

INSIDE

Recent Caselaw

Markups on surgical implants

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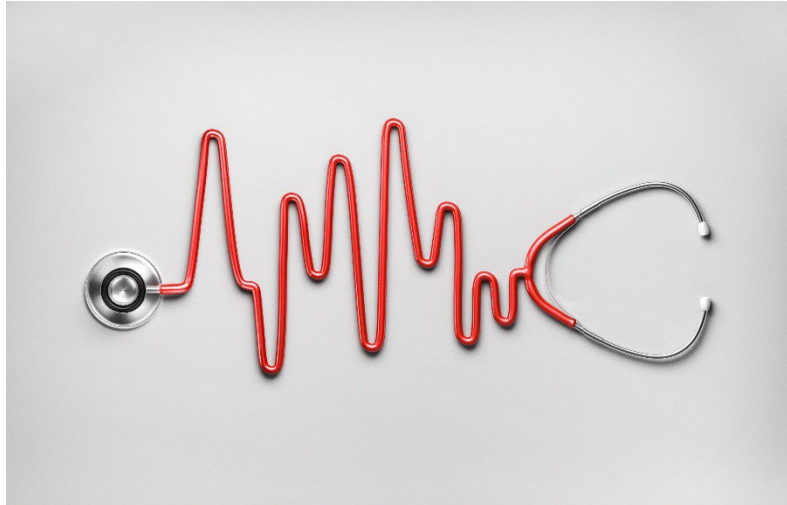
Workers' Comp Fraud

A deeper dive .

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News

New York seeks to make reporting immigration status illegal under anti-retaliation statutes



Recent Caselaw

Mark McDonnell v. Point Blue Water Systems, Inc. et al (La. 3rd Circuit)

Opinion - Dr. McDonnell, an orthopedic spinal surgeon, performed five (5) surgeries on injured employees pursuant to the Louisiana Workers' Comp Act. Stonetrust Commercial Insurance Company, the insurer for all five claims, provided pre-authorization for Dr. McDonnell to perform the procedures. Dr. McDonnell used a certain surgical implant, for which there was no specific reimbursement rate called out in the La. Workers' Compensation Fee Schedule. The specific provision, La Admin. Code, Title 40, Part I., § 5115, Sub. (15), states, "Plastic and metallic implants...supplied by the physician are to be reimbursed at invoice cost plus 20 percent. An invoice with the cost...must be submitted to the C/SIE with the bill."

Dr. McDonnell submitted a request for reimbursement consisting of the manufacturer's invoice, plus the statutory mark up of 20%, but Stonetrust paid only what it deemed to be a "reasonable amount" for the implants. At trial, the court found that the amounts charged by the manufacturer and, in turn, by Dr. McDonnell were reasonable, and ordered Stonetrust to pay the full reimbursement amount.

On appeal, Stonetrust argued that the WCJ failed to perform a reasonableness analysis (to determine the mean of the usual and customary price of the implants) and that the prices charged by Dr. McDonnell were not reasonable. The appellate court, citing a statement by the WCJ, determined that the WCJ did, in fact, conduct a reasonableness analysis when it concluded that "the medical implants were [not] priced at such an outrageous amount that they would not be reasonable within the meaning of the statute," The court affirmed the ruling.

In practice, if the provider shows that the amount charged by the manufacturer is reasonable, the payor will owe the invoiced amount, plus the providers' statutorily allowed 20% markup. If the invoiced price is not reasonable, the court must perform the reasonableness analysis prior to determine the reimbursable amount.

Quick Bites

Max Comp Rate: \$771.00

Min Comp Rate: \$206.00

Mileage: \$0.62 / mile

Links:

[LA Workforce Commission](#)

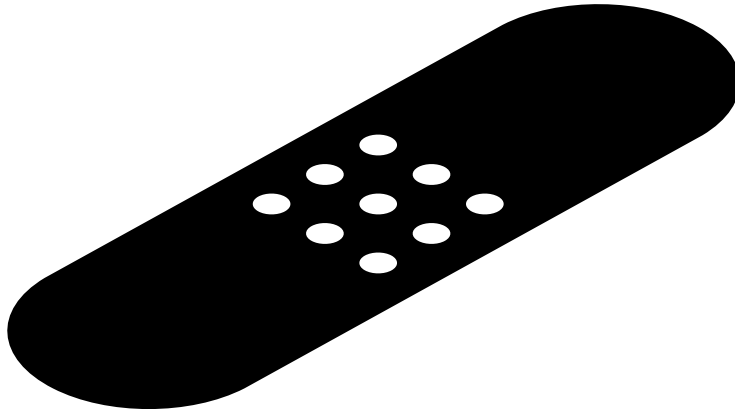
[1002 Form](#)

[1007 First Report Form](#)

[1008 Disputed Claim](#)

[1011 Settlement](#)

[1015 IME](#)



Workers' Comp Fraud

Part 2 - A deeper dive - What is a false statement or representation?ⁱ

To be disqualified from workers' compensation benefits under the Louisiana Workers' Comp Fraud Statute, i.e. La. R.S. 23:1208, the employee must "willfully" make a "false statement or representation" for the purpose of obtaining workers' compensation benefits. Below is a more in-depth discussion on what constitutes a "statement or representation" in the context of workers' compensation fraud.

A "statement" is defined as a definite or clear expression of something in speech or writing. A "representation" is the description or portrayal of someone or something in a particular way or as being of a certain nature.

In Lovas v. Gallagher Bassett Servs., Inc.,ⁱⁱ the claimant denied prior back pains or injuries in his discovery, the Second Injury Fund questionnaire, medical history provided to doctors, deposition testimony and trial testimony. A review of prior records indicated that Claimant not only had prior complaints of back pain, but he had also received significant treatment for back pain, including injections and medications. The trial court determined that the claimant made false statements representations regarding his prior back pain and treatment sufficient to violate the statute, which finding was affirmed on appeal.

In Guichard Operating Co., LLC v. Porche,ⁱⁱⁱ the court determined that the claimant made a false statement in his deposition about engaging in scrap metal sales following his injury wherein he received some "earnings" while also receiving workers' comp benefits.

In Heathcoate v. D & D Drilling & Expl., Inc.,^{iv} the court found that the claimant's denial of the receipt of any financial support, despite receipt of \$2,000 per month pertaining to an adoption proceeding, was a false statement made in violation of the fraud statute. (*cont'd, above*)

Fraud - pt. 2 cont'd

In Malone-Watson v. Strategic Restaurants,^v the claimant denied driving, carrying objects heavier than a loaf of bread, and doing normal activities of daily living. Despite these denials, she was caught on surveillance videos driving, carrying heavy objects, among other activities she testified she could no longer participate in. The Court determined that these misrepresentations about her condition were sufficient to support the Fraud defense.

In summary, denying prior back pain, failure to disclose earnings or other financial support, and misrepresenting the level of disability can all be considered false statements or misrepresentation for the purpose of alleging fraud. Each case is fact specific and if you have a claim where suspected fraud is involved, please contact our attorneys for their legal opinions.

News (Non-Louisiana)

New York lawmakers have introduced a bill which would bar employers from reporting or threatening to report to US officials the immigration status of employees filing workers' comp claims. The bill adds to the anti-retaliation statute by amending the definition of retaliation to include reporting the immigration status of injured employees to federal officials to avoid paying benefits. The fines for violations are also increased as part of the legislation.

About the Author

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Lee M. LeBouef is Partner at Leake & Andersson, LLP in New Orleans, Louisiana. Lee graduated from the Paul M. Hebert Law Center - Louisiana State University in 2015. He began his law practice handling mostly small construction disputes for contractors, subcontractors, and homeowners. Since 2017, he has practiced primarily in Louisiana Workers' Compensation defense, handling simple and complex cases for employers, insurers, and third-party administrators, including subrogation. Last year, Lee attended the Workers' Compensation Institute Conference in Orlando and the National Workers' Compensation and Disability Conference in Las Vegas.

If you have any questions about Louisiana Workers' Compensation, please contact Lee at your convenience.

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ⁱ Please refer back to [Issue No. 2](#) for Part I - the Basics

ⁱⁱ 2018-0801 (La. App. 4 Cir. 3/20/19), 267 So. 3d 129, 137

ⁱⁱⁱ 2015-1942 (La. App. 1 Cir. 1/5/17), 212 So. 3d 701, 708

^{iv} 2016-167 (La. App. 3 Cir. 9/28/16), 200 So. 3d 371, 375

^v 2014-1191 (La. App. 1 Cir. 6/11/15), 176 So. 3d 417, 420