

# RISK ALERT

THE MONTHLY BULLETIN FOR WORKERS' COMPENSATION RISK MANAGERS



TEAGUE CAMPBELL  
DENNIS & GORHAM  
EXPERIENCE | TRUST | RESULTS

WORKERS' COMPENSATION  
COMMERCIAL AND CIVIL LITIGATION  
PRODUCTS LIABILITY  
PREMISES LIABILITY  
MEDICAL MALPRACTICE  
NURSING HOME LITIGATION  
REAL ESTATE LITIGATION  
PROFESSIONAL LIABILITY  
EMPLOYMENT & LABOR LAW  
CONSTRUCTION LAW  
ENVIRONMENTAL LAW  
BUSINESS LITIGATION  
AUTOMOBILE LIABILITY  
GOVERNMENT & MUNICIPAL LAW  
INSURANCE LAW & COVERAGE

PLEASE CONTACT  
THE ATTORNEYS AT  
TEAGUE, CAMPBELL  
WITH QUESTIONS  
CONCERNING THE  
ARTICLES IN THIS  
NEWSLETTER

(919) 873-0166  
WWW.TCDG.COM

## LEGISLATIVE UPDATE

The General Assembly is back in session and Senator Doug Berger, a former deputy commissioner now employed by the Law Offices of James Scott Farrin, where he primarily represents workers' compensation claimants, has introduced four bills, any one of which, if enacted, would significantly increase defendants' liability under the Workers' Compensation Act.

The first, Senate Bill 995, seeks to add a new subsection (23a) to N.C.G.S. § 97-31, under which the Commission would be empowered to award up to \$100,000 for "serious injury to the brain, heart or reproductive organs."

In Senate Bill 996, Senator Berger has proposed amending N.C.G.S. § 97-29 so as to include a provision giving employees who are receiving compensation for permanent and total disability a three percent cost-of-living increase in any year in which there has been a three percent or greater increase in the Consumer Price Index as compared to the preceding year.

The third of Senator Berger's proposals, Senate Bill 997, would modify N.C.G.S. § 97-31(24) so as to increase the maximum award for loss of or permanent injury to an important internal or external organ from \$20,000 to \$50,000.

And, finally, Senator Berger has proposed Senate Bill 990, which would add two new sections to the Workers' Compensation Act, N.C.G.S. § 97-53.1 and N.C.G.S. § 97-53.2, and create a presumption that certain infectious diseases (hepatitis, meningococcal meningitis, tuberculosis and HIV), respiratory diseases, hypertension, heart disease and certain cancers (leukemia, pancreatic, prostate, rectal, throat, ovarian and breast) are occupational diseases if contracted by firefighters employed by local governments.

We will continue to monitor the progress of these bills and provide readers of *Risk Alert* with updates on their status, along with notice of any other workers' compensation bills which might be introduced later in this legislative session, as developments occur.

## CASE LAW UPDATE

*Court Denies Teacher's "Anxiety Disorder"  
Occupational Disease Claim*

Barbara Hassell was employed by the Onslow County Board of Education from 1987 to 2002, first as an elementary school teacher and then as a sixth grade teacher at Dixon Middle School. In her six years at the middle school, she had continuous problems maintaining order in her classroom. Her students were disrespectful, verbally and physically harassed and intimidated her, called her names, cursed her, and threw objects at her in the classroom and at an assembly.

Hassell's referral of an unusually large number of students to the principal's office prompted comments from the school administration. Other teachers with the same students did not have similar problems. Students and parents complained about her performance as a teacher, including her failure to accurately calculate and record students' grades. Lesley Eason, the school principal, felt that Hassell herself had created the chaotic environment in her classroom with a "lack of instructional presentation and delivery." She noted that "in sixteen years I have never seen a situation as bad as the situation in [Hassell's] classroom."

Not surprisingly, Hassell received negative performance reviews. Four "Action Plans" were devised to improve her job performance, the last of which attempted to address her failure to follow a classroom management plan, her random efforts at discipline, the negative learning climate in her classroom, errors in her grading practices, and her ineffective

instructional presentation, lack of feedback to students, and numerous student and parent complaints. When Hassell failed to show improvement, she was issued a warning letter. But, she refused to sign it, left the school and resigned her position.

Hassell then sought treatment from a psychologist, Dr. Dennis Chesnut. He eventually diagnosed “generalized anxiety disorder,” concluded that her job was “driving her crazy,” excused her from work, and stated that she was unable to return to the teaching profession. After she filed an occupational disease claim seeking an award of TTD benefits, he testified that Hassell’s employment had not only increased the risk that she would develop an anxiety disorder as compared to members of the general public not so employed, but it had actually caused or significantly contributed to the development of her condition.

Hassell’s claim was heard by Deputy Commissioner Brad Houser, who did not find persuasive the Board of Education’s argument that Hassell’s own shortcomings as a teacher had created the problematic classroom environment. He deemed that argument “not controlling or even marginally probative in determining the compensability of plaintiff’s claim” and found that “who is to ‘blame’ for the situation, is mostly irrelevant.” Relying on Dr. Chesnut’s causation and increased risk opinions, Deputy Commissioner Houser found the claim compensable and entered an award of ongoing TTD.

However, a 2-to-1 majority of the Full Commission, with Commissioner Bolch dissenting, reversed, finding that Hassell’s condition had not been caused by either the school board or anything unusual she was required to do as a teacher. Rather, it was the result of her “inadequate job performance and inability to perform her job duties as a teaching professional.” The Full Commission found it significant that Dr. Chesnut did not testify that another person exposed to the same work environment would develop an anxiety disorder and he conceded that “generalized anxiety disorder” is the most prevalent psychiatric disorder reported in the United States. The Full Commission noted that it gave little weight to Dr. Chesnut’s increased risk and causation opinions, as he had acknowledged that the object of his treatment was to give support to claimant and because he admitted that he had neither reviewed any of her employment records nor considered any concurrent personal stressors in her life.

On March 6, in *Hassell v. Onslow County Board of Education*, a 2-to-1 majority of the

Court of Appeals upheld the Full Commission’s denial of Hassell’s claim. Judge Hunter, writing for the majority, held that while mental illness can qualify as a compensable occupational disease under appropriate circumstances, in this case there was substantial evidence supporting the Commission’s finding that claimant’s anxiety disorder did not develop from “causes and conditions which are characteristic of and peculiar to a particular trade, occupation or employment.” The majority rejected Hassell’s argument that she was subjected to a dangerous and volatile work environment. It concluded instead that the evidence tended to establish that “plaintiff herself created the stressful work environment through her inability to perform the ordinary tasks expected of her and every other teacher” and “[w]hile we acknowledge the challenges and stress teachers encounter every day in their classrooms, we cannot conclude under the facts of this case that plaintiff faced challenges and situations unlike those confronting the general public, including other teachers.”

In dissent, Judge Wynn argued that the test of compensability was not a matter of apportioning blame between claimant and the school’s administration. Rather, the issue was whether there were unique workplace factors which put claimant at a greater risk as compared to the public generally. And, Judge Wynn felt that the evidence tended to show that no other teachers confronted a classroom like claimant’s, “conditions that members of the average teaching public do not experience,” including “personal taunts, racially-charged invectives, workspace vandalism, and physical threats.”

**Risk Handling Hint:** The Full Commission’s majority essentially drew its own conclusions on the issue of increased risk, based primarily on the testimony of the school principal. In the process, it effectively rejected the opinions expressed by claimant’s treating psychologist, Dr. Chesnut. The Commission and our appellate courts have tended to be uncharacteristically conservative in their view of occupational stress claims.

By virtue of Judge Wynn’s dissent, claimant has an automatic right of appeal to the Supreme Court and it is anticipated that she will avail herself of that right. Hopefully, the Commission’s findings, characterized as “apportioning blame” by Judge Wynn, will not be utilized by the Supreme Court as an opportunity to expand the compensability of this type of claim so as to include the stress experienced by employees across a wide range of occupations which are not themselves inherently stressful.

# TCDG NEWS

## RECENT TCDG CONTINUING LEGAL EDUCATION LECTURES

TCDG partner George Pender led a panel discussion about the issue of “suitable employment” at the Annual Rehabilitation and Case Management Educational Symposium in Greensboro, NC on March 22. George was also a member of the faculty at last year’s symposium and has been invited to return again next year.

On March 27, Carla Cobb of TCDG was a featured speaker at the “Advanced Workers’ Compensation in North Carolina” continuing legal education program sponsored by Sterling Educational Services. Her lecture, entitled “Novel Issues of Course and Scope: Premises Rule, Break-time Injuries, Workplace Assaults, and Athletic and Social Events,” included a power point presentation summarizing important course and scope of employment issues.

## PROGRAMS OFFERING CEU CREDITS AVAILABLE

Carla’s power point presentation has been incorporated in both of TCDG’s Department of Insurance approved continuing educational programs, which offer 3 and 6 hours of CEU credit respectively and are available to the firm’s clients upon request.

## TCDG ATTORNEYS AMONG BEST LAWYERS IN AMERICA

TCDG partners George Dennis, Dayle Flammia and Bruce Hamilton were recently selected by their peers for listing in the 2007 edition of *The Best Lawyers in America*. They have been so honored for thirteen, six and seven consecutive years respectively.

**PLEASE CONTACT THE  
ATTORNEYS AT TCDG WITH  
QUESTIONS YOU HAVE ABOUT  
THE ARTICLES IN RISK ALERT  
(919) 873-0166  
WWW.TCDG.COM**