



# From The Bench

*legal news of interest*

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## Workers' Compensation: Employment Applications

### What Wording Is Sufficient to Warn an Employee of the Consequences of Failing to Answer Medical Questions Truthfully?

*by Kevin S. Frederick*

In *Stiner v. Antoni's Italian Café*<sup>1</sup> the Louisiana Supreme Court considered what constitutes sufficient notice under *LSA-R.S. 23:1208.1* to warn an employee of the consequences of the failure to truthfully answer a medical questionnaire, resolving a split between the circuit courts. The Louisiana Supreme Court, finding the statute prescribed no mandatory language, concluded that an employer can use its own language in devising the notice required under the statute, provided the consequences of the failure to answer truthfully are clear.

Shirley Stiner fell from a ladder at work and sustained back, neck and stomach injuries. Her indemnity benefits and medical treatment were terminated by her employer, as Ms. Stiner had allegedly provided false information regarding previous injuries on a medical history questionnaire.

*LSA-R.S. 23:1208.1* permits an employer to inquire about previous injuries, disabilities or other medical conditions of an employee. The employee's failure to answer these inquiries truthfully results in the employee's forfeiture of benefits, provided the employee's failure to answer directly relates to the medical condition for which a claim for benefits is made or affects the employer's ability to receive reimbursement from the Second Injury Fund. However, an employer must comply with the following notice requirement:

This section shall not be enforceable unless the written form on which the inquiries about previous medical conditions are made contained a notice advising the employee that his failure to answer truthfully may result in his forfeiture of workers' compensation benefits under *LSA-R.S. 23:1208.1*. Such notice shall be prominently displayed in bold face block lettering of no less than ten point type.

Ms. Stiner claimed that the notice contained in the medical history questionnaire she completed failed to satisfy the foregoing notice requirement. The medical history questionnaire completed by Ms. Stiner contained three (3) similar notices on each page of the questionnaire, the first of which stated as follows:

**I FURTHER UNDERSTAND THAT THE FAILURE TO ANSWER TRUTHFULLY ANY OF THE MEDICAL QUESTIONS MAY RESULT IN A DENIAL OF ANY RIGHT I OR MY DEPENDENT(S) MAY HAVE TO WORKERS' COMPENSATION BENEFITS, INCLUDING MEDICAL TREATMENT AND EXPENSES.**

The workers' compensation judge granted summary judgment in favor of Ms. Stiner, holding the notice was inadequate. On appeal, the Third Circuit upheld the decision, concluding that the wording of the notice used by the employer did not satisfy *LSA-R.S. 23:1208.1*. The Louisiana Supreme Court reversed the court of appeal's decision.

Prior to *Stiner*, the lower courts of appeal had disagreed on whether use of the word “denial” in the notice required under *LSA-R.S. 23:1208.1* was sufficient to warn an employee of the consequences of a failure to truthfully answer a medical history questionnaire.

The Third Circuit Court of Appeal believed use of the term “denial” instead of the term “forfeiture” did not adequately place an employee on notice of the penalties that may be imposed for a false statement on a medical history questionnaire.<sup>2</sup> The Third Circuit defined the word “forfeiture” as implying serious legal consequences which the term “denial” did not encompass. Thus, the Third Circuit found a reasonable person would not view risk of denial of benefits as an absolute bar to receipt of benefits.

On the other hand, the Fourth Circuit Court of Appeal declined to adopt the Third Circuit’s interpretation.<sup>3</sup> The Fourth Circuit held that a notice using the term “denial” instead of “forfeiture” was sufficient to warn an employee of the consequences of failing to answer truthfully.

The Louisiana Supreme Court focused on the lack of any requirement mandating the use of specific language in the statute, as the specification of the print and point type evidenced that the legislature could have specified the exact language that an employer must use. Therefore, the Supreme Court rejected the argument that use of any word other than “forfeiture” fails to give the employee proper notice of the penalties resulting from an untruthful answer on the medical history questionnaire.

The Louisiana Supreme Court found use of the word “denial” provides an employee with sufficient warning of the consequences of not answering truthfully. As long as the employee is given notice that workers’ compensation benefits could be lost if the employee fails to answer the questionnaire truthfully and such untruthfulness causes prejudice to the employer, the use of specific wording is not necessary to utilize the forfeiture provision under *LSA-R.S. 23:1208.1*.

<sup>1</sup>2003-0209 (La. 10/21/03), 857 So.2d 400.

<sup>2</sup>*La. Workers’ Compensation Corp. v. Grayson*, 99-230 (La. App. 3 Cir. 10/13/99), 746 So.2d 121.

<sup>3</sup>*Boh Bros. Construction Co. v. Price*, 2000-2233 (La.App. 4 Cir. 8/29/01), 800 So.2d 898, writ denied, 01-2623 (La. 12/14/01), 804 So.2d 634.

## UPDATE

- Q.** If the damage award is less than the underlying coverage, but the award plus judicial interest exceeds the underlying coverage, does the U.M. insurer owe any portion of the judicial interest?
- A.** No. As the U.M. insurer was not cast in judgment for any portion of the damage award, it was not liable for any portion of the judicial interest.

*Rose v. Travelers Ins. Co.*, 03-606 (La. App. 5 Cir. 11/12/03), 2003 WL 22671542

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