TAYLOR WELLONS POLITZ & DUHE

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LOUISIANA AND MISSISSIPPI WORKERS' COMP NEWSLETTER

RECENT CASES AND NEWS

CLAIMANT PROVED UNWITNESSED ACCIDENT ALTHOUGH HE HAD NO PAIN SYMPTOMS UNTIL AFTER HE LEFT WORK

Claimant allegedly injured his back while working in a "pit" under cars changing oil. At the time of the alleged accident, Claimant did not feel pain but reported that pain developed later that night. Claimant reported no pre-existing injuries or treatment to his back. Employer denied the claim on grounds that claimant did not prove an "accident," specifically that claimant did not prove any specific identifiable event that immediately produced symptoms.

Claimant was only able to describe the various work activities he had performed during the day while working in the "pit," which included having to use a band wrench and other tools to remove filters that were overly tightened The court found in claimant's favor. The court held that an 'actual, identifiable, precipitous event' may also include a routine movement or task that the employee regularly performs, if the claimant is able to identify with some particularity as to time, place and manner, the objective manifestation of the accidental injury." The Court found Claimant's testimony credible and concluded that an identifiable and precipitous event occurred when Claimant used a band wrench to loosen an overtightened filter. *Boudreaux v. Take 5, LLC.*, 22-42 (La. App. 5 Cir. 10/5/22).

Attorney Spotlight

Noah R. Borer

Noah R. Borer joined Taylor Wellons in 2022, where his current focus is workers' compensation defense. Originally from Indianapolis, Indiana, Noah moved to New Orleans in 2011 to attend Loyola University, where he graduated with a Bachelor Degree in Psychology. Noah subsequently attended Loyola University New Orleans College of Law, where he graduated in 2018. While a student at Loyola College of Law, Noah focused on Civil Law and earned a certificate in Law, Technology, and Entrepreneurship. Noah was also a finalist in the Trial Advocacy Program, Social Chair of the Student Bar Association, and travelled abroad studying Maritime, Family, and Art Law in Panama City, Panama and Spetses, Greece.

Noah currently resides in Uptown New Orleans and enjoys cooking, golfing, trying the city's newest restaurants, live music, and spending time with his family, friends, and dog, Sazerac.

MEDICAL SUPPLY COMPANY HAD NO RIGHT TO SEEK PAYMENT FOR IMPLANTS PROVIDED TO DOCTOR AS IT IS NOT A PROVIDER

A medical equipment supplier contended it was a "health care provider" entitled to recover the costs of implants provided to claimant's treating physician. As evidence that an agency relationship existed between supplier and the physician, the supplier provided an affidavit from a corporate representative who testified as to the close relationship with the physician and further attested that the physician allowed the supplier to bill directly for their products. The court of appeal held that an agency relationship is a contract of mandate, which is a contract by which a person, the principal, confers authority on another person, the mandatary, to transact one or more affairs of the principal. The Court found that none of the exhibits the supplier submitted were signed by the physician nor conferred authority to collect reimbursement for the physicians' surgical materials. Therefore, the Court held that supplier had failed to support a right of action in its favor. *Strategic Medical Alliance v. State*, 2022 CA 0052, (La. App. 1 Cir. 10/6/22).

MS: BEWARE: A FULL AND FINAL SETTLEMENT SHOULD ALWAYS INCLUDE THE RELEASE OF ANY BAD FAITH CLAIM

In July 2017, claimant alleged a work-related back injury. The employer/carrier denied the claim. Ultimately, the parties agreed to a compromise and settled. The Commission approved the settlement and dismissed the case with prejudice. However, the general release claimant signed reserved his right to pursue a bad faith claim. Believing he had exhausted his administrative remedies, claimant filed a bad faith suit against the Employer/Carrier in Circuit Court. The Employer/Carrier filed a motion to dismiss, arguing that Thornhill had not exhausted administrative remedies—and that the circuit court lacked jurisdiction—because the Commission never made a factual finding that he was entitled to benefits. The employer argued that because the claim was settled on disputed basis, the bad faith claim should be dismissed. The trial court agreed, but the appeal court reversed and remanded, determining that claimant did exhaust his administrative remedies because he fully and finally settled his compensation claim, and there is nothing left pending before the Commission. The Supreme Court of Mississippi agreed with the appeal court that the circuit court had jurisdiction to hear the bad faith claim. *Thornhill v Walker-Hill Environmental*, 2020-CT-01181-SCT (MS 08/25/22).

EMPLOYER MAY REQUEST REIMBURSEMENT OF VOLUNTARY INDEMNITY PAYMENTS MADE IN ERROR

This case reaffirms that an employer/payor has a cause of action to seek reimbursement of alleged overpayment of indemnity benefits based on an erroneous calculation of the average weekly wage, which resulted from "an erroneous understanding of the nature of employment." *Eilts vs. Twentieth Century Fox TV*, 54-757 (La. App. 2 Cir 09/21/2022).

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The success we have seen is because of the way we built our practice. It's about more than routine strategies. It's about creative resolutions to difficult legal questions. It's about how we treat our clients and each other and how we work together to build the best possible defense for every single case. It's

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