

# COMP NEWS

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## Consumer Advocate blocks NCCI's request

NCCI wants a 7.3% loss cost increase in South Carolina, effective July 1, 2012, but the request is being blocked by Elliot Elam, South Carolina Consumer Advocate.

He has been negotiating with NCCI but the parties have been unable to reach a compromise. The matter is set for a hearing October 8 before Ralph King Anderson, III, Chief Judge, Administrative Law Court.

Whatever the final outcome, it won't be retroactive to July 1, Mr. Elam says. While he thinks NCCI's request is too high, Mr. Elam says he does not have a specific number in mind. His office has commissioned a study by actuary Marty Simons.

NCCI cites deteriorating claims experience in 2008 and 2009 and an increase in claims frequency. Combined ratios in South Carolina deteriorated from 94% in 2007 to 100% in 2008 and 107% in 2009, and jumped to 124% in 2010.

"This is the first filed increase in South Carolina since the filing effective in July 2008," NCCI said in an accompanying statement.

The Consumer Advocate has a history of stymieing NCCI. On a separate issue, Mr. Elam won a big victory earlier in the year when the Court of Appeals ruled his office has a right to inspect NCCI's loss-cost data, even if the group is asking for an overall decrease in loss costs.

The court pointed out NCCI's filing covers so many classifications, loss costs can increase for some classifications even while they decrease for others.

## South Carolina

### Self-insurers retain 25% market share

Despite a steady decline in the number of self-insured employers and group funds, self-insurers retain 25.6% of the workers' compensation market in South Carolina.

Last year, there were 100 self-insured employers in the state, compared to 114 in 2008, and 147 in 2002. There are nine self-insured funds, compared to 10 in 2008 and 13 in 2002.

The decline is directly attributable to the decline of manufacturing jobs in the U.S., says W.C. Smith, III, director of self-insurance at the Workers' Compensation Commission. He points out between 2001-2010, South Carolina lost 18 of 21 self-insured textile employers to closure, bankruptcy, and outsourcing.

Self-insurance has also suffered in what may be the longest soft market ever in workers' compensation. Rates are starting to firm but we are still a long way off from a hard market.

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## Judicial Notes by Mike Chase

### Cranford v. Hutchinson Construction

# Court files revised opinion

Following our article on this case in the spring newsletter, the South Carolina Court of Appeals withdrew, substituted, and re-filed a revised opinion on June 13, 2012. The following discusses what has changed.

In *Cranford v. Hutchinson Construction*, (Op. No. 4939, Ct. App. June 13 2012), claimant sustained injuries to his hands, arms and back after having to jump out of a forklift basket. Cranford returned to work on August 13, 2007, but the employer restricted him to light duty work.

He was terminated on August 31, 2007 for being unsafe on the job. The single commissioner awarded 4 weeks to the left arm, 8 weeks to the right arm (both for scarring) and 0% PPD to the back and held claimant was not entitled to TTD or additional medical benefits.

The full commission affirmed. The court of appeals initially held that the commission was correct in not awarding TTD benefits because claimant received salary in lieu of TTD benefits while he was out of work, and was assigned light duty when he returned to work until he was terminated for cause: violating the company's safety policy.

The Court noted that prior to his termination, Cranford worked "a minimum of 15 days" (See section 42-9-260(B)(1) allowing termination of TTD benefits after

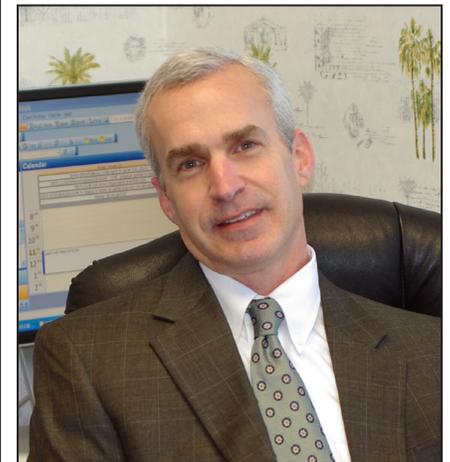
15 days of work completed when within 150 days of notice of the accident). The case was remanded to the Commission for other reasons, including a finding on whether the Claimant had reached MMI for all injuries.

However, the court of appeals then withdrew this opinion and re-filed a substituted opinion holding Claimant was entitled to TTD benefits because Claimant was not released to work without restriction: he was told to refrain from heavy lifting and strenuous activity and to "take it easy."

The Court added that despite having worked more than 15 days, an employer must reinstate weekly benefits following termination unless a doctor determines a Claimant can return to work without restriction or has achieved MMI. The Court concluded that since Claimant wasn't released to return to work until June 3, 2008 at MMI with "the use of good body mechanics and careful lifting techniques," the employer is required to pay TTD benefits from the day of his termination until the date of MMI.

Employers should still strive to carefully document all employee performance problems and disciplinary actions up to and including reasons for termination after a work injury and following a period of TTD. While the substituted decision in Cranford

(TTD may be owed following termination if claimant is not released at full duty or MMI) is now law, employers should still be prepared to present evidence and testimony in the event an injured worker is able to transition from light to full duty, or is assigned MMI prior to termination for unrelated causes.



MIKE CHASE  
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\* Disclaimer—This case law summary is not intended as legal advice. Contact your lawyer with questions regarding the potential impact upon your particular claim or situation.



*President's note*

DAVID BENENHALEY  
President

## Consumer Advocate does his job

We can't but help laud state Consumer Advocate Elliott Elam for forcing NCCI to defend its proposals for rate increases in South Carolina. He is among the very few who have the conceptual wherewithal and understanding of the process to challenge the formidable organization.

In 2012, as in 2009 and 2007 and 2005, the Consumer Advocate said "not so fast" when NCCI filed its request to revise loss costs in South Carolina. While it is too early to know what the outcome will be for 2012, the Consumer Advocate succeeded in moderating the increases in 2005 and 2007.

He won over the 2009 filing also, as recently ruled by the Court of Appeals. NCCI had proposed an average rate decrease of 0.3% in 2009 and it was approved by the department of insurance, which did not publish notice of the filing. As we report on page one of this issue, the Consumer Advocate took the matter to court and argued his office should have authority to review all filings, even when the request is for an overall decrease. Since NCCI's filings cover nearly 700 job classifications, loss costs often go up for some classifications even as they decrease for others.

NCCI is reputable enough to have the data to back up its rate requests. A little sunshine, a little airing is good for the system.

Until next time,

*David*

## Alarm over narcotics use

Three major groups have sounded the alarm in recent months over narcotics use in workers' compensation, as evidence mounts narcotic use is becoming more common and may be delaying return to work.

"Workers who received high doses of opioid painkillers to treat injuries like back strain stayed out of work three times longer than those with similar injuries who took lower dose," the New York Times reported in July. It added use of narcotics for workplace injuries is drawing scrutiny because there is little evidence they provide long-term benefits.

The newspaper cited a study by Accident Fund Holdings, an insurer that operates in 18 states, which found when medical care and disability payments are combined, the cost of a workplace injury is nine times higher when a strong narcotic like OxyContin is used than when a narcotic is not used.

Specifically, the insurer found the cost of a typical workplace injury increased from about \$13,000 to \$39,000 when a worker was prescribed a short-acting painkiller like Percocet. The cost jumped to \$117,000 when a stronger longer-acting opioid like OxyContin was prescribed.

In June, NCCI released a study which found narcotics use is becoming more common. The percentage of medical claims receiving narcotics within one year after injury increased from 8% in 2001 to 13% in 2008. Initial narcotic use is indicative of future use," the group found.

In May, the Workers' Compensation Research Institute hosted a webinar on narcotic use and discussed poor follow-up by prescribing physicians. "Few longer-term users of narcotics received the recommended services for monitoring, contrary to medical guideline recommendations," WCRI notes.



# Calendar

<b>August 28, 2012</b>	NCCI's 2012 State Advisory Forum. Hilton Columbia Center, Columbia.
<b>November 1, 2012</b>	General Membership Meeting, SC Self-Insurers Association. Seawell's, Columbia.
<b>April 10-12, 2013</b>	Members-Only Forum, SC Self-Insurers Association. Litchfield Beach & Golf Resort.

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## NCCI

### New rating plan in January

Employers with poor loss histories would pay more for comp coverage under NCCI's revised experience rating plan, while employers with above-average experience will benefit from the change next January. The revision could have a "material" impact on individual employers' premiums, Pamela F. Ferrandino, casualty practice leader, placement for Willis North America Inc. in New York, told Business Insurance.

"What we will see this do is really reward companies that have worked hard to improve and maintain their loss profile," Ms. Ferrandino said. "Those risks that really have better-than-average experience benefit from being better than average," she added.

Last year NCCI completed a comprehensive review of its Experience Rating Plan and, consequently, proposed an increase to the primary/excess split point from the current value. The split point is the value at which a claim is split in the experience rating formula between primary and excess loss amounts, the group explains.

"The last split point update occurred two decades ago, and since that time, the average cost of a claim has tripled. Because of this, the portion of each claim that flows into the experience rating formula at full value (primary loss amount) is much smaller than what it used to be 20 years ago," it adds.

NCCI helps 38 states set their workers' compensation rates. The changes to the experience modification factor would become effective with Jan. 1, 2013, policy purchases or renewals. Every NCCI state has approved the split-point adjustment, Business Insurance reports.

NCCI says the change will occur over three years. In Year 1, the split point will increase from the current \$5,000 to \$10,000, moving up to \$13,500 the following year, and to \$15,000 in 2015, plus two years of inflation adjustment (rounded to the nearest \$500). "Under this split-rating method, actual primary losses are given full weight in the experience rating formula while actual excess losses only receive partial weight," the group explains. Business Insurance notes the biggest impact will be on employers experiencing high-frequency, low-severity workers' comp claims.

NCCI agrees. "It is a plan that is heavily leveraged on frequency of loss vs. severity of loss because those are the types of injuries that get controlled by employers through their safety programs," a NCCI official commented to the publication.