

2006

Working RX, Inc. v. Workers Compensation Fund : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

M. David Eckersley; Attorney for Appellee.

Rex H. Huang; Attorney for Appellant.

Recommended Citation

Brief of Appellant, *Working RX, Inc. v. Workers Compensation Fund*, No. 20061131 (Utah Court of Appeals, 2006).
https://digitalcommons.law.byu.edu/byu_ca2/7019

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE COURT OF APPEALS STATE OF UTAH

WORKING RX, INC., a
Delaware corporation,

Plaintiff,

vs.

WORKERS COMPENSATION
FUND et al,

Defendants.

BRIEF OF APPELLANT

Appellate Court Number:
20061131-CA

APPEAL from a Decision of the
Third Judicial District Court, West Jordan Department
Salt Lake County, State of Utah
Honorable Robert W. Adkins

M. David Eckersley
175 East 400 South, #900
Salt Lake City, UT 84111
Attorney for Appellee / Defendant

REX H. HUANG #7225
4225 Lake Park Blvd., Suite 400
Salt Lake City, UT 84120
Telephone: (801) 417-6444
(801) 417-6302
Attorney for Appellant / Plaintiff

(ORAL ARGUMENT AND PUBLISHED DECISION REQUESTED)

FILED
UTAH APPELLATE COURTS
APR 10 2007

IN THE COURT OF APPEALS STATE OF UTAH

WORKING RX, INC., a
Delaware corporation,

Plaintiff,

vs.

WORKERS COMPENSATION
FUND et al,

Defendants.

BRIEF OF APPELLANT

Appellate Court Number:
20061131-CA

APPEAL from a Decision of the
Third Judicial District Court, West Jordan Department
Salt Lake County, State of Utah
Honorable Robert W. Adkins

M. David Eckersley
175 East 400 South, #900
Salt Lake City, UT 84111
Attorney for Appellee / Defendant

REX H. HUANG #7225
4225 Lake Park Blvd., Suite 400
Salt Lake City, UT 84120
Telephone: (801) 417-6444
(801) 417-6302
Attorney for Appellant / Plaintiff

(ORAL ARGUMENT AND PUBLISHED DECISION REQUESTED)

LIST OF PARTIES

PLAINTIFF:

WORKING RX, INC., a Delaware corporation

DEFENDANTS:

WORKERS COMPENSATION FUND, a Utah corporation, and
THE DELTA CENTER, and
SNOWBIRD LTD, and
ENABLE INDUSTRIES INCORPORATED, and
BESS REALTY, INC., and
NEWSPAPER AGENCY CORPORATION, and
PARKDALE CARE CENTER, INC., and
R.C. WILLEY HOME FURNISHINGS, and
QUALITY EXCAVATION, INC., and
NEW STAR GENERAL CONTRACTORS, INC., and
KARMAN KITCHENS, INC., and
DANVILLE SERVICES CORPORATION, and
CLYDE COMPANIES, INC., and
INTERMOUNTAIN STAFFING RESOURCES, and
ZITTING BROTHERS CONSTRUCTION, INC., and
STRATEGIC STAFFING, INC., and
COMMERCIAL DRYWALL INC., and
JACOBSEN CONSTRUCTION COMPANY, INC., and
QUESTAR GAS COMPANY, and
GENEVA ROCK PRODUCTS, INC., and
ALL AMERICAN PLAYGROUND, INC., and
NIELSON CONSTRUCTION, and
TITAN STEELE CORPORATION, and
AZTEC STEEL SYSTEMS, INC., and
QUALITY LIGHTING SERVICES, INC., and
WESTRIDGE STUCCO, INC., and
HARLEY DAVIDSON OF SALT LAKE CITY, LLC, and
GSC FOUNDRIES, INC., and
HOLIDAY OIL COMPANY, and
SPINDLER CONSTRUCTION CORPORATION, and
ENERGY WEST MINING COMPANY, and
JOHN DOES 1-1000,

TABLE OF CONTENTS

LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
STATEMENT OF JURISDICTION	1
STATEMENT OF ISSUES PRESENTED FOR REVIEW	1
CONSTITUTIONAL AND STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	2
STATEMENT OF RELEVANT FACTS	4
SUMMARY OF THE ARGUMENT	5
ARGUMENT	8
I. THE TRIAL COURT ERRED WHEN IT FOUND THAT THE WORKERS' COMPENSATION ACT DID NOT PROVIDE FOR A PRIVATE RIGHT OF ACTION	8
A. DUTIES OF EMPLOYER AND WORKERS COMPENSATION INSURANCE CARRIER	8
B. THE WORKERS COMPENSATION ACT PROVIDES FOR A PRIVATE RIGHT OF ACTION FOR PLAINTIFF	10
C. LEGISLATIVE HISTORY IMPLIES A PRIVATE RIGHT OF ACTION UNDER THE WORKERS COMPENSATION ACT ..	13

D.	CASE LAW SUPPORTS A PRIVATE RIGHT OF ACTION FOR PLAINTIFF	17
E.	EXCLUSIVE REMEDY PROVISION IS NOT APPLICABLE TO PLAINTIFF’S CLAIM	20
II.	THE TRIAL COURT ERRED WHEN IT FOUND THAT THE LABOR COMMISSION HAD JURISDICTION OVER A CLAIM IN EQUITY FOR UNJUST ENRICHMENT	21
	CONCLUSION	27
	ADDENDUM	

TABLE OF AUTHORITIES

<u>American Towers Owners Ass’n v. CCI Mech., Inc.</u> , 930 P.2d 1182 (Utah 1996)	23
<u>Bell v. Blue Cross of California</u> , 31 Cal.Rptr.3d 688 (Cal. App. 2005)	25, 26
<u>Bevans v. Industrial Comm’n of Utah</u> , 790 P.2d 573 (Utah Ct. App. 1990)	22
<u>Brown & Roots Indus. Serv. v. Industrial Comm’n</u> , 905 P.2d 305 (Utah Ct. App. 1995) 14	
<u>Buckner v. Kennard</u> , 2004 UT 78, 99 P.3d 842	19
<u>Cannon v. Travelers Indemnity Co.</u> , 2000 UT App. 10, 994 P.2d 824	18, 19
<u>Cline v. State</u> , 2005 UT App. 498, 142 P.3d 127	17
<u>Cook v. Peter Kiewit Sons Company</u> , 386 P.2d 616, 617 (Utah 1963)	8
<u>Consolidation Coal Company v. Utah Division of State Lands and Forestry</u> , 886 P.2d 514 (Utah 1994)	26
<u>Cort v. Ash</u> , 422 U.S. 66 (1975)	10
<u>Desert Miriah, Inc. V. B & L Auto, Inc.</u> , 12 P.3d 580 (Utah 2000)	24
<u>Hunsaker v. State</u> , 870 P.2d 893 (Utah 1993)	20
<u>IHC v. Industrial Commission</u> , 657 P.2d 1289 (Utah 1982)	20, 21
<u>Lone Mountain Production Co. v. Natural Gas Pipeline Co. of America</u> , 710 F. Supp. 305 (D. Utah 1989)	7
<u>Machan v. UNUM Life Ins. Co. of America</u> , 2005 UT 37, 116 P.3d 342	11, 18
<u>Maryland Casualty Company v. Industrial Commission of Utah</u> , 364 P.2d 1020 (Utah 1961)	9

<u>Miller v. Weaver</u> , 2003 UT 12, 66 P.3d 592	16
<u>Millet v. Logan City</u> , 2006 UT 466, 147 P.3d 971	1, 2
<u>Milliner v. Elmer Fox & Co.</u> , 529 P.2d 806 (Utah 1974)	17
<u>Oakwood Vill. LLC v. Albertsons, Inc.</u> , 2004 UT 101, 104 P.3d 1226	1, 2
<u>Richards Irrigation Co. v. Karren</u> , 880 P.2d 6 (Utah. Ct. App. 1994)	17, 18
<u>River Park Hospital v. Blue Cross Blueshield of Tenn.</u> , 173 S.W.3d 43 (Tenn. App. 2002)	26
<u>Savage v. Educators Ins. Co.</u> , 908 P.2d 862 (Utah 1995)	22, 23
<u>Shattuck-Owen v. Snowbird Corp.</u> , 16 P.3d 555 (Utah 2000)	20
<u>Sheppick v. Albertson's, Inc.</u> , 922 P.2d 769 (Utah 1996)	22
<u>Temple University Hospital v. Healthcare Management Alternatives</u> , 832 A.2d 501 (Pa. Super. 2003)	25
<u>Touchard v. La Z-Boy, Inc.</u> , 2006 UT 71, 148 P.3d 945	20, 21, 22
<u>Youren v. Tintic Sch. Dist.</u> , 2004 UT App. 33, 86 P.3d 771	17
UTAH CODE ANN. § 34A-2-101	1, 8, 9
UTAH CODE ANN. § 34A-2-105	20, 21
UTAH CODE ANN. § 34A-2-111	12, 13, 14, 15, 24
UTAH CODE ANN. § 34A-2-209	17
UTAH CODE ANN. § 34A-2-401	2, 9, 12
UTAH CODE ANN. § 34A-2-407	2, 11, 12, 13, 16

UTAH CODE ANN. § 34A-2-418 1, 2, 3, 5, 8, 9, 18

UTAH CODE ANN. § 34A-2-801 11, 12, 13, 15, 16

UTAH CODE ANN. § 58-17b-101 13

UTAH CODE ANN. § 31A-26-303(5) (1999) 19

UTAH ADMINISTRATIVE CODE RULE 612-2-12 8, 11

UTAH ADMINISTRATIVE CODE RULE 612-2-24 11, 23

UTAH ADMINISTRATIVE CODE RULE 590-89-3 19

STATEMENT OF JURISDICTION

The Utah Supreme Court has original jurisdiction under UTAH CODE ANN. § 78-2-2(3)(j) (2006). The Utah Court of Appeals now has jurisdiction over this matter pursuant to UTAH CODE ANN. § 78-2a-3(2)(j) (2006).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Issue I. Did the trial court err in dismissing Plaintiff's first cause of action for violations of UTAH CODE ANN. § 34A-2-418(1) (1997), when the court found that the Workers Compensation Act, UTAH CODE ANN. § 34A-2-101 *et seq.*, did not provide for a private right of action.

A trial court's order granting a motion to dismiss under UTAH R. CIV. P. 12(b)(6) is a question of law that is reviewed for correctness. Oakwood Vill. LLC v. Albertsons, Inc., 2004 UT 101, ¶9. When reviewing for correctness, the Court accepts "the factual allegations in the complaint as true and interpret[s] those facts and all inferences drawn from them in the light most favorable to the plaintiff as the non-moving party." *Id.* The trial court's ruling is granted no deference. *Id.* The trial court's ruling may be affirmed only if it clearly appears that the plaintiff would not be entitled to relief under the facts alleged or under any set of facts [plaintiff] could prove to support [its] claim." Millet v. Logan City, 2006 UT 466, ¶5 (citing Baker v. Angus, 910 P.2d 427, 430 (Utah Ct. App. 1996)).

This issue was preserved in the trial court. See Records Index 191-200.

Issue II: Did the trial court err in dismissing Plaintiff's second cause of action for unjust enrichment when it found that the Labor Commission had jurisdiction over such claim?

A trial court's order granting a motion to dismiss under UTAH R. CIV. P. 12(b)(6) is a question of law that is reviewed for correctness. Oakwood Vill. L.L.C., 2004 UT at ¶9. When reviewing for correctness, the Court accepts "the factual allegations in the complaint as true and interpret[s] those facts and all inferences drawn from them in the light most favorable to the plaintiff as the non-moving party." Id. The trial court's ruling is granted no deference. Id. The trial court's ruling may be affirmed only if it clearly appears that the plaintiff would not be entitled to relief under the facts alleged or under any set of facts [plaintiff] could prove to support [its] claim." Millet, 2006 UT at ¶5 (citing Baker v. Angus, 910 P.2d 427, 430 (Utah Ct. App. 1996)).

This issue was preserved in the trial court. See Records Index 191-200.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Utah Code Annotated Sections 34A-2-401(2) (1997), 34A-2-407(12) (2003), and 34A-2-418(1) (1997).

STATEMENT OF THE CASE

This is a case in which one party has provided valuable services and goods to another party but that other party has failed to pay for the reasonable value of such services and goods. In this case, Working Rx, Inc. ("Plaintiff"), contracted with and

provided services to pharmacies throughout the nation by processing, handling, and billing injured workers' prescription claims. After the pharmacy fills the prescriptions for the injured worker, the pharmacy assigns all rights of collection of that pharmacy invoice to Plaintiff.

Defendants are comprised of employers throughout the state of Utah and their workers' compensation insurer, the Workers Compensation Fund ("WCF"). After the injured workers fill their prescriptions at a pharmacy that has contracted with Plaintiff to handle such claims, Plaintiff bills the workers compensation carrier, in this case WCF, at a fair and reasonable rate for the prescriptions. The employer of the injured worker and WCF have accepted liability for the worker's claim but systematically underpaid Plaintiff's bills. The total amount of such underpayments exceeds \$4 million.

Subsequent to WCF's refusal to pay the fair and reasonable charges for the prescription claims of its injured workers, on or about April 3, 2006, Plaintiff brought a cause of action under the Utah Labor Code, § 34A-2-418(1), against WCF and various employers throughout the state of Utah to recover the unpaid amounts billed and a claim for unjust enrichment. On or about April 28, 2006, Defendants filed a motion to dismiss Plaintiff's complaint. On or about June 12, 2006, the trial court issued a ruling to dismiss Plaintiff's first cause of action brought pursuant to the Utah Labor Code. The trial court requested further briefing on Plaintiff's second cause of action for unjust enrichment. After hearing oral arguments on the issue of unjust enrichment, on or about October 18,

2006, the trial court entered a ruling to dismiss Plaintiff's second cause of action. This appeal followed.

STATEMENT OF RELEVANT FACTS

1. Plaintiff contracts with pharmacies throughout the United States to acquire and process prescription claims for injured workers. See Record 8.
2. Plaintiff provides services, such as a verification service and an online billing system, which permits the pharmacies to fill the prescriptions for the injured workers at the point of sale. See Record 8.
3. Plaintiff verifies whether the injured workers' claim has been closed, whether the drugs prescribed are typically prescribed for an industrial injury, and whether there was evidence of abuse by the injured workers. See Record 8.
4. Plaintiff's services allow its customer pharmacies to better assist the injured workers and to fill the injured workers' prescriptions efficiently and without error. See Record 8.
5. Injured workers will receive a prescription(s) for medications from their licensed physician to treat their industrial injury. See Record 8.
6. Injured workers will then bring their prescriptions into one of Plaintiff's customer pharmacies to be filled. See Record 9.

7. Once the verification process is completed, the pharmacy fills the injured workers' prescriptions. See Record 9.
8. The pharmacy will then assign all of its rights to collect on the invoice to Plaintiff. See Record 8.
9. Defendants are employers in the State of Utah and obtain workers' compensation insurance through WCF. See Record 9.
10. Defendants' injured workers had their prescriptions filled at one of Plaintiff's customers' pharmacies. See Record 9.
11. Plaintiff billed Defendants at a fair and reasonable rate for the injured workers' prescriptions. See Record 9.
12. Defendants have accepted liability for the injured workers' claims. See Record 10.
13. Defendants have paid Plaintiff's bills but have systematically shortpaid on Plaintiff's billed charges. See Record 9-10.
14. The total amount of shortpaid bills exceeds \$4 million, not including any penalties and interests. See Record 10.

SUMMARY OF ARGUMENT

The trial court erred when it dismissed Plaintiff's first cause of action against Defendants for violation of the Workers' Compensation Act, UTAH CODE ANN. § 34A-2-418(1) (1997) finding exclusive jurisdiction for Plaintiff's claims under the Act rested

with the Utah Labor Commission. The Workers' Compensation Act was created to provide health care and other benefits to workers injured in their employment. The Act creates a statutory duty upon employers and their workers compensation carriers to pay for such health care, including medicines.

The Act created the private cause of action for those giving care to injured workers by establishing a statutory duty on employers and their carriers to pay for injured employees' health care. The only real question is whether the exclusive remedy for such treatment rests with the Utah Labor Commission. Prior to May 1, 2006, only physicians were required to bring their fee disputes exclusively before the Utah Labor Commission. Where pharmacies and hospitals were specifically excluded from filing an application for hearing prior to May 1, 2006, with the Labor Commission there certainly cannot have been any exclusive jurisdiction with the Labor Commission to resolve such claims and Plaintiff's claims were properly before the district court.

The trial court erred when it dismissed Plaintiff's second cause of action against Defendants for unjust enrichment. Where the trial court stated that no private right of action exists under the Act, the elements for Plaintiff's alternative claim for unjust enrichment were met. Namely 1) a benefit was conferred by Plaintiff to Defendants, 2) the Defendants appreciated or had knowledge of the benefit by actually paying a large portion of Plaintiff's charges, and 3) the Defendants accepted or retained the conferred

benefit under such circumstances as to make it inequitable for the Defendants to retain the benefit without payment of its value.

ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT FOUND THAT THE WORKERS' COMPENSATION ACT DID NOT PROVIDE FOR A PRIVATE RIGHT OF ACTION.

A. Duties of Employer and Workers' Compensation Insurance Carrier.

“[T]he philosophy behind the Workmen’s Compensation Act encompasses two main objectives. The first is to assure that an employee who is injured in employment will have necessary medical and hospital care and modest but certain compensation for his injury, with resulting benefits to himself, his family and to society generally.” Cook v. Peter Kiewit Sons Company, 386 P.2d 616, 617 (Utah 1963). Where 78% of all workers compensation claims are for medical care only, the primary purpose of workers compensation is necessarily to secure treatment for injured workers so they can return to full employment. See “Medical-Only Claims that Become Lost-Time Claims,” Workers Compensation Issues Report 50 (attached hereto as “Exhibit A”).

As such, the Utah Labor Code § 34A-2-418(1) (1997) provides “the employer or the insurance carrier **shall** pay reasonable sums for medical, nurse, and hospital services, **for medicines**, . . . to treat injured employees” (emphasis added). The Code further provides that the party responsible for paying for the “medicines” used to treat the employee is “(a) the employer and the employer’s insurance carrier; and (b) not . . . the employee.” UTAH CODE ANN. §34-2-401(1)-(2) (1997). This places a statutory duty upon Defendants to pay the medical expenses of their employees injured during the

course of employment. Plaintiff has billed Defendants at a fair and reasonable rate, and pursuant to the Workers' Compensation Act ("Act"), UTAH CODE ANN. § 34A-2-101 *et seq.*, Defendants are responsible for paying the reasonable amount of the prescription charges to Plaintiff. Defendants have acknowledged a right for Plaintiff to recover compensation for medicines under Section 34A-2-101 *et seq.*, by paying a portion of Plaintiff's bills. However, Defendants have systematically underpaid on Plaintiff's reasonable bills in violation of the Act.

The Utah Labor Code places a clear duty upon employers and their carriers to pay for the health care treatment, and such duty is owed to both the injured workers and their health care providers. In Maryland Casualty Company v. Industrial Commission of Utah, 364 P.2d 1020, 1022 (Utah 1961), the court stated that the purpose of the Labor Code is to ensure that "injuries suffered in employment should be spread throughout and be borne by industry; and that compensation should be provided to alleviate economic hardship falling on injured workers and their dependents, which in turn has a beneficial effect in stabilizing the economy."

As discussed in part B and C, Plaintiff is not included in the classes of persons under the Labor Commission's exclusive jurisdiction. Plaintiff and others in its position will be unable to adjudicate their claims if they cannot bring a cause of action to assert their rights under the Act. If the employer or its carrier have accepted liability for the industrial injury but they are allowed to arbitrarily refuse to pay or shortpay the invoices

for necessary medical expenses, this would destroy the workers' compensation system. Providers would carry the burden of the medical costs to be passed on to non-workers compensation patients, not the employer or carrier as the Act intended. Moreover, this would create a system where Defendants would force every provider to require payment from the injured workers prior to receiving treatment or goods and services, and the injured workers would be required to seek reimbursement from the insured. This would worsen, not alleviate, the economic hardship faced by the injured workers. Furthermore, the costs of industrial accidents would fall directly on the injured workers and society, and not the employer or its workers compensation carrier, which is the underlying purpose of the Workers' Compensation Act.

Thus, the purpose of the Act echoes the clear intent to create a private cause of action for providers in Plaintiff's position to obtain reimbursement from employers and carriers for the care and treatment of injured workers.

B. The Workers' Compensation Act Provides for a Private Right of Action for Plaintiff.

In this case, the district court ruled that there is no express or implied private right of action under the Workers' Compensation Act." See Ruling and Order, dated July 12, 2006 (attached hereto as "Exhibit B"). The district court erred because it did not apply the Cort v. Ash, 422 U.S. 66 (1975), four-factor test. Utah courts have recognized the four-factor test in determining whether an individual has a private right of action to enforce a state statute as set out by the U.S. Supreme Court in Cort. The factors to

consider are:

(1) whether the plaintiff is a member of a class for whose special benefit the statute was enacted; (2) whether [the legislature] intended to create or deny a private remedy; (3) whether a private remedy would be consistent with the Statute's underlying purposes; and (4) the extent to which the cause of action is traditionally relegated to state law.

Machan v. UNUM Life Ins. Co. of America, 2005 UT 37, P23, 116 P.3d 342, 347.

Plaintiff is a member of a class for whose special benefit the Workers'

Compensation Act was enacted. The reasoning is that payments for medical services provided to the injured workers are to be made to entities like Plaintiff who provide the means for injured workers to receive their medicines, thus, satisfying the first element.

See UTAH ADMIN. CODE R612-2-12 (providing that each provider should bill separately to ensure that payment can be made to the provider that provided the services); UTAH ADMIN. CODE R612-2-24 (providing that the carrier shall pay the provider for services rendered).

Moreover, the second and third factors are satisfied where the legislature intended to create a private remedy that is consistent with the Labor Code's underlying purpose of providing care and treatment to injured workers.

Prior to May 1, 2006, the Labor Commission did not have exclusive jurisdiction to hear disputes from persons providing goods and services, such as medicines, to the injured worker. See UTAH CODE ANN. §§ 34A-2-407(12); 34A-2-801(1)(c) (2003). The Labor Commission only had "exclusive jurisdiction to hear and determine whether the

treatment or services rendered to an employee by a **physician** are . . . compensable.”

UTAH CODE ANN. § 34A-2-407(12) (2003) (emphasis added). A “physician” as defined in UTAH CODE ANN. § 34A-2-111(2) (1997) does not include Plaintiff, as discussed in part C.

Therefore, prior to the amendments, effective May 1, 2006, the legislature intended to create a private remedy for Plaintiff’s claims and deny the Labor Commission exclusive jurisdiction over such claims. The legislature only intended to deny a private remedy when it amended the Workers’ Compensation Act, effective May 1, 2006, giving the Labor Commission exclusive jurisdiction to hear claims involving compensability and reasonableness of goods and services provided to the injured workers. See UTAH CODE ANN. §§ 34A-2-407(12) (2006) (providing that “the commission has exclusive jurisdiction to hear and determine (i) whether goods provided to or services rendered to an employee are compensable . . . including . . . medicines; and . . . (ii) the reasonableness of the amounts charged or paid for a good or service.”) (attached hereto as “Exhibit C”); 34A-2-801(1)(c) (2006) (providing that the a “person providing foods or services described in Subsections 34A-2-401(12) and 34A-2-108(12) may file an application for hearing.”) (attached hereto as “Exhibit D”).

The final factor is also satisfied where the Workers’ Compensation Act is a creation of state law and actions for recovery of unpaid debts are relegated to the state as opposed to federal courts.

C. **Legislative History Implies a Private Right of Action Under the Workers' Compensation Act for Plaintiff.**

The legislature intended to create a private right of action for Plaintiff under the Workers' Compensation Act by not including Plaintiff in the classes of persons that can file an application for hearing with the Labor Commission's Division of Adjudication. Prior to the 2003 amendments to the Act, various sections of the Act included "physician, surgeon, or other health provider" as classes of persons covered under the Act. For example, UTAH CODE ANN. § 34A-2-801(1)(c) (1997) provided that a "*physician, surgeon, or other health provider* may file an application for hearing" with the Division of Adjudication (emphasis added). Section 34A-2-407(11) (1997) provided that "the commission has exclusive jurisdiction to hear and determine whether the treatment or services rendered to employees by *physicians, surgeons, or other health providers* are . . . compensable" (emphasis added).

Furthermore, a "physician" as defined in UTAH CODE ANN. § 34A-2-111(2) (1997) includes any health care provider licensed under: Podiatric Physician Licensing Act; Physical Therapist Practice Act; Utah Medical Practice Act; Utah Osteopathic Medical Practice Act; Dentist and Dental Hygienist Practice Act; Physician Assistant Practice Act; Naturopathic Physician Practice Act; Acupuncture Licensing Act; and Chiropractic Physician Practice Act. (Attached hereto as "Exhibit E", Historical and Statutory Notes Section). However, a "physician" does not include Plaintiff. If the legislature intended to include pharmacies and pharmacists in the definition of "physician" it could have done so

in clear and definite language by adding Pharmacy Practice Act, UTAH CODE ANN. § 58-17b-101, *et seq.* The legislature has not done so.

Furthermore even under the Labor Code in effect from 1997 to 2003, pharmaceuticals, i.e. prescription drugs, have never been considered as health providers. In fact Section 34A-2-111 still does not include pharmacies in the definition of ‘health care providers.’ As such, without specific statutory intent to include pharmacies, pharmacy fee disputes were not required to be filed before the Labor Commission **at any time** prior to May 1, 2006.

“[I]t is well settled that the law in effect at the time of the accident governs the substantive rights of the parties.” Brown & Roots Indus. Serv. v. Industrial Comm’n, 905 P.2d 305, 307 (Utah Ct. App. 1995). Even if these provisions from 1997 were in effect at the time that Plaintiff filed its complaint against Defendants, these provisions are still not applicable to Plaintiff because a “physician” or “health provider” as defined in UTAH CODE ANN. § 34A-2-111 (1997) did not include Plaintiff.

In 2003, the Utah State Legislature enacted SB 126, in which the Legislature repeatedly removed “surgeon or other health provider” throughout Title 34A Section 2 and replaced it with physicians only while specifically defining the term physician. See SB 126, at 5 (attached as “Exhibit F”). This act by the Legislature shows clear intent to exclude non-physicians from the exclusive remedy provisions of the Labor Code. These 2003 provisions were in effect at the time that Plaintiff filed its complaint against

Defendants. However, these provisions are still not applicable to Plaintiff because a “physician” as defined in UTAH CODE ANN. § 34A-2-111 (1997) does not include Plaintiff. This clearly shows the legislature’s intent to not include Plaintiff in the classes of persons covered under this Act.

The Utah Legislature clearly excluded pharmacy and hospital billings from the exclusive remedy provisions of the Workers’ Compensation Act. This clear intent to limit the exclusive remedies provision to physicians cannot be ignored and undermines any arguments that somehow the legislature had intended to include other health care in the exclusive remedies before the Commission.

Other statutory language suggests that Plaintiff is not included in the classes of persons that can file an application for hearing. Section 34A-2-801(1)(a) (2003) provides that an employee or his/her representative may file an application for a hearing to dispute the employer or its carrier’s determination concerning a compensable industrial accident. The employer, its carrier, or their representative(s) can dispute a penalty or an administrative act imposed by the division for failure to comply with the Workers’s Compensation Act by filing an application for hearing with the Adjudication Division. UTAH CODE ANN. § 34A-2-801(1)(b) (2003). A physician is also permitted to file an application for a hearing. UTAH CODE ANN. § 34A-2-801(1)(c) (2003). No statutory provisions existed in 2003 that required or permitted Plaintiff or its pharmacies to file an application for hearing with the Commission.

The court in Miller v. Weaver, 2003 UT 12, P24, 66 P.3d 592, 599-600, stated that the courts “generally presume that any amendment to a statute indicates a legislative intent to change existing legal rights and therefore is not a reliable indication of intent as to the earlier, unamended statute.” The 1997 amendments provided that “physicians, surgeons or other health providers” were covered under the Act. In 2003, the legislature amended the Act and omitted “surgeon or other health provider.” This omission was not an oversight by the legislature, but rather, it was intentional, and the legislature intended to exclude “surgeon and other health provider” and classes of persons in Plaintiff’s position from adjudicating the claim with the Commission.

The Utah Legislature enacted HB 150 in 2006, which amended the Workers’ Compensation Act. See HB 150 (attached hereto as “Exhibit G”). The 2006 Amendments to the Act are a reliable indication of the legislatures’ prior intent with the Act. Prior to May 1, 2006, the legislature intended to deny the Labor Commission exclusive jurisdiction over Plaintiff’s reimbursement claims for medicines provided to the injured employee, and intended to create a private remedy for Plaintiff’s claims. It was on May 1, 2006, when the legislature intended to deny this private remedy by amending the Workers’ Compensation Act, whereby the Labor Commission was granted exclusive jurisdiction to hear claims involving compensability and reasonableness of goods and services provided to the injured worker. See UTAH CODE ANN. §§ 34A-2-407(12) (2006); 34A-2-801(1)(c) (2006).

Therefore, the legislative history implies a private right of action for Plaintiff to bring its claim against Defendants under the Workers' Compensation Act. Without this private right of action, Plaintiff and others in its position would not be able to enforce their rights to receive compensation for providing services to Defendants' injured workers, and the workers compensation system would not achieve its purpose of providing medical care and treatment to the injured worker and alleviating the economic hardship on the injured workers.

D. Case Law Supports a Private Right of Action for Plaintiff.

Furthermore, the cases that found that no private right of action existed involved statutes for which criminal penalties were imposed for a violation of the respective statute. In Cline v. State, 2005 UT App. 498, ¶29, the court held that no private right of action existed for breach of confidentiality of records, child abuse, obstruction of justice, and perjury, when criminal penalties were available. See also Youren v. Tintic Sch. Dist., 2004 UT App. 33, ¶4 (stating that Utah's Anti-nepotism statutes does not provide for a private right of action because the statute made such conduct unlawful and provided for criminal penalties for its violation); Milliner v. Elmer Fox & Co., 529 P.2d 806, 808 (Utah 1974) (holding that Section 61-1-1 of the Utah Uniform Securities Act does not provide a private right of action when it is violated, but it only makes certain acts unlawful); Richards Irrigation Co. v. Karren, 880 P.2d 6 (Utah. Ct. App. 1994) (concluding that no private right of action exists when one violates the constitutional

provision, which provides that all persons in this State shall be free to obtain employment; but rather criminal penalties are imposed).

The case at bar is distinguishable from the less than a dozen cases that address the private right of action issue. The Workers' Compensation Act does provide a criminal remedy when an employer fails to secure a qualifying insurance policy. UTAH CODE ANN. § 34A-2-209(1)(a)(i). However, Plaintiff concedes that Defendants have secured a qualifying insurance policy through WCF, and this provision is not in dispute. The provision in dispute, UTAH CODE ANN. § 34A-2-418, does not provide for a criminal penalty, criminal remedy, or administrative remedy when the employer or its insurer fails to pay Plaintiff a reasonable sum for the injured workers' medicines.

The case at bar is further distinguished from Machan, 2005 UT 37, where the court denied the private cause of action where the insurance statute the plaintiff was relying on carried a penalty of terminating an adjuster's license rather than providing a penalty or cause of action to the insured. Moreover, the statute specifically stated no private cause of action existed. Those facts differ greatly from the case at bar where the Worker's Compensation Act was created to get injured workers treatment and care and not to regulate licensing of insurers.

Similarly, in Cannon v. Travelers Indemnity Co., 2000 UT App. 10, the plaintiff brought a cause of action alleging that the defendant violated the Utah Unfair Claims Settlement Practices statutes and rules. The Utah Court of Appeals upheld the trial

court's ruling that the Utah Unfair Claim Settlement Practices Act does not give rise to a private cause of action. Id. at ¶22-25. The court's rationale was based on § 31A-26-303(5), which provides that "this section does not create any private cause of action." Id. at ¶23 (quoting UTAH CODE ANN. § 31A-26-303(5) (1999)). Moreover, the Administrative Code Rule 590-89-3 provides that "this rule is regulatory in nature and is not intended to create a private right of action." Id. (quoting UTAH ADMIN. CODE R590-89-3 (1996)). The Cannon case is distinguishable from the present case. Nowhere in the Workers' Compensation Act and the administrative rules is there an explicit provision that no private cause of action is permitted or that the act does not create a private cause of action.

The same premise applies in the following case. In Buckner v. Kennard, 2004 UT 78, 99 P.3d 842, the court examined other cases involving a private cause of action and stated that under acts such as the Utah Antidiscrimination Act, the private cause of action could not be maintained where "the **exclusive remedy** . . . is an appeal to the state Division of Antidiscrimination and Labor." Id. at 37 (emphasis added) (citing Sauers v. Salt Lake County, 735 F. Supp. 381 (D. Utah 1990)). In the present case, Plaintiff brought this action in district court where there is no exclusive remedy provision for non-physician medical fee disputes, as discussed in part E.

Therefore, none of the cases dealing with a private right of action are applicable to the Workers' Compensation Act where it places a statutory duty upon Defendants to pay

the reasonable sum for medicines that Plaintiff provided to the injured workers and the Act does not provide for a criminal penalty nor administrative remedy for non-physicians.

E. Exclusive Remedy Provision is not Applicable to Plaintiff's Claim.

Plaintiff's claim is not barred under the exclusivity provision of the Act. The Workers' Compensation Act provides that the "right to recover compensation for injuries sustained by an employee . . . shall be the exclusive remedy against the employer." UTAH CODE ANN. § 34A-2-105. However, the exclusivity provision of the Act only "bars common-law tort actions requiring proof of physical or mental injury" sustained on the job. Touchard v. La Z-Boy, Inc., 2006 UT 71, P24, 148 P.3d 945, 954 (citing Shattuck-Owen v. Snowbird Corp., 2000 UT 94, P19, 16 P.3d 555, 560-61). This statement is further supported by the purpose of the exclusivity provision, which is to permit employees "to recover for job-related injuries without showing fault . . . and employers are protected from tort suits by employees." Hunsaker v. State, 870 P.2d 893, 899 (Utah 1993).

In IHC v. Industrial Commission, 657 P.2d 1289 (Utah 1982) the Utah Supreme Court specifically rejects an argument that the exclusive remedy provision bars claims similar to Plaintiffs and restricts the prior version of this language to employer-employee relationships. "The Workmen's Compensation Act deals exclusively with matters growing out of the relations of employer-employee. The provisions of the act are binding upon employers and employees but not upon others." Id. at 1290. The court went on to

allow hospitals to pursue collections actions against injured workers in the courts for unpaid balances where “[t]he situation is no different than in cases where private health insurance is involved. The insurance company under its policy with its insured may pay less than the full hospital charges but the patient remains liable for the balance.” Id.

Moreover, Section 34A-2-105 has only been raised in cases between the employer and employee. See e.g., Touchard, 2006 UT 71; Gomez v. Essential Botanical Farms, L.C., 2004 UT App. 331; Anderson v. Anixter, Inc., 2004 UT App. 12. This Section clearly was not intended to bar suits for collection of medical care provided to injured workers.

In Touchard, the Court considered the issue of whether the Workers’ Compensation Act preempted injured workers from bringing a wrongful discharge cause of action after they were terminated from exercising their rights under the Act. The Court held that “the exclusivity provision of the Act [§34A-2-105] does not bar an employee’s wrongful discharge cause of action.” Id. at P24. The Court based its holding on the rationale that the exclusivity provision barred only common tort actions which required proof of mental or physical injury. Id. Furthermore, the Court stated that the courts, not the Commission, have jurisdiction over such claims. See id. at P21.

The claims brought by Plaintiff in this case are not common-law torts that require proof of physical or mental injury. Such claims are not barred by the exclusivity provision of the Act, and do not fall within the exclusive jurisdiction of the Labor

Commission. Therefore, Plaintiff is able to pursue its causes of action outside of the Labor Commission.

II. THE TRIAL COURT ERRED WHEN IT FOUND THAT THE LABOR COMMISSION HAD JURISDICTION OVER A CLAIM IN EQUITY FOR UNJUST ENRICHMENT.

The Labor Commission is a statutorily created entity that only has “powers expressly or impliedly granted to it by the legislature.” Bevans v. Industrial Comm’n of Utah, 790 P.2d 573, 576 (Utah Ct. App. 1990). The Commission cannot exercise powers not expressly or impliedly granted to it, even in the name of fairness. Id. at 578.

Moreover, the Labor Commission is not a court of equity. Id. at 576. In Bevans, the Utah Court of Appeals found that the enabling statute of the Commission did not give it discretionary or equitable power to credit the employer’s liability to pay for the injured worker’s medical expenses and disability compensation with the automobile insurance proceeds received by the employee. Id. at 578.

In Touchard, 2006 UT at ¶21, the Utah Supreme Court stated that common law claims of wrongful discharge relating to termination for exercising one’s right under the Workers’ Compensation Act are within the purview of the state court system, and not the Labor Commission. Additionally, the Court in Sheppick v. Albertson’s, Inc., 922 P.2d 769, 775-76 (Utah 1996), also noted that a claim for bad faith refusal to deal is a common law claim, “which the Commission has neither the authority nor the jurisdiction to adjudicate,” and could only be adjudicated in the district court. See also Savage v.

Educators Ins. Co., 908 P.2d 862 (Utah 1995) (the court system, not the Commission adjudicated the plaintiff's claim alleging that the employer's workers' compensation carrier breached the covenant of good faith and fair dealing).

The above cases illustrate the limits of the adjudicative powers of the Labor Commission. The Commission is not a court of equity and does not have implied or expressed powers to hear common law claims. The trial court erred when it dismissed Plaintiff's second cause of action for unjust enrichment. The trial court dismissed the claim on the basis that the Labor Commission has jurisdiction to and is "better suited to make a determination as to the reasonableness of medical expenses for injured employees." See Memorandum Decision, dated Oct. 18, 2006 (attached hereto as "Exhibit H"). However, that was not what Plaintiff was requesting in its second cause of action for unjust enrichment. Plaintiff is requesting the Court to find that Defendants have been unjustly enriched by not paying the reasonable value of the services that Plaintiff has provided to their injured workers.

In this case, Plaintiff's claim of unjust enrichment is an equitable common law claim that is implied by law where the court finds that a remedy at law does not exist, i.e., the court finds that Plaintiff has no private right of action under the Act. American Towers Owners Ass'n v. CCI Mech., Inc., 930 P.2d 1182, 1193 (Utah 1996). The Utah Administrative Code Rule 612-2-24 provides an administrative remedy for "health care providers" and insurance carriers to have their fee dispute resolved. As stated above, this

Rule is invalid where the enabling legislation prior to May 1, 2006, only allowed the Industrial Commission to hear physician disputes. Furthermore, even if this Court were to find that the Commission could expand “physician” to include all “health care providers” the definition of “health care providers” does not include pharmacies nor pharmacists as defined in UTAH CODE ANN. § 34A-2-111(1)(a) (1997). Neither Plaintiff nor its pharmacies are a hospital, a clinic, an emergency care center, a physician, a nurse, a nurse practitioner, a physician’s assistant, a paramedic or an emergency medical technician. Id. Therefore, there is no administrative remedy available to Plaintiff to redress its damages, and the Plaintiff is entitled to bring a cause of action for unjust enrichment in district court.

The elements of unjust enrichment do not require that Defendants receive products or services from Plaintiff. Rather, the elements are 1) a benefit was conferred on one person by another, 2) the conferee appreciated or had knowledge of the benefit, and 3) the conferee accepted or retained the conferred benefit under such circumstances as to make it inequitable for the conferee to retain the benefit without payment of its value. Desert Miriah, Inc. v. B & L Auto, Inc., 12 P.3d 580, 582 (Utah 2000). Plaintiff has satisfied these elements.

Here, Defendants have a statutory duty to pay for the medicines received by their injured workers. Plaintiff, through the pharmacies, has provided medicines to the injured workers. Plaintiff has conferred a benefit onto Defendants by promptly providing

prescription medicines and rendering treatment to their injured workers and not demanding Defendants pay for the medications at the point of sale. Defendants certainly knew and appreciated the benefit. Defendants also accepted and retained said benefit as evidenced by Defendants' short payments on these prescriptions and not paying for the reasonable value of the services and products rendered.

Courts have repeatedly applied these same elements of unjust enrichment or *quantum meruit* to identical claims against insurers. The court in Temple University Hospital v. Healthcare Management Alternatives, 832 A.2d 501 (Pa. Super. 2003), applied these elements of unjust enrichment to a situation where the plaintiff hospital brought suit against the defendant insurance company for underpaying hospital bills for defendant's insureds. Where no contract existed between plaintiff and defendant, the court held that the defendant "Healthcare retained a benefit in this instance because it did not pay reasonable value for the services rendered. Accordingly, we find that all the elements for unjust enrichment were established." Id. at 507.

Similarly, in Bell v. Blue Cross of California, 31 Cal.Rptr.3d 688 (Cal. App. 2005) *cert. denied*, plaintiff physicians brought suit against a defendant health insurer for underpaying health care for defendant's insureds. In Bell, the court found that plaintiffs could bring their *quantum meruit* claims directly against the defendant insurer for attempting to pay them a network rate when no contract existed between the parties. The court further stated:

If providers are precluded from bringing private causes of action to challenge health plans' reimbursement determinations, health plans may receive an unjust windfall and patients may suffer an economic hardship when providers resort to balance billing activities to collect the difference between the health plan's payment and the provider's billed charges.

Id. at 693. See also, River Park Hospital v. Blue Cross Blueshield of Tennessee, 173 S.W.3d 43 (Tenn. App. 2002) (finding plaintiff hospital's treatment of defendant's insureds met the elements of unjust enrichment where no express or implied contracts existed between the parties). Of note in all of these cases is that the courts found that plaintiffs could pursue actions for unjust enrichment without having to exhaust their remedies of bringing suit against their patients for the unpaid balances.

Administrative agencies only have the rule-making authority that the legislature has expressly delegated to them, which may not conflict with the design of an Act. When there is a conflict, the court has a duty to invalidate the administrative regulation.

Consolidation Coal Company v. Utah Division of State Lands and Forestry, 886 P.2d 514, 531 (Utah 1994) (citations omitted). The legislature may not delegate authority to a board to adopt rules or regulations which abridge, enlarge, extend or modify the statute creating the right or imposing a duty. Id. (citations omitted). Prior to May 1, 2006, only physician disputes were required to be brought before the Utah Labor Commission. The Commission will overstep its authority if it includes all health care providers in the process. Nor can an argument be made that the legislature granted any power to the

Labor Commission to hear common law claims between employees and employers (much less third parties such as Plaintiff) and claims such as breach of contract or unjust enrichment that are brought by employees against their employer in the courts. Because the Labor Commission is not a court of equity and has no jurisdiction over a common law quantum meruit claim, such claim is properly filed in the district court as the above cases demonstrate.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court reverse the trial court's ruling and order to dismiss Plaintiff's complaint and remand the case for trial.

DATED this 10 day of April, 2007.


Rex H. Huang
Attorney for Plaintiff / Appellant

CERTIFICATE OF SERVICE

I hereby certify that ²~~1~~ true and corrected ^{copies}~~copy~~ of the Brief of Appellant ^{were}~~was~~ served upon all of the following parties, via first-class mail on this 10 day of April, 2007:

M. David Eckersley
175 East 400 South, #900
Salt Lake City, UT 84111

Michael Z. Hayes
2118 East 3900 South, Suite 300
Salt Lake City, UT 84124

Douglas P. Simpson
2115 South Dallin Street
Salt Lake City, UT 84109

A handwritten signature in black ink, appearing to read "D. P. Simpson", is written over a horizontal line.

EXHIBIT A

Medical-Only Claims

That Become Lost-Time Claims A Study of Characteristics

Workers compensation claims adjusters typically handle two distinct types of claims: claims that include indemnity payments, known as lost-time claims, and claims for which the only payments are for medical costs, known as medical-only claims. Understanding the characteristics of workers compensation claims that are more likely to be converted from medical-only claims to lost-time claims can help industry participants focus resources and minimize total workers compensation costs.

The vast majority of claims are medical only claims that keep employees out of work for only a short period of time if at all. To qualify for indemnity benefits workers need to be away from work longer than three to seven days depending on state waiting periods.

Medical only claims make up 77.9% of claim counts—but account for only 6.0% of loss dollars. For that reason insurance companies often handle lost time claims quite differently from medical only claims, focusing the majority of their expertise on the lost time claims.

For example, many companies have medical only units for fast track handling of the small medical claims. This works well for the vast majority of medical only claims. Only 4.6% of claims that are medical only 90 days after the date of injury become lost time claims within 30 months of that date.

However, as this study examines, there are certain types of medical only claims where the likelihood of becoming a late recognized indemnity claim is much greater.

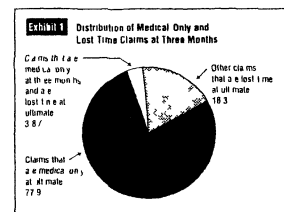
Some findings for claims that are medical only at 3 months and become lost time by 30 months include:

- About 80% make the transition within 12 months of the date of injury.
- They cost an average of 40 times more than those that remain medical only.
- Carpal tunnel claims are the most likely claims to transition from medical only to lost time, with a probability of about 34%.
- The larger the incurred value (paid plus case reserves), the greater the probability of the claim becoming a lost time claim.
- The probability of a claim transitioning increases with claimant age until 65 and then it declines.

Background

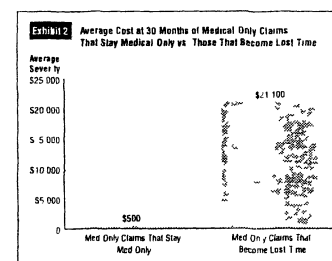
This study considers approximately five million claims that have no lost time component—that is, no indemnity paid and no indemnity case reserve—three months after the date of injury. A claim that becomes lost time is a claim for which some indemnity benefits are paid or some indemnity case reserve has been set up within the first 30 months after report. The studied claims are from a sample of claims provided by carriers.

As you can see in Exhibit 1, claims that are medical only at three months and ultimately become lost time claims constitute some 3.8% of all claims. Other ultimately lost time claims make up 18.3% of all claims, meaning that about one out of every six ultimately lost time claims was a medical only claim at three months.



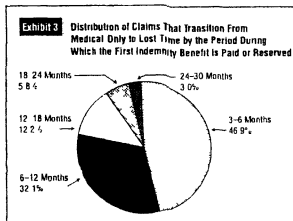
Claims that transition from medical only to lost time are on average of a far greater severity than claims that remain medical only. Exhibit 2 shows that the average cost at 30 months for medical only claims that transition to lost time is 40 times greater than the cost of medical only claims that do not transition.

The results, using 3 months as the starting point, are not significantly different from 6 months or 12 months, except that the rates of transition are smaller and there may be some slight shifting in the exact rankings of these rates for part of body/nature of injury/cause of injury (discussed below).



by John Robertson, FCAS and
Derek Schaff, ACAS

The first 30 months after report are sufficient to capture the majority of claims for which indemnity benefits are eventually paid because the percentage of medical-only claims that become lost-time decreases rapidly as claims mature. In fact, less than 0.1% of all claims that are medical-only at 3 months become lost-time after 30 months. Of the medical-only claims that become lost-time in the first 30 months, approximately 80% become lost-time within 12 months of the date of injury, as shown in Exhibit 3.



Differences by State

There are differences between states in the rates of conversion of medical-only claims to lost-time claims. The states with the greatest percentage of medical-only claims that become lost-time claims are:

- New York, 8.5%
- Hawaii, 7.6%
- Missouri, 7.2%
- California, 7.0%
- South Carolina, 6.8%

The states with the smallest percentage of medical claims that become lost-time claims are:

- Arkansas, 2.3%
- Indiana, 2.4%
- Arizona, 2.7%
- Pennsylvania, 2.7%
- Utah, 2.7%

In addition, it seems to make no difference whether the employer or the

employee has the right to make the initial choice of physician. States in which the employer has the choice have a 4.5% chance of a medical-only claim becoming a lost-time claim. States in which the employee has the choice have a 4.7% chance of a medical-only claim becoming a lost-time claim.

Types of Injury

The likelihood of a medical-only claim becoming lost-time depends greatly on the type of injury that has occurred. We examined three-way combinations of part of body, nature of injury, and cause of injury to determine which types of injury are more likely to incur indemnity benefits in the future.

One must be careful in interpreting the following results. The coding of these fields is not reflected as of three months, but rather as of the latest valuation, meaning that the part of body, nature of injury, or cause of injury coded at three months may have been different. However, it is unusual for these codes to change over the life of a claim, so claims with the characteristics shown below might offer opportunities for improved claims handling.

The 10 combinations of part of body/nature of injury/cause of injury with the greatest probabilities of transitioning, and with at least 1,000 medical-only claims in the sample, are:

- Wrist/Repetitive Motion/Carpal Tunnel Syndrome (5,023 claims)—38.0%
- Wrist/Strain or Injury by NOC/Carpal Tunnel Syndrome (1,090 claims)—33.7%
- Wrist(s) & Hand(s)/Repetitive Motion/Carpal Tunnel Syndrome (1,188 claims)—33.4%
- Wrist/Repetitive Motion/Carpal Tunnel Syndrome (6,052 claims)—33.0%
- Wrist/Cumulative, NOC/Carpal Tunnel Syndrome (2,071 claims)—30.7%

- Multiple Upper Extremities/Repetitive Motion/Carpal Tunnel Syndrome (1,089 claims)—28.7%
- Hand/Repetitive Motion/Carpal Tunnel Syndrome (1,169 claims)—28.5%
- Wrist/Fall, Slip or Trip, NOC/Fracture (1,541 claims)—17.6%
- Multiple Upper Extremities/Repetitive Motion/Inflammation (6,754 claims)—17.6%
- Wrist/on Same Level/Fracture (1,451 claims)—17.2%

Clearly, carpal tunnel claims transition from medical-only to lost-time far more often than other types of claims. In fact, the average transition probability among the seven carpal tunnel categories above is 34%, meaning that medical-only carpal tunnel claims at three months are roughly seven times more likely to incur indemnity losses than the average medical-only claim at three months.

It is interesting to examine each of these three variables individually.

Exhibit 4 shows the predominance of vertebral discs, which have a far greater probability of becoming a lost-time claim than any other body part. Carpal tunnel accounts for only 5% of medical-only wrist claims, with most medical-only wrist claims being fractures or other such types of claims with less propensity for becoming lost-time.

Exhibit 4 Parts of Body With Highest Probabilities of a Medical-Only Claim Becoming a Lost-Time Claim

Part of Body	Number of Medical-Only to Lost-Time Claims	Percentage of All Medical-Only to Lost-Time Claims	Probability of Medical-Only Claim Becoming Lost-Time
Disc, Noncervical	1,218	0.5%	28.3%
Disc, Cervical	751	0.3%	25.7%
Wrist(s) and Hand(s)	1,515	0.6%	14.9%
Heart	121	0.0%	10.6%
Shoulder(s)	11,553	4.8%	10.5%

In Exhibit 5 we see the parts of the body that have the greatest number of medical-only to lost-time claims. These five body parts alone comprise half of all medical-only to lost-time claims. Most of these

body parts have a higher than average probability of leading to a lost-time claim. Knee claims are twice as likely to lead to a lost-time claim. However, finger claims are about half as likely as average to do so.

Exhibit 5 Parts of Body With Greatest Number of Medical-Only to Lost-Time Claims

Part of Body	Number of Medical-Only to Lost-Time Claims	Percentage of All Medical-Only to Lost-Time Claims	Probability of Medical-Only Claim Becoming Lost-Time
Lower Back Area	40,324	16.0%	5.7%
Knee	25,446	10.1%	9.0%
Wrist	22,595	9.0%	8.3%
Multiple Body Parts	19,981	7.9%	6.7%
Finger(s)	17,929	7.1%	2.5%

In Exhibit 6 we can see that the nature of injury—Rupture—has a probability of about 70% or about 15 times the average of leading to a lost-time claim, far in excess of the next nature of injury. Often, that diagnosis is made within the first three months—a rupture claim that is in the medical-only unit is likely to be reassigned.

Exhibit 6 Natures of Injury With Highest Probabilities of a Medical-Only Claim Becoming a Lost-Time Claim

Nature of Injury	Number of Medical-Only to Lost-Time Claims	Percentage of All Medical-Only to Lost-Time Claims	Probability of Medical-Only Claim Becoming Lost-Time
Rupture	4,261	1.7%	69.5%
Amputation	1,279	0.5%	36.6%
Carpal Tunnel	8,257	3.3%	33.3%
Mental Disorder	312	0.1%	24.5%
Severance	657	0.3%	22.7%

(It may seem strange that an amputation claim should incur no indemnity loss after three months, but we found that, in fact, 21% of all amputation claims remain medical-only.)

Exhibit 7 shows that Strain accounts for about 40% of all medical only to lost time claims. Together, the top five natures of injury account for three quarters of all medical only to lost time claims. Laceration claims are about three times less likely than the average claim to become lost time.

Exhibit 7 Nature of Injury With Greatest Number of Medical Only to Lost Time Claims

Nature of Injury	Number of Medical Only to Lost Time Claims	Percentage of All Medical-Only to Lost Time Claims	Probability of Medical Only Claim Becoming Lost Time
Strain	101,750	40.6%	6.8%
All Other Specific Injuries NDC	32,543	13.0%	5.4%
Contusion	25,701	10.2%	3.1%
Spinal	16,790	6.3%	5.1%
Laceration	15,141	6.0%	1.6%

Exhibit 8 shows the top causes of injury for which a medical only claim becomes a lost time claim. These probabilities are much smaller than in either Exhibit 4 or Exhibit 6. Because any cause of injury can be associated with many different types of injury, the cause of injury is not as reliable an indicator of the probability of a medical only claim becoming lost time as are part of body or nature of injury.

Exhibit 8 Causes of Injury With Highest Probabilities of a Medical Only Claim Becoming a Lost Time Claim

Cause of Injury	Number of Medical-Only to Lost Time Claims	Percentage of All Medical-Only to Lost Time Claims	Probability of Medical Only Claim Becoming Lost Time
Repetitive Motion CTS	14,569	5.8%	14.7%
Cumulative NDC	5,196	2.1%	14.4%
Repetitive Motion	9,968	4.0%	14.1%
Control Valve	210	0.1%	11.0%
Motor Vehicle NDC	3,366	1.3%	10.6%

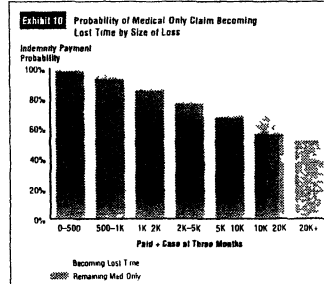
We can see from Exhibit 9 that the distribution of cause of injury is more uniform than nature of injury, as the top five causes of injury for medical only to lost-time claims account for only 40% of such claims. Note the reoccurrence in this exhibit of the cause of injury Repetitive Motion CTS, which we saw in Exhibit 8 to be the cause of injury with the highest probability of leading to a lost time claim.

Exhibit 9 Causes of Injury With Greatest Number of Medical Only to Lost Time Claims

Cause of Injury	Number of Medical Only to Lost Time Claims	Percentage of All Medical-Only to Lost Time Claims	Probability of Medical-Only Claim Becoming Lost Time
Lifting	37,711	15.0%	6.0%
Strain or Injury by NDC	16,672	6.6%	6.4%
Fall, Slip or Trip NDC	14,775	5.9%	7.2%
Pushing or Pulling	14,774	5.9%	5.9%
Repetitive Motion CTS	14,569	5.8%	14.7%

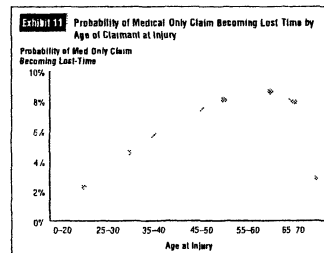
Size of Loss

It would seem that the more severe a medical only claim is, the greater the likelihood that indemnity benefits will eventually be paid. In Exhibit 10, we can see that this is indeed the case, and that the size of loss at three months has a great impact on whether or not the claim will eventually become lost time. For claims greater than \$20,000, the probability is nearly 50% that eventually there will eventually be an indemnity payment.



Age

Another factor related to size of loss that impacts the probability of a medical only claim becoming lost time is the age of the claimant at injury. Typically, injuries to older workers incur greater medical costs than injuries to younger workers. In view of the results shown in Exhibit 10, we might expect the probability of transitioning to increase with the age of the worker. We can see from Exhibit 11 that this is essentially true.



The probability does increase up to age 65, after which it drops off sharply. One reason for this is that workers over 65 often have sources of income available that replace workers' compensation benefits.

Conclusion

This study finds several characteristics that correlate the propensity of a claim to transition from medical only to lost time.

There are areas in which the above research may need to be refined. Some of the variables used may be inter-related (e.g., age and severity). It would be instructive to examine one variable while controlling for the other related ones (e.g., look at the breakdown among age groups for a common severity).

Other factors might be considered. Examples include gender, industry group, hazard group, and medical procedures performed.

As further research is conducted and new claims results become available, NCCI may reexamine this issue. Please continue to visit ncci.com for ongoing NCCI research updates.

John Robertson, FCAS, is a research focus lead and coordinates much of the research activity at NCCI. He has held positions at insurance companies and consulting firms. He has degrees in mathematics from Harvard College and the University of California at Berkeley.

Derek Schall, ACAS, has a graduate degree in mathematics from the University of Florida and has worked at NCCI since 2001 in the ratemaking and research focus areas.

EXHIBIT B

THIRD DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH
WEST JORDAN DEPARTMENT

WORKING RX, INC., a Delaware
corporation,

Plaintiff,

vs.

WORKERS COMPENSATION FUND, et al.,
Defendant.

RULING AND ORDER

Case No. 060404342

Judge ROBERT W. ADKINS

This matter comes before the Court for decision on a Motion to Dismiss filed by all defendants, except Geneva Steele, LLC. No hearing was requested. Having reviewed the parties filings and the applicable law the Court makes the following RULING AND ORDER:

1. GRANTING the Defendants motion to dismiss the Plaintiff's first cause of action based upon Utah Code § 34A-2-418(1). The Court concludes that there is no express or implied private right of action under the Workers' Compensation Act, Utah Code §§ 34A-2-101 *et seq.*
2. RESERVING decision on the Defendants motion to dismiss the Plaintiff's second cause of action for unjust enrichment. "The [unjust enrichment] doctrine is designed to provide an equitable remedy where one does not exist at law. In other words, if a legal remedy is available . . . the law will not imply the equitable remedy of unjust enrichment."

American Towers Owners Ass'n., Inc. v. CCI Mech., Inc., 930 P.2d 1182, 1193 (Utah

1996); see also Wood v. Utah Farm Bureau Ins. Co., 2001 UT App 35, P 10, 19 P.3d 392.

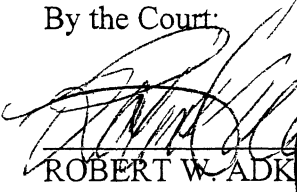
The parties failed to provide adequate briefing on whether an adequate legal remedy is or was available to the Plaintiff. If so, then unjust enrichment is precluded as a matter of law. If not, unjust enrichment may be an available remedy.

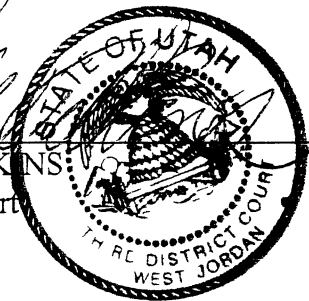
ORDER

The Court hereby ORDERS the parties to file supplemental briefs on the issue of whether an adequate legal remedy is or was available to the Plaintiff. The Defendants shall file their supplemental brief within thirty days of this Ruling and Order and pursuant to the Utah Rules of Civil Procedure, the Plaintiffs shall have ten days to file its opposition and the Defendants five days to file their reply. Thereafter, a notice to submit the issue to the Court may be filed by either party.

Dated this 12 day of June 2006.

By the Court:


ROBERT W. ADKINS
Third District Court



CERTIFICATE OF MAILING

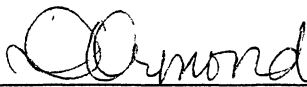
I certify that on the 12th day of June, 2006, I delivered a true and correct copy of the forgoing RULING AND ORDER, to the following

M. DAVID ECKERSLY
175 EAST 400 SOUTH, SUITE 900
SALT LAKE CITY UTAH 84111

DOUGLAS P. SIMPSON
2115 SOUTH DALLIN STREET
SALT LAKE CITY UTAH 84109

MICHAEL Z. HAYES
2118 EAST 3900 SOUTH, SUITE 300
SALT LAKE CITY UTAH 84124

MICHELLE CHRISTENSEN
4225 LAKE PARK BLVD, SUITE 400
SALT LAKE CITY UTAH 84120



Court Clerk

EXHIBIT C

WEST'S UTAH CODE ANNOTATED
TITLE 34A. UTAH LABOR CODE
CHAPTER 2. WORKERS' COMPENSATION ACT
PART 4. COMPENSATION AND BENEFITS



§ 34A-2-407. Reporting of industrial injuries--Regulation of health care providers--Funeral expenses

- (1) As used in this section, "physician" is as defined in Section 34A-2-111.
- (2)(a) Any employee sustaining an injury arising out of and in the course of employment shall provide notification to the employee's employer promptly of the injury.
- (b) If the employee is unable to provide the notification required by Subsection (2)(a), the following may provide notification of the injury to the employee's employer:
- (i) the employee's next-of-kin; or
 - (ii) the employee's attorney.
- (c) An employee claiming benefits under this chapter, or Chapter 3, Utah Occupational Disease Act, shall comply with rules adopted by the commission regarding disclosure of medical records of the employee medically relevant to the industrial accident or occupational disease claim.
- (3)(a) An employee is barred for any claim of benefits arising from an injury if the employee fails to notify within the time period described in Subsection (3)(b):
- (i) the employee's employer in accordance with Subsection (2); or
 - (ii) the division.
- (b) The notice required by Subsection (3)(a) shall be made within:
- (i) 180 days of the day on which the injury occurs; or
 - (ii) in the case of an occupational hearing loss, the time period specified in Section 34A-2-506.
- (4) The following constitute notification of injury required by Subsection (2):
- (a) an employer's or physician's injury report filed with:
 - (i) the division;
 - (ii) the employer; or
 - (iii) the employer's insurance carrier; or
 - (b) the payment of any medical or disability benefits by:

(i) the employer; or

(ii) the employer's insurance carrier.

(5)(a) In the form prescribed by the division, each employer shall file a report with the division of any:

(i) work-related fatality; or

(ii) work-related injury resulting in:

(A) medical treatment;

(B) loss of consciousness;

(C) loss of work;

(D) restriction of work; or

(E) transfer to another job.

(b) The employer shall file the report required by Subsection (5)(a) within seven days after:

(i) the occurrence of a fatality or injury;

(ii) the employer's first knowledge of the fatality or injury; or

(iii) the employee's notification of the fatality or injury.

(c)(i) An employer shall file a subsequent report with the division of any previously reported injury that later results in death.

(ii) The subsequent report required by this Subsection (5)(c) shall be filed with the division within seven days following:

(A) the death; or

(B) the employer's first knowledge or notification of the death.

(d) A report is not required to be filed under this Subsection (5) for minor injuries, such as cuts or scratches that require first-aid treatment only, unless:

(i) a treating physician files a report with the division in accordance with Subsection (9); or

(ii) a treating physician is required to file a report with the division in accordance with Subsection (9).

(6) An employer required to file a report under Subsection (5) shall provide the employee with:

(a) a copy of the report submitted to the division; and

(b) a statement, as prepared by the division, of the employee's rights and responsibilities related to the industrial injury.

(7) Each employer shall maintain a record in a manner prescribed by the division of all:

- (a) work-related fatalities; or
- (b) work-related injuries resulting in:
 - (i) medical treatment;
 - (ii) loss of consciousness;
 - (iii) loss of work;
 - (iv) restriction of work; or
 - (v) transfer to another job.

(8)(a) Except as provided in Subsection (8)(b), an employer who refuses or neglects to make reports, to maintain records, or to file reports with the division as required by this section is:

- (i) guilty of a class C misdemeanor; and
- (ii) subject to a civil assessment:
 - (A) imposed by the division, subject to the requirements of Title 63, Chapter 46b, Administrative Procedures Act; and
 - (B) that may not exceed \$500.

(b) An employer is not subject to the civil assessment or guilty of a class C misdemeanor under this Subsection (8) if:

- (i) the employer submits a report later than required by this section; and
- (ii) the division finds that the employer has shown good cause for submitting a report later than required by this section.

(c) A civil assessment collected under this Subsection (8) shall be deposited into the Uninsured Employers' Fund created in Section 34A-2-704.

(9)(a) A physician attending an injured employee shall comply with rules established by the commission regarding:

- (i) fees for physician's services;
- (ii) disclosure of medical records of the employee medically relevant to the employee's industrial accident or occupational disease claim; and
- (iii) reports to the division regarding:
 - (A) the condition and treatment of an injured employee; or
 - (B) any other matter concerning industrial cases that the physician is treating.

(b) A physician who is associated with, employed by, or bills through a hospital

is subject to Subsection (9)(a).

(c) A hospital providing services for an injured employee is not subject to the requirements of Subsection (9)(a) except for rules made by the commission that are described in Subsection (9)(a)(ii) or (iii).

(d) The commission's schedule of fees may reasonably differentiate remuneration to be paid to providers of health services based on:

(i) the severity of the employee's condition;

(ii) the nature of the treatment necessary; and

(iii) the facilities or equipment specially required to deliver that treatment.

(e) This Subsection (9) does not prohibit a contract with a provider of health services relating to the pricing of goods and services.

(10) A copy of the initial report filed under Subsection (9)(a)(iii) shall be furnished to:

(a) the division;

(b) the employee; and

(c)(i) the employer; or

(ii) the employer's insurance carrier.

(11)(a) Except as provided in Subsection (11)(b), a person subject to Subsection (9)(a)(iii) who fails to comply with Subsection (9)(a)(iii) is guilty of a class C misdemeanor for each offense.

(b) A person subject to Subsection (9)(a)(iii) is not guilty of a class C misdemeanor under this Subsection (11), if:

(i) the person files a late report; and

(ii) the division finds that there is good cause for submitting a late report.

(12)(a) Subject to appellate review under Section 34A-1-303, the commission has exclusive jurisdiction to hear and determine:

(i) whether goods provided to or services rendered to an employee are compensable pursuant to this chapter or Chapter 3, Utah Occupational Disease Act, including:

(A) medical, nurse, or hospital services;

(B) medicines; and

(C) artificial means, appliances, or prosthesis;

(ii) the reasonableness of the amounts charged or paid for a good or service described in Subsection (12)(a)(i); and

(iii) collection issues related to a good or service described in Subsection

(12)(a)(i).

(b) Except as provided in Subsection (12)(a), Subsection 34A-2-211(7), or Section 34A-2-212, a person may not maintain a cause of action in any forum within this state other than the commission for collection or payment for goods or services described in Subsection (12)(a) that are compensable under this chapter or Chapter 3, Utah Occupational Disease Act.

Current through end of 2006 legislation

Copr © 2007 Thomson/West

END OF DOCUMENT

EXHIBIT D

WEST'S UTAH CODE ANNOTATED
TITLE 34A. UTAH LABOR CODE
CHAPTER 2. WORKERS' COMPENSATION ACT
PART 8. ADJUDICATION



§ 34A-2-801. Initiating adjudicative proceedings--Procedure for review of administrative action

(1)(a) To contest an action of the employee's employer or its insurance carrier concerning a compensable industrial accident or occupational disease alleged by the employee, any of the following shall file an application for hearing with the Division of Adjudication:

(i) the employee; or

(ii) a representative of the employee, the qualifications of whom are defined in rule by the commission.

(b) To appeal the imposition of a penalty or other administrative act imposed by the division on the employer or its insurance carrier for failure to comply with this chapter or Chapter 3, Utah Occupational Disease Act, any of the following shall file an application for hearing with the Division of Adjudication:

(i) the employer;

(ii) the insurance carrier; or

(iii) a representative of either the employer or the insurance carrier, the qualifications of whom are defined in rule by the commission.

(c) A person providing goods or services described in Subsections 34A-2-407(12) and 34A-3-108(12) may file an application for hearing in accordance with Section 34A-2-407 or 34A-3-108.

(d) An attorney may file an application for hearing in accordance with Section 34A-1-309.

(2) Unless a party in interest appeals the decision of an administrative law judge in accordance with Subsection (3), the decision of an administrative law judge on an application for hearing filed under Subsection (1) is a final order of the commission 30 days after the date the decision is issued.

(3)(a) A party in interest may appeal the decision of an administrative law judge by filing a motion for review with the Division of Adjudication within 30 days of the date the decision is issued.

(b) Unless a party in interest to the appeal requests under Subsection (3)(c) that the appeal be heard by the Appeals Board, the commissioner shall hear the review.

(c) A party in interest may request that an appeal be heard by the Appeals Board by filing the request with the Division of Adjudication:

(i) as part of the motion for review; or

(ii) if requested by a party in interest who did not file a motion for review, within 20 days of the date the motion for review is filed with the Division of Adjudication.

(d) A case appealed to the Appeals Board shall be decided by the majority vote of the Appeals Board.

(4) All records on appeals shall be maintained by the Division of Adjudication. Those records shall include an appeal docket showing the receipt and disposition of the appeals on review.

(5) Upon appeal, the commissioner or Appeals Board shall make its decision in accordance with Section 34A-1-303.

(6) The commissioner or Appeals Board shall promptly notify the parties to any proceedings before it of its decision, including its findings and conclusions.

(7) The decision of the commissioner or Appeals Board is final unless within 30 days after the date the decision is issued further appeal is initiated under the provisions of this section or Title 63, Chapter 46b, Administrative Procedures Act.

(8)(a) Within 30 days after the date the decision of the commissioner or Appeals Board is issued, any aggrieved party may secure judicial review by commencing an action in the court of appeals against the commissioner or Appeals Board for the review of the decision of the commissioner or Appeals Board.

(b) In an action filed under Subsection (8)(a):

(i) any other party to the proceeding before the commissioner or Appeals Board shall be made a party; and

(ii) the commission shall be made a party.

(c) A party claiming to be aggrieved may seek judicial review only if the party has exhausted the party's remedies before the commission as provided by this section.

(d) At the request of the court of appeals, the commission shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter together with the decision of the commissioner or Appeals Board.

Current through end of 2006 legislation

Copr © 2007 Thomson/West

END OF DOCUMENT

EXHIBIT E



§ 34A-2-111. Managed health care programs--Other safety programs

(1) As used in this section:

(a)(i) "Health care provider" means a person who furnishes treatment or care to persons who have suffered bodily injury.

(ii) "Health care provider" includes:

- (A) a hospital;
- (B) a clinic;
- (C) an emergency care center;
- (D) a physician;
- (E) a nurse;
- (F) a nurse practitioner;
- (G) a physician's assistant;
- (H) a paramedic; or
- (I) an emergency medical technician.

(b) "Physician" means any health care provider licensed under:

- (i) Title 58, Chapter 5a, Podiatric Physician Licensing Act;
- (ii) Title 58, Chapter 24a, Physical Therapist Practice Act;
- (iii) Title 58, Chapter 67, Utah Medical Practice Act;
- (iv) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
- (v) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;
- (vi) Title 58, Chapter 70a, Physician Assistant Act;
- (vii) Title 58, Chapter 71, Naturopathic Physician Practice Act;
- (viii) Title 58, Chapter 72, Acupuncture Licensing Act; and
- (ix) Title 58, Chapter 73, Chiropractic Physician Practice Act.

(c) "Preferred health care facility" means a facility:

- (i) that is a health care facility as defined in Section 26-21-2; and
- (ii) designated under a managed health care program.

(d) "Preferred provider physician" means a physician designated under a managed health care program.

(e) "Self-insured employer" is as defined in Section 34A-2-201.5.

(2)(a) A self-insured employer and insurance carrier may adopt a managed health care program to provide employees the benefits of this chapter or Chapter 3, Utah Occupational Disease Act, beginning January 1, 1993. The plan shall comply with this Subsection (2).

(b)(i) A preferred provider program may be developed if the preferred provider program allows a selection by the employee of more than one physician in the health care specialty required for treating the specific problem of an industrial patient.

(ii)(A) Subject to the requirements of this section, if a preferred provider program is developed by an insurance carrier or self-insured employer, an employee is required to use:

(I) preferred provider physicians; and

(II) preferred health care facilities.

(B) If a preferred provider program is not developed, an employee may have free choice of health care providers.

(iii) The failure to do the following may, if the employee has been notified of the preferred provider program, result in the employee being obligated for any charges in excess of the preferred provider allowances:

(A) use a preferred health care facility; or

(B) initially receive treatment from a preferred provider physician.

(iv) Notwithstanding the requirements of Subsections (2)(b)(i) through (iii), a self-insured employer or other employer may:

(A)(I)(Aa) have its own health care facility on or near its worksite or premises; and

(Bb) continue to contract with other health care providers; or

(II) operate a health care facility; and

(B) require employees to first seek treatment at the provided health care or contracted facility.

(v) An employee subject to a preferred provider program or employed by an employer having its own health care facility may procure the services of any qualified health care provider:

(A) for emergency treatment, if a physician employed in the preferred provider program or at the health care facility is not available for any reason;

(B) for conditions the employee in good faith believes are nonindustrial; or

(C) when an employee living in a rural area would be unduly burdened by

traveling to:

(I) a preferred provider physician; or

(II) preferred health care facility.

(c)(i)(A) An employer, insurance carrier, or self-insured employer may enter into contracts with the following for the purposes listed in Subsection (2)(c)(i)(B):

(I) health care providers ;

(II) medical review organizations; or

(III) vendors of medical goods, services, and supplies including medicines.

(B) A contract described in Subsection (1)(c)(i)(A) may be made for the following purposes:

(I) insurance carriers or self-insured employers may form groups in contracting for managed health care services with health care providers;

(II) peer review;

(III) methods of utilization review;

(IV) use of case management;

(V) bill audit;

(VI) discounted purchasing; and

(VII) the establishment of a reasonable health care treatment protocol program including the implementation of medical treatment and quality care guidelines that are:

(Aa) scientifically based;

(Bb) peer reviewed; and

(Cc) consistent with standards for health care treatment protocol programs that the commission shall establish by rules made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, including the authority of the commission to approve a health care treatment protocol program before it is used or disapprove a health care treatment protocol program that does not comply with this Subsection (2)(c)(i)(B)(VII).

(ii) An insurance carrier may make any or all of the factors in Subsection (2)(c)(i) a condition of insuring an entity in its insurance contract.

(3)(a) In addition to a managed health care program, an insurance carrier may require an employer to establish a work place safety program if the employer:

(i) has an experience modification factor of 1.00 or higher, as determined by the National Council on Compensation Insurance; or

(ii) is determined by the insurance carrier to have a three-year loss ratio of 100% or higher.

(b) A workplace safety program may include:

(i) a written workplace accident and injury reduction program that:

(A) promotes safe and healthful working conditions; and

(B) is based on clearly stated goals and objectives for meeting those goals; and

(ii) a documented review of the workplace accident and injury reduction program each calendar year delineating how procedures set forth in the program are met.

(c) A written workplace accident and injury reduction program permitted under Subsection (3)(b)(i) should describe:

(i) how managers, supervisors, and employees are responsible for implementing the program;

(ii) how continued participation of management will be established, measured, and maintained;

(iii) the methods used to identify, analyze, and control new or existing hazards, conditions, and operations;

(iv) how the program will be communicated to all employees so that the employees are informed of work-related hazards and controls;

(v) how workplace accidents will be investigated and corrective action implemented; and

(vi) how safe work practices and rules will be enforced.

(d) For the purposes of a workplace accident and injury reduction program of an eligible employer described in Subsection 34A-2-103(7)(f), the workplace accident and injury reduction program shall:

(i) include the provisions described in Subsections (3)(b) and (c), except that the employer shall conduct a documented review of the workplace accident and injury reduction program at least semiannually delineating how procedures set forth in the workplace accident and injury reduction program are met; and

(ii) require a written agreement between the employer and all contractors and subcontractors on a project that states that:

(A) the employer has the right to control the manner or method by which the work is executed;

(B) if a contractor, subcontractor, or any employee of a contractor or subcontractor violates the workplace accident and injury reduction program, the employer maintains the right to:

(I) terminate the contract with the contractor or subcontractor;

(II) remove the contractor or subcontractor from the work site; or

(III) require that the contractor or subcontractor not permit an employee

that violates the workplace accident and injury reduction program to work on the project for which the employer is procuring work; and

(C) the contractor or subcontractor shall provide safe and appropriate equipment subject to the right of the employer to:

(I) inspect on a regular basis the equipment of a contractor or subcontractor; and

(II) require that the contractor or subcontractor repair, replace, or remove equipment the employer determines not to be safe or appropriate.

(4) The premiums charged to any employer who fails or refuses to establish a workplace safety program pursuant to Subsection (3)(b)(i) or (ii) may be increased by 5% over any existing current rates and premium modifications charged that employer.

Laws 1992, c. 202, § 1; Laws 1996, c. 240, § 121, eff. July 1, 1997; Laws 1997, c. 375, § 93, eff. July 1, 1997; Laws 2006, c. 295, § 2, eff. May 1, 2006.

Codifications C. 1953, § § 35-1-108, 35A-3-117.

HISTORICAL AND STATUTORY NOTES

Laws 2006, c. 295, rewrote this section, which formerly provided:

"(1) Self-insured employers and workers' compensation carriers may adopt a managed health care program to provide employees the benefits of this chapter or Chapter 3, Utah Occupational Disease Act, beginning January 1, 1993. The plan may include one or more of the following:

"(a)(i) A preferred provider program may be developed so long as the program allows a selection by the employee of more than one physician in the health care specialty required for treating the specific problem of an industrial patient. If a preferred provider program is developed by an employer, insurance carrier, or self-insured entity, employees are required to use preferred provider physicians and medical care facilities. If a preferred provider program is not developed, an industrial claimant may have free choice of health care providers. Failure of an industrial claimant to use a preferred health care facility as defined in Section 26-21-2 as part of a preferred provider program, or failure to initially receive treatment from a preferred physician, may, if the claimant has been notified of the program, result in the claimant being obligated for any charges in excess of the preferred provider allowances.

"(ii) Notwithstanding the requirements of Subsection (1)(a)(i), a self-insured entity or other employer may:

"(A) have its own health care facility on or near its worksite or premises and continue to contract with other health care providers; or

"(B) operate a health care facility and require employees to first seek treatment at the provided health care or contracted facility.

"(iii) An employee of an employer using a preferred provider program or having its own health care facility may procure the services of any qualified practitioner:

"(A) for emergency treatment, if a physician employed in the program or at the

facility is not available for any reason;

"(B) for conditions the employee in good faith believes are nonindustrial; or

"(C) when an employee living in a rural area would be unduly burdened by traveling to a preferred provider.

"(b) (i) Other contracts with medical care providers or medical review organizations may be made for the following purposes:

"(A) insurance carriers or self-insured employers may form groups in contracting for managed health care services with medical providers;

"(B) peer review;

"(C) methods of utilization review;

"(D) use of case management; and

"(E) bill audit.

"(ii) Insurance carriers may make any or all of the factors in Subsection (1) (b) (i) a condition of insuring entities in their insurance contract.

"(2) As used in Subsection (1), 'physician' means any health care provider licensed under:

"(a) Title 58, Chapter 5a, Podiatric Physician Licensing Act;

"(b) Title 58, Chapter 24a, Physical Therapist Practice Act;

"(c) Title 58, Chapter 67, Utah Medical Practice Act;

"(d) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

"(e) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;

"(f) Title 58, Chapter 70, Physician Assistant Practice Act;

"(g) Title 58, Chapter 71, Naturopathic Physician Practice Act;

"(h) Title 58, Chapter 72, Acupuncture Licensing Act; and

"(i) Title 58, Chapter 73, Chiropractic Physician Practice Act.

"(3) Each workers' compensation insurance carrier writing insurance in this state shall maintain a designated agent in this state registered with the division.

"(4) (a) In addition to managed health care plans, an insurance carrier may require an employer to establish a work place safety program if the employer:

"(i) has an experience modification factor of 1.00 or higher, as determined by the National Council on Compensation Insurance; or

"(ii) is determined by the carrier to have a three-year loss ratio of 100% or higher.

"(b) A workplace safety program may include:

"(i) a written workplace accident and injury reduction program that promotes safe and healthful working conditions, which is based on clearly stated goals and objectives for meeting those goals; and

"(ii) a documented review of the workplace accident and injury reduction program each calendar year delineating how procedures set forth in the program are met.

"(5) A written workplace accident and injury reduction program permitted under Subsection (4)(b)(i) should describe:

"(a) how managers, supervisors, and employees are responsible for implementing the program;

"(b) how continued participation of management will be established, measured, and maintained;

"(c) the methods used to identify, analyze, and control new or existing hazards, conditions, and operations;

"(d) how the program will be communicated to all employees so that the employees are informed of work-related hazards and controls;

"(e) how workplace accidents will be investigated and corrective action implemented; and

"(f) how safe work practices and rules will be enforced.

"(6) The premiums charged to any employer who fails or refuses to establish a workplace safety program pursuant to Subsection (4)(b)(i) or (ii) may be increased by 5% over any existing current rates and premium modifications charged that employer."

LIBRARY REFERENCES

Workers' Compensation k991.5.

Westlaw Key Number Search: 413k991.5.

C.J.S. Workers' Compensation § 503.

U.C.A. 1953 § 34A-2-111, UT ST § 34A-2-111

Current through end of 2006 legislation

Copr © 2007 Thomson/West

END OF DOCUMENT

EXHIBIT F

WORKERS' COMPENSATION AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Ed P. Mayne

This act modifies the Workers' Compensation Act including technical changes. The act addresses penalties for failure to make reports related to industrial accidents. The act provides for survival of workers' compensation claims in case of death.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

34A-2-407, as last amended by Chapter 205 and renumbered and amended by Chapter 375, Laws of Utah 1997

34A-2-801, as renumbered and amended by Chapter 375, Laws of Utah 1997

ENACTS:

34A-2-423, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34A-2-407** is amended to read:

34A-2-407. Reporting of industrial injuries -- Regulation of health care providers.

(1) As used in this section, "physician" is as defined in Section 34A-2-111.

~~[(1)]~~ (2) (a) Any employee sustaining an injury arising out of and in the course of employment shall provide notification to the employee's employer promptly of the injury.

(b) If the employee is unable to provide the notification required by Subsection (2)(a), the ~~[employee's next-of-kin or attorney]~~ following may provide notification of the injury to the employee's employer~~[-]~~:

(i) the employee's next-of-kin; or

(ii) the employee's attorney.

~~[(2) Any]~~ (3) (a) An employee ~~[who fails to notify the employee's employer or the division within 180 days of an injury]~~ is barred for any claim of benefits arising from ~~[the]~~ an injury~~[-]~~ if the employee fails to notify within the time period described in Subsection (3)(b):

(i) the employee's employer in accordance with Subsection (2); or

(ii) the division.

(b) The notice required by Subsection (3)(a) shall be made within:

(i) 180 days of the day on which the injury occurs; or

(ii) in the case of an occupational hearing loss, the time period specified in Section

34A-2-506.

~~[(3)]~~ (4) The following constitute notification of injury required by Subsection (2):

(a) an employer's or physician's injury report filed with:

(i) the division;

(ii) the employer; or

(iii) the employer's insurance carrier, or

(b) the payment of any medical or disability benefits by:

(i) the employer; or

(ii) the employer's insurance carrier.

~~[(4)]~~ (5) (a) In the form prescribed by the division, each employer shall file a report with the division of any:

(i) work-related fatality; or

(ii) work-related injury resulting in:

(A) medical treatment;

(B) loss of consciousness;

(C) loss of work;

(D) restriction of work; or

(E) transfer to another job.

(b) The employer shall file the report required by Subsection ~~[(4)]~~ (5)(a) within seven days after:

(i) the occurrence of a fatality or injury;

(ii) the employer's first knowledge of the fatality or injury; or

(iii) the employee's notification of the fatality or injury.

(c) ~~[Each]~~ (i) An employer shall file a subsequent report with the division of any previously reported injury that later ~~[resulted]~~ results in death.

(ii) The subsequent report required by this Subsection (5)(c) shall be filed with the division within seven days following:

~~[(i)]~~ (A) the death; or

~~[(ii)]~~ (B) the employer's first knowledge or notification of the death.

(d) A report is not required to be filed under this Subsection (5) for minor injuries, such as cuts or scratches that require first-aid treatment only, unless:

(i) a treating physician files~~[-, or is required to file, the Physician's Initial Report of Work Injury or Occupational Disease]~~ a report with the division~~[-]~~ in accordance with Subsection (9);
or

(ii) a treating physician is required to file a report with the division in accordance with Subsection (9).

~~[(5) Each]~~ (6) An employer required to file a report under Subsection (5) shall provide the employee with:

(a) a copy of the report submitted to the division; and

(b) a statement, as prepared by the division, of the employee's rights and responsibilities related to the industrial injury.

~~[(6)]~~ (7) Each employer shall maintain a record in a manner prescribed by the division of
all:

(a) work-related fatalities; or

(b) work-related injuries resulting in:

(i) medical treatment;

(ii) loss of consciousness;

(iii) loss of work;

(iv) restriction of work; or

(v) transfer to another job.

~~[(7) Any]~~ (8) (a) Except as provided in Subsection (8)(b), an employer who refuses or

neglects to make reports, to maintain records, or to file reports with the division as required by this section is:

(i) guilty of a class C misdemeanor; and

(ii) subject to ~~[citation under Section 34A-6-302 and]~~ a civil assessment ~~[as provided under Section 34A-6-307, unless]~~:

(A) imposed by the division, subject to the requirements of Title 63, Chapter 46b, Administrative Procedures Act; and

(B) that may not exceed \$500.

(b) An employer is not subject to the civil assessment or guilty of a class C misdemeanor under this Subsection (8) if:

(i) the employer submits a report later than required by this section; and

(ii) the division finds that the employer has shown good cause for submitting a report later than required by this section.

(c) A civil assessment collected under this Subsection (8) shall be deposited into the Uninsured Employers' Fund created in Section 34A-2-704.

~~[(8)]~~ (9) (a) Except as provided in Subsection [(8)] (9)(c) [all physicians, surgeons, and other health providers], a physician attending an injured [employees] employee shall:

(i) comply with all the rules, including the schedule of fees, for [their] the physician's services as adopted by the commission; and

(ii) make reports to the division at any and all times as required as to:

(A) the condition and treatment of an injured employee; or [as to]

(B) any other matter concerning industrial cases [they are] that the physician is treating.

(b) A physician[~~, as defined in Subsection 34A-2-111(2),~~] who is associated with, employed by, or bills through a hospital is subject to Subsection [(8)] (9)(a).

(c) A hospital is not subject to the requirements of Subsection [(8)] (9)(a).

(d) The commission's schedule of fees may reasonably differentiate remuneration to be paid to providers of health services based on:

(i) the severity of the employee's condition;

- (ii) the nature of the treatment necessary; and
- (iii) the facilities or equipment specially required to deliver that treatment.

(e) This Subsection [(8)] (9) does not modify contracts with providers of health services relating to the pricing of goods and services existing on May 1, 1995.

(f) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, a physician~~[-surgeon, or other health provider]~~ may file with the Division of Adjudication an application for hearing to appeal a decision or final order to the extent [it] a decision or final order concerns the fees charged by the physician~~[-surgeon, or other health provider]~~ in accordance with this section.

~~[(9)]~~ (10) A copy of the ~~[physician's]~~ initial report filed under Subsection (9) shall be furnished to:

- (a) the division;
- (b) the employee; and
- (c) (i) the employer; or [its]
(ii) the employer's insurance carrier.

~~[(10) Any]~~ (11) (a) Except as provided in Subsection (11)(b), a physician[-surgeon, or other health provider], excluding any hospital, who [refuses or neglects to make any report or] fails to comply with this section is guilty of a class C misdemeanor for each offense~~[-unless]~~.

(b) A physician is not guilty of a class C misdemeanor under this Subsection (11), if:

- (i) the physician files a late report; and
- (ii) the division finds that there is good cause for submitting a late report.

~~[(11)]~~ (12) (a) Subject to appellate review under Section 34A-1-303, the commission has exclusive jurisdiction to hear and determine whether the treatment or services rendered to ~~[employees by physicians, surgeons, or other health providers]~~ an employee by a physician are:

- (i) reasonably related to industrial injuries or occupational diseases; and
- (ii) compensable pursuant to this chapter or Chapter 3, Utah Occupational Disease Act.

(b) Except as provided in Subsection ~~[(11)]~~ (12)(a), Subsection 34A-2-211(7), or Section 34A-2-212, a person may not maintain a cause of action in any forum within this state other than

the commission for collection or payment of a physician's[, surgeon's, or other health provider's] billing for treatment or services that are compensable under this chapter or Chapter 3, Utah Occupational Disease Act.

Section 2. Section ~~34A-2-423~~ is enacted to read:

34A-2-423. Survival of claim in case of death.

(1) As used in this section:

(a) "Estate" is as defined in Section 75-1-201.

(b) "Personal representative" is as defined in Section 75-1-201.

(2) The personal representative of the estate of an employee may adjudicate an employee's claim for compensation under this chapter if in accordance with this chapter, the employee files a claim:

(a) before the employee dies; and

(b) for compensation for an industrial accident or occupational disease for which compensation is payable under this chapter or Chapter 3, Utah Occupational Disease Act.

(3) If the commission finds that the employee is entitled to compensation under this chapter for the claim described in Subsection (2)(a), the commission shall order that compensation be paid for the period:

(a) beginning on the day on which the employee is entitled to receive compensation under this chapter; and

(b) ending on the day on which the employee dies.

(4) (a) Compensation awarded under Subsection (3) shall be paid to:

(i) if the employee has one or more dependents on the day on which the employee dies, to the dependents of the employee; or

(ii) if the employee has no dependents on the day on which the employee dies, to the estate of the employee.

(b) The commission may apportion any compensation paid to dependents under this Subsection (4) in the manner that the commission considers just and equitable.

(5) If an employee that files a claim under this chapter dies from the industrial accident

or occupational disease that is the basis of the employee's claim, the compensation awarded under this section shall be in addition to death benefits awarded in accordance with Section 34A-2-414.

Section 3. Section 34A-2-801 is amended to read:

34A-2-801. Initiating adjudicative proceedings -- Procedure for review of administrative action.

(1) (a) To contest an action of the employee's employer or its insurance carrier concerning a compensable industrial accident or occupational disease alleged by the employee, any of the following shall file an application for hearing with the Division of Adjudication:

- (i) the employee; or
- (ii) a representative of the employee, the qualifications of whom are defined in rule by the commission.

(b) To appeal the imposition of a penalty or other administrative act imposed by the division on the employer or its insurance carrier for failure to comply with this chapter or Chapter 3, Utah Occupational Disease Act, any of the following shall file an application for hearing with the Division of Adjudication:

- (i) the employer;
- (ii) the insurance carrier; or
- (iii) a representative of either the employer or the insurance carrier, the qualifications of whom are defined in rule by the commission.

(c) A physician~~[, surgeon, or other health provider]~~, as defined in Section 34A-2-111, may file an application for hearing in accordance with Section 34A-2-407.

(d) An attorney may file an application for hearing in accordance with Section 34A-1-309.

(2) Unless a party in interest appeals the decision of an administrative law judge in accordance with Subsection (3), the decision of an administrative law judge on an application for hearing filed under Subsection (1) is a final order of the commission 30 days after the date the decision is issued.

(3) (a) A party in interest may appeal the decision of an administrative law judge by filing a motion for review with the Division of Adjudication within 30 days of the date the decision is issued.

(b) Unless a party in interest to the appeal requests under Subsection (3)(c) that the appeal be heard by the Appeals Board, the commissioner shall hear the review.

(c) A party in interest may request that an appeal be heard by the Appeals Board by filing the request with the Division of Adjudication:

(i) as part of the motion for review; or

(ii) if requested by a party in interest who did not file a motion for review, within 20 days of the date the motion for review is filed with the Division of Adjudication.

(d) A case appealed to the Appeals Board shall be decided by the majority vote of the Appeals Board.

(4) All records on appeals shall be maintained by the Division of Adjudication. Those records shall include an appeal docket showing the receipt and disposition of the appeals on review.

(5) Upon appeal, the commissioner or Appeals Board shall make its decision in accordance with Section 34A-1-303.

(6) The commissioner or Appeals Board shall promptly notify the parties to any proceedings before it of its decision, including its findings and conclusions.

(7) The decision of the commissioner or Appeals Board is final unless within 30 days after the date the decision is issued further appeal is initiated under the provisions of this section or Title 63, Chapter 46b, Administrative Procedures Act.

(8) (a) Within 30 days after the date the decision of the commissioner or Appeals Board is issued, any aggrieved party may secure judicial review by commencing an action in the court of appeals against the commissioner or Appeals Board for the review of the decision of the commissioner or Appeals Board.

(b) In an action filed under Subsection (8)(a):

(i) any other party to the proceeding before the commissioner or Appeals Board shall be

made a party; and

(ii) the commission shall be made a party.

(c) A party claiming to be aggrieved may seek judicial review only if the party has exhausted the party's remedies before the commission as provided by this section.

(d) At the request of the court of appeals, the commission shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter together with the decision of the commissioner or Appeals Board.

EXHIBIT G

UTAH STATE LEGISLATURE [Home](#) | [Site Map](#) | [Calendar](#) | [Code/Constitution](#) | [House](#) | [Senate](#) | [Search](#)

Download Zipped Enrolled WordPerfect [HB0150.ZIP](#)

[\[Introduced\]](#)[\[Amended\]](#)[\[Status\]](#)[\[Bill Documents\]](#)[\[Fiscal Note\]](#)[\[Bills Directory\]](#)

H.B. 150 Enrolled

1

WORKERS' COMPENSATION REVISIONS

2

2006 GENERAL SESSION

3

STATE OF UTAH

4

Chief Sponsor: Michael T. Morley

5

Senate Sponsor: Curtis S. Bramble

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to the Workers' Compensation Act and the Utah
10 Occupational Disease Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 . addresses when an employer of a contractor, subcontractor, or their employees is
- 14 protected by the exclusive remedy of workers' compensation;
- 15 . defines terms related to managed health care programs and provides for consistent
- 16 use of terms;
- 17 . expands the persons with whom and purposes for which contracts may be made in a
- 18 managed health care workers' compensation setting;
- 19 . addresses workplace accident and injury reduction programs;
- 20 . expands requirements for a workers' compensation carrier's designated agent;
- 21 . gives the commission the exclusive jurisdiction and authority to determine the
- 22 reasonableness and to adjudicate the collection of certain amounts related to
- 23 workers' compensation benefits;
- 24 . addresses treatment of hospital services for purposes of workers' compensation;
- 25 . addresses reporting requirements;
- 26 . addresses contracts with providers of health services relating to the pricing of goods
- 27 and services;
- 28 . clarifies burden of proof in permanent total disability claims;
- 29 . addresses who may file an application for a hearing;

30

- . deletes out-of-date language;

31 makes technical changes; and
 32 provides for legislative intent.

33 **Monies Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 34A-2-103, as last amended by Chapter 71, Laws of Utah 2005

40 34A-2-111, as renumbered and amended by Chapter 375, Laws of Utah 1997

41 34A-2-407, as last amended by Chapter 113, Laws of Utah 2004

42 34A-2-413, as last amended by Chapter 261, Laws of Utah 2005

43 34A-2-801, as last amended by Chapter 67, Laws of Utah 2003

44 34A-3-108, as last amended by Chapter 205 and renumbered and amended by Chapter
 45 375, Laws of Utah 1997

46 ENACTS:

47 34A-2-113, Utah Code Annotated 1953

48 **Uncodified Material Affected:**

49 ENACTS UNCODIFIED MATERIAL

50

51 *Be it enacted by the Legislature of the state of Utah:*

52 Section 1. Section 34A-2-103 is amended to read:

53 **34A-2-103. Employers enumerated and defined -- Regularly employed --**
 54 **Statutory employers.**

55 (1) (a) The state, and each county, city, town, and school district in the state are
 56 considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

57 (b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah

58 Occupational Disease Act prescribed in Sections 34A-2-105 and 34A-3-102, the state is
 59 considered to be a single employer and includes any office, department, agency, authority,
 60 commission, board, institution, hospital, college, university, or other instrumentality of the
 61 state.

62 (2) (a) Except as provided in Subsection (4), each person, including each public utility
 63 and each independent contractor, who regularly employs one or more workers or operatives

in

64 the same business, or in or about the same establishment, under any contract of hire, express

or

65 implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah
 66 Occupational Disease Act.

67 (b) As used in this Subsection (2):

68 [~~(a)~~] (i) "Independent contractor" means any person engaged in the performance of any
 69 work for another who, while so engaged, is:

70 [~~(i)~~] (A) independent of the employer in all that pertains to the execution of the work;

71 [~~(ii)~~] (B) not subject to the routine rule or control of the employer;

72 [~~(iii)~~] (C) engaged only in the performance of a definite job or piece of work; and

73 [~~(iv)~~] (D) subordinate to the employer only in effecting a result in accordance with the
 74 employer's design.

75 [~~(b)~~] (ii) "Regularly" includes all employments in the usual course of the trade,

76 business, profession, or occupation of the employer, whether continuous throughout the year

or

77 for only a portion of the year.

78 (3) (a) The client company in an employee leasing arrangement under Title 58, Chapter
 79 59, Professional Employer Organization Registration Act, is considered the employer of
 leased

80 employees and shall secure workers' compensation benefits for them by complying with
 81 Subsection 34A-2-201 (1) or (2) and commission rules.

82 (b) [~~Insurance carriers~~] An insurance carrier may underwrite workers' compensation
 83 secured in accordance with Subsection (3)(a) showing the leasing company as the named
 84 insured and each client company as an additional insured by means of individual
 endorsements.

85 (c) Endorsements shall be filed with the division as directed by commission rule.

86 (d) The division shall promptly inform the Division of Occupation and Professional
 87 Licensing within the Department of Commerce if the division has reason to believe that an
 88 employee leasing company is not in compliance with Subsection 34A-2-201 (1) or (2) and
 89 commission rules.

90 (4) A domestic employer who does not employ one employee or more than one
 91 employee at least 40 hours per week is not considered an employer under this chapter and
 92 Chapter 3, Utah Occupational Disease Act.

93 (5) (a) As used in this Subsection (5):

94 (i) (A) "agricultural employer" means a person who employs agricultural labor as
 95 defined in Subsections 35A-4-206 (1) and (2) and does not include employment as provided
 in

96 Subsection 35A-4-206 (3); and

97 (B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a
 98 member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural
 99 employer is a corporation, partnership, or other business entity, "agricultural employer"

means

100 an officer, director, or partner of the business entity;

101 (ii) "employer's immediate family" means:

102 (A) an agricultural employer's:

103 (I) spouse;

104 (II) grandparent;

105 (III) parent;

106 (IV) sibling;

107 (V) child;

108 (VI) grandchild;

109 (VII) nephew; or

110 (VIII) niece;

111 (B) a spouse of any person provided in Subsection (5)(a)(ii)(A)(II) through (VIII); or

112 (C) an individual who is similar to those listed in Subsections (5)(a)(ii)(A) or (B) as

113 defined by rules of the commission; and

114 (iii) "nonimmediate family" means a person who is not a member of the employer's
 115 immediate family.

116 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
 117 agricultural employer is not considered an employer of a member of the employer's
 immediate

118 family.

119 (c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
 120 agricultural employer is not considered an employer of a nonimmediate family employee if:

121 (i) for the previous calendar year the agricultural employer's total annual payroll for all
 122 nonimmediate family employees was less than \$8,000; or
 123 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll
 124 for all nonimmediate family employees was equal to or greater than \$8,000 but less than
 125 \$50,000; and
 126 (B) the agricultural employer maintains insurance that covers job-related injuries of the
 127 employer's nonimmediate family employees in at least the following amounts:
 128 (I) \$300,000 liability insurance, as defined in Section 31A-1-301 ; and
 129 (II) \$5,000 for health care benefits similar to benefits under health care insurance as
 130 defined in Section 31A-1-301 .
 131 (d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
 132 agricultural employer is considered an employer of a nonimmediate family employee if:
 133 (i) for the previous calendar year the agricultural employer's total annual payroll for all
 134 nonimmediate family employees is equal to or greater than \$50,000; or
 135 (ii) (A) for the previous year the agricultural employer's total payroll for nonimmediate
 136 family employees was equal to or exceeds \$8,000 but is less than \$50,000; and
 137 (B) the agricultural employer fails to maintain the insurance required under Subsection
 138 (5)(c)(ii)(B).
 139 (6) An employer of agricultural laborers or domestic servants who is not considered an
 140 employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come
 under
 141 this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

142 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and
 143 (b) the rules of the commission.
 144 (7) (a) If any person who is an employer procures any work to be done wholly or in
 145 part for the employer by a contractor over whose work the employer retains supervision or
 146 control, and this work is a part or process in the trade or business of the employer, the
 147 contractor, all persons employed by the contractor, all subcontractors under the contractor,
 and
 148 all persons employed by any of these subcontractors, are considered employees of the
 original
 149 employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.
 150 (b) Any person who is engaged in constructing, improving, repairing, or remodelling a
 151 residence that the person owns or is in the process of acquiring as the person's personal
 152 residence may not be considered an employee or employer solely by operation of
 Subsection
 153 (7)(a).
 154 (c) A partner in a partnership or an owner of a sole proprietorship [~~may~~ is not [~~be~~]
 155 considered an employee under Subsection (7)(a) if the employer who procures work to be
 done
 156 by the partnership or sole proprietorship obtains and relies on either:
 157 (i) a valid certification of the partnership's or sole proprietorship's compliance with
 158 Section 34A-2-201 indicating that the partnership or sole proprietorship secured the
 payment of
 159 workers' compensation benefits pursuant to Section 34A-2-201 ; or
 160 (ii) if a partnership or sole proprietorship with no employees other than a partner of the
 161 partnership or owner of the sole proprietorship, a workers' compensation policy issued by
 an
 162 insurer pursuant to Subsection 31A-21-104 (8) stating that:
 163 (A) the partnership or sole proprietorship is customarily engaged in an independently

164 established trade, occupation, profession, or business; and
 165 (B) the partner or owner personally waives the partner's or owner's entitlement to the
 166 benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of
 the
 167 partnership or sole proprietorship.

168 (d) A director or officer of a corporation [~~may~~] is not [~~be~~] considered an employee
 169 under Subsection (7)(a) if the director or officer is excluded from coverage under
 Subsection

170 34A-2-104 (4).
 171 (e) A contractor or subcontractor is not an employee of the employer under Subsection
 172 (7)(a), if the employer who procures work to be done by the contractor or subcontractor
 obtains

173 and relies on either:

174 (i) a valid certification of the contractor's or subcontractor's compliance with Section
 175 34A-2-201 ; or

176 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a
 177 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a
 178 workers' compensation policy issued by an insurer pursuant to Subsection 31A-21-104 (8)
 179 stating that:

180 (A) the partnership, corporation, or sole proprietorship is customarily engaged in an
 181 independently established trade, occupation, profession, or business; and

182 (B) the partner, corporate officer, or owner personally waives the partner's, corporate
 183 officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah
 184 Occupational Disease Act, in the operation of the partnership's, corporation's, or sole
 185 proprietorship's enterprise under a contract of hire for services.

186 (f) (i) For purposes of this Subsection (7)(f), "eligible employer" means a person who:

187 (A) is an employer; and

188 (B) procures work to be done wholly or in part for the employer by a contractor,
 189 including:

190 (I) all persons employed by the contractor;

191 (II) all subcontractors under the contractor; and

192 (III) all persons employed by any of these subcontractors.

193 (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of

194 Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes
of

195 Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the
contractor

196 or subcontractor described in Subsection (7)(f)(i)(B).

197 (iii) Subsection (7)(f)(ii) applies if the eligible employer:

198 (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an
 199 original employer under Subsection (7)(a) because the contractor or subcontractor fails to
 200 comply with Section 34A-2-201 ;

201 (B) (I) secures the payment of workers' compensation benefits for the contractor or
 202 subcontractor pursuant to Section 34A-2-201 ;

203 (II) procures work to be done that is part or process of the trade or business of the
 204 eligible employer; and

205 (III) does the following with regards to a written workplace accident and injury
 206 reduction program that meets the requirements of Subsection 34A-2-111 (3)(d):

207 (Aa) adopts the workplace accident and injury reduction program;
 208 (Bb) posts the workplace accident and injury reduction program at the work site at
 209 which the eligible employer procures work; and
 210 (Cc) enforces the workplace accident and injury reduction program according to the
 211 terms of the workplace accident and injury reduction program; or
 212 (C) (I) obtains and relies on:
 213 (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);
 214 (Bb) a workers' compensation policy described in Subsection (7)(c)(ii) or (7)(e)(ii); or
 215 (Cc) proof that a director or officer is excluded from coverage under Subsection
 216 34A-2-104 (4);
 217 (II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits
 218 if the contractor or subcontractor fails to comply with Section 34A-2-201 ;
 219 (III) procures work to be done that is part or process in the trade or business of the
 220 eligible employer; and
 221 (IV) does the following with regards to a written workplace accident and injury
 222 reduction program that meets the requirements of Subsection 34A-2-111 (3)(d):
 223 (Aa) adopts the workplace accident and injury reduction program;
 224 (Bb) posts the workplace accident and injury reduction program at the work site at
 225 which the eligible employer procures work; and

226 (Cc) enforces the workplace accident and injury reduction program according to the
 227 terms of the workplace accident and injury reduction program.

228 Section 2. Section 34A-2-111 is amended to read:

229 **34A-2-111. Managed health care programs -- Other safety programs.**

230 (1) As used in this section:

231 (a) (i) "Health care provider" means a person who furnishes treatment or care to
 232 persons who have suffered bodily injury.

233 (ii) "Health care provider" includes:

234 (A) a hospital;

235 (B) a clinic;

236 (C) an emergency care center;

237 (D) a physician;

238 (E) a nurse;

239 (F) a nurse practitioner;

240 (G) a physicians' assistant;

241 (H) a paramedic; or

242 (I) an emergency medical technician.

243 (b) "Physician" means any health care provider licensed under:

244 (i) Title 58, Chapter 5a, Podiatric Physician Licensing Act;

245 (ii) Title 58, Chapter 24a, Physical Therapist Practice Act;

246 (iii) Title 58, Chapter 67, Utah Medical Practice Act;

247 (iv) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

248 (v) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;

249 (vi) Title 58, Chapter 70a, Physician Assistant Act;

250 (vii) Title 58, Chapter 71, Naturopathic Physician Practice Act;

251 (viii) Title 58, Chapter 72, Acupuncture Licensing Act; and

252 (ix) Title 58, Chapter 73, Chiropractic Physician Practice Act.

253 (c) "Preferred health care facility" means a facility:

254 (i) that is a health care facility as defined in Section 26-21-2 ; and

255 (ii) designated under a managed health care program.
 256 (d) "Preferred provider physician" means a physician designated under a managed
 257 health care program.
 258 (e) "Self-insured employer" is as defined in Section 34A-2-201.5 .
 259 ~~[(1)]~~ (2) (a) [Self-insured employers] A self-insured employer and [workers'
 260 compensation carriers] insurance carrier may adopt a managed health care program to
 provide
 261 employees the benefits of this chapter or Chapter 3, Utah Occupational Disease Act,
 beginning
 262 January 1, 1993. The plan ~~[may include one or more of the following:]~~ shall comply with
this
 263 Subsection (2).
 264 ~~[(a)]~~ (b) (i) A preferred provider program may be developed [so long as] if the
 265 preferred provider program allows a selection by the employee of more than one physician
 in
 266 the health care specialty required for treating the specific problem of an industrial patient.
 [If]
 267 (ii) (A) Subject to the requirements of this section, if a preferred provider program is
 268 developed by an [employer,] insurance carrier[, or self-insured [entity] employer,
 [employees
 269 are] an employee is required to use:
 270 (I) preferred provider physicians; and
 271 (II) [medical] preferred health care facilities.
 272 (B) If a preferred provider program is not developed, an [industrial claimant] employee
 273 may have free choice of health care providers. [Failure of an industrial claimant to use a
 274 preferred health care facility as defined in Section 26-21-2 as part of a preferred provider
 275 program, or failure to initially receive treatment from a preferred physician,]
 276 (iii) The failure to do the following may, if the [claimant] employee has been notified
 277 of the preferred provider program, result in the [claimant] employee being obligated for any
 278 charges in excess of the preferred provider allowances[.];
 279 (A) use a preferred health care facility; or
 280 (B) initially receive treatment from a preferred provider physician.
 281 ~~[(ii)]~~ (iv) Notwithstanding the requirements of [Subsection (1)(a)(i)] Subsections

 282 (2)(b)(i) through (iii), a self-insured [entity] employer or other employer may:
 283 (A) (I) (Aa) have its own health care facility on or near its worksite or premises; and
 284 (Bb) continue to contract with other health care providers; or
 285 ~~[(B)]~~ (II) operate a health care facility; and
 286 (B) require employees to first seek treatment at the provided health care or contracted
 287 facility.
 288 ~~[(iii)]~~ (v) An employee [of an employer using] subject to a preferred provider program
 289 or employed by an employer having its own health care facility may procure the services of
 any
 290 qualified [practitioner] health care provider:
 291 (A) for emergency treatment, if a physician employed in the preferred provider
 292 program or at the health care facility is not available for any reason;
 293 (B) for conditions the employee in good faith believes are nonindustrial; or
 294 (C) when an employee living in a rural area would be unduly burdened by traveling to:
 295 (I) a preferred provider physician; or
 296 (II) preferred health care facility.
 297 ~~[(b)]~~ (c) (i) [Other] (A) An employer, insurance carrier, or self-insured employer may

298 enter into contracts with ~~[medical]~~ the following for the purposes listed in Subsection
 299 (2)(c)(i)(B):

300 (I) health care providers ~~[or]~~;

301 (II) medical review organizations; or

302 (III) vendors of medical goods, services, and supplies including medicines.

303 (B) A contract described in Subsection (1)(c)(i)(A) may be made for the following
 304 purposes:

305 ~~[(A)]~~ (I) insurance carriers or self-insured employers may form groups in contracting
 306 for managed health care services with ~~[medical]~~ health care providers;

307 ~~[(B)]~~ (II) peer review;

308 ~~[(C)]~~ (III) methods of utilization review;

309 ~~[(D)]~~ (IV) use of case management; ~~[and]~~

310 ~~[(E)]~~ (V) bill audit[-];

311 (VI) discounted purchasing; and

312 (VII) the establishment of a reasonable health care treatment protocol program

313 including the implementation of medical treatment and quality care guidelines that are:

314 (Aa) scientifically based;

315 (Bb) peer reviewed; and

316 (Cc) consistent with standards for health care treatment protocol programs that the

317 commission shall establish by rules made in accordance with Title 63, Chapter 46a, Utah

318 Administrative Rulemaking Act, including the authority of the commission to approve a

health

319 care treatment protocol program before it is used or disapprove a health care treatment

protocol

320 program that does not comply with this Subsection (2)(c)(i)(B)(VII).

321 (ii) ~~[Insurance carriers]~~ An insurance carrier may make any or all of the factors in

322 Subsection ~~[(1)(b)]~~ (2)(c)(i) a condition of insuring ~~[entities in their]~~ an entity in its

insurance

323 contract.

324 ~~[(2) As used in Subsection (1), "physician" means any health care provider licensed~~
 325 ~~under:]~~

326 ~~[(a) Title 58, Chapter 5a, Podiatric Physician Licensing Act;]~~

327 ~~[(b) Title 58, Chapter 24a, Physical Therapist Practice Act;]~~

328 ~~[(c) Title 58, Chapter 67, Utah Medical Practice Act;]~~

329 ~~[(d) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;]~~

330 ~~[(e) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;]~~

331 ~~[(f) Title 58, Chapter 70, Physician Assistant Practice Act;]~~

332 ~~[(g) Title 58, Chapter 71, Naturopathic Physician Practice Act;]~~

333 ~~[(h) Title 58, Chapter 72, Acupuncture Licensing Act; and]~~

334 ~~[(i) Title 58, Chapter 73, Chiropractic Physician Practice Act.]~~

335 ~~[(3) Each workers' compensation insurance carrier writing insurance in this state shall~~
 336 ~~maintain a designated agent in this state registered with the division.]~~

337 ~~[(4)]~~ (3) (a) In addition to a managed health care ~~[plans]~~ program, an insurance carrier

338 may require an employer to establish a work place safety program if the employer:

339 (i) has an experience modification factor of 1.00 or higher, as determined by the
 340 National Council on Compensation Insurance; or

341 (ii) is determined by the insurance carrier to have a three-year loss ratio of 100% or
 342 higher.

343 (b) A workplace safety program may include:
 344 (i) a written workplace accident and injury reduction program that:
 345 (A) promotes safe and healthful working conditions~~[-which]; and~~
 346 (B) is based on clearly stated goals and objectives for meeting those goals; and
 347 (ii) a documented review of the workplace accident and injury reduction program each
 348 calendar year delineating how procedures set forth in the program are met.

349 ~~[(5)]~~ (c) A written workplace accident and injury reduction program permitted under
 350 Subsection ~~[(4)]~~ (3)(b)(i) should describe:

351 ~~[(a)]~~ (i) how managers, supervisors, and employees are responsible for implementing
 352 the program;

353 ~~[(b)]~~ (ii) how continued participation of management will be established, measured,
 354 and maintained;

355 ~~[(c)]~~ (iii) the methods used to identify, analyze, and control new or existing hazards,
 356 conditions, and operations;

357 ~~[(d)]~~ (iv) how the program will be communicated to all employees so that the
 358 employees are informed of work-related hazards and controls;

359 ~~[(e)]~~ (v) how workplace accidents will be investigated and corrective action
 360 implemented; and

361 ~~[(f)]~~ (vi) how safe work practices and rules will be enforced.

362 (d) For the purposes of a workplace accident and injury reduction program of an
 363 eligible employer described in Subsection 34A-2-103 (7)(f), the workplace accident and

injury

364 reduction program shall:

365 (i) include the provisions described in Subsections (3)(b) and (c), except that the

366 employer shall conduct a documented review of the workplace accident and injury

reduction

367 program at least semiannually delineating how procedures set forth in the workplace

accident

368 and injury reduction program are met; and

369 (ii) require a written agreement between the employer and all contractors and
 370 subcontractors on a project that states that:

371 (A) the employer has the right to control the manner or method by which the work is
 372 executed;

373 (B) if a contractor, subcontractor, or any employee of a contractor or subcontractor
 374 violates the workplace accident and injury reduction program, the employer maintains the

right

375 to:

376 (I) terminate the contract with the contractor or subcontractor;

377 (II) remove the contractor or subcontractor from the work site; or

378 (III) require that the contractor or subcontractor not permit an employee that violates
 379 the workplace accident and injury reduction program to work on the project for which the
 380 employer is procuring work; and

381 (C) the contractor or subcontractor shall provide safe and appropriate equipment
 382 subject to the right of the employer to:

383 (I) inspect on a regular basis the equipment of a contractor or subcontractor; and

384 (II) require that the contractor or subcontractor repair, replace, or remove equipment
 385 the employer determines not to be safe or appropriate.

386 ~~[(6)]~~ (4) The premiums charged to any employer who fails or refuses to establish a

387 workplace safety program pursuant to Subsection ~~[(4)]~~ (3)(b)(i) or (ii) may be increased by

5%

388 over any existing current rates and premium modifications charged that employer.

389 Section 3. Section 34A-2-113 is enacted to read:

390 **34A-2-113. Designated agent required.**

391 Each workers' compensation insurance^ε carrier writing insurance in this state shall

392 maintain a designated agent in this state that is:

393 (1) registered with the division; and

394 (2) authorized to receive on behalf of the workers' compensation insurance carrier all

395 notices or orders provided for under this chapter or Chapter 3, Utah Occupational Disease

Act.

396 Section 4. Section 34A-2-407 is amended to read:

397 **34A-2-407. Reporting of industrial injuries -- Regulation of health care providers**

398 **-- Funeral expenses.**

399 (1) As used in this section, "physician" is as defined in Section 34A-2-111 .

400 (2) (a) Any employee sustaining an injury arising out of and in the course of
401 employment shall provide notification to the employee's employer promptly of the injury.

402 (b) If the employee is unable to provide the notification required by Subsection (2)(a),
403 the following may provide notification of the injury to the employee's employer:

404 (i) the employee's next-of-kin; or

405 (ii) the employee's attorney.

406 (c) An employee claiming benefits under this chapter, or Chapter 3, Utah Occupational
407 Disease Act, shall comply with rules adopted by the commission regarding disclosure of
408 medical records of the employee medically relevant to the industrial accident or

occupational

409 disease claim.

410 (3) (a) An employee is barred for any claim of benefits arising from an injury if the
411 employee fails to notify within the time period described in Subsection (3)(b):

412 (i) the employee's employer in accordance with Subsection (2); or

413 (ii) the division.

414 (b) The notice required by Subsection (3)(a) shall be made within:

415 (i) 180 days of the day on which the injury occurs; or

416 (ii) in the case of an occupational hearing loss, the time period specified in Section
417 34A-2-506 .

418 (4) The following constitute notification of injury required by Subsection (2):

419 (a) an employer's or physician's injury report filed with:

420 (i) the division;

421 (ii) the employer; or

422 (iii) the employer's insurance carrier; or

423 (b) the payment of any medical or disability benefits by:

424 (i) the employer; or

425 (ii) the employer's insurance carrier.

426 (5) (a) In the form prescribed by the division, each employer shall file a report with the
427 division of any:

428 (i) work-related fatality; or

429 (ii) work-related injury resulting in:

430 (A) medical treatment;

431 (B) loss of consciousness;

432 (C) loss of work;

433 (D) restriction of work; or

434 (E) transfer to another job.

435 (b) The employer shall file the report required by Subsection (5)(a) within seven days
436 after:

437 (i) the occurrence of a fatality or injury;

438 (ii) the employer's first knowledge of the fatality or injury; or

439 (iii) the employee's notification of the fatality or injury.

440 (c) (i) An employer shall file a subsequent report with the division of any previously
441 reported injury that later results in death.

442 (ii) The subsequent report required by this Subsection (5)(c) shall be filed with the
443 division within seven days following:

444 (A) the death; or

445 (B) the employer's first knowledge or notification of the death.

446 (d) A report is not required to be filed under this Subsection (5) for minor injuries,
447 such as cuts or scratches that require first-aid treatment only, unless:

448 (i) a treating physician files a report with the division in accordance with Subsection
449 (9); or

450 (ii) a treating physician is required to file a report with the division in accordance with
451 Subsection (9).

452 (6) An employer required to file a report under Subsection (5) shall provide the
453 employee with:

454 (a) a copy of the report submitted to the division; and

455 (b) a statement, as prepared by the division, of the employee's rights and
456 responsibilities related to the industrial injury.

457 (7) Each employer shall maintain a record in a manner prescribed by the division of all:

458 (a) work-related fatalities; or

459 (b) work-related injuries resulting in:

460 (i) medical treatment;

461 (ii) loss of consciousness;

462 (iii) loss of work;

463 (iv) restriction of work; or

464 (v) transfer to another job.

465 (8) (a) Except as provided in Subsection (8)(b), an employer who refuses or neglects to
466 make reports, to maintain records, or to file reports with the division as required by this

section

467 is:

468 (i) guilty of a class C misdemeanor; and

469 (ii) subject to a civil assessment:

470 (A) imposed by the division, subject to the requirements of Title 63, Chapter 46b,
471 Administrative Procedures Act; and

472 (B) that may not exceed \$500.

473 (b) An employer is not subject to the civil assessment or guilty of a class C
474 misdemeanor under this Subsection (8) if:

475 (i) the employer submits a report later than required by this section; and

476 (ii) the division finds that the employer has shown good cause for submitting a report
477 later than required by this section.

478 (c) A civil assessment collected under this Subsection (8) shall be deposited into the
479 Uninsured Employers' Fund created in Section 34A-2-704 .

480 (9) (a) ~~Except as provided in Subsection (9)(c), a~~ A physician attending an injured

481 employee shall comply with rules established by the commission regarding:
 482 (i) fees for physician's services;
 483 (ii) disclosure of medical records of the employee medically relevant to the employee's
 484 industrial accident[;] or occupational disease claim; and
 485 (iii) reports to the division regarding:
 486 (A) the condition and treatment of an injured employee; or
 487 (B) any other matter concerning industrial cases that the physician is treating.
 488 (b) A physician who is associated with, employed by, or bills through a hospital is
 489 subject to Subsection (9)(a).
 490 (c) A hospital providing services for an injured employee is not subject to the
 491 requirements of Subsection (9)(a)[;] except for rules made by the commission that are
 492 described in Subsection (9)(a)(ii) or (iii).
 493 (d) The commission's schedule of fees may reasonably differentiate remuneration to be
 494 paid to providers of health services based on:
 495 (i) the severity of the employee's condition;
 496 (ii) the nature of the treatment necessary; and
 497 (iii) the facilities or equipment specially required to deliver that treatment.
 498 (e) This Subsection (9) does not ~~[modify contracts with providers]~~ prohibit a contract
 499 with a provider of health services relating to the pricing of goods and services ~~[existing on~~
 May 500 ~~1, 1995].~~
 501 ~~[(f) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, a~~
 502 ~~physician may file with the Division of Adjudication an application for hearing to appeal a~~
 503 ~~decision or final order to the extent a decision or final order concerns the fees charged by~~
 the 504 ~~physician in accordance with this section.]~~
 505 (10) A copy of the initial report filed under Subsection (9)(a)(iii) shall be furnished to:
 506 (a) the division;
 507 (b) the employee; and
 508 (c) (i) the employer; or
 509 (ii) the employer's insurance carrier.
 510 (11) (a) Except as provided in Subsection (11)(b), a ~~[physician, excluding any~~
 511 ~~hospital,]~~ person subject to Subsection (9)(a)(iii) who fails to comply with Subsection
 512 (9)(a)(iii) is guilty of a class C misdemeanor for each offense.
 513 (b) A ~~[physician]~~ person subject to Subsection (9)(a)(iii) is not guilty of a class C
 514 misdemeanor under this Subsection (11), if:
 515 (i) the ~~[physician]~~ person files a late report; and
 516 (ii) the division finds that there is good cause for submitting a late report.
 517 (12) (a) Subject to appellate review under Section 34A-1-303, the commission has
 518 exclusive jurisdiction to hear and determine:
 519 (i) whether ~~[the treatment]~~ goods provided to or services rendered to an employee ~~[by a~~
 520 ~~physician are: (i) reasonably related to industrial injuries or occupational diseases; and (ii)]~~
 are 521 compensable pursuant to this chapter or Chapter 3, Utah Occupational Disease Act[;],
 522 including:
 523 (A) medical, nurse, or hospital services;
 524 (B) medicines; and
 525 (C) artificial means, appliances, or prostheses;
 526 (ii) the reasonableness of the amounts charged or paid for a good or service described
 527 in Subsection (12)(a)(i); and

528 (iii) collection issues related to a good or service described in Subsection (12)(a)(i).
 529 (b) Except as provided in Subsection (12)(a), Subsection 34A-2-211 (7), or Section
 530 34A-2-212, a person may not maintain a cause of action in any forum within this state other
 531 than the commission for collection or payment ~~[of a physician's billing for treatment]~~ for
 532 goods
 532 or services described in Subsection (12)(a) that are compensable under this chapter or
 Chapter 3, Utah Occupational Disease Act.
 533
 534 Section 5. Section **34A-2-413** is amended to read:
 535 **34A-2-413. Permanent total disability -- Amount of payments -- Rehabilitation.**
 536 (1) (a) In cases of permanent total disability resulting from an industrial accident or
 537 occupational disease, the employee shall receive compensation as outlined in this section.
 538 (b) To establish entitlement to permanent total disability compensation, the employee
 539 ~~[has the burden of proof to show]~~ must prove by a preponderance of evidence that:
 540 (i) the employee sustained a significant impairment or combination of impairments as a
 541 result of the industrial accident or occupational disease that gives rise to the permanent total
 542 disability entitlement;
 543 (ii) the employee is permanently totally disabled; and
 544 (iii) the industrial accident or occupational disease was the direct cause of the
 545 employee's permanent total disability.
 546 (c) To ~~[find]~~ establish that an employee is permanently totally disabled~~[-the~~
 547 ~~commission shall conclude]~~ the employee must prove by a preponderance of the evidence
 that:
 548 (i) the employee is not gainfully employed;
 549 (ii) the employee has an impairment or combination of impairments that limit the
 550 employee's ability to do basic work activities;
 551 (iii) the industrial or occupationally caused impairment or combination of impairments
 552 prevent the employee from performing the essential functions of the work activities for
 which
 553 the employee has been qualified until the time of the industrial accident or occupational
 disease
 554 that is the basis for the employee's permanent total disability claim; and
 555 (iv) the employee cannot perform other work reasonably available, taking into
 556 consideration the employee's:
 557 (A) age;
 558 (B) education;
 559 (C) past work experience;
 560 (D) medical capacity; and
 561 (E) residual functional capacity.
 562 (d) Evidence of an employee's entitlement to disability benefits other than those
 563 provided under this chapter and Chapter 3, Utah Occupational Disease Act, if relevant:
 564 (i) may be presented to the commission;
 565 (ii) is not binding; and
 566 (iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah
 567 Occupational Disease Act.
 568 (2) For permanent total disability compensation during the initial 312-week
 569 entitlement, compensation shall be 66-2/3% of the employee's average weekly wage at the
 time

570 of the injury, limited as follows:
571 (a) compensation per week may not be more than 85% of the state average weekly
572 wage at the time of the injury;
573 (b) compensation per week may not be less than the sum of \$45 per week, plus \$5 for a
574 dependent spouse, plus \$5 for each dependent child under the age of 18 years, up to a
575 maximum of four dependent minor children, but not exceeding the maximum established in
576 Subsection (2)(a) nor exceeding the average weekly wage of the employee at the time of the
577 injury; and
578 (c) after the initial 312 weeks, the minimum weekly compensation rate under
579 Subsection (2)(b) shall be 36% of the current state average weekly wage, rounded to the
nearest
580 dollar.
581 (3) This Subsection (3) applies to claims resulting from an accident or disease arising
582 out of and in the course of the employee's employment on or before June 30, 1994.
583 (a) The employer or its insurance carrier is liable for the initial 312 weeks of permanent
584 total disability compensation except as outlined in Section 34A-2-703 as in effect on the
date
585 of injury.
586 (b) The employer or its insurance carrier may not be required to pay compensation for
587 any combination of disabilities of any kind, as provided in this section and Sections
34A-2-410
588 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation
589 payable over the initial 312 weeks at the applicable permanent total disability compensation
rate under Subsection (2).
590
591 (c) Any overpayment of this compensation shall be reimbursed to the employer or its
592 insurance carrier by the Employers' Reinsurance Fund and shall be paid out of the
Employers'
593 Reinsurance Fund's liability to the employee.
594 (d) After an employee has received compensation from the employee's employer, its
595 insurance carrier, or the Employers' Reinsurance Fund for any combination of disabilities
596 amounting to 312 weeks of compensation at the applicable permanent total disability
597 compensation rate, the Employers' Reinsurance Fund shall pay all remaining permanent
total
598 disability compensation.
599 (e) Employers' Reinsurance Fund payments shall commence immediately after the
600 employer or its insurance carrier has satisfied its liability under this Subsection (3) or
Section
601 34A-2-703
602 (4) This Subsection (4) applies to claims resulting from an accident or disease arising
603 out of and in the course of the employee's employment on or after July 1, 1994.
604 (a) The employer or its insurance carrier is liable for permanent total disability
605 compensation.
606 (b) The employer or its insurance carrier may not be required to pay compensation for
607 any combination of disabilities of any kind, as provided in this section and Sections
34A-2-410
608 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation
609 payable over the initial 312 weeks at the applicable permanent total disability compensation
610 rate under Subsection (2).
611 (c) Any overpayment of this compensation shall be recouped by the employer or its
612 insurance carrier by reasonably offsetting the overpayment against future liability paid

before

613 or after the initial 312 weeks.

614 (5) Notwithstanding the minimum rate established in Subsection (2), the compensation
615 payable by the employer, its insurance carrier, or the Employers' Reinsurance Fund, after an
616 employee has received compensation from the employer or the employer's insurance carrier

for

617 any combination of disabilities amounting to 312 weeks of compensation at the applicable

total

618 disability compensation rate, shall be reduced, to the extent allowable by law, by the dollar
619 amount of 50% of the Social Security retirement benefits received by the employee during

the

620 same period.

621 (6) (a) A finding by the commission of permanent total disability is not final, unless
622 otherwise agreed to by the parties, until:

623 (i) an administrative law judge reviews a summary of reemployment activities
624 undertaken pursuant to Chapter 8, Utah Injured Worker Reemployment Act;

625 (ii) the employer or its insurance carrier submits to the administrative law judge:

626 (A) a reemployment plan as prepared by a qualified rehabilitation provider reasonably
627 designed to return the employee to gainful employment; or

628 (B) notice that the employer or its insurance carrier will not submit a plan; and

629 (iii) the administrative law judge, after notice to the parties, holds a hearing, unless
630 otherwise stipulated, to:

631 (A) consider evidence regarding rehabilitation; and

632 (B) review any reemployment plan submitted by the employer or its insurance carrier
633 under Subsection (6)(a)(ii).

634 (b) Before commencing the procedure required by Subsection (6)(a), the administrative
635 law judge shall order:

636 (i) the initiation of permanent total disability compensation payments to provide for the
637 employee's subsistence; and

638 (ii) the payment of any undisputed disability or medical benefits due the employee.

639 (c) Notwithstanding Subsection (6)(a), an order for payment of benefits described in
640 Subsection (6)(b) is considered a final order for purposes of Section 34A-2-212 .

641 (d) The employer or its insurance carrier shall be given credit for any disability
642 payments made under Subsection (6)(b) against its ultimate disability compensation liability
643 under this chapter or Chapter 3, Utah Occupational Disease Act.

644 (e) An employer or its insurance carrier may not be ordered to submit a reemployment
645 plan. If the employer or its insurance carrier voluntarily submits a plan, the plan is subject to

646 Subsections (6)(e)(i) through (iii).

647 (i) The plan may include retraining, education, medical and disability compensation
648 benefits, job placement services, or incentives calculated to facilitate reemployment funded

by

649 the employer or its insurance carrier.

650 (ii) The plan shall include payment of reasonable disability compensation to provide
651 for the employee's subsistence during the rehabilitation process.

652 (iii) The employer or its insurance carrier shall diligently pursue the reemployment
653 plan. The employer's or insurance carrier's failure to diligently pursue the reemployment

plan

654 shall be cause for the administrative law judge on the administrative law judge's own

motion to

655 make a final decision of permanent total disability.

656 (f) If a preponderance of the evidence shows that successful rehabilitation is not
657 possible, the administrative law judge shall order that the employee be paid weekly

permanent

658 total disability compensation benefits.

659 (7) (a) The period of benefits commences on the date the employee became
660 permanently totally disabled, as determined by a final order of the commission based on the
661 facts and evidence, and ends:

662 (i) with the death of the employee; or

663 (ii) when the employee is capable of returning to regular, steady work.

664 (b) An employer or its insurance carrier may provide or locate for a permanently totally
665 disabled employee reasonable, medically appropriate, part-time work in a job earning at

least

666 minimum wage provided that employment may not be required to the extent that it would
667 disqualify the employee from Social Security disability benefits.

668 (c) An employee shall fully cooperate in the placement and employment process and
669 accept the reasonable, medically appropriate, part-time work.

670 (d) In a consecutive four-week period when an employee's gross income from the work
671 provided under Subsection (7)(b) exceeds \$500, the employer or insurance carrier may

reduce

672 the employee's permanent total disability compensation by 50% of the employee's income in
673 excess of \$500.

674 (e) If a work opportunity is not provided by the employer or its insurance carrier, a
675 permanently totally disabled employee may obtain medically appropriate, part-time work
676 subject to the offset provisions contained in Subsection (7)(d).

677 (f) (i) The commission shall establish rules regarding the part-time work and offset.

678 (ii) The adjudication of disputes arising under this Subsection (7) is governed by Part
679 8, Adjudication.

680 (g) The employer or its insurance carrier shall have the burden of proof to show that
681 medically appropriate part-time work is available.

682 (h) The administrative law judge may:

683 (i) excuse an employee from participation in any job that would require the employee
684 to undertake work exceeding the employee's medical capacity and residual functional

capacity

685 or for good cause; or

686 (ii) allow the employer or its insurance carrier to reduce permanent total disability
687 benefits as provided in Subsection (7)(d) when reasonable, medically appropriate, part-time
688 employment has been offered but the employee has failed to fully cooperate.

689 (8) When an employee has been rehabilitated or the employee's rehabilitation is
690 possible but the employee has some loss of bodily function, the award shall be for

permanent

691 partial disability.

692 (9) As determined by an administrative law judge, an employee is not entitled to
693 disability compensation, unless the employee fully cooperates with any evaluation or
694 reemployment plan under this chapter or Chapter 3, Utah Occupational Disease Act. The
695 administrative law judge shall dismiss without prejudice the claim for benefits of an

employee

696 if the administrative law judge finds that the employee fails to fully cooperate, unless the
697 administrative law judge states specific findings on the record justifying dismissal with

698 prejudice.
699 (10) (a) The loss or permanent and complete loss of the use of both hands, both arms,
700 both feet, both legs, both eyes, or any combination of two such body members constitutes
total
701 and permanent disability, to be compensated according to this section.

702 (b) A finding of permanent total disability pursuant to Subsection (10)(a) is final.
703 (11) (a) An insurer or self-insured employer may periodically reexamine a permanent
704 total disability claim, except those based on Subsection (10), for which the insurer or
705 self-insured employer had or has payment responsibility to determine whether the worker
706 remains permanently totally disabled.
707 (b) Reexamination may be conducted no more than once every three years after an
708 award is final, unless good cause is shown by the employer or its insurance carrier to allow
709 more frequent reexaminations.
710 (c) The reexamination may include:
711 (i) the review of medical records;
712 (ii) employee submission to reasonable medical evaluations;
713 (iii) employee submission to reasonable rehabilitation evaluations and retraining
714 efforts;
715 (iv) employee disclosure of Federal Income Tax Returns;
716 (v) employee certification of compliance with Section 34A-2-110 ; and
717 (vi) employee completion of sworn affidavits or questionnaires approved by the
718 division.
719 (d) The insurer or self-insured employer shall pay for the cost of a reexamination with
720 appropriate employee reimbursement pursuant to rule for reasonable travel allowance and
per
721 diem as well as reasonable expert witness fees incurred by the employee in supporting the
722 employee's claim for permanent total disability benefits at the time of reexamination.
723 (e) If an employee fails to fully cooperate in the reasonable reexamination of a
724 permanent total disability finding, an administrative law judge may order the suspension of
the
725 employee's permanent total disability benefits until the employee cooperates with the
726 reexamination.
727 (f) (i) Should the reexamination of a permanent total disability finding reveal evidence
728 that reasonably raises the issue of an employee's continued entitlement to permanent total
729 disability compensation benefits, an insurer or self-insured employer may petition the
Division
730 of Adjudication for a rehearing on that issue. The petition shall be accompanied by
731 documentation supporting the insurer's or self-insured employer's belief that the employee is
no
732 longer permanently totally disabled.
733 (ii) If the petition under Subsection (11)(f)(i) demonstrates good cause, as determined
734 by the Division of Adjudication, an administrative law judge shall adjudicate the issue at a
735 hearing.
736 (iii) Evidence of an employee's participation in medically appropriate, part-time work
737 may not be the sole basis for termination of an employee's permanent total disability
738 entitlement, but the evidence of the employee's participation in medically appropriate,
part-time
739 work under Subsection (7) may be considered in the reexamination or hearing with other

740 evidence relating to the employee's status and condition.
741 (g) In accordance with Section 34A-1-309 , the administrative law judge may award
742 reasonable attorneys fees to an attorney retained by an employee to represent the employee's
743 interests with respect to reexamination of the permanent total disability finding, except if the
744 employee does not prevail, the attorneys fees shall be set at \$1,000. The attorneys fees shall
be
745 paid by the employer or its insurance carrier in addition to the permanent total disability
746 compensation benefits due.
747 (h) During the period of reexamination or adjudication if the employee fully
748 cooperates, each insurer, self-insured employer, or the Employers' Reinsurance Fund shall
749 continue to pay the permanent total disability compensation benefits due the employee.
750 (12) If any provision of this section, or the application of any provision to any person
751 or circumstance, is held invalid, the remainder of this section shall be given effect without
the
752 invalid provision or application.
753 Section 6. Section **34A-2-801** is amended to read:
754 **34A-2-801. Initiating adjudicative proceedings -- Procedure for review of**
755 **administrative action.**
756 (1) (a) To contest an action of the employee's employer or its insurance carrier
757 concerning a compensable industrial accident or occupational disease alleged by the
employee,
758 any of the following shall file an application for hearing with the Division of Adjudication:
759 (i) the employee; or
760 (ii) a representative of the employee, the qualifications of whom are defined in rule by
761 the commission.
762 (b) To appeal the imposition of a penalty or other administrative act imposed by the
763 division on the employer or its insurance carrier for failure to comply with this chapter or
764 Chapter 3, Utah Occupational Disease Act, any of the following shall file an application for
765 hearing with the Division of Adjudication:
766 (i) the employer;
767 (ii) the insurance carrier; or
768 (iii) a representative of either the employer or the insurance carrier, the qualifications
769 of whom are defined in rule by the commission.
770 (c) A ~~physician, as defined in Section 34A-2-111,~~ person providing goods or services
771 described in Subsections 34A-2-407 (12) and 34A-3-108 (12) may file an application for
hearing
772 in accordance with Section 34A-2-407 or 34A-3-108 .
773 (d) An attorney may file an application for hearing in accordance with Section
774 34A-1-309 .
775 (2) Unless a party in interest appeals the decision of an administrative law judge in
776 accordance with Subsection (3), the decision of an administrative law judge on an
application
777 for hearing filed under Subsection (1) is a final order of the commission 30 days after the
date
778 the decision is issued.
779 (3) (a) A party in interest may appeal the decision of an administrative law judge by
780 filing a motion for review with the Division of Adjudication within 30 days of the date the
781 decision is issued.
782 (b) Unless a party in interest to the appeal requests under Subsection (3)(c) that the
783 appeal be heard by the Appeals Board, the commissioner shall hear the review.

784 (c) A party in interest may request that an appeal be heard by the Appeals Board by
785 filing the request with the Division of Adjudication:

786 (i) as part of the motion for review; or

787 (ii) if requested by a party in interest who did not file a motion for review, within 20
788 days of the date the motion for review is filed with the Division of Adjudication.

789 (d) A case appealed to the Appeals Board shall be decided by the majority vote of the
790 Appeals Board.

791 (4) All records on appeals shall be maintained by the Division of Adjudication. Those
792 records shall include an appeal docket showing the receipt and disposition of the appeals on
793 review.

794 (5) Upon appeal, the commissioner or Appeals Board shall make its decision in
795 accordance with Section 34A-1-303 .

796 (6) The commissioner or Appeals Board shall promptly notify the parties to any
797 proceedings before it of its decision, including its findings and conclusions.

798 (7) The decision of the commissioner or Appeals Board is final unless within 30 days
799 after the date the decision is issued further appeal is initiated under the provisions of this
800 section or Title 63, Chapter 46b, Administrative Procedures Act.

801 (8) (a) Within 30 days after the date the decision of the commissioner or Appeals
802 Board is issued, any aggrieved party may secure judicial review by commencing an action

in

803 the court of appeals against the commissioner or Appeals Board for the review of the

decision

804 of the commissioner or Appeals Board.

805 (b) In an action filed under Subsection (8)(a):

806 (i) any other party to the proceeding before the commissioner or Appeals Board shall
807 be made a party; and

808 (ii) the commission shall be made a party.

809 (c) A party claiming to be aggrieved may seek judicial review only if the party has
810 exhausted the party's remedies before the commission as provided by this section.

811 (d) At the request of the court of appeals, the commission shall certify and file with the
812 court all documents and papers and a transcript of all testimony taken in the matter together
813 with the decision of the commissioner or Appeals Board.

814 Section 7. Section **34A-3-108** is amended to read:

815 **34A-3-108. Reporting of occupational diseases -- Regulation of health care**
816 **providers.**

817 (1) Any employee sustaining an occupational disease, as defined in this chapter, arising
818 out of and in the course of employment shall provide notification to the employee's
employer

819 promptly of the occupational disease. If the employee is unable to provide notification, the
820 employee's next-of-kin or attorney may provide notification of the occupational disease to

the

821 employee's employer.

822 (2) (a) Any employee who fails to notify the employee's employer or the division
823 within 180 days after the cause of action arises is barred from any claim of benefits arising
824 from the occupational disease.

825 (b) The cause of action is considered to arise on the date the employee first suffered
826 disability from the occupational disease and knew, or in the exercise of reasonable diligence
827 should have known, that the occupational disease was caused by employment.

828 (3) The following constitute notification of an occupational disease:
829 (a) an employer's or physician's injury report filed with the:
830 (i) division;
831 (ii) employer; or
832 (iii) insurance carrier; or
833 (b) the payment of any medical or disability benefits by the employer or the employer's
834 insurance carrier.
835 (4) (a) In the form prescribed by the division, each employer shall file a report with the
836 division of any occupational disease resulting in:
837 (i) medical treatment;
838 (ii) loss of consciousness;
839 (iii) loss of work;
840 (iv) restriction of work; or
841 (v) transfer to another job.

842 (b) The report required under Subsection (4)(a), shall be filed within seven days after:
843 (i) the occurrence of an occupational disease;
844 (ii) the employer's first knowledge of the occupational disease; or
845 (iii) the employee's notification of the occupational disease.
846 (c) Each employer shall file a subsequent report with the division of any previously
847 reported occupational disease that later resulted in death. The subsequent report shall be
filed
848 with the division within seven days following:
849 (i) the death; or
850 (ii) the employer's first knowledge or notification of the death.
851 (d) A report is not required for:
852 (i) minor injuries that require first-aid treatment only, unless a treating physician files,
853 or is required to file, the Physician's Initial Report of Work Injury or Occupational Disease
with
854 the division;
855 (ii) occupational diseases that manifest after the employee is no longer employed by the
856 employer with which the exposure occurred; or
857 (iii) when the employer is not aware of an exposure occasioned by the employment that
858 results in an occupational disease as defined by Section 34A-3-103 .
859 (5) Each employer shall provide the employee with:
860 (a) a copy of the report submitted to the division; and
861 (b) a statement, as prepared by the division, of the employee's rights and
862 responsibilities related to the occupational disease.
863 (6) Each employer shall maintain a record in a manner prescribed by the division of all
864 occupational diseases resulting in:
865 (a) medical treatment;
866 (b) loss of consciousness;
867 (c) loss of work;
868 (d) restriction of work; or
869 (e) transfer to another job.

870 (7) Any employer who refuses or neglects to make reports, to maintain records, or to
871 file reports with the division as required by this section is guilty of a class C misdemeanor
and
872 subject to citation under Section 34A-6-302 and a civil assessment as provided under

Section

873 34A-6-307 , unless the division finds that the employer has shown good cause for
submitting a
874 report later than required by this section.
875 (8) (a) Except as provided in Subsection (8)(c), all physicians, surgeons, and other
876 health providers attending occupationally diseased employees shall:
877 (i) comply with all the rules, including the schedule of fees, for their services as
878 adopted by the commission; and
879 (ii) make reports to the division at any and all times as required as to the condition and
880 treatment of an occupationally diseased employee or as to any other matter concerning
881 industrial cases they are treating.
882 (b) A physician, as defined in ~~[Subsection]~~ Section 34A-2-111 ~~[(2)]~~, who is associated
883 with, employed by, or bills through a hospital is subject to Subsection (8)(a).
884 (c) A hospital is not subject to the requirements of Subsection (8)(a) *except a hospital*
885 *is subject to rules made by the commission under Subsections 34A-2-407 (9)(a)(ii) and (iii).*
886 (d) The commission's schedule of fees may reasonably differentiate remuneration to be
887 paid to providers of health services based on:
888 (i) the severity of the employee's condition;
889 (ii) the nature of the treatment necessary; and
890 (iii) the facilities or equipment specially required to deliver that treatment.
891 (e) This Subsection (8) does not ~~[modify contracts with providers]~~ *prohibit a contract*
892 *with a provider* of health services relating to the pricing of goods and services ~~[existing on~~
May
893 ~~1, 1995]~~.
894 ~~[(f) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, a~~
895 ~~physician, surgeon, or other health provider may file an application for hearing with the~~
896 ~~Division of Adjudication to contest a decision or final order to the extent it concerns the~~
fees
897 ~~charged by the physician, surgeon, or other health provider.]~~
898 (9) A copy of the physician's initial report shall be furnished to the:
899 (a) division;
900 (b) employee; and
901 (c) employer or its insurance carrier.
902 (10) Any ~~[physician, surgeon, or other health provider, excluding any hospital,]~~ *person*
903 *subject to reporting under Subsection (8)(a)(ii) or Subsection 34A-2-407 (9)(a)(iii) who*
refuses
904 or neglects to make any report or comply with this section is guilty of a class C
misdemeanor
905 for each offense, unless the division finds that there is good cause for submitting a late
report.
906 (11) (a) Applications for a hearing to resolve disputes regarding occupational disease
907 claims shall be filed with the Division of Adjudication.
908 (b) After the filing, a copy shall be forwarded by mail to:
909 (i) the employer or to the employer's insurance carrier;
910 (ii) the applicant; and
911 (iii) the attorneys for the parties.
912 (12) (a) Subject to appellate review under Section 34A-1-303 , the commission has
913 exclusive jurisdiction to hear and determine:
914 *(i) whether [the treatment] goods provided to or services rendered to [employees by*
915 *physicians, surgeons, or other health providers are: (i) reasonably related to industrial*

injuries

916 ~~or occupational diseases; and (ii)]~~ *an employee is* compensable pursuant to this chapter and
 917 Chapter 2, Workers' Compensation Act[-], including the following:
 918 (A) medical, nurse, or hospital services;
 919 (B) medicines; and
 920 (C) artificial means, appliances, or prosthesis;
 921 (ii) the reasonableness of the amounts charged or paid for a good or service described
 922 in Subsection (12)(a)(i); and
 923 (iii) collection issues related to a good or service described in Subsection (12)(a)(i).
 924 (b) Except as provided in Subsection (12)(a), Subsection 34A-2-211 (7), or Section
 925 34A-2-212 , a person may not maintain a cause of action in any forum within this state other

926 than the commission for collection or payment of [~~a physician's, surgeon's, or other health~~
 927 ~~provider's billing for treatment]~~ goods or services described in Subsection (12)(a) that are
 928 compensable under this chapter or Chapter 2, Workers' Compensation Act.

929 **Section 8. Legislative intent language.**

930 It is the intent of the Legislature that the amendments to Section 34A-2-413 in this bill
 931 be interpreted as merely clarifying an existing principle that the employee bears the burden

of

932 proving that the employee is permanently totally disabled based on those factors listed as
 933 matters on which the commission is to make a conclusion in Subsection 34A-2-413 (1)(c),

as

934 enacted before the amendments of this bill.

[\[Bill Documents\]](#)[\[Bills Directory\]](#)

[Questions/Comments](#) | [Utah State Home Page](#) | [Terms of Use/Privacy Policy](#)

EXHIBIT H

3RD DIST. COURT - WEST JORDAN
SALT LAKE COUNTY, STATE OF UTAH

WORKINGRX INC,	:	
Plaintiff,	:	MEMORANDUM DECISION
	:	
vs.	:	Case No: 060404342
	:	
WORKERS COMPENSATION,	:	Judge: ROBERT ADKINS
Defendant.	:	Date: October 18, 2006

Defendant's Motion to Dismiss is granted as to the Second Cause of Action. Counsel for Defendants is to prepare the Order on the Motion to Dismiss. Court declines to overturn its 6/12/06 ruling and order.

000431

THIRD DISTRICT COURT, STATE OF UTAH
SALT LAKE COUNTY, WEST JORDAN DEPARTMENT

WORKINGRX INC, :
:
vs. : MEMORANDUM DECISION
WORKERS COMPENSATION et al., :
Case No. 060404342

The matter before the Court is Defendant's Motion to Dismiss as to Plaintiff's Second Cause of Action, Unjust Enrichment.¹ The Court heard oral argument on the Motion on October 17, 2006 and took the Motion under advisement. The Court now rules as follows:

Plaintiff claims that injured employees of Defendants had their prescriptions filled at pharmacies that are Plaintiff's customers. (Complaint ¶45) That Section 34A-2-418(1) requires employers to pay all reasonable medical expenses (including prescriptions) for injured workers. (Complaint ¶36) That Worker's Compensation Fund (WCF) provides worker's compensation to the Defendants and WCF systematically short pays prescription claims. (Complaint ¶54)

¹In its Ruling and Order of June 12, 2006, the Court dismissed the First Cause of Action. The only remaining cause of action is the Unjust Enrichment Cause of Action.

That Plaintiff has billed at a fair and reasonable rate pursuant to Section 34A-2-418(1), but Defendants have consistently paid Plaintiff less than the reasonable rate billed. (Complaint ¶61).

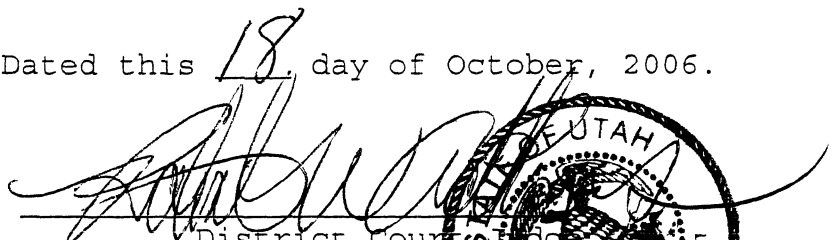
It is well settled case law, that if an injured employee is not satisfied with the amount being paid for his prescriptions, that he could not bring an action against the employer in this court. Sheppick v. Albertson's Inc., 922 P.2d 769 (Utah, 1996). The injured employee's remedy is through the Labor Commission. If there is a claim that employers are not complying with Section 34A-2-418 (1), by failing to pay all reasonable medical expenses, that is for the Labor Commission to determine, not this Court. The Labor Commission is better suited to make a determination as to the reasonableness of medical expenses for injured employees, than is the Court. Further, this Court is without jurisdiction to make the determination as to the reasonableness of the medical expenses. Plaintiff's remedy is to address this issue before the Labor Commission.

Defendant's Motion to Dismiss is granted as to the Second Cause of Action.

Counsel for Defendant's is to prepare the Order on the Motion to Dismiss.

Plaintiff's counsel verbally requested that this Court vacate and overturn its Ruling and Order of June 12, 2006; the Court declines to do so.

Dated this 18 day of October, 2006.


District Court Judge
Robert W. Adkins



CERTIFICATE OF MAILING


I certify that on the 18th day of October, 2006, I mailed a true and correct copy of the forgoing Memorandum Decision to the following:

Attorney for Plaintiff
Rex H. Huang
4225 Lake Park Blvd, Ste 400
Salt Lake City Utah 84120

Attorney for Defendant
M. David Eckersley
175 East 400 South #900
Salt Lake City Utah 84111

Attorney for Defendant
Michael Z. Hayes
2118 East 3900 South, Ste 300
Salt Lake City Utah 84124

Attorney for Defendant
Douglas P. Simpson
2115 South Dallin Street
Salt Lake City Utah 84109



Court Clerk