



South Carolina Workers' Compensation Summit

WC Legislation – What's in it for you?

SAM PAINTER

NEXSEN | PRUET
The Carolinas Law Firm

S. 127

S. 127 was signed by the Governor on April 15, 2005.

S. 127

Two things:

- ① Makes Rule 501, the Code of Judicial Ethics, applicable to Workers' Compensation Commissioners.
- ② Requires Workers' Compensation Commissioners and their Administrative Assistants to attend an annual workshop offering 3.0 continuing education hours "Concerning Ethics and the Administrative Procedures Act".

S. 127

What does Rule 501 of the South Carolina Appellate Court Rules do?

S. 127

Rule 501 is based on the “Canons of Judicial Conduct”.

S. 127

What are the Canons of Judicial Conduct?

S. 127



cannon



judge

S. 127



A man who knows “canons”.

S. 127

Canons = Rules

S. 127

Good news:
There are only 5!

S. 127

Bad news:
There are only 5!

S. 127

Canon 1:

A Judge Shall Uphold the Integrity and Independence of the Judiciary.

S. 127

Canon 2:

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.

S. 127

Canon 3:

A Judge Shall Perform the Duties of
Judicial Office Impartially and Diligently.

S. 127

Canon 4:

A Judge Shall So Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations.

S. 127

Canon 5:

A Judge or Judicial Candidate Shall Refrain from Inappropriate Political Activity.

H. 3205

- Abolishes WCC
- Mandatory mediation
- ALJ's
- Limitations on awards
- Strengthens intoxication defenses

H. 3205

- Bars comp for safety violations
- No comp for aliens
- Co-ordinates with federal comp
- No comp if incarcerated
- Removes 50% of the back rule

H. 3205

- Requires prompt payment of medical
- Deletes references to medical boards
- Changes penalty for “Going Bare”
- Brown v. Bi-Lo
- Tiller v. National Healthcare

Pending Bills

“Clyburn Nine”

Here is a brief description of the nine bills:

- H. 3358 ~ Mandatory rehab in all cases
- H. 3359 ~ Lifetime benefits in all total disability cases
- H. 3546 ~ Employee to have choice of physician
- H. 3547 ~ Payments during appeals
- H. 3549 ~ Employees may sue for intentional acts and bad faith
- H. 3550 ~ Change of condition extended from one year to two
- H. 3551 ~ Future medicals are subject to apportionment
- H. 3552 ~ Value of fringe benefits may be considered for AWW
- H. 3553 ~ Employee may chose between 42-9-10 or 42-9-30

Other House Bills

- Dissolution of SIF
- Illegal aliens
- Captives can write comp

Pending Senate Bills

- Late payment of medical bills
- Brown v. Bi-Lo
- HA for law enforcement
- Horse trainers
- Cab drivers ~ independent contractors

Pending Senate Bills

- Owner–operators ~ independent contractors
- Prisoners may receive comp
- Statewide constables
- Salary of Administrative Director
- Limitations on approvable administrative costs in fee petitions

Legislation in response to . . .

Tiller v. National Health Care Center

What happened?



Back injury

Diagnosis



Discitis

Doctor says:



Supreme Court says:

Supreme Court says:

No problem! [Expert medical testimony not necessary to prove causation in medically complex cases. *Tiller v. National Health Care Center*, 334 S.C. 333, 513 S.E. 2d 843 (1999).]

Bill introduced in 2004:

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 42-15-85, is hereby enacted to read as follows:

“Section 42-15-85. The burden of proof in a workers’ compensation claim is on the claimant. Causation in medically complex workers’ compensation cases must be proven by expert witness testimony.”

SECTION 2. This act takes effect upon approval of the Governor.

Language in H. 3205:

Section 42-15-85. The burden of proof in a worker's [sic] compensation claim is on the injured employee. Causation in medically complex workers' compensation cases must be proven by expert witness opinion evidence.



My other favorite issue:



Brown v. BI-LO,
A History and Recent Legislation

Once upon a time . . .



Hippocrates

Patient-physician confidentiality

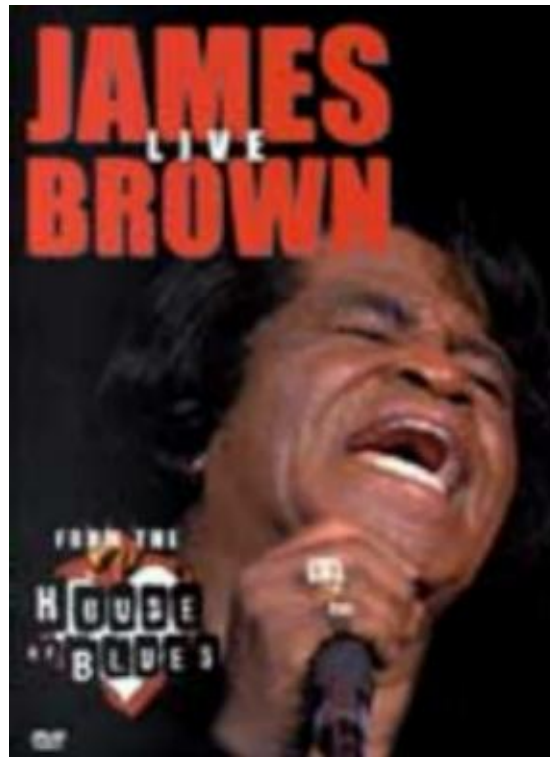


Once upon a time . . .



Employer, with an employee named . . .

Brown



Brown!



NEXSEN | PRUET
The Carolinas Law Firm

Brown?



NEXSEN | PRUET
The Carolinas Law Firm

Sherry Brown



Brown – Hernia victim

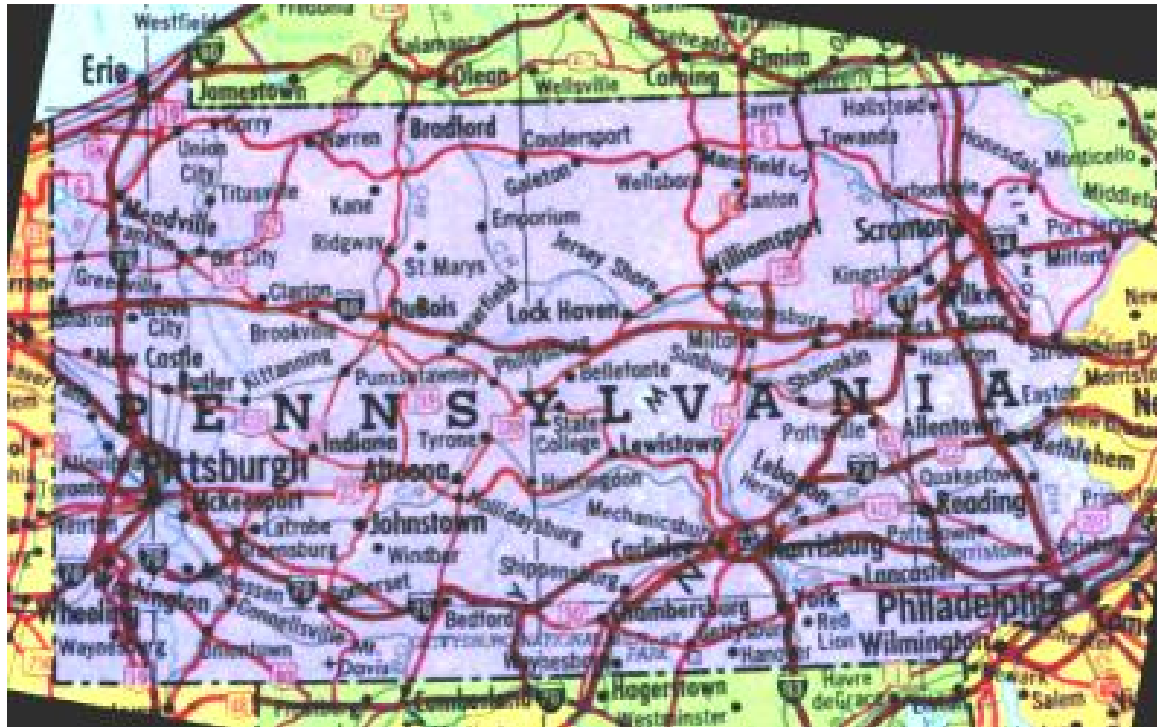


Hired tough lawyer



NEXSEN | PRUET
The Carolinas Law Firm

Moved to



Bi-Lo hired . . .



Rehab Nurse

Brown's lawyer . . .



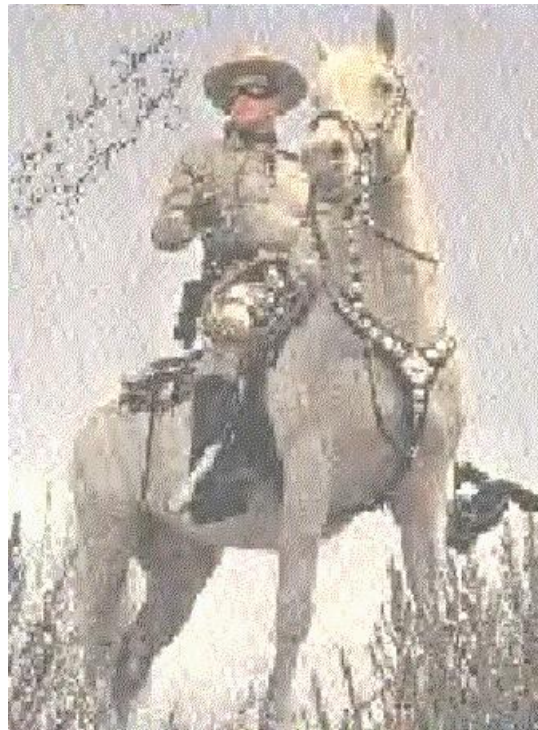
Wrote a letter

Sherry's doctors responded



“We won’t communicate with Bi-Lo’s Rehab Nurse”

So Bi-Lo hired a lawyer



NEXSEN | PRUET
The Carolinas Law Firm

Single Commissioner ruled



For Bi-Lo!

Sherry's Lawyer



Appeals

NEXSEN | PRUET
The Carolinas Law Firm

Full commission panel rules:



For Bi-Lo!
(Brown appeals again)

Circuit Judge rules:



For Bi-Lo!
(Brown appeals again)

Court of Appeals rules:



For Bi-Lo
(Brown appeals again)

Supreme Court rules:



For Brown!

NEXSEN | PRUET
The Carolinas Law Firm

Physician – Patient Privilege



Ruling: Physicians are authorized by statute and regulation to communicate by written reports only.

Physician – Patient Privilege

Bars oral communication



...unless authorized by patient.

This created:



A mess!

NEXSEN | PRUET
The Carolinas Law Firm

Present law:

S.C. Code Ann. Section 42-15-80 provides as follows:

No fact communicated to or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, shall be privileged, either in hearings provided for in this title or any action at law brought to recover damages against any employer who may have accepted the compensation provision of this Title.

Present law:

S.C. Code Ann. Section 42-15-95 provides in relevant part as follows:

All existing information compiled by a health care facilitypertaining directly to a workers' compensation claim must be provided to the insurance carrier, the employer, the employee, their attorneys, or the Workers' Compensation Commission, within fourteen (14) days after receipt of a written request

Present law

South Carolina Workers' Compensation Commission
Regulation 67-1301 (A) reads as follows:

A medical practitioner or treatment facility shall furnish upon request all medical information relevant to the employee's complaint of injury to the claimant, the employer, the employer's representative, or the Commission. Payment for services rendered may be withheld from any medical practitioner or treatment facility who fails to comply with a request for this information.

Bill proposed in 2004

Section 42-15-80 . . . A physician, surgeon, or other health care provider may discuss such facts as a worker's compensation claimant's medical history, diagnosis, causation, course of treatment, prognosis, work restrictions, and impairments with representatives of the insurance carrier, the employer, the employee, their attorneys, or the South Carolina Workers' Compensation Commission without violating physician-patient confidentiality.

Sponsor: Rep. Leach

Language in H. 3205

A physician, surgeon, or other health care provider may discuss and otherwise communicate these facts as an employee's medical history, diagnosis, causation, course of treatment, prognosis, work restrictions and impairments with representatives of the insurance carrier, the employer, the employee, their attorneys or the South Carolina Workers' Compensation Division without the employee's permission, and this communication must not violate physician-patient confidentiality.

Pending Legislation



A Poem



The End!