



LAW OFFICE OF

JACK CLAY, LLC

WORKERS' COMPENSATION ■ SERIOUS INJURY



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A Word From Jack Clay

The year 2007 was a very busy year for workers' compensation law. There have been changes on the horizon for workers' compensation attorneys and claimants throughout the State of Georgia. Although the legislative changes and new case law were not substantial, especially compared with past years, there are two other drastic and interrelated key changes.

The first change is the implementation of the ICMS system at the Georgia State Board of Workers' Compensation. Case files are now kept electronically on a vast computer system. Forms and documents are now submitted electronically for the most part. This drastically changes the day-to-day operations for attorneys handling workers' compensation cases.

Second, this change to an electronic system has had an unintended consequence of encouraging specialization. Technology is forcing specialization now in workers' compensation law by adding another layer of complexity to the handling and processing of workers' compensation cases. The ICMS system takes a lot of time to understand. I believe that the days of a practitioner handling an occasional workers' compensation are disappearing. While I support technological advances, as evidenced by my paperless office, I am personally disappointed that many general practitioners may not be able to handle the occasional workers' compensation case.

In my early days practicing law in a small area, I had a very general litigation practice. Historically, we saw a similar transformation in bankruptcy and federal practice with the move toward an electronic system. We have seen yet another metamorphosis recently with the implementation of child support guidelines and worksheets. I would prefer that the workers' compensation system remain accessible to injured workers and general practitioners alike.

Best regards,

Jack E. Clay

A Word About Referrals...

The referral of a workers' compensation case
is an expression of confidence.

Our practice has been built on referrals from the legal community, medical community, and our clients. If you would like to discuss a case referral, please call us anytime at (770) 577-2227.

An Overview of Georgia Workers' Compensation Law & System

You cannot build a house without a strong foundation, or so the saying goes. As I explain to my clients, an injured worker is entitled to four types of benefits in a workers' compensation case under Georgia law. In a very broad sense, these are the basics to which an injured worker is entitled.

First, an injured worker is entitled to income benefits. These weekly benefits are either temporary total disability (TTD) benefits or temporary partial disability benefits (TPD). The only difference between the two is that an injured worker gets TTD while completely out of work. If the injured worker returns to work and earns less money because of the injury, the worker gets TPD benefits. Currently, the maximum weekly TTD benefit is \$500.00 per week. In most cases, this figure is calculated by averaging the injured worker's weekly pay over the 13 week period prior to the injury. This figure, called the Average Weekly Wage, is multiplied by 2/3 to arrive at the Compensation Rate. Example: an injured worker earned, on average, \$600.00 each week over the 13 week period before the on-the-job injury. They would get workers' compensation in the amount of \$400.00 weekly, assuming they have a valid claim.

The second type of benefit an injured worker can get is medical benefits. The law says an injured worker is entitled to medical benefits that will effect a cure, give relief, or return the worker to suitable employment. Technically, an injured worker is entitled to lifetime medical benefits. The most traditional benefits include doctor care and hospitalization. Medical benefits can also range from prescriptions to medical devices. Medical benefits

can even include paying somebody, even a friend or family member, to help care for an injured worker, typically after a surgery. This is referred to as attendant care. Medical benefits can even include payment for a gardener to do yard work if the doctor is willing to order it on behalf of the injured worker.

The third type of benefit available is payment based on a permanent partial disability (PPD) rating. Typically, a doctor will assign a percentage rating to an injured worker based on a number of factors. The ratings are supposed to be based upon the American Medical Association Guide to the Evaluation of Permanent Impairment, 5th Edition. In a case I worked on earlier today, my client was assigned a 25% whole body Permanent Partial Disability rating. This rating is used to compute the amount an injured worker will receive, based on a formula. An important point is that the percentage ratings can vary among different doctors. I have typically seen lower percentage ratings from doctors who are known to be friendly to the insurance companies (imagine that!).

The Basics:

"An injured worker is entitled to benefits..."

Rehabilitation benefits are the fourth type of benefits. Unfortunately, the law only allows these benefits for the most seriously injured workers who have catastrophic injuries. Rehabilitation benefits can include home modifications, educational programs, and special vehicle modifications.

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Footstar, Inc. v. Liberty Mutual

Statutes of Limitation in Georgia workers' compensation cases are admittedly tricky. Although this case grew out of fight between two insurance companies, it affects injured workers adversely. Generally, there is a two year Statute of Limitations in a change of condition case. In its most basic form, a change of condition case means what it says: an injured worker's condition changes for the better or worse. In many cases, an injured worker gets better, the weekly benefits stop, and later gets worse and again seeks weekly benefits. In these cases, the injured worker generally has a two-year Statute of Limitations in which to file a claim for additional weekly benefits.

The question that naturally arises is as follows - - what happens if the injured worker never receives weekly income benefit checks? What is the Statute of Limitations in these cases? Does it matter if a judge issues an award in favor of the Claimant allowing medical care but awards no income benefits? In Georgia, as in many states, there are "Medical Only" cases. These are cases in which the only benefit supplied by the insurance company is medical care.

Perhaps the biggest problem this case presents is that it leaves more questions unanswered than answered. In my opinion, it also opened a huge can of worms for insurers to hang their hats as the rights of injured workers are further depleted.

As an interesting side-note, I had a case some years back before the same Administrative Law Judge. In this case, his ruling was similar to the Footstar case in that he denied my client's application for income benefits, but issued an award in favor of my client for medical care. My case was settled after I filed an appeal, but I often wondered how it might have turned out if it were not settled.

"... yet there are controversies about benefits when there is a change of condition."

Fallin v. Merritt Maintenance & Welding, Inc.

The Georgia Court of Appeals announced its decision in the case of Fallin v. Merritt Maintenance & Welding, Inc. on January 19, 2007. This case involves a change in condition of the injured worker like so many recent cases from Georgia's appellate courts. My opinion is that we will continue to see more and more change in condition cases as the defense bar, over the past few years, has waged a war using the change in

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condition theory as its primary weapon. Typically, this involves insurance company lawyers filing hearing requests (many of them frivolous, I might add) which assert a change in condition for the better. The Fallin case is different, though. Although there are two holdings in this case, my opinion is that this case is a victory for the injured worker. Now, it appears clear that when a notice to controvert is filed that does not pay all benefits currently due, including penalties, it is an invalid controvert.

In this case, the injured worker was hurt in 1998 and sought additional weekly benefits some 7 years later. This case stands for at least 2 propositions. First, "An employer's failure to pay all benefits currently due before filing a notice to controvert under O.C.G.A. 34-9-221(h) renders that notice to controvert invalid." In Fallin the term "all benefits due" includes penalties for late payments. This is good for the injured employee.

Second, this case seems to say that an employer can still assert a change in condition under O.C.G.A. 34-9-221(i) even if it files an invalid controvert (i.e. one that, as in Fallin, is filed without all benefits currently due being paid). Obviously, this part of the ruling is bad for the injured worker.

Overall, this is a good case for employees who are hurt in an on-the-job accident. If the employer does not follow the law when filing a controvert by paying all benefits and penalties owed, the controvert is invalid. While an employer may still fight the case based-upon a change in condition theory, the burden of proof would then rest on the employer. Also, attorneys' fees could be assessed more often against employers and their workers' compensation insurers for not filing a timely controvert. This is due to the fact that filing an invalid controvert

seems to now be a nullity and, accordingly, tantamount to filing nothing at all. Only time will tell, however, as this area of Georgia workers' compensation law continues to evolve.

Reid v. Georgia Bulldog Authority, et. al

The Georgia Court of Appeals decided Reid v. Georgia Building Authority, et. al on February 2, 2007. The facts in this case are familiar to any attorney who handles workers' compensation cases. Ms. Reid suffered an on-the-job injury to her hand. The injury was serious enough that Ms. Reid, who was sixty-six years old when she was injured, would not be able to do her

“Much must be proven
for a claim to be
deemed catastrophic.”

housekeeping work for the rest of her life. In fact, she had been a housekeeper for her entire life. According to her doctor, she was permanently and totally disabled from performing her job as a housekeeper. Ms. Reid sought to have her claim deemed catastrophic. The Administrative Law Judge for the Georgia State Board of Workers' Compensation ruled in her favor as did the Appellate Division / Full Board. When the employer appealed to Superior Court, the decision was overturned. The Court of Appeals upheld the Superior Court's decision and found there was not enough evidence on the record to show this was a catastrophic case.

There are several lessons to be learned in this case. The Court of Appeals starts the opinion by point-

ing out that Ms. Reid's attorney did not properly make citations to the record in violation of court rules. Later in the opinion, the Court of Appeals points out that Ms. Reid could have secured testimony from a vocational rehabilitation expert which was not done. In this case, the Court of Appeals needed more.

This is a bad case for employees. While Ms. Reid did not have a vocational expert, she had strong medical evidence from her doctor and through testing by a physical therapist which outlined her limitations. The Administrative Law Judge thought this was enough as did the Appellate Division of the State Board.

This case also illustrates another important point. For a claim to be catastrophic, the injured worker must show that there are no jobs available for him or her in "substantial numbers in the national economy." Most often, this can be shown when an injured worker is awarded Social Security Disability benefits. Admittedly, this standard is open to a lot of interpretation. It is also a heavy and high burden to be taken seriously. As I counsel my clients, a claim is not catastrophic just because you cannot do your job or your line of work again, even for the rest of your life. Much more needs to be proven and the best place to start is with a well-respected vocational rehabilitation expert.

TIG Insurance Co. v. Dust-Away, Inc., et al.

On February 6, 2007 the Georgia Court of Appeals handed down a decision in what I call a two-insurer battle case. Often, there is a dispute between two or more insurance companies as to which company bears responsibility for an injured claimant's medical treatment and income benefits. TIG Specialty Insurance Co. v. Dust-Away, Inc. is one of these cases. The facts in this case are straight forward. In December of 2000, the claimant was injured while working for Dust-Away. At this time, Dust-Away was insured by TIG. In February of 2002, Dust-Away changed workers' compensation insurance companies from TIG to Zenith. In May of 2002, the injured worker became unable to work due to the on the job injury and TIG began to pay income benefits to the injured worker.

The Court of Appeals holding is that the insurance company providing coverage on the date the employee was no longer able to work because of the aggravation or worsening of his or her injury bears responsibility for payment of income benefits.

Another issue in the case is the so-called Statute of Limitations contained in O.C.G.A. 34-9-221(h) which reads as follows: Where compensation is being paid without an award, the right to compensation shall not be controverted except upon the grounds of change in condition or newly discovered evidence unless notice to controvert is filed with the board within 60 days of the due date of first payment of compensation. The Court of Appeals in this case re-affirmed the principle that

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this 60 day limitation should not apply to two insurance companies in cases where the compensability of the claimant's injury is accepted. My opinion of this case is while it does not seem to affect injured workers directly, it further solidifies O.C.G.A. 34-9-221(h) as to injured employees. This Section protects a injured worker in Georgia who has a workers' compensation case in that an employer and insurer have 60 days from the date of first payment of income benefits to controvert or deny a claim. In my practice, I refer to this as the "81 Day Rule". Income benefits are due by the 21st day after an on the job injury. Some attorneys wait or "lay low" until the 81st day after the injury, if weekly benefits are being paid, to file their WC-14 Notice of Claim. The reason for this is to prevent an insurance company from controverting a claim once they know the injured worker has retained an attorney. This case makes it clearer as to which insurer is responsible for an injured workers' benefits in a two-insurer battle.

Reliance Electric Co. v. Brightwell

On February 19, 2007, the Court of Appeals issued its decision in this case. This case dealt with an insurer's failure to timely file a form WC-2 before suspending benefits. Under Georgia Workers' Compensation law, an insurance company is required to file a Form WC-2 before suspending an injured workers' weekly income benefits. There is an additional added protection built into the law which requires 10 days' notice to those suffering an on the job work injury. In this case, the WC-2 was filed with the Georgia State Board of Workers' Compensation less than 10 days prior to stopping weekly benefits. The Claimant argued that the WC-2 was ineffective and was eventually awarded an additional 17 month's of income benefits.

The Court of Appeals thought

otherwise and held that the WC-2 was not invalidated altogether. The Claimant got an additional 4 days of benefits, not 17 months of additional workers' compensation benefits. Interestingly, the Court of Appeals also remanded the case for consideration of attorneys' fees. It seems as if the Court of Appeals thought that this would be a good case for assessed attorneys' fees even though the Administrative Law Judge did not think they were appropriate.

This case helps to solidify the requirement that an employer and insurance company must file a WC-2 prior to suspending income benefits. There have been a long line of cases supporting this notion. I recommend that attorneys dealing with this issue be sure to check the details about the WC-2, including whether and when it was filed with the Georgia State Board of Workers' Compensation.

**“Employers/Insurers must
file a WC-2 prior to
suspending benefits.”**

Caremore, Inc./Wooddale Nursing Home v. Hollis

Late February was a busy time for workers' compensation cases from the Georgia Court of Appeals. On February 22, 2007, the Court issued its opinion in Caremore, Inc./Wooddale Nursing Home v. Hollis. This case dealt with what I think is an important issue: O.C.G.A. 34-9-205. I will write separately about the pre-approval problems in workers' compensation cases. This case addressed the employer and insurer's willfulness in failing to comply with the form filing rules under

Georgia workers' compensation law. It held that the circumstances warranted a finding of a violation of Board Rule 61.

Another central issue involved the injured worker's meals. The Court held that the meals provided by the employer and insurer increased the average weekly wage, thus entitling the injured worker to additional weekly benefits.

As previously discussed, the issue of pre-authorization creates many problems in workers' compensation cases. My office very often deals with medical providers who, understandably, do not want to perform services without pre-

**“Make it a point to help medical providers
understand the law to avoid complications.”**

authorization from the workers' compensation insurance company. The problem is that currently pre-authorization is not required for medical services provided by the Authorized Treating Physician or another physician to whom the ATP refers an injured worker. The Form WC-205 is there the rubber meets the road to address this issue. If a Form WC-205 is sent by a medical provider to an employer and insurer, a response is required or the treatment stands pre-approved. In my practice, I make it a point to help medical providers understand the law. Often, we send WC-205's partially completed to the medical provider(s) so all they will have to complete is the pertinent medical information, sign, and send it to the insurer. When insurers drag their feet on getting medical treatment approved, this can be helpful.

Wal-Mart Stores, Inc. v. Parker

On February 22, 2007, the Court of Appeals decided yet another workers' compensation case. This case involved an oversight by a judge wherein an Order was not sent to the parties. The employer, who wanted to appeal the case, was unable to do so because they never received a copy of the Order. The Court of Appeals ordered the Superior Court to re-enter its judgment so the Employer and Insurer will have 30 days to file an appeal.

This case gave a break to the Employer. While it can be viewed as beneficial to the Employer, the tables could have easily been turned on the injured worker. The importance of this case should not be overlooked as parties now have a case to rely upon if they fail to read and follow the law closely. O.C.G.A. 34-9-105 states that if the Superior Court does not issue an Order within a specified time, the Award from Georgia's State Board of Workers' Compensation will be affirmed. This is precisely what happened in this case. Nevertheless, once the Superior Court issues its Order, it admittedly failed to send it to the Employer and Insurer. This was the basis for Wal-Mart's successful appeal.

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Burns Int'l Sec. Servs. Corp. v. Johnson

On March 19, 2007, the Georgia Court of Appeals decided this case. The underlying facts of this case are tragic. Ms. Johnson was employed as a night security guard. She was murdered one night while assigned to guard a vacant and historically dangerous property. Her family brought an action against her employer Burns Security for wrongful death.

The Court of Appeals held that Ms. Johnson's family's rights were limited by Georgia Workers' Compensation Law. Specifically, the Exclusive Remedy Provision contained at O.C.G.A. 34-9-11 generally prohibits injured workers from bringing civil lawsuits against their employers. In this case, the Court held that Ms. Johnson's family was limited to workers' compensation benefits and could not bring a lawsuit against her employer.

It is important to note that there are several exceptions to this general rule. An attorney should be consulted when this situation arises as soon as possible.

Ray Bell Construction v. King

On March 26, 2007, the Georgia Supreme Court decided Ray Bell Construction v. King. The issue in the case is whether Howard King had a valid case under Georgia workers' compensation law under the continuous employment / traveling employee doctrine. Howard King was killed in a motor vehicle collision while driving a company vehicle from a storage shed back to his jobsite. It was undisputed that he went to the self storage shed for a personal reason - - he was delivering family furniture to the storage shed.

The Supreme Court upheld the Court of Appeals' decision. The legal test in the case, according to

the Court, was whether the employee "turns back" and resumes the duties of the employer after the personal mission.

Renu Thrift Store v. Figueroa

On June 20, 2007 the Georgia Court of Appeals issued a decision in the case of Renu Thrift Store Inc. VS. Figueroa. The case involved three primary issues. The first issue involves a credit for overpayment of benefits that the employer sought pursuant to O.C.G.A. §34-9-245. The employer in this case sought to take a credit against TTD payments for several years. It is interesting to

"The Court of Appeals quickly dismissed this logic and emphasized that employer and insurers are required to send out checks in a weekly fashion."

note in this case that the employer admitted that they over calculated the claimants TTD rate. In this regard, the Court of Appeals held that the employer was not entitled to a credit for over payments. Any claim for reimbursement by an employer needs to be brought within two years of the date of overpayment according to O.C.G.A. §34-9-245. The second issue decided in this case was whether or not the fifteen percent penalty found in O.C.G.A. §34-9-221(b) is appropriate when an employer insurer sends income benefit checks bi-weekly rather than a weekly basis. The court in this case held that the penalty was appropriate. As I have discussed in other articles, a constant concern representing injured claimants throughout Georgia in workers' compensation cases is that they do not receive their checks in a timely fashion. O.C.G.A. §34-9-221(b) provides that weekly benefits shall be due and payable in weekly installments. In

this case, the Court of Appeals sided with the claimant and the State Board of Workers' Compensation was authorized to access the fifteen percent penalty for those weeks when the employer refused to pay the employees benefits on a weekly basis. It is important to note that the employer in this case argued that, included in each bi-weekly payment, was a payment for the current week as well as a payment for one week ahead. The Court of Appeals quickly dismissed this logic and emphasized that employer insurers are required to send out checks in a weekly fashion.

Canal Ins. Co. v. ProSearch

On June 26, 2007, the Georgia Court of Appeals issued its decision in Canal Insurance Company v. Pro Search. The case dealt with a dispute between a Workers' Compensation Insurer and an Employer, centering on the nonpayment of deductibles by the Employer to the Insurer. In this case, the Employer, as part of its Workers' Compensation insurance policy, opted to have a deductible in each claim in the amount of \$2,500.00. When the insurance company sent a bill for \$42,755.54, the Employer refused to pay the bill and the Insurer filed a lawsuit. The Court held that the claim was not barred by the statutes of limitations which started to run when the Insurer demanded payment for the deductibles from the Employer.

Champion v. Pilgrim's Pride Corp. of Delaware, Inc.

On July 5, 2007, the Georgia Court of Appeals decided the case of Champion v. Pilgrim's Pride Corp. of Delaware, Inc. In this case, a worker was injured after being hit by a truck in the receiving area of the poultry plant. She later died from her injuries. A civil suit was brought against her employer. One of the issues in the case was whether Georgia's workers' compensation law applies. The law says that an injured worker has a valid work injury claim if the injury occurs when the worker ingresses and egresses from the place of work. In this case, the Georgia Court of Appeals decided that it is a jury question as to whether or not she could maintain a wrongful death case against her employer. Specifically, the issue was whether she was acting within the scope of her employment when she was hit. The Georgia Court of Appeals was swayed by the fact that the deceased was hit at work 78 minutes before she started her shift. This case adds an interesting case to the large number of work injury cases dealing with whether an injury arises out of employment. Usually, the injured employee is seeking workers compensation benefits. In this case, the person who died in this horrible workplace accident brought a personal injury lawsuit so it was essential to get around the Exclusive Remedy Provision (O.C.G.A. 34-9-11).

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Bibb County Board of Education v. Bemby

On July 30, 2007, the Georgia Court of Appeals decided the case of Bibb County Board of Education v. Bemby. This case involved a workers' compensation appeal of a school teacher in Bibb County, Georgia. The Court of Appeals judges discussed the claimant's medical treatment with several doctors.

"Pre-existing medical conditions are prevalent."

In this case, the employer and insurance company alleged that the claimant had a significant pre-existing issues. Specifically, the claimant had a herniated disc in her back prior to her fall at work. One of the doctors concluded that the client had returned to her "pre-injury base line" with "medical certainty."

The issue of pre-existing medical conditions, especially those involving the back, are prevalent in workers' compensation cases. While Georgia Workers' Compensation law allows claimants to recover even with a pre-existing injury, the employer is only obligated to return the injured worker to their pre-injury base line. This case emphasizes several important points. First, the Any Evidence Standard is alive and well in Georgia. What this means is that the State Board of Workers' Compensation issues a decision based upon the facts of the case, their particular findings should be conclusive and binding if there is any evidence to substantiate their findings. Of course, this generally applies to the facts and not legal issues that can arise in the case. Second, the Court of Appeals rather clearly spelled out its position regarding pre-existing issues by using terms such as "pre-injury base line" and "medical certainty". Third and perhaps more

importantly, the Court of Appeals noted that Georgia State Board of Workers' Compensation is entitled to credit the injured worker's Authorized Treating Physician opinion over the opinion of a claimant's personal physician in resolving conflicting expert medical evidence. This is important because, presumably, the same analysis might apply to allowing an Administrative Law Judge to believe the opinion of an authorized treating physician over the opinions of physicians to whom the claimants is sent by the employer/insurer.

Patterson v. Bristol Timber Company

On July 9, 2007, the Georgia Court of Appeals handed down its decision in Patterson v. Bristol Timber Company. In this case, the plaintiff filed a person injury suit against Bristol Timber Company. The injured employee, working for a Georgia trucking company, was contracted to deliver wood chips to Bristol Timber Company by his employer. A work accident occurred when the injured worker fell off a ladder onto a front loader. Although this case involved other legal issues aside from the workers' compensation case, the primary basis for dismissal was Exclusive Remedy Provision of Georgia Workers' Compensation Law.

In this case, it is important to keep in mind the hierarchy of the companies involved. The Court reasoned that the personal injury lawsuit could not be maintained against Bristol due to it being a statutory employer under the Georgia Workers' Compensation Act. This is because Bristol hired Brownlow to haul the wood chips from their loading docks to inland. Patterson was injured on Bristol's premises in the course of his work for Brownlow while performing obligations the contract. Therefore, the Court found these facts fall squarely into O.C.G.A §34-9-8(a) & (d).

This case involves the issue of statutory employment. Most states have, through their respective workers' compensation statutes, established rules protecting workers of sub-contractors who do not have workers' compensation insurance. Under the laws as discussed in this case, an employee

"An employee may bring a workers' compensation claim against statutory employers...."

may bring a workers' compensation claim against statutory employers. Of course, there is a flip side to this coin being that the statutory employers, in exchange for being responsible under Georgia's Workers' Compensation law, enjoy tort immunity pursuant to Georgia's Exclusive Remedy doctrine. Many injured workers in Georgia do not know that, in most instances, they can only file worker's compensation claim against their employer if they are hurt on the job. Thus, personal injury claims and civil suits for negligence against an injured worker's employer are generally frowned upon. These claims may come in all sorts of shapes and fashions including slip and fall cases, claims against co-workers in the operation of machinery, failure to maintain machinery and vehicles, car accidents, truck accidents, and other various dangers that exists in the work place. These legal issues can be complex. In addition, many of the cases that have emerged in this area are gray at best. If you or a loved one has a situation and would like an opinion as to whether or not you can bring a personal injury lawsuit against an employer, in addition to a workers' compensation claim, please do not hesitate to contact my office or another law firm that handles workers' compensation and personal injury cases.

Axxson Timber Company v. Wilson

On July 7, 2007, the Court of Appeals decided Axxson Timber Company v. Wilson. This case involved whether a worker who suffered an on the job injury can maintain a work-

"...but rights are limited."

ers' compensation claim against a statutory employer under O.C.G.A. §34-9-8(d). In order for an injured worker to maintain a case under Georgia Workers' Compensation Law in this instance, the law requires that the injury occur at a place that the statutory employer had undertaken to execute work and which was otherwise under the control and management of the statutory employer.

The problem with this case is the claimant was injured at a Mill

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in Florida. Accordingly, the court found that because the injury did not occur on Axxson Timber Company property or property that Axxson Timber Company controlled and the injured employee could not pursue a workers' compensation case. In quoting the Court of Appeals, "... imposing a workers' compensation liability on a shipper for an injury that occurred at a location over which it had no control would render the shipper and insurer, which was not the intent of the Georgia Workers' Compensation Act". This case seems to limit the rights of injured workers to bring cases against statutory employers. Although the results in this case were dependent on its particular facts, a precedent has been set that limits the rights of injured workers. This is especially concerning in the context of cases involving truck drivers. If a truck driver is working for a shipper that does not have workers' compensation insurance and suffers an injury at the point of destination, they may be unable to maintain a workers' compensation claim against a statutory employer if such statutory did not own or manage the location where the injury took place. This case is even more troubling as White Trucking Company, the direct employer, did not have workers' compensation insurance. Please remember if you are a truck driver or have a friend or family member that is a truck driver and have been injured in a workers' compensation accident, please consult an attorney regarding your potential case. In many cases, even though the direct employer may not have workers' compensation insurance coverage because they are a small company, there are other statutory employers against which you can file a workers' compensation claim.

Paschall Truck Lines v. Kirkland

On September 11, 2007, the Georgia Court of Appeals issued its decision in Paschall Truck Lines v.

Kirkland. In this case, the injured worker was hurt in a truck accident when another commercial vehicle struck the vehicle he was driving. He filed a Georgia workers' compensation claim and a Kentucky workers' compensation claim. When the Georgia personal injury / truck accident claim settled for \$100,000.00, the workers' comp. insurance company sought to recover money based on a purported lien. This case is governed by O.C.G.A. 34-9-11.1(b) which states that for an insurer to successfully intervene and recuperate money paid to an injured worker in a third party personal injury case, the insurer must show that the injured worker was fully and

The Goal:
"Recovery goes primarily
to the injured."

completely compensated for economic and non-economic damages. This case was a victory for the injured worker. Workers' compensation insurers in Georgia often try to get paid back from personal injury settlements or verdicts that injured employees bring against third-parties. In some states, the workers' compensation insurance company has strong rights of recovery. This is not the case in Georgia. I have been successful in my handling of similar cases in maximizing the recovery on behalf of my clients. Interestingly, some claimants' attorneys are especially loathe to repay a workers' compensation insurer because they feel the fruit of their efforts (i.e. compensation) should go to their clients and not the insurance company.

YKK (USA), Inc. et al. v. Patterson

On September 13, 2007, the Georgia Court of Appeals issued its decision in the case of YKK (USA), Inc.

This case involved two important issues. First, the Court of Appeals held that the injured worker did not prove, by a preponderance of the evidence, that she suffered an on the job injury in accordance with Georgia workers' compensation law. Second, the Court of Appeals found that the Superior Court erred by remanding the case to the Administrative Law Judge instead of the State Board of Workers' Compensation. This case presents an interesting issue. In Georgia, there are several levels of appeal an injured worker or employer / insurer must go through before attempting to reach the Georgia Court of Appeals. In my opinion, there are too many levels of appeal. For example, in every appeal that reaches the Georgia Court of Appeals, there have already been two levels of appeal. First, one must appeal the decision of the Administrative Law Judge to the State Board of Workers' Compensation. Second, the decision of the State Board of Workers' Compensation can be appealed to the Superior Court of the county where the injury occurred. Only then can a party make application for discretionary appeal to the Court of Appeals. Thereafter, the Court of Appeals' decision can attempt to be appealed to the Georgia Supreme Court. I often wonder if some of the red tape could be cut in order to streamline the appeals process, especially for injured workers.

L&S Construction v. Lopez

On November 26, 2007, the Georgia Court of Appeals issued its decision in the case of L&S Construction v. Lopez. This somewhat short opinion involves the sole issue of whether attorneys' fees should have been awarded to the Claimant, pursuant to O.C.G.A. 34-9-108. The Court of Appeals referred to the dispute as one that was "closely contested on reasonable grounds" by the Employer/Insurer. Therefore, the Court found that attorneys' fees were inappropriate. There is a more fundamental issue that helped guide the Court of Appeals to its decision. This case illustrates and further cements any evidence standard of appeal in workers' compensation cases. Simply stated, the factual findings by the State Board of Workers' Compensation will not be disturbed if there is "any evidence" to substantiate the finding of fact. This case presents negative implications for injured workers. The subject of attorneys' fees is, in my opinion, a hot button issue for attorneys representing injured workers in Georgia. Insurers sometimes controvert or deny valid workers' compensation claims. I will preface my comments by saying that if I feel the need to request a hearing, I often request attorneys' fees; however, I will have usually established strong evidence in my favor, including correspondence requesting the other side to act reasonably. While I believe that attorneys' fees should be sought and awarded in appropriate circumstances, I find that many attorneys on both sides seek attorneys' fees much too often. My theory is that some credibility is lost among members of the bar who request attorneys' fees in every contested case. All too often, attorneys cry wolf so it becomes hard to distinguish a legitimate claim for attorneys' fees from a bogus claim.

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**“Workers’ Compensation
2007 Year in Review”
Is Enclosed**

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