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LA: COURT UPHOLDS MEDICAL DIRECTOR APPROVAL OF SURGERY DESPITE CONTRARY OPINIONS OF SMO AND STATE-APPOINTED IME

Claimant's treating neurosurgeon submitted a Form 1010 seeking approval for a second neck surgery and a carpal tunnel release. After a UR denial, the physician filed a Form 1009 to the Medical Director. In response, the employer provided the Medical Director with the reports from the SMO and state-appointed IME. The SMO and IME both opined that no additional surgeries were necessary.

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The IME was even more specific in stating that the surgery would not provide any long-term benefit. The employer/adjuster did not provide the Director with each and every medical report in the claim history. The Medical Director approved the proposed surgeries, finding they were allowable under the Treatment Guidelines. The employer appealed. The court affirmed the Medical Director's surgery approval.

The court took issue with the employer not providing all of the prior medical records, but noted more importantly that neither the SMO nor the IME doctor referred to any sections of the Treatment Guidelines in their reports to support their opinions that no surgery was warranted. Therefore, the court held that the employer failed to point to any specific provision of the Medical Treatment Guidelines that were misapplied, thus the Medical Director's decision was affirmed. *City of Abbeville v. Suire*, 2019-847 (La. App. 3rd Cir. 6/3/20).

Attorney Spotlight



Linnette Conerly Goodly

Linnette is native of Madisonville, Louisiana. She is a proud graduate of Covington High School, where she was extremely active in school activities, sports, and student government - ultimately receiving the American Legion Award (1990), serving as senior class president (1989-1990), and excelling in district and state track competitions.

Prior to becoming an attorney, she practiced as a clinical social worker at Louisiana State Penitentiary at Angola, and served populations including pre-adjudicated and adjudicated youth, children in foster care, developmentally disabled adults, and individuals battling substance abuse and mental illness. As the proud mother of two sons, Linnette has dedicated her life to her family and her work, while also enjoying opportunities to travel, earn new friendships, and to cultivate old ones.



LA: TEACHER PROVED PHYSICAL/MENTAL CLAIM AFTER BEING HIT BY STUDENT

A high school teacher was struck in the chest by a student, which caused him to experience tightness in his chest, the sensation that he was unable to breathe, and profuse sweating. He continued to experience severe episodes of uncontrolled heart racing, lightheadedness, and dizziness, and believed that he was experiencing cardiac issues. Claimant's cardiologist opined that claimant had suffered several spells of tachycardia related to his anxiety over the workplace event, placed him off work, and referred him to a psychologist.

A psychologist diagnosed the claimant with Mood Disorder, PTSD and Major Depressive Disorder as result of the accident, and restricted him from returning to work. The Court found that the teacher was entitled to payment of indemnity benefits and medical treatment for the physical/mental injury as the incident exacerbated and aggravated his pre-existing heart condition, and a created a psychological injury. *Thibodeaux v. St. Mary Parish School Board*, 2019-0793 (La. App 1 Cir. 6/24/20).



LA: ALLEGED DELIBERATE VIOLATION OF OSHA STANDARDS WAS NOT SUFFICIENT TO PROVE INTENTIONAL TORT

Plaintiffs filed an intentional tort claim alleging that the defendants deliberately took actions in violation of OSHA safety standards, which made it substantially certain that death or serious injuries would occur.

The trial court found that plaintiff's specific allegations that the plant safety lighting was turned off, walking surfaces were covered in slippery oily fluids, and hard barriers, railings and grates were missing were insufficient to state a cause of action for intentional tort noting that the "substantially certain to follow" element requires more than a reasonable probability that the injury will occur.

The Supreme Court declined to review the case. *In Re: Jerome Matthews and Elton Barber v. Phillips, et al.*, 2020-00493 (La. 6/22/20).



NEW 2020 LAW REGARDING DEATH BENEFITS

Act No. 364 passed by the 2020 Louisiana Legislature, provides that death benefits shall continue until death of the surviving spouse when the decedent was employed as a law enforcement officer and was killed in the line of duty. Therefore, death benefits for the surviving spouse will continue even after remarriage.



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