

Wearable Devices can Prevent Accidents

Wearable devices such as vests and belt clips, among others, are attracting investments from insurers who believe such safety devices can prevent workplace accidents. Some insurers even see a role for wearable devices in returning injured employees to work.

AIG, one of the largest insurers in the country, stirred a lot of interest recently when it announced its “strategic investment” in New York-based Human Condition Safety. The company is among the startups piloting sensor technology which can alert workers of impending hazards and accidents.

Insurance broker Marsh uses the following example: Consider two electricians working on construction projects. Both wrongly assume the power to the circuits they’re working on has been shut down. One taps in and suffers severe burns. Across town, in a similar situation, another worker is about to do the same when a sensor in his vest lights up and emits a high-pitched warning, alerting him the power is still on and thus allowing him to work without incident.

“Right now the data insurance companies have is mostly after the fact — it’s once a claim has happened, once an injury has happened. (A wearable safety device) gives you data about risk, before an injury has happened. The next logical step is to gather this type of data,”

Sensors can be life-saving in another common scenario: if a worker wanders into the path of a forklift, sensors can warn both the wayward employee and the forklift driver. Sensors can also capture body movements and identify bad habits — such as improper lifting techniques — and help employers develop best practices to reduce injury rates, improve productivity, and promote safety.

Crane Worldwide Logistics tested one such product to measure the number of high-risk lifts performed per day — an average of 140 — and identify the riskiest time of day, which turned out to be before lunch and an hour before the end of a shift. “With additional training and real-time feedback, the Houston-based transportation and logistics services provider saw an 84% reduction in the number of high-risk lifts performed per shift,” according to *Business*

Insurance.

“It just makes a lot of sense,” says Haytham Elhawary, CEO of Kinetic, a New York-based company that created a wearable safety device for industrial workers. “Right now the data insurance companies have is mostly after the fact — it’s once a claim has happened, once an injury has happened. (A wearable safety device) gives you data about risk, before an injury has happened. The next logical step is to gather this type of data,” he told the publication.

Some observers foresee that employers who adopt state-of-the-art devices may be able to secure better pricing from insurers or obtain coverage on better terms. *Business Insurance* adds one model familiar to many consumers and insurers is the way Allstate Insurance Co. promotes its *Drivewise* device, which drivers plug into their vehicles and earn rewards for safe driving behaviors such as avoiding high speeds and hard stops.

“We think there’s a big future in wearables,” says Adam Bellin, director of business development at Human Condition Safety. “Most safety-related data going forward will be real-time and mobile, provisioned through wearable sensors. And for the most progressive companies, we predict that real-time, onsite data will be critical to success,” he told Marsh.

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CASE LAW UPDATE

By Julie Hooten



Reconsidering Wilkes v. City of Greenville

No recent case has caused more heartburn for the defense bar than *Wilkes v. City of Greenville*. While there is certainly cause for concern, it's not quite time to panic, yet....

Johnnie Wilkes was a 62-year-old landscaper for the City of Greenville who was involved in a motor vehicle accident while driving a City truck. He was transported to a hospital and treated for an abrasion to his head, broken ribs, and injuries to his neck, back, left pelvis, and hip. A brain MRI was interpreted as showing evidence of a concussion.

A week after the accident, defendants filed a Form 60 accepting injuries to Wilkes' ribs, neck, legs, and entire left side. Wilkes later sought treatment for depression and anxiety. Defendants filed a Hearing Request disputing the totality of his complaints and the need for additional medical treatment. Deputy Commissioner Vilas concluded that Wilkes' depression and anxiety were the causal result of the work-related accident and that Wilkes was entitled to weekly indemnity benefits as it would be futile for him to seek work given his age, IQ, work experience, and work-related restrictions.

Defendants appealed to the Full Commission, which reversed and concluded that Wilkes had failed to meet his burden of proof that his depression and anxiety were caused by the accident. The Full Commission also concluded Wilkes was no longer entitled to weekly indemnity benefits because he presented insufficient evidence that a job search would be futile. Wilkes appealed to the Court of Appeals.

On October 6, 2015, in *Wilkes v. City of Greenville*, the Court of Appeals reversed in part, vacated in part, and remanded the case to the Full Commission for additional findings. The court reached two significant conclusions that shocked many in the comp world. Specifically, the Court concluded the Commission erroneously placed the burden of proof on Wilkes to establish his depression and anxiety were causally related to the accident.

Instead, the court noted that the *Parsons* presumption put the initial burden to disprove on defendants, rather than on Wilkes, an employee seeking additional medical treatment after a compensable injury. With regard to this issue, the court determined the Full Commission misapplied the law and remanded the case to the Full Commission for more specific

findings as to whether defendants met their initial burden of proof to disprove the depression and anxiety conditions.

Relying heavily on the *Perez* case, the court rejected defendants' argument the *Parsons* presumption did not apply to Wilkes' depression and anxiety since they had not accepted those conditions as compensable on Form 60. The Form 60 listed only his ribs, neck, leg, and entire left side.

At first blush, the fact that Form 60 did not include 'depression and anxiety' as identified compensable conditions seemed to be a departure from the court's application of the *Parsons* presumption in the past, but the court likely considered the fact the issue had been the subject of an earlier Medical Motion and defendants were ordered to authorize a neurosurgical evaluation and any resulting neurosurgical or neuropsychological treatment, if recommended.

Defendants subsequently authorized an evaluation with a neurosurgeon, who recommended evaluation with a neuropsychologist, and thereafter defendants authorized evaluation with a psychiatrist.

Consequently, the *Wilkes* case may not be seen so much as an extension of *Parsons* but as a reminder to defendants to tread carefully when authorizing medical treatment while still exploring the compensability of that particular condition.

Whether the Full Commission finds the *Wilkes* defendants presented evidence to rebut the presumption of relatedness remains to be seen, but this aspect of the *Wilkes* decision does not seem to be a radical extension of the *Parsons* presumption after all.

In addition to the *Parsons* issue, the court also resolved the issue of whether *Wilkes* presented sufficient evidence that it would be futile for him to seek employment given his age, IQ, transferrable skills, and restrictions. While much ado has been made of the court's *Parsons* analysis, its conclusion that

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President's Note

A Fast Start to this Year's Conference

Perhaps it is a sign of the improving economy as this year we began receiving a flurry of registrations soon after we sent out the brochure for our upcoming conference in Wrightsville Beach. It so happens that we also have a terrific program this year, thanks to our board member Stephanie Gay and thanks to suggestions made by our members in response to our call for ideas.

Our annual conference is an excellent way to keep up with emerging developments in workers' comp, to network with your peers, and to introduce your products and services. Employers, in particular, will find it most beneficial to hear a variety of views and opinions on how to tackle the pressing issues of the day.

So much of what transpires in workers' comp today is a reflection of rapid changes in healthcare, employee benefits, and technological innovations. No one organization, let alone a single individual, can hope to keep up without the help of knowledgeable peers. The self-insurers' annual conference is one of the best resources for continuing educational and professional learning.

See you at the conference.

With very best wishes,

Jay Norris



Opt-out Proposals Fading Away

Opt-out legislative proposals which had rattled the workers' compensation industry appear to be all but dead in Tennessee and South Carolina and, despite brave talk by its proponents, don't appear to be making headway anywhere in the country.

Business Insurance notes it's unlikely that such legislation will pop up in other states before there's movement in Tennessee or South Carolina. Opt-out legislation received harsh scrutiny last year from NPR and ProPublica which slammed them for providing restrictive coverage to injured workers while imposing onerous conditions.

Separately, the National Conference of Insurance Legislators said it would look closely into the pros and cons of opt-out legislation, as it is concerned stripped-down workers' compensation benefits might prompt the federal government to intervene.

Bill Minick, secretary of the Association for Responsible Alternatives to Workers' Compensation, the group pushing opt-out, told *Best's News Service* his group is not fazed by recent developments. "It is true that we are encountering bumps in the road in Tennessee and South Carolina. That's not unexpected whenever a long-established business model is disrupted by new, innovative processes. We're prepared to make and defend our argument that all parties — except perhaps the entrenched special interests — benefit from choice and innovation."

Best's also reports insurance industry groups expect opt-out proposals to be introduced in several states next year including Arkansas, West Virginia and Georgia, and also in Wisconsin, Indiana, and Missouri as well.

Critics note one fundamental problem with opt-out plans is that in order to win support the plans have to provide benefits comparable to those provided under current workers' compensation programs. But once opt-out plans concede that, they start looking very much like the current structure, and states are likely to conclude it would be simpler and less-disruptive to reform the existing system.

coming up

Mar. 30–Apr.1, 2016

NC Association of Self-Insurers' Annual Conference.

Holiday Inn Resort, Wrightsville Beach

April 6-8, 2016

Members-Only Forum, SC Self-Insurers' Association.

Hilton Myrtle Beach Resort

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expert testimony was not necessary to establish futility may have more far-reaching consequences.

The court distinguished its recent holding in the *Fields* case where it concluded the employee had failed to establish disability through an argument of futility as he had no expert testimony as to his other vocational limitations. According to the *Wilkes* court, however, vocational testimony is not necessary but is merely one example of how an employee can establish that evidence. *Wilkes* clarifies that defendants cannot argue that failure to offer expert vocational opinion testimony necessarily bars a conclusion of futility. Instead, the court will likely consider the facts of each individual case and not apply a one-size fits all to a futility analysis.

First impressions can be misleading. The *Wilkes* case is not the best result for the defense bar, but it is not the worst either.

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