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Larson's Workers' Compensation Law

Publication 340 Release 89 November 2002

HIGHLIGHTS

Chapter Revisions

- Ch. 88, *Disfigurement Awards,* has been revised.
- Ch. 89, *Heritability and Assignability of Claims and Benefits; Taxability of Benefits,* has been revised.
- Ch. 94, *Hospital and Medical Benefits,* has been revised.
- Ch. 95, *Rehabilitation,* has been revised.
- Ch. 100, *Nature and Scope of the Exclusiveness Principle,* has been revised.
- Ch. 101, *Exclusiveness as to Persons Other Than Employee,* has been revised.
- Ch. 115, *Election,* has been revised.

Recent Developments in Case Law

- Many noteworthy court decisions have been added throughout the set.

Disfigurement Awards. Chapter 88 has been revised, bringing up to date the discussion of state law related to this important feature of workers' compensation benefits. Disfigurement awards are now expressly permitted by statute in 39 states and have been authorized by judicial decision in at least three others. In most jurisdictions, compensation for disfigurements is closely tied to scheduled benefits. Indeed, in some jurisdictions, the disfigurement provisions act as a virtual catch-all provision for injuries not listed in the schedule but which are nevertheless permanent in nature. There continues to be a division among the states as to whether an award can be made for both loss of a member and statutory disfigurement for the same loss. The answer depends, in large part, on the particular wording of the applicable statute. Apart from special statutory restrictions, there is no reason why loss of use and disfigurement of the same member should not be recognized.

Heritability and Assignability of Claims and Benefits; Taxability of Benefits. Chapter 89, which discusses not only the issue of whether unpaid benefits may be inherited by an employee's heirs, but whether the future

flow of workers' compensation benefits can be reached by the employee's creditors (and whether that flow is subject to taxation), has been revised as well. In the vast majority of jurisdictions, benefits that are unpaid, yet accrued, survive the employee's death and may be distributed to his or her heirs. Where, however, the flow of future disability benefits is interrupted by the employee's death, that flow of benefits generally ceases. The right to future disability benefits is generally free from the claims of an employee's creditors. Where there is some obligation to provide care and support, such as in the case of a spouse, a former spouse, or the employee's children, the situation is quite different. Workers' compensation benefits can be subjected to claims from these protected persons, usually on the grounds that the persons are not "creditors" at all, or based on special statutory authority. Workers' compensation benefits continue to be generally free from taxation.

Hospital and Medical Benefits. Chapter 94 has been revised, bringing up to date the discussion of state law related to another core workers' compensation concept: the provision of medical benefits, including artificial members and other aids, to injured employees. Much of the recent activity in this area has been on the periphery—marking the limits, for example, of reimbursement for home care when the care is provided by family members or determining whether such aids as specially-modified automobiles, hot tubs or swimming pools meet the statutory definition of necessary medical care and treatment. The rise of medical care costs and the proliferation of HMOs and other managed care facilities continues to be a force in the delivery of medical care to injured employees. Most jurisdictions attempt to balance two competing interests: on the one hand, the value of allowing an employee, as far as possible, to choose his or her own physician and team of care givers, and on the other hand, the desirability of achieving the maximum of rehabilitation by permitting the compensation system to control the nature and quality of medical services from the moment of injury or diagnosis. That balancing act is not without difficulties, and the courts and administrative agencies continue to weigh the issues in these sorts of disputes.

Rehabilitation. Closely related to the discussion of hospital and medical benefits is that of rehabilitation, which is treated in Chapter 95. This chapter has also been updated to reflect recent case law and statutory modifications. Most jurisdictions have recognized that it is often not enough to repair the injured employee's body. Where physical limitations linger, and where those limitations prevent the employee from performing the sorts of work he or she formerly provided the employer, something else must be added. A number of states are now providing the statutory framework to support not only the types of physical rehabilitative services that can assist an employee in getting back on his or her feet, but also comprehensive retraining programs to allow the employees to move into new areas of employment within their physical limitations.

At issue also is the important interaction between workers' compensation laws on the one hand and federal laws, such as the Americans With Disabilities Act, on the other. Ch. 95, § 95.06 discusses this interaction. One must always keep in mind the important distinctions between state rehabilitation laws and the provisions of the ADA. The former have as their primary goal the return of injured employees to the work force. This can be accomplished by direct aid to the employee or through financial incentives to the employer. The goal of the latter is more systemic—i.e., to prevent discrimination against the disabled, whether that disability is caused by a work-related injury or not.

Nature and Scope of the Exclusiveness Principle. Chapter 100, which discusses the doctrine of exclusiveness— the fact that once a workers' compensation act has become applicable, it ordinarily affords the sole remedy for the injury by the employee or the employee's dependents against the employer and insurance carrier—has been updated and revised. The exclusiveness doctrine is considered well settled and has generally survived constitutional attacks. The chapter revision includes expanded coverage of a 2001 decision from the Supreme Court of Oregon [*Smothers v. Gresham Transfer, Inc.,* 332 Ore. 83, 23 P.3d 333 (2001)], which held that the state's exclusiveness statute was unconstitutional, at least to the extent that it abrogated special common-law remedies enjoyed by employees without providing anything in return [*see* Ch. 100, § 100.02 ns.10 and 11].

Not all sorts of damages are, of course, covered by workers' compensation acts. Ordinarily, the injury must be disabling in some way. A recent decision from New York softens the rule somewhat, awarding benefits to the wife of an injured employee for artificial insemination when the employee's injury prevented him from directly fathering a child [*see Spyhalsky v. Cross Constr.,* 743 N.Y.S.2d 212 (App. Div. 2002), Ch. 100, § 100.05[1][b] n.5.1].

Exclusiveness as to Persons Other than the Employee. The exclusiveness doctrine not only limits the employee's recovery to the benefits provided by the workers' compensation act, it generally bars a spouse from successfully maintaining a loss of consortium action and a parent or non-dependent child from maintaining a wrongful death action against a negligent employer even where no compensation benefit is recoverable. Chapter 101, which discusses the effect of the exclusiveness doctrine on persons other than the injured employee, has also been updated. Recent cases have barred tort recovery by a minor child of a deceased employee for loss of parental consortium [*see Hardin v. Action Graphics, Inc.,* 57 S.W.3d 844 (Ky. Ct. App. 2001), *cert. denied*, 152 L. Ed. 2d 820, 122 S. Ct. 1910 (2002), Digest to Ch. 101, § 101.02D[1] n.4] and by parents of a sixteen-year-old employee killed in a workplace explosion [*see Hesse v. Ashland Oil, Inc.,* 466 Mich. 21, 642 N.W.2d 330 (2002), Ch. 101, § 101.02[4] n.18].

Election. Chapter 115, which discusses the fact that ordinarily an injured employee is not required to hazard his or her substantive rights on an election between claiming compensation and suing a third-party tortfeasor, has been revised as well. Double recovery is generally avoided by requiring a successful plaintiff to reimburse the employer or carrier for benefits received pursuant to the workers' compensation law.

Injury From Spider Bite Held Compensable. In *Simmons v. City of Charleston,* 349 S.C. 64, 562 S.E.2d 476 (Ct. App. 2002), a captain with a city fire department, who sustained severe leg injuries and eventually the amputation of his right leg due to complications from a brown recluse spider bite sustained as he put on his fire fighting boots was allowed to recover total and permanent disability benefits for his injury without showing that his employment placed him in "greater risk" of the bite than that experienced by the general public. The court reasoned that the employee need not show any additional risk so long as he or she was engaged at the time of the injury in the actual performance of the work. It is sufficient if he or she is upon the employer's premises, "occupying" himself or herself with the contract of hire. The captain's actions in putting on his firefighting boots in response to the emergency call was reasonable and within his employment. He need not show he was at a greater risk. *See* Ch. 3, § 3.04 n.1.

Off-Duty Bouncer's Injuries in Fight Near His Bar Held Not Compensable. In *Goers v. Dirty Dan's Haw., Inc.,* 98 Haw. 142, 44 P.3d 293 (Ct. App. 2002), an off-duty bouncer at a Hawaii strip club, injured when he and a club patron were hit by a tow truck while the two were in the middle of an adjacent highway, may not recover workers' compensation benefits for his injuries; they resulted from his own wilful intention to injure another. Although the claimant disputed the fact, several witnesses indicated that as a confrontation between claimant and several bar patrons outside the bar grew tense, the claimant chased one of the patrons into the nearby street where they were both struck by a tow truck. Affirming a denial of the claim, the appellate court noted that there was reliable, probative and substantial evidence to support the Board's decision, particularly the testimony of three witnesses who testified that the particular patron was quite drunk and looked scared as he was chased into the street. Even if it was only a compulsive act on the part of the claimant to chase the club patron into the street and beat him there, the court could not ignore the seriousness of the conduct and the dangers involved. *See* Ch. 8, § 8.01D[5][d] n.133.

Fatal Injuries Sustained by Mechanic in Fight With Construction Workers Arose Out of the Employment; Tort Claim Barred. In *Dekalb Collision Ctr., Inc. v. Foster,* 254 Ga. App. 477, 562 S.E.2d 740 (2002), the fatal injuries sustained by a mechanic who became involved in a wild fracas between the mechanic and co-employees on the one side and a number of bricklayers who attempted to demolish a brick facade they had recently completed at the employer's premises on the other, arose out of and in the course of the mechanic's employment. Therefore, his daughters were barred from suing the employer for wrongful death by the exclusive remedy provisions of the Georgia workers' compensation act. The fight and the ensuing death were bound up within the employment so that the only recourse for the plaintiffs was under the state's workers' compensation act. *See* Ch. 8, § 8.03D[4] n.39.

Cost of More Expensive Cancer Therapy Held Not Compensable Because of Work-Related Injury. In *Owens v. Industrial Claim Appeals Office,* No. 01CA0803, 2002 Colo. App. LEXIS 371 (Colo. Ct. App. Mar. 14, 2002), *cert. denied*, 2002 Colo. LEXIS 516 (Colo. June 24, 2002), a Colorado employee, who suffered permanent and total disability as a result of an industrial injury to her upper extremities and who was subsequently diagnosed with breast cancer unrelated to her injury, was not entitled to additional workers' compensation medical benefits because her work-related permanent injury prevented her from holding her arm in a required position to receive a less expensive cancer therapy. *See* Ch. 10, § 10.02D n.1.

Claim for Injuries Sustained by Fire fighter En Route to Fire Held Not Barred by Going and Coming Rule. In *Strickland v. Galloway,* 348 S.C. 644, 560 S.E.2d 448 (Ct. App. 2002), a volunteer fire fighter, responding to an alarm by driving his vehicle to the scene of the fire, was not "going to work" as that term is generally used to discern if an injury falls within the "going and coming" exception to workers' compensation coverage. Immunity from suit extended also to the other defendant, a volunteer fire fighter himself, whose car skidded as he approached the fire scene, striking the plaintiff, who had just donned his fire fighting gear and was readying himself to fight the blaze. The injuries occurred within the course and scope of both firefighters' employment. *See* Ch. 14, § 14.05D[6] n.42.

Purchase of Milk at End of Shift Held

Not Outside Zone of Employment. In *Packer v. The Kroger Co.,* 2002 Ohio 1185 (Ct. App.), a grocery store employee, who clocked out at the end of her shift, used the bathroom, picked up two gallons of milk, picked up her coat near the front of her store and then exited only to fall down an icy ramp on her way to the company parking lot, sustained an accidental injury arising out of and in the course of her employment; she was within the "zone of employment" in spite of the fact that she had already checked out of work for the day. *See* Ch. 21, § 21.06D[1][c] n.20.

Professional Football Players Suffered Accidental Injury Arising Out of and in Course of Employment, Despite Substantial Risk of Injury. In spite of the dangers inherent within professional sports, particularly professional football, it is still quite possible for an injured player to show that he has sustained an "accidental" injury so as to qualify for workers' compensation benefits. In *Pro-Football, Inc. v. Uhlenhake,* 37 Va. App. 407, 558 S.E.2d 571 (2002), benefits were awarded for the claimant's ankle injury, but denied for his knee injury due to the vagueness of his allegations. The court of appeals reasoned that a pro athlete is in no different a position from any other worker employed in a hazardous enterprise. The court noted that coal miners, steel workers, firefighters, and police officers (who are covered by the Act) are regularly exposed to known, actual risks of hazards "because the employment subjects the employee to the particular danger." There is nothing so special about football that would operate to exclude its employees from the same sorts of workers' compensation coverage. The nature of the employment cannot determine whether an injury is accidental for purposes of the workers' compensation act. *See* Ch. 22, § 22.04[1][b] n.10.

Injury Sustained in Union-Sponsored Softball Game Held Not Compensable. In *Koch v. Rockland County Sheriff's Dep't,* 289 A.D.2d 865, 734 N.Y.S.2d 697 (2001), a New York appellate court held that knowledge of a recreational activity, even acquiescence in the activity because it will have some positive effect upon employee morale, is insufficient under N.Y. Work. Comp. Law § 10(1) to bring the activity within the course and scope of the employment. Affirming a decision that had denied workers' compensation benefits to an employee injured in a union-sponsored softball game between employees of a correction division and employees of a patrol division, the appellate court reasoned that there was insufficient employer involvement to make the employer liable for compensation benefits. *See* Ch. 22, § 22.04D[4][a] n.74.

Injuries Sustained in Fight Over Employer's Dress Policy Arose From the Employment; Tort Action Barred. In *Cook v. AFC Enters., Inc.,* No. 2000917, 2002 Ala. Civ. App. LEXIS 12 (Ala. Civ. App. Jan. 18, 2002), an Alabama appellate court affirmed the dismissal of a tort action filed by an employee who was fired for violating her employer's dress policy and who sustained injuries in an altercation with other employees just after the termination; her claim was barred by exclusivity. The Alabama appellate court noted that a person's employment includes a reasonable time, space and opportunity before and after the actual employment. In as much as Cook's termination and her injuries occurred simultaneously, her sole remedy was within the workers' compensation system and not in tort. *See* Ch. 26, § 26.01D n.1.

Employee Injured Scaling Fence After the Work Day Sustained Compensable Accident. In *Arp v. Parkdale Mills, Inc.,* 563 S.E.2d 62 (N.C. Ct. App. 2002), a textile employee who broke his leg when he attempted to scale a six-foot fence that separated the employer's premises from a nearby

parking lot where he was to be picked up by a relative sustained an accidental injury arising out of and in the course of his employment. The court of appeals held that a denial of the claim could only be supported if the employee had intentionally sought to injure himself. Since there was no such evidence, the unorthodox exit was covered. The employee's effort may have been negligence, but fault ordinarily has no part in determining the compensability of a claim. *See* Ch. 33, § 33.01[3] n.21.1.

Psychiatric Injury Allegedly Caused by Workplace Gossip Held Not Compensable. In *Atascadero Unified Sch. Dist. v. Workers' Comp. App. Bd.,* 98 Cal. App. 4th 880, 120 Cal. Rptr. 2d 239 (2002), a school district employee who claimed she suffered a psychiatric injury as a result of workplace gossip about her extramarital affair with a coworker was not allowed to recover workers' compensation disability benefits for her alleged condition; it did not arise out of and in the course of her employment. Reversing a decision of the Workers' Compensation Appeal Board, which had awarded benefits based on the facts that the employee's coworkers were the source of the gossip and that it took place within the workplace, the appellate court held that, as a matter of law, an injury caused by workplace gossip about an employee's personal life may not arise from the employment. It is never sufficient to merely show that the workplace provided "the stage" for the employee's injury. That there is a passive element involving the work environment is also insufficient to support a claim for disability benefits. Here, the rumors and gossip all stemmed from acts and occurrences of the employee's personal life and were not directly associated with her employment. The nature of her duties was not the proximate cause of her injury; her work merely provided a convenient stage. *See* Ch. 56, § 56.02D[4] n.28.

No Compensable Mental Injury Found for Demoted Bank Branch Manger. In *Partin v. Merchants & Farmers Bank,* 01-1560 (La. 03/11/02), 810 So. 2d 1118, the demotion of a bank branch manager for lack of managerial skills, apparently related to a $5 error by two of the manager's tellers, did not produce the sudden, unexpected and extraordinary stress required by the Louisiana workers' compensation act in order to support a mental injury claim. Reviewing 1989 legislation that made recovery in mental/mental cases more difficult, the high court agreed with the court of appeals that an objective and not a subjective standard should be applied. Disagreeing with the lower court, however, about the conclusions to be drawn from the demotion of the claimant in the case at bar, the court stressed that unfairness alone cannot supply the necessary level of objectivity. *See* Ch. 56, § 56.06D[6] n.38.

Orthopedic Surgeon With Carpal Tunnel Syndrome Did Not Establish Sufficient Reduction in Earnings to Establish Claim. In *State ex rel. Rouweyha v. Indus. Comm'n,* 2002 Ohio 347, 94 Ohio St. 3d 160, 761 N.E.2d 27, the claimant was an orthopedic surgeon who was unable to use his right arm due to work-related carpal tunnel syndrome. He closed his practice and entered into an agreement with the medical group that purchased his medical building whereby the claimant would be trained as a hair transplant surgeon at a cost of $60,000 to the medical group in exchange for his working for the group without compensation for two years after training. The claimant then sought benefits for the difference of $30,000, the salary imputed for each year of unpaid work for the group, and $120,000, his annual salary prior to the injury. Benefits were denied. The claimant did not demonstrate that he attempted to secure any employment with a salary that would be comparable to his preinjury wage level. In addition, the specifics

of the new job, such as the number of hours to be worked, were not in evidence, and such specifics were necessary to determine whether the claimant took the position for injury-related reasons and not simply for lifestyle reasons. *See* Ch. 84, § 84.01D[4] n.26.

South Carolina Employee Not Allowed to Recover for Loss of Psychological System as a Scheduled Member. In *Lee v. Harborside Café,* No. 3494, 2002 S.C. App. LEXIS 68 (S.C. Ct. App. May 13, 2002), an employee who alleged he sustained psychological injuries as a result of an accident at his workplace may not recover for partial loss of his psychological system under S.C. Code Ann. § 42-9-30 (the scheduled member section of the South Carolina workers' compensation law). The court of appeals acknowledged that a number of recent decisions had clearly established the compensability of mental injuries, but *not* as scheduled member claims. *See* Ch. 86, § 86.02D n.3.

Tort Action for Infliction of Emotional Distress Not Barred by Exclusivity When Employer Fired Employee While He Lay in Bed Recovering From Heart Condition. In *Archer v. Farmer Bros. Co.,* 2002 Colo. App. LEXIS 718 (Colo. Ct. App. 2002), a Colorado employee with 22 years experience with the employer, whose supervisors personally delivered a notice of termination to him as he lay in bed recuperating from a heart condition, may recover tort damages against his former employer for intentional infliction of emotional distress, held a state appellate court; the suit was not barred by the exclusive remedy provisions of the state's workers' compensation law. *See* Ch. 103, § 103.03D n.2.

Employer's Removal of Safety Guard From Dangerous Machine Could Subject Employer to Tort Liability Despite Exclusivity Doctrine. Reiterating that New Jersey utilizes the "substantially certain" rule in determining what sorts of employer behavior is deemed to be intentional and, therefore, outside the exclusive remedy protections of the workers' compensation act, the New Jersey Supreme Court held that allegations that an employer removed a safety guard from a dangerous machine, knowing that the removal was substantially certain to result in injury to its workers, were sufficient to raise a factual issue for determination by a jury [*see Laidlow v. Hariton Mach. Co.,* 170 N.J. 602, 790 A.2d 884, *appeal dismissed*, 171 N.J. 334, 793 A.2d 714 (2002); Ch. 103, § 103.04D[2][e] n.42].

Wiretapping Claim Against Employer Not Barred by Exclusivity. In *Karch v. BayBank FSB,* 147 N.H. 525, 794 A.2d 763 (2002), an employee sued under the state's wiretapping statute, alleging that her private telephone conversations had been intercepted and used by her employer. Her claim was held not barred by workers' compensation exclusivity. *See* Ch. 104, § 104.01 n.1.1.

California Employee Stated Claim for Fraudulent Concealment of Nature and Probable Results of Exposure to Chemicals. In *Palestini v. General Dynamics Corp.,* 99 Cal. App. 4th 80, 120 Cal. Rptr. 2d 741 (2002), a California employee who claimed that he developed testicular cancer and other injuries after years of exposure to various carcinogenic chemicals at his workplace and that his former employers were guilty of fraudulent concealment both of the nature of his exposure and the probable results thereof stated a claim under Cal. Labor Code § 3602(b)(2), and his wife stated a proper claim for loss of consortium. The appellate court held the plaintiff's claim was not barred by the exclusive remedy provisions of the California workers' compensation act. *See* Digest to Ch. 104, § 104.03D[3] n.6.

Defamation Action Not Barred by New York Exclusivity Rule. In *Nassa v. Hook-Superx, Inc.,* 790 A.2d 368 (R.I. 2002), a

New York appellate court held that the state's workers' compensation act did not prevent employees from bringing work-related defamation actions against coworkers or employers. Following earlier decisions, the court stated "that certain work-related intangible injuries which rob a person of dignity and self-esteem do not fall within the WCA's exclusive-remedy provisions." Defamation was such an injury. *See* Ch. 104, § 104.04D n.1.

Mississippi Adopts Firefighter's Rule; South Carolina Refuses to Adopt Rule. In *Farmer v. B & G Food Enters., Inc.,* 2000-CA-00722-SCT (Miss. 2002) [*see* Ch. 110, § 110.08 n.7.1], a case of first impression, the Supreme Court of Mississippi held that a police officer who sustained a severe knee injury when he attempted to break up a fight at a restaurant to which he had been dispatched may not sue the restaurant in tort because his claim was barred by the application of the "police officer and firefighter's rule." South Carolina, however, has recently refused to adopt the rule altogether [*see Minnich v. Med-Waste, Inc.,* No. 25468, 2002 S.C. LEXIS 91 (S.C. May 20, 2002); Ch. 110, § 110.08 n.7.2].

California Employee Injured at Workplace on Day Off Not Allowed to Sue for Negligence. In *Wright v. Beverly Fabrics, Inc.,* 95 Cal. App. 4th 346, 115 Cal. Rptr. 2d 503 (2002), *review denied*, No. S104627, 2002 Cal. LEXIS 3206 (Cal. May 1, 2002), a California employee who sustained back injuries at her employer's premises when she helped other employees hold up a merchandise shelf that was in danger of collapsing may not sue her employer for negligence in spite of the fact that her injuries were sustained on her day off and at a time when she had come to the store to sign a condolence card and contribute money for two coworkers who had lost family members. Reversing a judgment entered on a $500,000 jury verdict, the appellate court held that, at the time she sustained her injuries, the employee was engaged in an activity that was incidental to her employment and in furtherance of her employer's business. Since such activity was reasonable under the circumstances and reasonably expected by her employer, the entire incident was within the course and scope of her employment so that workers' compensation was the employee's sole remedy for her injuries. *See* Ch. 113, § 113.08D n.2.

Georgia Court Denied Workers' Compensation Lien to Compensation Carrier With More than $200,000 in Medical Expenses Despite Multi-Million Dollar Third-Party Settlement. In *CGU Ins. Co. v. Sabel Indus.,* 2002 Ga. App. LEXIS 577 (Ga. Ct. App. 2002), a workers' compensation carrier that paid more than $212,000 in medical expenses, temporary total benefits, and permanent partial disability benefits was denied a lien against the injured employee's multi-million dollar third-party settlement because the carrier failed to show that the injured employee and his spouse had been fully compensated for their losses pursuant to O.C.G.A. § 34-9-11.1. Affirming a dismissal of the lien claim, the court of appeals held that the experts proffered by the compensation carrier had engaged in speculation as to the nature and degree of the injured employee's damages. It was not error, therefore, for the trial court to ignore the carrier's claim that the employee and spouse had been fully compensated for their loss. *See* Ch. 117, § 117.01D[1] n.2.

Physician's Cursory Note Faxed to Employer's Office Was Sufficient Notice to Employer. In *Etheredge v. Monsanto Co.,* 562 S.E.2d 679 (S.C. Ct. App. 2002), a cursory note describing an employee's medical condition as being aggravated by activity at her place of work, faxed by the employee's treating physician to a company nurse,

was sufficient notice to the employer of the employee's injury under S.C. Code Ann. § 42-15-20. Holding that the language of the notice statute must be liberally construed in favor of the claimant, the court stressed that the particular type or style of the notice was not important, so long as there is some knowledge of accompanying facts connecting the injury or illness with the employment, and signifying to a reasonably conscientious supervisor that the case may involve a potential compensation claim. *See* Ch. 126, § 126.03D[1][b] n.14.

Informal Conversation With Physician Held Insufficient to Provide Employee With Knowledge of Work-Relatedness of Condition. In a South Carolina case, *McCraw v. Mary Black Hosp.,* No. 25480, 2002 S.C. LEXIS 102 (S.C. June 17, 2002), a hospital nurse's informal conversations with a physician about breathing problems that she was experiencing in which the physician indicated it might be a good idea for the nurse to seek a transfer to another department where she would not come into contact with specific cleaning fluids was not the sort of definitive diagnosis of an occupational disease so as to trigger the running of the two-year statute of limitations on such claims. The South Carolina high court held that the nurse's first definitive diagnosis came at the time she was hospitalized for respiratory problems, a date that was within the two-year limitations period. *See* Ch. 126, § 126.05D[1] n.1.

Appendices. Appendix A, Tabulation of Substantive Statutory Provisions, Appendix B, Tabulation of Benefits, and Appendix G, Workmen's Compensation and Rehabilitation Law (Revised) Model Act, have been revised in this release.

Supplement Table of Cases. A revised supplement of the Table of Cases has been included in this release.

Index. A revised index has been included in this release.

COMPOSITION RUN COMPLETED --- ERRORS: NONE --- PAGES: 10