

# The JLF Report

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## JLF Teamwork Scores For Client

Joye Law Firm, L.L.P., successfully reached a sizeable settlement on behalf of client Darius Jenkins (Note: Client's name changed for this article) against an industrial business and an equipment manufacturer. Per the settlement agreement, many details regarding this case must be kept confidential. Darius, who was 16 years old at the time he was injured, was attending high school, and working part-time to help support his family. The company for which he worked provided cleaning services for industrial businesses.

On January 30, 2005, Darius was performing his regular cleaning duties at an industrial business when he came into contact with a piece of machinery located on the premises resulting in a catastrophic injury to Darius. Darius' left arm was ripped off two or three inches below his shoulder.

Darius suffered tremendous physical pain as a result of his disfiguring injury. He also incurred several hundred thousands of dollars in medical bills as a result of his injury. Darius and his mother were also concerned about the expense of occupational therapy that would be needed to support Darius in learning to adjust to his disability and the costs associated with vocational training that would be essential in assisting Darius in choosing a viable career that could accommodate his life-changing disability.

Sally Jenkins, Darius' mother, turned to Joye Law Firm, L.L.P. for help. Attorney Ken Harrell, the head of the law firm's workers' compensation section, was able to procure a workers' compensation settlement for the loss of Darius' arm against Diversco, Darius' employer, without having to move forward with a hearing. Of significance, Mr. Harrell was able to convince the workers' compensation insurance company that Darius' compensation rate should be based on his future earning capacity (rather than his limited earnings as a student working part-time.) This increased the final settlement nearly 10-fold. Mr. Harrell also persuaded the workers' compensation carrier to completely drop its subrogation claim against the negligence case settlement.

While the workers' compensation case was pending, Joye

Law Firm, L.L.P.'s product liability and litigation section filed a personal injury action on behalf of Darius against the industrial business where he was working on the day that he was injured, and a product liability action against the manufacturer of the equipment on which he was injured. As to the industrial business, Joye Law Firm, L.L.P. alleged that it maintained an unsafe work environment. As to the manufacturer of the equipment, the firm alleged that the equipment was defective.

As it always does, Joye Law Firm, L.L.P. retained numerous respected experts to assist in the preparation of this case in the event of the need for a trial. These experts included an engineer to testify how the manufacturing equipment could have been built more safely to prevent the kind of injury that Darius sustained, a life care planner to testify regarding Darius' future health care and medical needs as a result of his injury including prosthetic devices, a vocational rehabilitation expert to testify about Darius' future employment possibilities given his disability, and an economist to testify regarding Darius' future economic losses as a result of Darius' limited employment potential given his disability.



The Jenkins family was thrilled with Joye Law Firm, L.L.P.'s representation and the expediency at which the firm was able to procure a settlement. Mark C. Joye, Esquire, who handled the product liability case against the industrial employer and the equipment manufacturer, stated, "This is a perfect example of both Joye Law Firm, L.L.P.'s workers' compensation and product liability sections working together to achieve maximum results for a client. We are delighted that we were able to secure such a successful financial settlement for Darius, which will enable him to pay for the resources that he needs to learn employment skills that will afford him the opportunity to maximize his employment opportunities despite his disability. Despite the finger-pointing between the defendants, we are glad that we were able to make them accountable for their respective roles in contributing to Darius' injury."

*(continued on p. 2, "Teamwork")*



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## Drew Carroll Elected VP of SCACDL



Joye Law Firm attorney Drew Carroll, shown at left, was recently elected as Vice-President of the South Carolina Association of Criminal Defense Lawyers. Drew supervises the law firm's criminal defense section.

## Attorney Patrick Jennings Joins JLF



Attorney Patrick Jennings, pictured at left, is the newest addition to the Joye Law Firm team. Pat will be working with our Workers' Compensation section. Pat is a 2003 graduate of Clemson University and a 2005 graduate of the Florida Coastal School of Law.

### JLF Teamwork... (Cont. from p.1)

Joye Law Firm, L.L.P.'s workers' compensation department handles workers' compensation cases throughout South Carolina. In most instances, Joye Law Firm, L.L.P.'s workers' compensation department is able to procure maximum workers' compensation benefits without having to move forward with contested hearings. In addition to handling workers' compensation cases, the firm also handles social security disability cases throughout the state. Often, injured workers may have claims for both workers' compensation and social security disability benefits depending on the injury.

The law firm's product liability section, which consists of three attorneys and its own support staff, handles a myriad of product liability cases on a national basis where death or severe personal injury has occurred. Among others, these cases involve defective equipment and machinery, and medical devices. Joye Law Firm, L.L.P. is also representing numerous plaintiffs in the recent peanut butter salmonella poisonings. The firm also has a thriving national automotive product liability practice representing plaintiffs against large automobile manufacturers such as DaimlerChrysler, Ford Motor Company, and General Motors Corporation. While these cases all involve crashworthiness, other specific defects at issue include fuel lines, handling and stability control, roll-over and roof crush, occupant restraint systems, door locking and latch systems, and window glazing.

### Visit Our Revised Website



The Joye Law Firm has recently revised its logo (see below) and has been working to overhaul its marketing campaigns. Keep an eye out for the firm's new television ads noting the "Reasons" the Joye Law Firm is the right choice for injured persons and please visit our revised website at [www.joyelawfirm.com](http://www.joyelawfirm.com)



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# Senate Bill 332 - Workers' Compensation

## Overview

As passed by the Senate, Bill 332 addresses a laundry list of issues that are being pushed by the SC Civil Justice Coalition. Conversely, the bill does very little to enhance the rights of injured workers. Consideration should be given as to whether or not insurance premiums would be reduced. Many of the Civil Justice Coalition proposals do nothing to impact premiums; some even result in premium increases.

## Fraud

**Provision** -- Expands the definition of "false statement and misrepresentation" and increases penalties for acts of fraud on the part of anyone or any entity involved in the workers' compensation system.

**Comments** - This is a fair and good provision because addressing fraud-related issues will result in a cost savings to the system.

## Independent Contractors

**Provision** -- Provides exemption from the Workers' Compensation Act for truck drivers who are independent contractors if the drivers meet certain conditions.

**Comments** - The Legislature should not favor one industry; others will want similar treatment, and it will erode the system. Workers' compensation is intended to be inclusive and more employers covered means lower premiums for everyone. Existing law allows the Commission and courts to enforce real independent contractor agreements but not sham agreements designed to avoid workers' compensation.

## Burden of Proof

**Provision** -- In cases involving **stress, mental injuries or mental illness** that arose out of employment (*no physical injury exists*), the employee must prove that the employment conditions were extraordinary and unusual (as compared to normal conditions of that type of work) and have medical evidence (defined as expert testimony, documents or other material stated to a reasonable degree of medical certainty by a health care provider) to show the stress, mental injury or mental illness was caused by the job.

**Comments** - The Senate bill requires a higher burden of proof in these cases. Making these cases overly complicated will thereby deny injured workers who have these conditions benefits under the act.

## Repetitive Trauma

**Provision** -- "Repetitive trauma" is defined as an injury that happens gradually and is caused by cumulative effects of repetitive traumatic events (not caused by a single event but happens over time by doing something that strains your body over and over again). The Commissioner must make a specific finding of fact in the award that the repetitive job activities caused the injury. The employee must have medical evidence to show the employment conditions caused the injury.

**Comments** -- Repetitive trauma claims should be treated like other claims. The claimant already has the burden of proof. This provision is highly technical and will require more lawyer involvement.

## Awards

**Provision** - The **shoulder** is added to scheduled injuries - valued at 300 weeks. The **hip** is added to scheduled injuries - valued at 280 weeks. Defendants can now rebut the presumption that a 50% or more loss of use of the **back** is total and permanent disability (assume 50% or more loss of the back is total disability but other side has the ability to show otherwise). If 49% or less loss of use of back is awarded, the employee can receive compensation up to 300 weeks. If 50% or more loss of use is awarded, the employee can receive compensation up to 500 weeks.

**Comments** - This is a fair compromise to the long-standing debate over how the hip and the shoulder should be valued, and whether an employee with a severe back injury should be presumed to be totally disabled.

## AMA Guidelines for Determining Disability

**Provision** -- Codifies that the commission must use the most recent version of the American Medical Association's Guide or other accepted med-

ical authority, and lists 18 factors that must be included in an award, including impairment rating, work restrictions, education, work history, age, and evaluative testing.

**Comments** - The AMA Guides are not intended to rate disability. That is the job of the Workers' Compensation Commission. This is a fair compromise to ensure that the AMA Guides are used as evidence but are not the only determining factors. This would allow consideration of other factors that contribute to whether or not a person can return to work or return to the same job.

## Commission

**Provision** - Increases the Workers' Compensation Commission to nine commissioners (currently seven).

**Comments** - This is a cost increase to the system and is not necessary.

## Insurance Company Access to Medical Records

**Provision** -- Establishes that an employee is considered to give consent for release of medical information related to a job injury upon seeking treatment under workers' compensation. The injured worker must be notified of the communication with the health care provider in a timely fashion, in writing or orally.

**Comments** - The language needs to be clarified that the employee receives notification when the communication is initiated. "Timely fashion" is not well-defined and could be used as a way to circumvent letting the injured worker know until it is too late for him/her to participate in the discussion.

## Appeals

**Provision** -- Appeals from full Commission go directly to Court of Appeals (currently go to Circuit Court first).

**Comments** - This may make it harder for an injured worker to appeal because it is more costly to have cases heard before the Court of Appeals.

## Study Committee

**Provision** -- Committee comprised of 3 senators and 3 representatives to study other states' workers' compensation laws, focusing on award standards. The study committee must give its report and recommendations to the General Assembly by January 15, 2012.

**Comments** - A Study Committee would develop a group of legislative experts on the issues and could be useful in future debates.

## Second Injury Fund

**Provision** - Provides for an orderly dissolution of the SIF. Last date for injuries to be eligible for SIF reimbursement is 06/30/08 with SIF termination on 7/1/13.

**Comments** -- The SIF pays no money to the employee. The SIF provides an incentive for all employers to hire and retain disabled workers by protecting all employers against pre-existing conditions. The ADA does nothing to affirmatively promote hiring the disabled or to protect employers who do so.

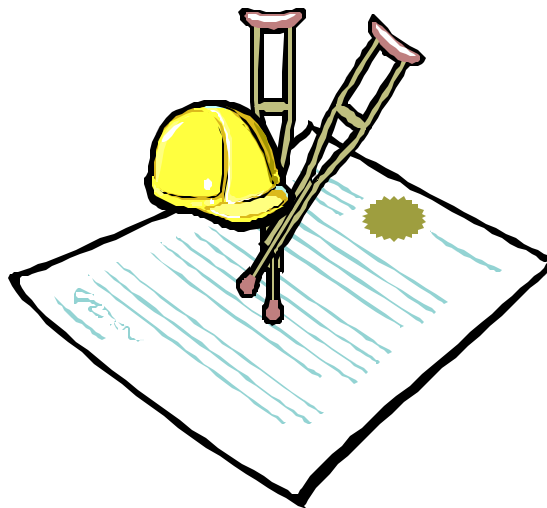
## Lost Cost Multiplier

**Provision** -- Insurers must file lost cost multiplier information with Department of Insurance and DOI must review the filing (provides guides as to what must be contained in filing). *Note: SC is the only state not to require such a filing - was deregulated in SC in 2003.* Copy of filing must be provided to Consumer Advocate at least 30 days before insurer uses new rates.

**Comments** - This is an excellent provision that would provide better information to our state's regulators about insurance company profits.

**Note: The debate on our workers' compensation laws now continues in the House. All JLF clients are urged to**

**CALL YOUR REPRESENTATIVES to ask them to "Vote to protect the rights of injured workers in South Carolina."**





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## JLF Partner Mark Joye Meets With Senator Graham



Mark Joye, JLF partner, is shown at left with U.S. Senator Lindsey Graham (R-S.C.)



## JLF Attorney Tina Walker Attends Celebration for Representative Jim Clyburn

Attorney Tina Walker and U.S. Senator Hillary Clinton (D-N.Y.) take a moment to smile for the cameras at the International Longshoremen's Hall celebration for Representative Jim Clyburn's election as Majority Whip in the House. Tina works in the firm's personal injury department.



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