorandum 2023-05 has been issued by Chief Administrative Law Judge Morelli regarding maximum compensation rates. The Chairman has ordered that the maximum total disability rate for injuries occurring after October 1, 2023 is \$1,575 (based on the estimated average weekly wage of all employees in Connecticut). The maximum temporary partial/permanent partial disability rate for accidents after October 1, 2023 is \$1,154 (based on the average weekly earnings of production and related workers in manufacturing in Connecticut).

<https://portal.ct.gov/WCC/Workers-Compensation-News/Commission-Memorandums/2023/Memorandum-No-2023-05>

MEMORANDUM 2023-04

The Official Connecticut Practitioner Fee Schedule was issued by the Connecticut Workers’ Compensation Commission effective July 15, 2023.

MEMORANDUM 2023-03

The Connecticut Workers’ Compensation Commission effective June 10, 2023 has amended subsection F of Section VII of the *Professional Guide for Attorneys, Physicians and Other Health Care Practitioners Guidelines for Cooperation*. The subsection now reads:

Exception for Psychiatrists, Psychologists, Neuropsychologist, and Neuropsychiatrists

Due to the particular nature of these fields, there are some exceptions to Commission rules, regulations and guidelines granted to providers in these disciplines. Please note the following:

- 1. Most Commission rules and regulations, including deposition fees and formal hearing testimony fees, **do apply***
- 2. Fees as listed in the Official Connecticut Practitioner Fee Schedule, which encompasses most office visit/treatment fees, **do apply** unless there is a contract indicating otherwise*
- 3. Fees for Commission Medical Exams and Employer/Respondent Exams **DO NOT** apply. The provider may charge a maximum of \$2500 for these types of exams without prior approval. Any fee above \$2500 for a CME must be approved by the ALJ **prior** to the exam taking place. In the case of an RME, the provider may request the higher fee from the respondent. If the provider and respondent cannot agree on a fee, the respondent may choose another provider or request a hearing with an ALJ to determine a reasonable fee.*

NEW COMPENSATION REVIEW BOARD PANEL

The new CRB panel beginning January 1, 2024 will be Administrative law Judges Delaney and Schoolcraft along with Chief Administrative Law Judge Morelli.

MEDICARE NEWS FROM CMS

The following alert has been issued by CMS:

2023 Recovery Thresholds for Certain Liability Insurance, No-Fault Insurance, and Workers' Compensation Settlements, Judgments, Awards or Other Payments

As required by section 1862(b) of the Social Security Act, the Centers for Medicare and Medicaid Services (CMS) has reviewed the costs related to collecting Medicare's conditional payments and compared this to recovery amounts. Beginning January 1, 2023, the threshold for physical trauma-based liability insurance settlements will remain at \$750. CMS will maintain the \$750 threshold for no-fault insurance and workers'

compensation settlements, where the no-fault insurer or workers' compensation entity does not otherwise have ongoing responsibility for medicals. This means that entities are not required to report, and CMS will not seek recovery on settlements, as outlined above. Please note that the liability insurance (including self-insurance) threshold does not apply to settlements for alleged ingestion, implantation, or exposure cases.

LIFE EXPECTANCY TABLES

Beginning February 24, 2024, CMS will utilize the CDC's "Table 1: Life Table for the total population: United States, 2021" for the Workers' Compensation Medicare Set Aside life expectancy calculations.

WORKERS' COMPENSATION TIP

Our law firm will regularly receive calls from families that have had, unexpectedly, a workers' compensation claim filed against them due to the injury of a worker who worked in their home in some capacity. The workers that are pursuing the claim are generally in the role of a Nanny or health care assistant. The families most of the time were unaware that there was potential exposure for workers' compensation due to injuries to these workers in their homes. Every state is different regarding the need for workers' compensation coverage for "in home workers"; some states do not require workers' compensation coverage for workers in the home. In Connecticut, to be covered a worker must work in the home regularly for more than 26 hours per week. Also, the so-called "control test" will determine if the worker is an independent contractor or not; that is, whether the alleged employer can and does exercise "control" over the worker. Examples of control are the homeowner determining the hours and time that the worker will work and requiring the homeowner's approval for the worker to take time off. Individuals with an "in home" worker should consider whether they need to take out workers' compensation coverage and protect themselves from these potentially expensive claims.

CASE LAW

CURRAN V. STATE OF CONNECTICUT/DEPARTMENT OF CORRECTION, 6492 CRB-1-22-12 (November 17, 2023)

The claimant alleged an injury to his right hip at work on April 12, 2011. He reported the incident to his supervisor, completed a form and was sent for an evaluation by an on-duty RN at the company on-site clinic. The RN examined the claimant and "felt his hip, took his temperature and blood pressure, provided him with an ice pack and gave him some Advil." The RN also completed a medical incident report. The claimant did not follow up with any further treatment. Years later on July 15, 2021 the claimant filed a

Form 30c and sought workers' compensation benefits for the 2011 claim. The respondents asserted that the claimant was not timely filed. The claimant alleged that the medical care exception to written notice applied pursuant to Section 31-294c(c). The ALJ agreed and found that the claim was timely filed. The CRB affirmed the finding and rejected the respondents' argument that the medical provider had to be a medical doctor or APRN for the exception to apply.

WILLIE HAYES, JR. V. LILY TRANSPORTATION CORPORATION, 6500 CRB-1-23-4 (November 24, 2023)

The claimant was a driver. On November 17, 2014 he had to grip his steering wheel very tightly to try and avoid a motor vehicle that had gone into a spin in front of him. As a result of this, the claimant developed an injury to his right small finger. Dr. Gross performed two surgeries on the finger which were accepted by the employer as compensable. Subsequently, the claimant developed bilateral wrist problems and came under the care of Dr. Mastella, a hand specialist. The respondents questioned whether the wrists were due to the 2014 accident since there had been no wrist complaints at first. Based on the history of injury to the wrists in 2014 that was provided by the claimant, Dr. Mastella in his reports opined that the wrist injuries were due to the 2014 incident. Dr. Bernstein performed a RME and he concluded that the wrist injuries were not due to the 2014 event. The medical notes of Dr. Gross from his initial treatment did not mention any wrist injuries. At his deposition Dr. Mastella was asked to review Dr. Gross' notes and he changed his opinion regarding causation; he stated he agreed with Dr. Bernstein that the wrist injury was not related to the 2014 incident. Dr. Mastella did concede, however, that if the claimant had experienced wrist pain initially after the incident then that would tend to support causation. At the trial level the ALJ found the claimant credible that his wrists hurt from the beginning and relied on Dr. Mastella's opinion in his reports that the condition was due to the 2014 accident. The CRB affirmed the decision on appeal notwithstanding the respondents protestations that Dr. Mastella had changed his opinion on causation at his deposition.

JANE DOE V. XYZ COMPANY (December 7, 2023; ALJ DECISION)

The claimant alleged that she fell at work on the company premises on February 14, 2022 causing a fracture to her left leg. While the respondents acknowledged that the claimant fell at work they denied liability in the case. The respondents contended that the claimant's injury did not "arise out of" her employment; rather, respondents asserted that the claimant's fall was because of a pre-existing, non-occupational foot drop. The claimant had a number of prior left hip surgeries which caused a foot drop. As a result of this, the claimant became more susceptible to falling. The claimant did wear a brace on her left ankle to stop falls although she admitted that it was uncomfortable. The claimant fell at a restaurant outside of work in January 2022, one month before the work accident. A fellow worker testified that he saw the claimant prior to the work accident

and she was having difficulty walking. The claimant came in to work early in the morning and was walking to her workstation at the time of the fall. Following the fall, the claimant reported to numerous medical providers that she had fallen on rock salt. At the formal hearing, however, the claimant acknowledged that she did not see any rock salt at the time of her fall but did say that there had been rock salt outside of work as she entered the premises. The claimant also testified at the formal hearing that there may have been a small puddle of water on the floor where she fell. The claimant did not know why she fell, however. The respondents presented the testimony of Dr. Raymond Sullivan, a foot specialist, who opined that the claimant's pre-existing left foot drop was a substantial factor in causing her fall at work. The Administrative Law Judge concluded that Dr. Sullivan's testimony was persuasive that the claimant's foot drop was a substantial factor in causing the fall. The Judge found there was no credible or persuasive evidence that there was rock salt on her shoe when she fell or that there was water on the floor. The Judge dismissed the claim concluding that the fall was caused solely by her left foot drop condition. This case is now on appeal to the CRB. **This claim was successfully defended by Attorney Jason Dodge of SDAZ. The name of this case has been changed for confidentiality purposes.**

JINKS V. STOP & SHOP SUPERMARKET, 6465 CRB-6-22-1 (January 5, 2024)

The claimant sustained compensable chest injury on April 12, 2017 and a voluntary agreement was issued. He alleged two subsequent claims as well on September 14, 2018 and January 21, 2019. The claimant contended that he had PTSD due to his injuries and claimed that his diabetic condition was substantially related to his work injuries. The claimant also sought authorization of an OSKA device as recommended by Dr. Kost. THE ALJ dismissed all claims for PTSD, diabetes and the OSKA device. The Judge relied on the opinion of Dr. Pier, a CME and neuropsychologist, who disagreed with diagnosis of PTSD and causation. Regarding the diabetic condition the Judge found that the RME with Dr. Cooper was more credible than the treating physician and concluded that the diabetic condition was not related. Pertaining to the OSKA device the Judge accepted the RME opinion of Dr. Grahling that the device was not reasonable or necessary medical treatment. On appeal the CRB concluded that there was sufficient evidence in the record to support the Judge's factual conclusions. The claimant asserted that the Judge should have ordered a CME re the diabetic condition but the Board determined that an ALJ is not required to order a CME in all cases, citing the Appellate Court case of *Jodlowski v. Stanley Works, 169 Conn. App. 103 (2016)*. Interestingly, it appears that the ALJ had attempted at the trial level to find a doctor to perform a CME re the diabetic condition but could not find an expert to complete that examination.

GARDNER V. DEPARTMENT OF MENTAL HEALTH AND ADDICTIONS SERVICES, 223 CONN. APP. 221 (2024)

The claimant took this appeal to the Appellate Court alleging that notwithstanding the fact that she was at maximum medical improvement she should continue to receive temporary partial benefits pursuant to Connecticut General Statutes Section 31-308(a). The Appellate Court held that the Judge did not have discretion to award ongoing TP once maximum improvement had been reached; it determined that permanency was owed versus TP benefits. In this case the claimant had sustained a compensable wrist injury and reached mmi with an eight per cent rating. The trial Judge and the CRB had found that ongoing TP was not owed although the claimant had ongoing work restrictions. The Appellate Court rejected the claimant's contention that the case of *Osterlund v. State*, 129 Conn. 591 (1943), compelled a conclusion that the ALJ had discretion to award ongoing TP benefits versus permanency pursuant to Section 31-308(b). It is expected that the claimant will pursue an appeal of this decision to the Connecticut Supreme Court.

HERRICK V. I.P.C. LYDON, L.L.C., 6496 CRB-2-23-2 (February 2,2024)

The claimant was employed as a welder for many years. In 1987 he sustained a left shoulder injury at Electric Boat; he had numerous surgeries due to this and was paid 25% of the arm. In May 2018 he worked as a welder for I.P.C. Lydon L.L.C. for five days. Later in the summer of 2018 he was seen by Dr. Anbari for bilateral shoulder problems. Dr. Anbari related the shoulder injuries to his heavy work as a welder. A RME with Dr. Jambor concluded that the claimant's left shoulder condition was due to the 1987 injury and the right arm injury was due to overuse secondary to the left arm. He opined that the five days at Lydon were not significant to the development of the injuries. A CME with Dr. Rios determined that the injuries were due to repetitive trauma. He seemed to discount the contribution of the Lydon work in causing the injuries. The trial judge found that the claimant's injuries were due to repetitive work and held Lydon liable as the last employer pursuant to Section 31-299b. Lydon appealed that decision contending that there was no evidence to support that its five days of employment were a substantial contributing factor for the injuries. The CRB affirmed the finding against Lydon concluding that under Section 31-299b "an assessment of the extent to which the respondents' period of employment materially contributed to the claimant's repetitive trauma injury is not only premature at this stage of the litigation but is also at odds with the legislative intent of the apportionment statute." The Board did note that the respondent did not argue that the claimant's job duties during the last five-day period of employment "deviated significantly from the responsibilities associated with his prior periods of employment throughout his career as a welder." Essentially the Board concluded that since the Lydon employment was the same type of work that caused the injuries over many years, that Lydon as the last employer was liable for the initial payments notwithstanding the fact that no ruling was made that their employment was a substantial contributor to the injuries. The Board

did note that the last employer was entitled to pursue apportionment against earlier employers and carriers.

We believe this ruling represents a change in how the Commission handles apportionment claims. In the past it was felt that evidence was needed to show that the last employer's actual employment was a substantial factor in causing the injury, however, this case suggests that if the last employer's employment is similar to the repetitive trauma that is claimed then that is enough to require the last employer to pay and then seek apportionment. This may speed up the process in a repetitive trauma claim where the injury is clearly related to work but it raises questions if it is fair to require the last employer to pay for a claim where their employment is of short duration and may not even be a significant factor in causing the condition.

MATTERA, DECEASED, v. STATE OF CONNECTICUT, 6505 CRB-8-23-6 (March 1, 2024)

The claimant sustained compensable injuries on January 5, 2018 to the neck, low back, left shoulder; a claim for PTSD was also accepted. The claimant received total disability benefits from the date of injury until April 8, 2022 when he died due to cancer unrelated to the work injury. The treating psychiatrist had seen the claimant last on March 9, 2022 and did not address maximum medical improvement in his report. Post the death of the claimant in response to request from counsel the treating doctor placed the patient at mmi as of March 9, 2022 and provided a rating of 15% of the brain. The claimant's surviving children sought permanency based on their contention that the claimant had reached mmi prior to death. The trial Judge and the CRB both dismissed the claim finding that the claimant had not proven he had reached mmi prior to his death. The Judge found the treating physician opinion regarding mmi to not be credible or persuasive. The Board affirmed, noting that it was in the discretion of the Judge to determine if mmi had been reached based on the evidence presented. **In reaching their decision the CRB cited the Workers' Compensation treatise co-authored by Attorneys Strunk and Dodge of SDAZ.**

JONELIS V. CUMBERLAND FARMS, 6499 CRB-5-23-4 (March 1, 2024)

The claimant sustained a compensable ankle injury. She was working at a time that workers' compensation benefits were being paid which resulted in a large overpayment. The trial Judge found that there was an overpayment and ordered a repayment schedule. The Finding was issued on March 8, 2023 but an appeal was not taken until April 14, 2023., beyond the twenty day appeal period. Since the appeal was taken more than twenty days after the Finding the CRB granted the respondents' Motion to Dismiss the appeal.