



January 19, 2009

Hello to all. We at Estes, Sanders & Williams, LLC would like to wish you a Happy New Year! We are very excited about the new year and are looking forward to continuing our relationship with you.

Estes, Sanders and Williams have already started the year with some exciting news that we would like to share, as well as provide you with upcoming events and new procedures regarding handling Alabama claims for the 2009 calendar year. We hope you enjoy our newsletter and please feel free to let us know if there is anything we can add that would help you with your daily responsibilities.

## **What's New with Estes, Sanders & Williams**

### **Welcome to Lauren Shine!**

Lauren is our newest associate. She started with ESW December 8. Lauren is from Birmingham Alabama, she attended the University of Alabama and graduated with a degree in Business-Marketing. She then attended Cumberland Law School and graduated in 2005. Lauren moved to Memphis, Tenn. with her husband Mark and two sons Demarcus and Isaiah. Lauren was in-house counsel for Memphis Gas and Water until she moved back to Birmingham. Welcome Lauren, we are so happy you joined our firm!

## **Wedding Bells in December:**

Devona Johnson, which many of you know, recently got married December 8. Devona's new name is now Devona Segrest. Congratulations Devona we are very happy for you.

## **Make a Note:**

Effective January 2009, Alabama State reduced the reimbursement rate for standard mileage. The current rate for reimbursement is 55 cents per mile. Please make a note.

## **Upcoming Events:**

Jamie, Matt and Lisa will be heading to Nashville mid-January and to Dallas at the end of the month. Let us know if you would like for us to stop by and visit, you can email Lisa at [lisa@esw-law.com](mailto:lisa@esw-law.com).

## **CEU & Lunch and Learn Presentations:**

Please keep us in mind for your CEU and Lunch and Learns. We can provide credits for CEU presentations for all states or we would be more than happy to provide a Lunch and Learn on Alabama law.

## **TRIALS:**

Jamie and Matt have recently been entrusted to handle several new accounts already this year. We are honored to represent such esteemed companies, and we look forward to receiving favorable results.

## **NEW CASE LAW:**

**RE: Alabama Law Weekly for December 12, 2008**

*Ex parte SAAD'S Healthcare Services, Inc.* 2008 WL 5105454 (Ala.)  
Workers' Compensation: Psychological Injury; Refusal of Treatment.

Cynthia Meinhardt, a licensed practical nurse, brought a workers' compensation claim against her employer, Saad's Healthcare Services, Inc., after being stabbed by a patient's relative. Plaintiff reached MMI as to her physical injuries in 2002, but continued to suffer from depression and posttraumatic stress disorder.

The trial court found that the plaintiff was permanently and totally disabled due to her psychological injuries and that she had reached MMI (in regards to her psychological injuries) in 2004. However, the court found that before plaintiff reached MMI, she had unreasonably refused to accept medical treatment in the form of psychological and psychiatric care and declined to award PTD benefits. Claimant appealed, and employer cross-appealed.

The Court of Civil Appeals affirmed in part, reversed in part, and remanded with instructions. The Supreme Court granted and later quashed a writ of certiorari. On remand, the Circuit Court entered an amended order awarding Meinhardt PTD benefits. Employer appealed.

Granting employer's petition for writ of certiorari, the Supreme Court held that (1) the psychological and psychiatric treatment that claimant refused after reaching MMI was not "physical or vocational rehabilitation" within exclusion in definition of "permanently and totally disabled"; and (2) Supreme Court was precluded from considering an issue addressed in first decision of Court of Civil Appeals as to which writ of certiorari was granted but later quashed. Court of Civil Appeals affirmed.

Alabama Code § 25-5-57(a)(4)d 1975, states that one who refuses physical or vocational rehabilitation shall not be deemed permanently and totally disabled. The court held that, although she had refused treatment, the exclusion in Section 25-5-57 (a)(4)d did not apply to one's refusal to undergo psychological or psychiatric treatment. The Court found that Meinhardt's condition did not fall under either "vocational rehabilitation" or "physical rehabilitation." "Because post-MMI treatment Meinhardt refused was not offered for the purpose of

restoring her physical function or her ability to engage in gainful employment, but was instead offered to treat her mental impairments, that treatment was not ‘physical or vocational rehabilitation’ within the meaning of the exclusion found in the Code.

## **RE: Alabama Law Weekly for December 19, 2008**

*Child Day Care Association v. Christesen*, 2008 WL 5194597 (Ala. Civ. App.)

Workers’ Compensation: Scheduled Injury

Child Day Care Association (“CDCA”) appealed from a judgment awarding workers’ compensation benefits to Victoria Christesen for a permanent and total disability. The issue on appeal was whether the trial court erred in awarding benefits to Christesen for an injury to the body as a whole rather than for injuries to scheduled members under Ala. Code § 25-5-57(a)(3) 1975. Affirmed.

In August of 2002, while working for CDCA, Christesen injured her right ankle. A MRI showed a rupture of the posterior tibial tendon. In January of 2003, Dr. Crotnell, an orthopedic surgeon, and authorized treating physician, performed surgery. After the surgery, Dr. Crotnell referred her to physical therapy. However, while in physical therapy, Christesen ruptured the quadriceps tendon in her left knee. Dr. Crotnell also performed surgery to fix the left knee. In February of 2004, she sued CDCA, seeking Workers’ Compensation benefits. The trial court awarded her permanent-total-disability benefits.

The issue on appeal was whether the trial court erred by awarding benefits to Christesen for an injury to the body as a whole instead of for an injury to a scheduled member. The trial court determined that the injuries to her left knee and right ankle extended to her back and interfered with its efficiency. Christesen testified that her injuries effected her mobility and caused pain in her back. Dr. Crotnell stated that the pain in her back was caused by imbalance, shifting, and malignment, subsequent to surgery.

The Court found that Christesen's ankle and knee injuries extended to her back and interfered with its efficiency. The trial court also awarded benefits to Christensen due to her debilitating pain. The trial court's decision was affirmed.

**RE: Alabama Law Weekly for January 2, 2009**

*Greater Mobile Chrysler-Jeep, Inc. v. Atterberry*  
Workers' Compensation--Causation

Atterberry worked as an automobile detailer for the Chrysler for two years. At work, Atterberry would use different detergents and cleaning products that contained toxic chemicals. After suffering from severe respiratory problems in 2007, he was hospitalized for three months. After he was released, he continued to suffer from low blood-oxygen levels.

Atterberry sought workers' compensation benefits; however, he had not yet reached MMI by the time of trial. The trial court determined that Atterberry had suffered a non-accidental injury and that his illness was compensable. The employer appealed. **Reversed.**

In reversing the trial court's finding of compensability, the Court of Civil Appeals held that Atterberry did not identify a causal link between his condition and the chemical exposure for his condition to be considered an occupational disease. The Court further held that the plaintiff failed to establish by clear and convincing evidence that he suffered a non-accidental injury because he could not prove that he was exposed to chemicals materially in excess of what ordinary people are exposed. "To establish legal causation, Atterberry was required to present clear and convincing evidence that he was exposed to a risk materially in excess of those risks to which we are all exposed to in our everyday lives." *Westpoint Stevens, Inc. v. Hill*, 851 So. 2d 71, 75 (Ala. Civ. App. 2002).

**UPCOMING EVENTS:**

**Alabama State Conference will be held on March 19 at the Wynfrey Hotel in Birmingham. Please let us know if you plan on attending.**

**Take care and we hope you have enjoyed your January issue.**

**Matt, Jamie and Lisa**