

# TENNESSEE WORKERS' COMPENSATION UPDATE

## Legislative Session Addresses Workers' Comp Issues

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In addition to the passage of a nearly \$30 billion budget, the 106th Tennessee General Assembly addressed several key issues during the session which ended on June 10, 2010.

Below is a summary of the key legislative changes:

### NEW PROCEDURE FOR RESOLVING FUTURE MEDICAL BENEFITS

Public Chapter No. 858 gives the Department of Labor workers' compensation specialist the authority to determine whether it is appropriate to order the employer or the employer's insurer to provide medical services pursuant to a judgment or decree entered by a court following a workers' compensation trial or pursuant to a workers' compensation settlement agreement approved by a court or by the Department of Labor. The specialist's authority shall include, but is not limited to, the authority to order specific medical care and treatment, medical services or medical benefits, or both, and any authority granted to a court by T.C.A. §50-6-

204(b)(2) to award attorney's fees and reasonable costs that include reasonable and necessary court reporter expenses and expert witness fees or depositions. This law was intended to address the problem that arose after a Department of Labor approval when there was a dispute about specific future medical treatment. The Department of Labor did not previously have the authority to deal with the dispute and since there was never a court involved in the settlement, the employee had no option to go back to court and get a judge to resolve the dispute. This law vests significant new authority in the Department of Labor specialists.

### MMI DATE CLARIFIED WHEN PAIN MANAGEMENT INVOLVED

Public Chapter No. 920 clarifies the date of maximum medical improvement for purposes of temporary total disability benefits when pain management is involved. The Chapter provides that a person is conclusively presumed to be at MMI

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## Department of Labor Announces New Workers' Compensation Rates

### New Rates - Effective July 1, 2010:

- TTD Max Benefits - \$841.50 or 110% of the state's average weekly wage
- PPD Max Benefits - \$765.00 or 100% of the state's average weekly wage
- Minimum Weekly Benefit - \$114.75

## Workers' Comp Education Conference Approaches

*Valuable education, safety and health conference to be held Aug. 15-18 at the Marriott World Center in Orlando, Fla.*

The 65th Annual Workers' Compensation Educational Conference & 22nd Annual Safety and Health Conference will be held on August 15-18, 2010, at the Marriott World Center in Orlando, Florida.

Please join the attorneys of our Workers' Compensation Division as we participate in this conference which is specifically designed to keep you ahead of the learning curve through educational offerings which highlight case law updates, current insurance regulations, as well as emerging national trends. You do not want to miss this opportunity that is targeted to payors, providers, employers, attorneys, adjusters, and other interested parties. The conference will include informative break-out sessions for those working with claims in Tennessee, Georgia, Mississippi, Florida, Alabama, North Carolina, South Carolina, Texas and Louisiana.

The annual conference will provide a wonderful opportunity to bring work comp professionals together for networking, fun, and information sharing.

Keynote and guest speakers include: Sam Friedman, Editor-in-chief of National Underwriter P&C, Paul Radliff, SVP and General Manager at Liberty Mutual Group and Football Legend Dan Marino.

You can learn more about this valuable conference and register online at: <http://www.fwciweb.org/Conference.html>

The screenshot shows the website for the Florida Workers' Compensation Institute (FWCI). The header includes the FWCI logo and the text "FLORIDA WORKERS' COMPENSATION INSTITUTE". Below the header is a navigation menu with links for Home, Conference, Seminars, Publications, Committee, Archives, Links, Search, and Contact Us. The main content area features the title "65TH ANNUAL WORKERS' COMPENSATION EDUCATIONAL CONFERENCE & 22ND ANNUAL SAFETY AND HEALTH CONFERENCE" with the dates "August 15 - 18, 2010". The location is listed as "ORLANDO WORLD CENTER Marriott WORLD & CONVENTION CENTER, 8701 World Center Drive, Orlando, Florida". At the bottom, it states "A Partnership Between" and lists logos for FWCI, The National Underwriter Company, NIOSH, CDC, and the Center for Work-Related Injury Prevention and Research at the University of South Florida.

The screenshot shows the Manier & Herod website. The header includes the Manier & Herod logo and a navigation menu with links for HOME, ABOUT, PRACTICE AREAS, ATTORNEYS, RECRUITING, PUBLICATIONS, and CONTACT. Below the header are three images: a classical building facade, a person reading a book, and a stack of books. The main content area features the text "WHERE TRADITION & INNOVATION MEET" and "FIRM NEWS" with a list of recent news items. At the bottom, there is a disclaimer and contact information.

For updates on the issues cited in this newsletter, please visit the news section of the Manier & Herod website at: [http://www.manierherod.com/about/workerscomp\\_news](http://www.manierherod.com/about/workerscomp_news)

## Adjuster Certification Proposed

The Tennessee Department of Labor recently filed new General Rules that govern the filing of claims forms and the payment of benefits. These Rules include a proposed mandate for the certification of adjusters, which is expected to become effective in the coming months.

A hearing on the approval and implementation of these rules will be held by the Tennessee Department of Labor on August 23, 2010 at 10:00 a.m. CST, location TBA. Manier & Herod attorneys will be present at this hearing.

## Court of Appeals Defends Employers' Subrogation Rights

When employees suffer compensable injuries due to the fault of a non-employer third party (as typically happens when employees are injured in car accidents), the employee can bring two claims for the same accident. The first is a workers' compensation claim against the employer. The second is a personal injury lawsuit (in tort) against the third party.

If the employee gets workers' compensation benefits from his employer plus a tort judgment against the third party, the employee has to reimburse his employer from his tort judgment/settlement what his employer had to pay in workers' compensation benefits (less attorney's fees). Thus, the employer is said to hold a right of reimbursement, or subrogation interest (or lien), in the employee's lawsuit against the third party.

### COURT OF APPEALS DEFENDED RIGHTS OF EMPLOYERS

The Tennessee Court of Appeals recently defended the rights of employers to intervene (become a party) in an employee's third-party lawsuit to protect this interest in *Santander v. Lopez*, No. M2009-01210-COA-R3-CV, (Tenn. Ct. App., 2010). The employee was injured in a car accident in the course and scope of his employment. He brought a claim against his employer for workers' compensation benefits, then, in a separate lawsuit, he alleged the accident was the fault of the third party, Mr. Lopez.

While the employee's lawsuit against Mr. Lopez was pending, the employee

*The Court of Appeals held that employers should be reimbursed whether it intervenes or not.*

settled his workers' compensation claim with his employer.

The employer petitioned the Court to intervene in the case against Mr. Lopez to protect its lien. The trial court refused to allow the employer's intervention, finding that the motion to intervene was not filed in a timely manner. The Court of Appeals disagreed with this refusal and reversed the trial court, allowing the employer to intervene.

### EMPLOYERS SHOULD BE REIMBURSED

The Court of Appeals held that employer should be reimbursed whether it intervenes or not. In fact, even when the employer chooses not to intervene, the law imposes "an implied duty upon the part of the employee's attorney" to pay the lien "when known to him, and when no other attorney represents the employer's subrogation interest."

However, if the employer wants to intervene, it has an absolute right to do so. Note, however, that an employer cannot subrogate against a UM/UIM policy.

Intervention is important if the employer thinks the employee might drop (or "non-suit") his case against the third party. If the employee non-suits and the employer has not intervened, the employer is prevented from bringing its own lawsuit on behalf of the employee seeking reimbursement.

## Manier attorneys presenting at Ga. State Board Conference

Manier & Herod's Workers' Compensation Attorneys will be attending and presenting at the 2010 Georgia State Board Workers' Compensation Annual Educational Conference to be held August 29, 2010 to September 1, 2010 at the Renaissance Waverly Hotel at 2450 Galleria Parkway in Atlanta, Georgia. We look forward to seeing you there!

## Attorneys present at Miss. Conference

Workers' Compensation Attorneys David Drobny and Duane Willis recently presented at the 2010 23rd Annual Mississippi Workers' Compensation Educational Conference held on April 14 - 16, 2010, at the Beau Rivage in Biloxi, MS.



Willis



Drobny

*continued from page 1*

## Legislative Session Wrapup

upon the earliest of the following two events: (1) at the time the treating physician concludes that the employee has reached MMI, or (2) 104 weeks after the commencement of the pain management treatment. This bill was drafted by Manier & Herod. Its purpose is to clarify the situation as to whether or not a person is at MMI when they are still being treated by a pain management doctor. Some plaintiffs' attorneys had argued that even though the treating doctor has put the employee at MMI that they are not at MMI because they are still being treated by pain management. This bill conclusively refutes that argument.

## MEANINGFUL RETURN TO WORK CLARIFIED

Public Chapter No 1034 became law on June 3, 2010. It deals with problems involved when employers reach an agreement with workers regarding reduced hours or a reduction in pay when those reductions are due to economic conditions. The bill is intended to prevent employees from reopening their cases when, due to the economy, the employer has had to cut back on the hourly pay rate or cut back on the amount of hours worked. The bill excludes employees involved in lay-offs, closures, or a termination of business operations.

## WORKERS' COMP REQUIREMENTS FOR CONSTRUCTION WORKERS

Public Chapter No. 792. A bill passed in 2008 that was intended to require that all construction workers be covered by workers' compensation. However, many solo employers complained that the coverage was too expensive. The House and Senate have agreed upon a bipartisan bill that allows sole proprietors, partners, LLC members, etc. to exempt themselves from the workers' compensation coverage requirements. This involves specific filings with the Secretary of State's office. The bill has been sent to the Governor for signature.

## Workers' Comp Division Directory

### Attorneys

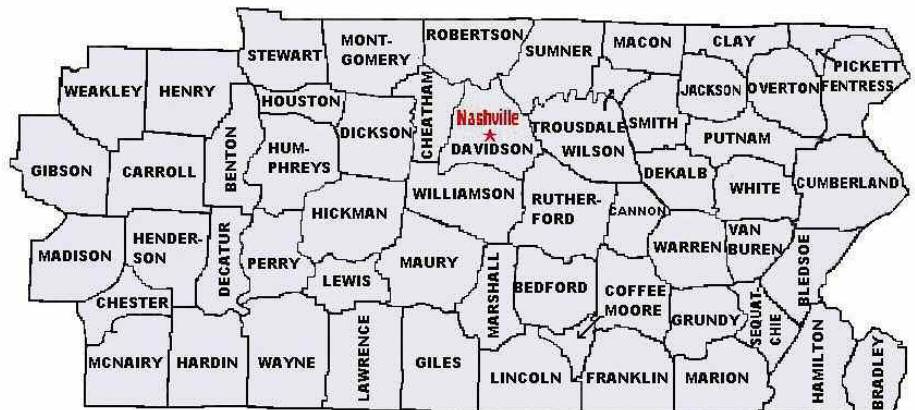
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## Workers' Compensation Practice Area

Although Manier & Herod's Workers' Compensation practice services the entire state upon client request, it is based in Nashville and regularly services the following 57 counties:



This newsletter is intended to summarize recent developments in Tennessee Workers' Compensation Law and should not be construed as legal advice. Please consult competent legal counsel for answers to your particular legal questions. Certifications of specialization are available to Tennessee lawyers in all areas of practice relating to or included in the areas of civil trial, criminal trial, business bankruptcy, consumer bankruptcy, creditors' rights, medical malpractice, legal malpractice, accounting malpractice, elder law, and estate planning. Listing of related or included practice areas herein does not constitute or imply a representation of certification of specialization. If you would like to be added to our newsletter mailing list, please contact Annette Fountain at (615) 742-9418.