

# COMP NEWS

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## Drones, robots making worksites safer

Safety experts are enthusiastic about the increased use of drones and robots in the workplace as the newer models are smarter, safer, more versatile, and less expensive. Some analysts say the new technologies are ushering in a second machine age and have the potential to be as revolutionary as the Internet.

Drones, which until very recently sounded like science fiction, are now practical and common enough for the Federal Aviation Administration to issue operational rules to fully integrate them into the nation's airspace. The agency says its recently issued regulations will stimulate innovation, create jobs, and prevent work-related injuries and fatalities.

"We are part of a new era in aviation, and the potential for unmanned aircraft will make it safer and easier to do certain jobs, gather information, and deploy disaster relief," said U.S. Transportation Secretary Anthony Foxx in announcing the new rules in June.

FAA Administrator Michael Huerta added "with this new rule, we are taking a careful and deliberate approach that balances the need to deploy this new technology with the FAA's mission to protect public safety. But this is just our first step. We're already working on additional rules that will expand the range of operations."

Industry analysts estimate the FAA's action will help generate more than \$82 billion for the U.S. economy and create more than 100,000 new jobs over the next 10 years. The number of drones, or commercial unmanned aerial systems, is expected to grow rapidly over the next five years, increasing from 32,800 in 2016 to 101,300 next year, and to 542,200 by 2020.

"For anything a person can do, there is someone trying to find out if it can be done easier with a drone," an official with **ProSight Specialty Insurance Group Inc.**, which offers drone insurance, noted to *Business Insurance*. The publication says among the tasks ideally suited to drones are inspections of tall telecommunications equipment and construction sites.

Drones are improving safety on construction sites by, among other things, checking to ensure scaffolding is set up properly or that workers are using fall-protection equipment. Also, drones can easily fly over infrastructure and send back images showing the condition of electric lines and other equipment, **Business Insurance** adds.

Utility companies, in particular, note drones reduce the number of times workers have to negotiate steep terrain or make dangerous ascents and descents of high towers. Roofing companies, to cite another example, like drones because drone aerial photography enables them to check roofs are installed properly without having to send somebody up on the roof.

Although consumers associate drones with battlefields, the unmanned systems have an even brighter future in agricultural fields. As the **Des Moines Register** notes, that's because agriculture operations span large areas and are mostly free of privacy and safety concerns that have bogged the use of drones in populated areas.

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## Judicial Notes

### SC Self Insurance Fund not a Trust for Purposes of Direct Action by its Members

The South Carolina Court of Appeals recently ruled in favor of a nonprofit organization created so its members could meet their obligations under the South Carolina Workers' Compensation Act (the Act). The Court found that the fund was not a trust but an unincorporated association, and the members' claims against the fund failed as a result.

In *Patterson v. S.C. Home Builders Self Insurers Fund*, Op. No. 4516 (S.C. Ct. App. June 15, 2016), Home Builders Association of South Carolina, Inc. (HBASC) created the Home Builders Self Insurers Fund (the Fund) in a document titled "Agreement and Declaration of Trust". The Fund's purpose was to meet and fulfill HBASC's members' obligations and liabilities under the Act. The Fund is regulated and controlled by the Commission.

To become a member of the Fund, and comply with the Act, a homebuilder must submit an application to the Commission. If approved, the homebuilder receives a certificate confirming membership in the Fund. Five weeks later, the Fund begins billing the new member for a predetermined premium rate. Also, each member is jointly and severally liable for the obligations of the Fund.

At some point, the Fund's board voted to remove \$5 million from the Fund to establish a separate member-owned insurance company. As a result, some members sued for breach of fiduciary duty, breach of trust, and breach of contract.

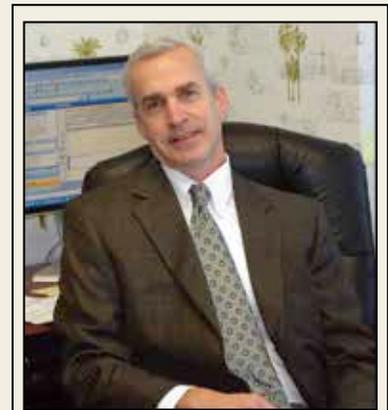
The Court held that the Fund was not a trust, but instead an unincorporated association. While the Fund contained language indicative of being a trust, it lacked two other elements needed to create a trust.

First, upon creation it needed to give money or property to the Board to hold for its members. Yet, funds were only added after its creation through the members' payments of premiums and dues for their own workers' compensation obligations. Secondly, there were no ascertainable beneficiaries because homebuilders had to go through a two-step process in order to become a member.

In summary, the Court found the Fund was an unincorporated association because it was a common enterprise of homebuilders who voluntarily joined together to form a fund to provide workers' compensation coverage for their employees.

Because the Fund was an unincorporated association, the members had to comply with the rules for derivative lawsuits, which are required to enforce a right or loss.

The Court concluded the member's rights were derivative in nature since the action was premised on an alleged harm to the overall Fund, rather than the individual members. Therefore, the claims failed because the members did not first place a demand (required by statute in derivative suits) on the Board to take action to remedy their complaints before filing suit.



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**Comments:** *This does not constitute legal advice. You should seek the counsel of your attorney concerning the application of the information in this article to your particular situation. If you have comments, please contact Mike at [mchase@turnerpadget.com](mailto:mchase@turnerpadget.com).*



*President's note*



BRIAN TEUSINK  
President

## A new direction for the association

Last newsletter we raised the question of whether we need an Association and opined about the relatively low number of dues-paying members and declining attendance at our meetings. With a generally favorable workers' compensation environment in South Carolina, and the lack of substantive issues with which to grapple, it is a real challenge to remain relevant as an Association. That is why the board has undertaken a strategic planning initiative to define the Association's future.

We are aggressively challenging the status quo and seeking to broaden our reach. Separate work groups have been evaluating the Association's bylaws, vision and mission, and social media presence. On June 24, the full board met to discuss the ideas developed by the work groups and to develop a strategic plan. I extend thanks to my fellow board members for their diligent work and open-mindedness to new approaches.

A significant portion of this fall's General Membership Meeting will be devoted to conveying the board's vision of the future, and members will be asked to approve momentous changes to the bylaws which will allow us to move beyond our somewhat limited current constituency. You will receive additional information prior to the meeting, but I encourage you to mark your calendar to ensure your attendance on November 3. Your support of the Association and the exciting changes being proposed is critical to ensure we succeed in our endeavors.

Until next time,

*Brian*

## Commission set to approve provider manual

The S.C. Workers' Compensation Commission is reviewing a draft version of the 2016 Medical Services Provider Manual and will consider adopting the new schedule at its business meeting on August 15. Interested parties should submit comments by July 29.

The maximum allowable payment and other fees in the 2016 manual are calculated utilizing the 2016 Resource Based Relative Value Scale (RBRVS) produced by the Centers for Medicare & Medicaid Services, the American Medical Association's CPT Codes, and a \$50 conversion factor.

In 2015 the General Assembly enacted legislation which placed statutory limitations in the change in the value of each CPT codes to no more than 10% increase or a 10% decrease. Any increase or decrease greater than 10% would allow a party to challenge the manual in administrative law court. In order to comply with these limitations, the proposed fee schedule was developed with no increase or decrease greater than 10%, the Commission reports.

As a result of the changes in the CMS RBRVS and maintaining the \$50 conversion factor, the overall average change for all categories is 2.58%. The manual is divided into eight sections. Each section has relevant policies and procedures and the CPT codes with the corresponding Maximum Allowable Payment allowed.

The changes are reflected below:

Evaluation & Med	0.02%
HCPSCS	5.12%
Lab/Pathology	7.59%
Medicine	1.01%
Physical Medicine	0.59%
Radiology	-0.20%
Special Reports	3.2%
Surgery	-0.10%
<b>Overall Change</b>	<b>2.58%</b>



# Calendar

- November 3, 2016** General Membership Meeting,  
SC Self-Insurers Association.  
Seawell's, Columbia.
- 
- March 29-31, 2017** Annual Conference,  
NC Association of Self-Insurers.  
Holiday Inn Resort, Wrightsville Beach.
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- April 5-7, 2017** Annual Conference,  
SC Self-Insurers Association.  
Hilton Myrtle Beach Resort.

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"Farmers with operations spanning hundreds or thousands of acres could use drones to find and possibly treat a disease before it spreads, or tailor the amount of pesticides, water, fertilizer, and other applications to reduce costs and boost production. Livestock producers could monitor cattle and other livestock," the newspaper adds.

Drones will likely have a future even in the insurance industry as they can more accurately measure insurance claims by surveying an entire agricultural field rather than certain sections, and do so in a way that resolves the claim much faster. It also could save the government millions by avoiding payouts on fraudulent claims, the publication states.

"I think this really is a technology that is going to be a huge game-changer for agriculture," says Christina Bloebaum, a professor of aerospace engineering at Iowa State University.

While drones in recent years have caught the public's fancy, it is robots that are having a revolutionary impact in the workplace. "The idea, once so amazing, of robots working on assembly lines is regarded these days as laughably primitive by those in business," is how the *Guardian* newspaper summed up the contemporary scene.

"Thanks to vast increases in dexterity and the ability to see in three dimensions, modern robots can cook and serve fast food; pick fruit, carefully distinguishing between the ripe and unripe; keep control of huge inventories and stack shelves accordingly," it added.

The *London Review of Books* offers another glimpse of the modern worksite. "Take a look online at the latest generation of Kiva robots employed by Amazon. The robots are low, slow, accessorized in a friendly orange. They can lift three thousand pounds at a time and carry an entire stack of shelves in one go."

"Directed wirelessly along preprogrammed paths, they swivel and dance around each other with surprising elegance, then pick up their packages according to the instructions printed on automatically scanned barcodes. They are not alarming, but they are inexorable, and they aren't going away: the labor being done by these robots is work that will never again be done by people," the publication adds.

Robots have become so smart and versatile it is commonplace now for analysts to warn they will soon start displacing tens of thousands of workers. Whereas robots used to be big and clumsy and could do only one thing over and over, "collaborative robots" can be set to do one task one day—such as picking pieces off an assembly line and putting them in a box—and a different task the next.

"Some are mobile and able to range freely inside a factory. The use of advanced sensors means they stop or reposition themselves when a person gets in their way, solving a safety issue that long kept robots out of smaller factories," reports the *Wall Street Journal*.

Indeed, the day is not far off when machines on the plant floor will actively identify problems, determine a course of action, execute, and measure those results, predicts Seegrid, which manufactures driverless vision guided vehicles for use in warehouses and distribution centers.