

Bugbee & Conkle, LLP

Workers' Compensation News

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SEMINAR REMINDER

Bugbee & Conkle, LLP will host a seminar for its clients March 12, 2009, from 1:00 p.m.– 4:30 pm, at the Holiday Inn French Quarter Hotel, 10630 Fremont Pike, Perrysburg, OH 43551. If you have any questions or still would like to register, please contact us at 419-244-6788, or through our website. As always, our seminar is free of charge to our clients and invitees.

SUPREME COURT DETERMINES SENATE BILL 7 SHOULD BE APPLIED PROSPECTIVELY

On February 5, 2009, the Ohio Supreme Court decided *Thornton v. Montville Plastics & Rubber, Inc.*, Slip Opinion No. 2009-Ohio-360. There were two primary issues before the court: 1) whether Senate Bill 7 applied retrospectively; 2) if so, whether a plaintiff could voluntarily dismiss his complaint in an employer appeal without the employer's consent.

Montville Plastics appealed the allowance of a June, 2005 injury to court pursuant to R.C. 4123.512. While the case was pending, the General Assembly promulgated Senate Bill 7, which amended several sections of the workers' compensation statute. Among the amendments was a revision to R.C. 4123.512(D) requiring the employer's consent before a claimant could dismiss his complaint in an employer appeal. This amendment was challenged by referendum. Senate Bill 7 also provided that the law, as amended, applies to all claims filed on and after the effective date of the law.

In the present case, the claimant voluntarily dismissed his complaint without Montville Plastics' consent.

Montville Plastics contended the amended version of R.C. 4123.512 precluded the claimant from dismissing without consent. In addition, because the case involved a 2005 injury, Montville Plastics argued Senate Bill 7 applied retrospectively despite the language of the bill.

The court rejected Montville Plastics' argument based on the clear language that the law applies to all claims filed on and after the effective date. In so holding, the court found that the claim in controversy arose in 2005 on the date of injury. The court also held that the effective date of the of the amendments challenged by referendum, including the amendment to R.C. 4123.512(D), is August 25, 2006. Because the claim in controversy arose before the effective date, the former version of the statute applied and the claimant could dismiss without consent.

Of note, the court did not determine whether a motion for an additional condition constitutes a claim. This issue is currently pending before the 6th District Court of Appeals.

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MEDICARE SECONDARY PAYER ACT TO REQUIRE ADDITIONAL REPORTING BY EMPLOYERS

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Beginning July 1, 2009, Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (42 U.S.C. 1395y(b)) will impose mandatory reporting requirements on employers. Employers will be required to determine whether a worker's compensation claimant is entitled to Medicare benefits even if the claimant is not currently receiving such benefits. If the claimant is determined to be entitled to Medicare benefits, the employer must submit to the Center for Medicare and Medi-

caid Services (CMS) the name of the claimant and such other information CMS may require to coordinate benefits.

The penalty for failure to comply with the law is \$1,000.00 for each day of non-compliance with respect to each claimant. CMS has not yet published details about how the above information should be submitted. However, CMS has indicated it will require the submission of information in an electronic format through a secure website.

CONSOLIDATED CASES MAINTAIN THEIR IDENTITY AFTER DISMISSAL

In *Hall-Davis v. Honeywell, Inc.*, 2nd Dist. Nos. 2008 CA 1 & 2008 CA 2, 2009-Ohio-531, the company filed two separate appeals to court pursuant to R.C. 4123.512 from separate Commission orders allowing the claim for reflex sympathetic dystrophy (RSD) of the upper and lower extremities respectively. Thereafter the court consolidated the cases for trial on the company's motion. The claimant voluntarily dismissed the complaints.

Within one year, the claimant re-filed one complaint. In the complaint, the claimant sought the right to participate in the Fund for RSD of the lower extremities only. The claimant did not re-file a separate complaint requesting RSD of the upper extremi-

ties.

The employer moved for judgment on the RSD of the upper extremities, arguing claimant failed to re-file her complaint as to such condition within one year. The trial court granted the motion entering judgment in the employer's favor, disallowing RSD of the upper extremities. The Second District Court of Appeals affirmed the trial court holding that consolidated cases do not merge into a single case, but, maintain their original identity. Therefore, the claimant was required to re-file a complaint for each case.

The information contained in this publication is not intended to serve as legal advice, but merely to alert readers to developments in the law. If you have any questions, either call at the address listed above left or email us through our website. The website can be accessed by clicking the link below.

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