

SOUTH CAROLINA Workers' Comp LAW BLOG



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Case Law Update: Heatstroke at Hands of Home Health Aide Compensable



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Practice Areas:

- Workers' Compensation
- Professional Liability

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About two weeks ago, the South Carolina Court of Appeals considered whether a heat stroke suffered by a quadriplegic was a foreseeable consequence of his original work accident. In *Timms v. J.D. Kitts Construction*, No. 4840, (S.C. Ct. App. filed June 15, 2011) (Shearouse Adv. Sh. No. 20 at 143), J.D. Kitts and its carrier (collectively "Appellants") sought review of a decision of the Appellate Panel, which ordered them to pay Claimant's medical expenses after he suffered a heatstroke while in the care of a home health aide. This is the first time the court has considered whether negligence caused by treatment providers other than physicians is compensable. Here's what happened:

Claimant fell from scaffolding in 2006, rendering him a quadriplegic. Appellants provided medical and lifetime indemnity benefits, to include home health care. On June 9, 2007, Claimant asked his home health aide to take him to Wal-Mart. The aide left Claimant in the car, in 100 degree heat, while returning to the store to look for her lost keys. When she returned to the car, Claimant was unconscious. At the hospital, the attending physician diagnosed coma due to heatstroke. Despite testing positive for cocaine, the physician opined the heatstroke was the main cause of Claimant's condition. The heatstroke resulted in some brain damage.

Claimant filed for medical benefits related to the heatstroke, and Appellants denied the claim. The Single Commissioner awarded benefits, and the Appellate Panel affirmed, finding the "heatstroke was a natural consequence of [Claimant's] original work-related injury—his quadriplegia—because it prevented him from extricating himself from his caregiver's overheated car." *Timms* at 145.

"Every natural consequence that flows from a work-related compensable injury is also compensable unless the consequence is the result of an independent, intervening cause sufficient to break the chain of causation." *Id.* at 149 (citations omitted). Appellants argued two intervening, superseding causes "broke the chain of legal causation." *Id.* at 148 (citation omitted). First, Claimant chose to ride in the aide's car without air-conditioning on an extremely hot day. Second, but for the aide's negligence and/or "criminal behavior," the heat stroke would not have occurred. The court found Claimant's decision to ride in the car was not unreasonable because he could not have known the aide would leave him in the car to look for her lost keys. The court agreed with the Appellate Panel, finding the quadriplegia caused the heatstroke because it prevented Claimant from being able to get out of the hot car.

As to the caregiver's negligence, the court held "[i]njuries due to the negligence of non-physicians connected with the process of treatment or convalescence are within the compensable range of consequences of the original work-related injury." *Id.* at 152 (citing *Larson's Workers' Compensation Law* §10.09(3)). This is the first time the court has considered whether negligence caused by treatment

providers other than physicians is compensable, and arguably, this is the most important point to take away from this decision. It is well-settled in South Carolina that a physician's negligence is compensable as part of a workers' compensation claim, but this is the first time the court has applied this same concept to other caregivers. See S.C. Code Ann. § 42-15-70. With this holding, the court expanded the scope of compensability for claims arising out of negligence to providers other than physicians. See *id.* at 151 (considering case law from other jurisdictions where compensability extends to negligence by "orderlies, first aid personnel, physical therapists and even hospital maintenance staff.")

Because the Act allows carriers to choose treatment providers, the Claimant's bar would argue this is the only fair consequence if the treatment provider is negligent. Further, the carrier has the right to assert a lien against any third party proceeds if the claimant chooses to sue the negligent party in civil court.

Practice Point: Carriers - beware of this decision, and take care when choosing any type of treatment provider.

- Anne Marie

About Anne Marie Hempy

Anne Marie Hempy is an associate practicing in the areas of Workers' Compensation and Defense Litigation. While in law school, Anne Marie worked as a law clerk for Collins & Lacy and served as an Articles Editor for the South Carolina Law Review. Prior to joining Collins & Lacy as an associate, Anne Marie served as a law clerk to the Honorable G. Ross Anderson, Jr., United States District Court, District of South Carolina and worked for a defense firm, where she practiced in the area of Professional Liability Defense.

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