

INSIDE

Recent Caselaw

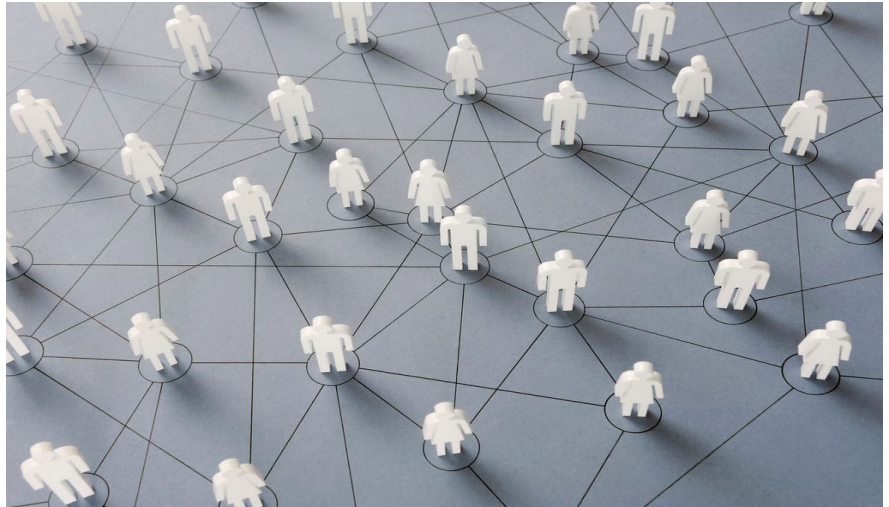
Ruling in favor of Employer
 AFFIRMED

Workers' Comp Fraud Series

The Finale.

News

LWCC to distribute record dividends



Recent Caselaw – Defense Judgment Affirmed

Demarest v. NI Welding Supply, LLC, et al (Third Circuit)

Opinion - Claimant allegedly injured his back while in the course and scope of his employment with NI Welding on July 25, 2019. After trial, the trial court issued a final judgment denying all claims.

At trial, there was conflicting testimony. First, Claimant contended that he reported the accident to his supervisor; his supervisor refuted this. Next, claimant testified that he told an employee of the offsite contractor where he was allegedly injured that he had hurt his back; testimony and documentary evidence refuted claimant’s testimony. Finally, one of Claimant’s co-workers/friends denied that Claimant ever mentioned that he was involved in an accident or that he was injured at work. Further, medical records from one-day post-accident indicated that Claimant had pre-existing back pain since 2018, and he denied any injury or trauma.

The trial court found that Claimant failed to prove that his lower back pain was causally related to the alleged work accident of July 25, 2019. The claimant appealed.

On appeal, the appellate court noted that there were two permissible views of the evidence and that the trial court believed the Defendants version. “[W]here there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable.” And when two permissible views of the evidence exist, the factfinder’s choice between them cannot be manifestly erroneous or clearly wrong. The Court affirmed the ruling of the trial court that Claimant failed to carry his burden of proof regarding causation.

In practice, where a trial court is faced with two permissible views of conflicting evidence, the trial court’s choice between the two cannot be manifestly erroneous, and will not be disturbed on appeal. This means that in a case where there is conflicting testimony, but the Court sides with the Claimant, these findings of fact can almost never be manifest error, the burden of proof on such appeals.

Quick Bites

Max Comp Rate: \$771.00

Min Comp Rate: \$206.00

Mileage: \$0.655 / mile

Links:

[LA Workforce Commission](#)

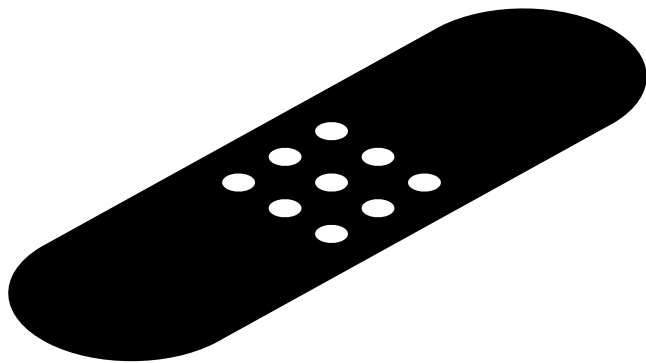
[1002 Form](#)

[1007 First Report Form](#)

[1008 Disputed Claim](#)

[1011 Settlement](#)

[1015 IME](#)



Workers' Comp Fraud

Part 4 (the Series Finale) - The Repercussions

An employee who is proven to be in violation of La. R.S. 23:1208 is subject to the sanctions also outlined in the statute. Initially, it should be noted that willfully making false statements or representations for the purpose of obtaining workers' compensation benefits is a criminal act. Depending on the value of the claimed benefits, it may rise to the level of a felony. If the benefits claimed are between \$2,500 and \$10,000, a person found guilty of violating the statute shall be sentenced to not more than 5 years of prison time. For benefits under \$2,500, the person found guilty will be sentenced to not more than months of jail time. In both cases, there is also a fine. (Please note that the criminal prohibitions extend to non-claimants who aid and abet or counsel the claimant to make false statements or representations).

More pertinently, a person who willfully makes false statements or representations for the purpose of obtaining workers' compensation benefits forfeits any right to compensation under the Louisiana Workers' Compensation act. There are three (3) requirements for forfeiture, which all must be proven by the employer by a preponderance of the evidence: (1) a false statement or representation; (2) willfully made; (3) for the purpose of obtaining compensation benefits.ⁱ All three elements must be present for forfeiture to apply. If the employer proves each and every element required for forfeiture, the forfeiture applies only prospectively from the moment the false statement or representation is made. (Note: there This means that if any benefits are legitimately received prior to the false statement or misrepresentation, the claimant would not forfeit those benefits.

Finally, any benefits received due to the fraud are subject to restitution. According to the statute, restitution is not mandatory ("restitution **may** be ordered" - emphasis added). And it shall only apply to benefits obtained through fraud and only through the time the employer became aware of the fraudulent conduct. The court may also order a civil penalty be paid by the claimant to the Kids Chance Scholarship Fund or the Louisiana Bar Foundation.

If you have any cases where workers' comp fraud is suspected, contact the attorneys at Leake & Andersson for an opinion.

Client Successes

Settlement - Claimant suffered from a broken ankle sustained in an accident while in the course and scope of his employment. Claimant was released to return to work light duty, with a full duty release expected soon, yet still demanded in excess of six-figures in Supplemental Earnings Benefits and medical treatment. After an intense OWC mediation and some additional private negotiation, the claim was settled on terms acceptable to the employer and claimant.

Work Comp News

LWCC Dividends

LWCC to distribute \$115.5 million in dividends back to its policy holders for 2022. Nearly 20,000 Louisiana businesses who have policies with the workers' compensation insurer will receive payments before April 28, 2022. The policy holders are the owners of LWCC, so they receive financial rewards. This will be the largest dividend payment in the history of LWCC. Over the years, over \$1.25 billions in dividend payments have been made to policyholders. Dividends are paid out from premiums that are collected but that were not spent on claims, plus earnings on LWCC's investment. LWCC is the largest workers' compensation insurer in the State of Louisiana.

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. Lee was recently promoted to Partner at the beginning of 2023. Lee is a member of the Louisiana Bar Association's Insurance, Tort, Workers' Compensation and Admiralty Section. He is also a member of ALFA International's Workers' Compensation Practice Group and is active on the Steering Committee. 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 Whether or not the employer has proven and every element is a factual consideration. As such, on appeal, forfeiture is reviewed for manifest error.