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### Client Bulletin #493

## BRAIN DAMAGE MUST BE SERIOUS FOR LIFETIME WORKERS' COMP INDEMNITY, S.C. SUPREME COURT CLARIFIES

By David Keller  
Greenville Office

Two significant workers' compensation cases involving physical brain damage were handed down by the South Carolina Supreme Court on March 6. The two cases – *Sparks v. Palmetto Hardwood, Inc.*, and *Crisp v. South Co., Inc.* – clarified the law and significantly restricted a prior decision from the South Carolina Court of Appeals.

South Carolina law **provides** (scroll down to § 42-9-10(C)) that a claimant can receive lifetime indemnity and medical benefits if he is totally disabled from paraplegia, quadriplegia or “physical brain damage.” However, in the 1997 case of *Pearson v. J.P.S Converter & Indus. Corp.*, the Court of Appeals held that a claimant did not have to show a serious brain injury to qualify for lifetime benefits.

According to the *Pearson* court, “the statute only requires that a claimant be totally and permanently disabled and suffer physical brain damage as a result of the injury” to qualify for lifetime compensation. The “total and permanent disability” referred to in *Pearson* could be from any source. Once total disability was shown, a claimant could potentially receive lifetime indemnity by showing *any* related brain damage or injury, no matter how minor.

Last week's Supreme Court decisions clarified and significantly restricted the holding in *Pearson*. In *Sparks*, the Court held that in defining “physical brain damage” under § 42-9-10(C), the General Assembly meant to require a “severe, permanent impairment of normal brain function in order for an injured worker to be deemed physically brain damaged...” Although the Court acknowledged that objective testing might not always prove or disprove “physical brain damage” in all cases, it clarified that a concussion, by itself, suffered during an otherwise compensable injury is not enough to rise to the level of permanent injury required by the code section.

The Court then relied on *Sparks* to decide the *Crisp* case. The claimant in *Crisp* had a disputed brain injury which, according to the Commission's findings, was not enough to render him totally disabled or even seriously impaired. Essentially, the claimant argued the *Pearson* standard, that the mere presence of physical brain damage in an otherwise potential total disability case was enough to trigger the operation of § 42-9-10(C). The Court, however, held such an argument “is not persuasive, as it is contrary to the legislative intent” of the code section. The Court specifically held

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that the legislative intent was “to compensate an employee-claimant for life only in the most serious cases of injury to the brain...”

The Court noted that it was incumbent on the *claimant* to prove a brain injury so severe that the brain injury alone would keep him from returning to gainful employment. For example, the Court said, citing case law from other jurisdictions, a brain injury that would require lifetime specialized medical care would probably qualify for lifetime indemnity under the statute.

*Sparks* and *Crisp* have both been remanded to the Commission for further findings concerning whether the claimants actually suffered “physical brain damage” as now defined by the Court. The Supreme Court’s clarification is certainly welcome news for South Carolina employers.

If you have a question about these court decisions or other workers’ compensation issues, please contact any member of Constangy’s **Workers’ Compensation Defense Practice Group**, or the Constangy attorney of your choice.

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