

WORKER'S COMPENSATION

April 2020

TWPD

TAYLOR WELLONS POLITZ DUHE

New Orleans, LA. Baton Rouge, LA. Jackson, MS



Deanne McCauley, Partner

Deanne McCauley has been a member of TWPD's workers compensation team since January 2014 defending Louisiana state and longshore workers compensation claims for employers and carriers. Deanne is a partner in TWPD's New Orleans office and has handled workers' compensation claims for over 27 years. Deanne was a 1993 graduate of Mississippi College School of Law. Before she attended law school, Deanne received her Bachelor of Arts in Pre-Law with a Minor in English from the UL (formerly USL) in 1990 where she was a member of the USL Cheerleading team and Ragin Jazz dance team.

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EMPLOYER ORDERED TO PAY PENALTIES AND FEES ALTHOUGH DENIED TREATMENT WAS SUPPORTED BY MEDICAL DIRECTOR DECISION

This case is another example that employers cannot always rely on a decision of the Medical Director to avoid penalties and attorney fees when denying medical treatment. The claimant was bitten on the knee by a large dog. The bite developed into complex regional pain syndrome. The claimant was having difficulty with hygiene because she could not stand in the shower or easily get in and out of the bathtub. Thus, the treating neurologist recommended a combination walk-in tub/shower chair. The request was approved by utilization review, but the compensation carrier only approved a three-month rental. Unable to find any vendor for rental bathtubs, the claimant filed a Form 1009 with the Medical Director appealing the three-month rental approval. The Medical Director denied the appeal on grounds that the requested tub was not within the Medical Treatment Guidelines. Claimant then filed suit with the workers' compensation court. The court overturned the Medical Director, and assessed a \$2,000 penalty and \$5,000 attorney fee. The Third Circuit Court of Appeal affirmed the trial judge, including the penalty and fee award. The court stressed that the parties are not bound by the Medical Treatment Guidelines, and that the absence of treatment within the guidelines does not circumvent the obligation to provide an injured party with all reasonable and necessary care. *McCain v. Motel 6*, 19-653 (La. App. 3 Cir. 3/4/2020).



Jill Miller, Partner

Jill has spent her 12 year career expanding TWPDs footprint into Mississippi, where she has developed a successful workers' compensation practice. Prior to joining TWPD, Jill attended Mississippi College School of Law where she served on the Law Review and Moot Court Board. Following law school, Jill was extended the honor of being offered a clerkship with the Mississippi Supreme Court, where she served as a law clerk to Justice Jess H. Dickinson. After becoming licensed in both Mississippi and Louisiana during her clerkship, Jill returned to her home state of Louisiana and began her law career at TWPD, where she has expanded her practice to include workers' compensation and casualty defense in both Mississippi and Louisiana.

COURT REFUSES TO ANNUL SETTLEMENT DESPITE CLAIMANT'S ARGUMENT HE WAS MEDICATED AND UNABLE TO UNDERSTAND

This case involved an unrepresented claimant who attempted to annul a full and final settlement. On the day of trial, the parties appeared and reached an agreement to settle for \$24,000. The settlement agreement was read into the record in open court. The presiding judge approved the settlement finding it to be reasonable and in the best interest of the parties. Because the claimant was unrepresented, the judge questioned him on the record to ensure he understood the terms of the settlement and to ensure that there was nothing hindering his ability to give consent, including any medication. The claimant consented, and the suit was dismissed. Claimant appealed contending that at the time of the settlement in open court he was unrepresented, had recently had a stroke, and was taking medication. The First Circuit Court of Appeal found that the judge complied with the applicable statute in determining that the unrepresented Claimant understood the terms of the settlement before approving it. The only basis under law for setting aside a compensation settlement is fraud or misrepresentation by a party. The appellate court did not find any evidence of either and the settlement was upheld. *Legendre v. Cajun Constructors, LLC* 2019-0707 (La. App. 1 Cir. 2/26/20).

MS: EXPANSION OF TELEMEDICINE SERVICES

In the 2019 Fee Schedule, Telemedicine was limited to only physicians holding a valid Mississippi license. However, due to COVID-19, MWCC has reevaluated Telemedicine/Telehealth/Virtual services and provided an expansion of the rule. The MWCC has now authorized Telemedicine/Telehealth/Virtual services to not only include physicians, but also physician assistants, nurse practitioners, physical therapists, occupational therapists, speech therapists, psychiatrist, clinical psychologists, and dietitians who are licensed to practice in Mississippi. Further, the expansion notice provides that reimbursement of these services shall not be denied by workers compensation payors for CPT codes noted with a star icon and billed with Modifier 95. These codes are listed in Appendix P of the CPT manual. Additionally, CPT codes for services that are typically billed by PT/OT/ST on pages 295 and 296 of the 2019 fee schedule are authorized to be provided via electronic communication. Currently, this expansion rule will extend from March 16, 2020, to June 30, 2020.

MS: DETOUR WAS PERSONAL AND THEREFORE THE ACCIDENT WAS NOT COMPENSABLE

Claimant was a traveling salesperson and was involved in an automobile accident. One day after the accident, claimant suffered a heart attack. He filed a petition to controvert claiming the automobile accident and subsequent heart attack occurred during the course of his employment. At the time of the accident, claimant alleged he was in route to his home office in order to get a form he need for his employment. However, the AJ noted that the employer provided him with a truck equipped with a computer and printer. Therefore he could have printed the form in his truck and did not need to go home. Claimant further contended another business purpose of the trip was to drop off a product list with his brother. Nevertheless, the AJ found that this was merely incidental to claimant's personal mission to deliver a four-wheeler. The Mississippi Court of Appeals affirmed, finding that the dual-purpose test was properly applied, and that claimant's personal missions, not his employment, created the risk he encountered when he was involved in the automobile accident. *Marty Sims v. Delta Fuel and National Union Fire Ins. Co. of Pittsburgh, PA*, No. 2019-WC-00244-COA, (Miss. Ct. App. Mar. 17, 2020).

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