



July 31, 2009

Hi Everyone,

Jamie, Matt and I hope that all of you have had a great July. It is hard to believe that August is a days away and that school will be starting back soon for most of us here in the south. We at ESW have had an amazing July, thanks to all of you and we are looking forward to a very active, busy August. Here are some of the highlights for July and upcoming events for the month of August.

ESW HIGHLIGHTS:

Jamie and I were in Atlanta July 15th and 16th providing educational training on Alabama Law to several of our clients. We would like to thank all of you who attended our lunch and learns; we hope that you all benefited from our time together.

Jamie and I were also in Portland Oregon July 23-27th. We met with Louisiana Pacific and Grocers Insurance (Argo Select). Our time spent with all of you was wonderful and we are already looking forward to next year. As always, thank you for your warm Oregon hospitality. Jamie and I were able to have a little fun while we were in Portland; we did some hiking, site seeing and had the opportunity to visit Mt. Hood, which was thrilling. Oregon is a beautiful state and the people are terrific!!! Thanks again for your hospitality.

Matt Williams was in Huntsville for the Alabama State Conference on July 30th. Matt was chosen as one of the speakers for the conference, his topic was on (Pre-Existing Conditions In Light of Alamo vs PCH). For those of you who attended his session, we hope you enjoyed his presentation and we thank you for participating. We also want to say thank you to all of you joined us for our happy hour event at 801 Franklin on July 29th. Jamie and I were disappointed that we could not attend; however, I have already heard thru the grapevine that all of you who attended had a great time. I also heard that 801 Franklin was excellent, the food and service were apparently outstanding. We know that all of you have other options during the conference events, so we appreciate that you all decided to spend your time with us.

KEEPING YOU IN THE LOOP:

ESW will be hosting events for the upcoming conferences; please let me know if you will be attending any of the conferences listed below. If so, I will be happy to add you to our invitation list for each event.

August 16th-18th - ASIA Conference- Sand Destin, Florida

August 17th-19th - Florida Work Comp Conference- Orlando, Florida

August 30th-September 2nd - Georgia Work Comp Conference



WE WANT TO EDUCATE YOU:

Please let me know if your office would like to learn more about Alabama Law. We are always ready and available to provided one on one in-service's, so feel free to contact me at (lisa@esw-law.com).

HAPPY BIRTHDAY:

All of us at ESW would



like to wish all of you that had a birthday this month, a very Happy Birthday!!!

ESW CONTACT INFORMATION:

JAMIE SANDERS (CELL) 205-937-5505: E-MAIL Jamie@esw-law.com

MATT WILLIAMS (CELL) 205-910-8018: E-MAIL matt@esw-law.com

LISA HODGE SANDERS (CELL) 205-937-7311 OR 678-923-1224: E-MAIL lisa@esw-law.com

ALABAMA WEEKLY LAW UPDATES:

Alabama Law Weekly 7/03/09 & 7/10/09

Gooden v. Board of Water & Sewer Commissioners of the City of Mobile, 2009 WL 1818409 (Ala.Civ.App. 2009) – Premises Liability

Plaintiff brought suit against the Defendant alleging negligence and wantonness resulting from her stepping into an uncovered hole containing a water meter. The Defendants moved for summary judgment claiming that they had not breached any duty that they owed to Plaintiff. They claimed the only duties they owed to Plaintiff were (1) to refrain from negligently or wantonly leaving the hole uncovered and thereby creating a hazard, and (2) to place a cover on the hole upon receiving actual or constructive notice that the hole was not covered. The trial court granted Defendant's motion for summary judgment citing that the evidence reflected that the cover was over the hole the last time the Defendant had checked it, and they had no actual or constructive notice that the cover had been removed. Plaintiff appealed.

Once the Defendant established evidence that they breached no duty, the burden then shifted to the Plaintiff to produce substantial evidence that the Defendant created the hazard by leaving the hole uncovered, or that they had notice that the hole was uncovered prior to her accident. Plaintiff's evidence that a special key was required to remove the cover, without proof that the Defendant was the only person with access to the key, did not constitute substantial evidence. Simply because the Plaintiff produced evidence that the Defendant's employees had to remove the cover off the hole to read the meter, was not substantial evidence that the Defendant left the hole uncovered. Further, evidence that the cover weighed sixteen pounds and 45% of the meters in the housing complex were found to be uncovered did not constitute substantial evidence that the Defendant was at fault for this hole being uncovered.

Accordingly, the Court of Appeals affirmed the trial court because the Plaintiff failed to meet her burden of production. Moreover, the Plaintiff could not prove that the Defendant's employees breached a duty they owed Plaintiff.

Dollar General Corp. v. Nelson, 2009 WL 1887431 (Ala.Civ.App. 2009) – Workers' Compensation: Causation

Plaintiff was employed as a manager for the Defendant and one of her duties was to assist in the unloading of delivery trucks. One day she was unloading a truck and she felt pain in her chest while lifting a box. Plaintiff continued despite the pain and afterwards her fellow employees told her that she looked awful. Later, Plaintiff passed out and her employees told her to go receive medical attention, but Plaintiff continued to work that day. Plaintiff did not receive medical treatment until the following day.

Plaintiff went to her doctor the following day which had been treating her for high blood pressure for the past few years. He referred her to other doctors who ran tests on her and they ruled out any cardiac problems. Her doctor then diagnosed her with chest wall pain arising from costochondritis. The doctor told her to do light work and also wished that she would take some time off. However, Plaintiff returned to work and had her employees arrive early one day so they could unload a delivery truck while she worked the register. The delivery truck was pulled over which caused extreme stress on Plaintiff, and later Plaintiff suffered a stroke. She was taken to the hospital where she was diagnosed with having a stroke caused by "infarct," which results from the blockage of a blood vessel inside the brain.

Plaintiff's doctor had previously treated her for high blood pressure, menopause related health concerns, anxiety, stress, and depression. A neurologist who saw the Plaintiff testified that it was very unlikely that a stroke would occur from a person who lifted a box and developed some chest pain that led to their blood pressure rising. Instead, in his opinion the stroke was caused from her past medical problems, smoking, and stress in general. However, the trial court didn't follow his testimony because the Plaintiff and her mother testified and claimed that she never suffered a stroke so the neurologist's testimony was worthless. The trial court entered judgment for Plaintiff finding that she was permanently and totally disabled and that her average weekly wage to be \$425. Defendant appealed.

On appeal, Defendant argued that Plaintiff failed to prove legal causation of her stroke. Since Plaintiff's injury was considered "non-accidental," she must prove both legal and medical causation. Further, she must present evidence that enables the rational mind to trace the resultant injury to a proximate cause set in motion by the employment and not otherwise.

The Court of Appeals held that Plaintiff failed to present substantial evidence that indicated she was exposed to a danger or risk materially in excess of that danger to which all persons are ordinarily exposed in their everyday lives. Moreover, this coupled with Plaintiff's past medical history and her own testimony, that she smoked and had stressful relationships, led the appeals court to reverse the trial court because Plaintiff failed to prove legal causation of her stroke.

That is all I have to report my friends. As always, please let us know if you should have any questions, concerns, issues or feedback regarding our newsletter.

Take care,

LISA, MATT AND JAMIE