RECENT DEVELOPMENTS IN PENNSYLVANIA WORKERS' COMPENSATION
2008

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NOTE

ALL ITEMS IN BOLD PRINT REPRESENT NEW INFORMATION FOR THE CURRENT MONTH.

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I. LEGISLATIVE DEVELOPMENTS

PASSED LEGISLATION

The Pennsylvania Legislature passed a new Workers' Compensation Amendment H.B. No. 2738 which became effective on 10/16/06 and requires a mandatory trial schedule at the first hearing setting forth deadlines for evidence and future hearings. The deadlines will be enforced. Mediations will now be required no less than 30 days before Findings of Fact are due. Finally there is the creation of a resolution hearing procedure for Compromise and Release Agreements requiring a hearing within 14 days. There will be a requirement for the WCAB members to respond to a circulated draft Opinion within 30 days as a push for more prompt WCAB decisions. Two opinion writers have been assigned to each Board member to assist in drafting Opinions. The new act also establishes an uninsured guarantee fund for handling of uninsured employers.

Act 109 of 2006, See 23 Pa. C.S. Sec. 4308 (2006), effective 09/05/06, requires a WCJ before any decision is issued to collect from claimant written documentation of any arrears owed or written indication that no arrears are owed. The Judge is required to order payment of arrears for payment of the lien. The website for the information is located at www. dli.state.pa.us/ and then click on the "workers comp/SWIF quick link, then on the "Office of Adjudication" or "Bureau of Workers' Compensation" link. The Act 109 information can be viewed un the "Announcement" header.

Act 147, signed into law on 11/09/06, has created a fund for claimants to seek recovery from the Uninsured Employers Guaranty Fund. Forty five days notice must be given by the claimant to the Fund from the date the claimant knew of his injury. The Notice shall be filed on a Notice of Claim Against Uninsured Employer. See Sec. 123.802 of the Regs. The Fund will determine whether payment can then be accepted. If not, a "Claim Petition for Benefits Against the Uninsured Employer" may be filed after 21 days of the filing of the Notice of Claim. The regs. describes the procedure to be followed.

The Department of Labor and Industry has issued new final regulations addressing the qualifications of vocational experts. They were published 37 Pa. Bulletin 2804 (published June 23, 2007). Perhaps the most important regulation is 34 Pa. Code Sec. 123.204 which requires the vocational expert to provide the results of the interview or the report to claimants. In addition, the new regulations set forth the minimum qualification of the expert. These regulations had their inception because of Caso v. WCAB (School District of Philadelphia), 790 A.2d 1078 (2002), revised 839 A.2d 219(2003), which held that claimants were not required to attend the vocational interview since there had been no list of approved vocational experts approved by the Bureau.

PROPOSED LEGISLATION

There are two pending legislative bills which merit mention: (1) H.B. No. 218, referred to committee on 02/07/07, allows an injured party to sue an employer in Common Pleas Court if the employer has acted with reckless, willful or wanton disregard for the safety of the employee; (2) H.B. No. 292, referred to committee on 02/07/07, contemplates including first responders in disaster response withing the definition of employees under the Act and those who voluntarily help responders after completing a community emergency response team program; (3) H.B. 465, referred to committee on February 26, 2007, amends section 108(m.1) in reference to the compensability of Hepatitis C to include Capitol Police, the Bureau of Narcotics Investigators, The Liquor Control Enforcement officers employed by the Pennsylvania State Police, Sheriffs and Deputy Sheriffs.

II. APPELLATE DEVELOPMENTS

ABNORMAL WORKING CIRCUMSTANCES

The Commonwealth Court affirmed the Workers' Compensation Appeal Board and Workers' Compensation Judge denying compensation benefits to a prison nurse at a maximum security prison who failed to prove exposure to abnormal working circumstances that caused her anxiety attacks and psychiatric treatment. The nurse and his family were threatened frequently by inmates. Inmates threw urine and feces on the claimant. The claimant witnessed an inmate who severed his jugular and died. You should note that there were two dissenting opinions. Babich v. WCAB (CPA Department of PA), 1472 of 2006. Filed April 14, 2007.

AMENDING THE NOTICE OF COMPENSATION PAYABLE

There are two ways to amend a Notice of Compensation Payable (NCP). One is through a claimant filing a petition to modify the NCP, the other is where the WCJ is authorized to modify the injuries in a later Decision based upon medical proof that the NCP is inaccurate. The Judge had issued a Decision that claimant suffered a herniated disc. Although the offered medical expert was sufficient to terminate claimant's benefits upon the issued NCP, once Judge Guyton found for claimant in earlier litigation that she had sustained a herniated disc, then employer was required to prove that all disability related to the herniated disc had resolved, which it could not do. The Court also required the defendant's medical expert to acknowledge the Judge's finding of herniated disc. Westmoreland County v. WCAB (Fuller), No. 1277 C.D. 2007. Filed January 28, 2008.

AUTHORITY OF THE WORKERS' COMPENSATION JUDGE

Where evidence accepted by the WCJ finds in favor of modifying benefits to claimant, the WCJ has no authority to reduce the hours testified to by the doctor whose opinion was accepted. In the Morella case the defendant expert had testified that claimant was able to work 40 hours/week. The Judge had reduced this to 20 hours/week in the Decision. The Commonwealth Court decided the Judge had erred and reversed to the 40 hour/week holding as testified to by the defendant expert. Morella v. WCAB (Mayfied Foundry Inc and Laundry Owners Mutual Liab.), No 141 C.D. 2007.

AUTOMOBILE ACCIDENT BLOOD TESTS

The Commonwealth Court held that expert testimony establishing that blood tests for alcohol levels after a motor vehicle were not properly done. Clear Channel Broadcast v. WCAB, 179 C.D. 2007. Filed December 7, 2007.

AVERAGE WEEKLY WAGE

Under Section 309(e), board and lodging are, by definition, part of wages. Claimant, a pilot, was required to stay overnight for work. The decedent paid for these expenses and then submitted an expense report. The sole issue was whether board and lodging were within the definition of wages pursuant to Sec 309(e), even when they are reimbursed by the employer. The Court relied upon their decision in Arthur Shelley Trucking v. Workmen's Compensation Appeal Board (Bregman), 538 A2d 604 (1988) in deciding. The Court made clear that the mandatory language of the statute required such inclusion in wages notwithstanding the claimant was simply being reimbursed. Thomas Lennon, Deceased c/o Lara Goldman Lennon v. WCAB (EPPS), No. 757 C. D. 2007. Filed October 10, 2007.

A volunteer fireman injured in the line of duty was not allowed to stack his wages as a truck driver on the statutory formula of Section 601 to create an average weekly wage greater than his actual earnings. Ballerino v. WCAB (Darby Borough), 1113 C.D. 2007. Filed December 13, 2007.

BAD FAITH CONDUCT

Whether the termination of an employee was bad faith conduct on the employer's part is dependent upon a factual determination by the WCJ. The employer must present conclusive evidence of the violation of a company policy to establish that a loss of earnings is through fault of claimant. The violation herein was excessive absenteeism. The testimony of the employer left the possibility that some of the excessive absences were the result of calling off without sick days remaining. The Court, in a befuddled opinion, held that claimant was entitled to miss work because of her work injury as "illness" has been viewed as a defense to the claim of bad faith conduct by claimant. The question of bad faith is a question of fact. Shop Vac Corporation v. WCAB (Thomas) No. 217 C. D. 2007. Filed July 25, 2007.

BAD FAITH FAILURE TO ACCEPT EMPLOYMENT

Once a claimant refuses to accept a job within his restrictions, claimant remains ineligible to receive benefits after the claimant becomes totally disabled once again. The claimant had an injury in April, 2006, He refused a modified job in November, 1997 and his benefits were suspended. Thereafter three years passed and claimant underwent surgery. Again the claimant recovered sufficiently to

work at the original modified job, but it was not offered. Although claimant acknowledged he was capable of working the modified job, the Judge suspended his benefits. The PA Supreme Court found that claimant's bad faith relieved the employer to re-establish the existence of an available job. Pitt Ohio Express v. WCAB (Wolff) : Appeal of Wolff 912 A2d 206 (Pa. 2006).

BUREAU POLICY CHANGE FOR REQUESTING RECORDS

The Bureau changed its policy for record request effective August 1, 2007. When requesting non-public records in a workers' compensation case, one of the following must be met in order for the bureau to honor the request:

- Bureau records indicate that the requester is a party to the case.
- The requester enters an appearance on behalf of a party when asking for the records.
- Request includes a signed and dated authorization release from the claimant (authorization release is valid if submitted within 60 days of the date on form.)
- Requester submits a subpoena.

Remember to include the following information when requesting records: claimant's name, social security number, injury date(s), and party representation. The request should be mailed to the Bureau of Workers' Compensation, Attention: Records Unit, 1171 South Cameron Street, Room 109, Harrisburg, PA 17104-2501, or fax to 717-705-1629.

CLAIMANT'S BURDEN IN A PENALTY PETITION

When a Claimant files a Penalty Petition for the employer's failure to pay medical bills, the Claimant has the burden "to submit medical invoices on the proper form and with all the information needed to permit an employer to ascertain readily that the billed treatment is related to the work injury. The medical bills must be "either the HCFA form 1500, or the UB 92 form". Sims v. WCAB (School District of Philadelphia #1), 265 C.D. 2006. Filed June 1, 2007.

CLAIMANT'S BURDEN REGARDING NOTICE OF ABILITY TO RETURN TO WORK

Where an employer has not filed a Notice of Ability to Return to work with the Bureau and is prosecuting a Suspension Petition, the Claimant waged the issue as to whether the employer can prosecute the Suspension Petition. The Claimant must raise issues regarding the Notice of Ability to Return to Work to the Workers' Compensations Judge. Payne v. WCAB (Elwynly, Inc.), 216 C.D. 2007. June 8, 2007.

COMMON LAW MARRIAGE

The Commonwealth Court reversed the Workers' Compensation Appeal Board and recognized a common law marriage that occurred after the decision of the Commonwealth Court in PNC Bank Corporation v. WCAB (Stanos), 831 A.2d 1269 (Pa. Commw. 2003) that prospectively abolished common law marriages effective September 17, 2003. Subsequently, the legislature by statute abolished common law marriages effective January 1, 2005 as follows:

> No common-law marriage contracted after January 1, 2005, shall be valid. Nothing in this port shall be deemed or taken to render any common-law marriage otherwise lawful and contracted on or before January, 2005, invalid.

The Commonwealth Court held that the legislature in effect had suspended the PNC decision. Costello v. WCAB (Kinsley Construction, Inc.), 831 C.D. 2006. Filed February 13, 2007.

COURSE OF EMPLOYMENT

Judge Mary Leavitt wrote an Opinion holding that an employee walking to work was a covered employee even though a third party tort feasor had struck the employee while intoxicated and claimant was walking on a public sidewalk. The Judge determined that claimant had parked at a lot for employees and had taken the public sidewalk in conformity with the employer's lack of opposition. Thus claimant was in furtherance of the employer's business under Sec. 301. A major reasoning of the Court was based on the fact that claimant was on the employer's premises. Allegheny Ludlum Corporation v. WCAB (Hines) No. 1022 C.D. 2006. Filed December 19, 2006.

DEATH BENEFITS

The Commonwealth Court held that a decedent's death due to an occupational disease beyond the 300th week statute of limitations set forth in Section 301(c)(2) regarding death benefits was barred and further, the decedent received a lump sum settlement for the alleged occupational disease with a Compromise and Release Agreement. Ingram v. WCAB (Ford Electronics and Refrigeration Corp.), 491, 492, 493 C.D. 2007. Filed December 12, 2007.

DEPENDENCY OF A PARENT

The Commonwealth Court affirmed the Workers' Compensation Appeal Board and Workers' Compensation Judge who awarded partial dependency benefits to a mother whose daughter had been killed during the course of employment. A parent must establish that he or she is dependent on the financial contributions of the deceased child "to any extent". Wyoming Valley Health Care Systems v. WCAB (Kalwaytis), 2109 C.D. 2006. Filed April 9, 2007.

EARNING POWER ASSESSMENT

Where an employer's Labor Market Survey reflects higher wages than the actual job, wages claimant receives which he obtained after the Notice of Ability to Return to Work and before being advised of the positions in the Labor Market Survey, the employer is permitted to have the earning power assessment introduced into evidence and accepted as credible by the WCJ. The Commonwealth Court determined that notwithstanding Kupchinsky, the post Act 57 era permits use of the earning power assessment and a Judge's finding based on that assessment. Here the WCJ believed the earning power assessment over the actual wages which was the basis for the WCJ's decision. CRST v. WCAB (Boyles) No. 1954 C. D. Filed July 30, 2007.

ENTITLEMENT TO A PHYSICAL EXAM

An employer was entitled to a physical exam although initially denied by the WCJ. The claimant and defendant had settled the indemnity issues for $36,000, but defendant remained liable for reasonable and necessary medical expenses. The prescriptions of claimant were not paid and thus she filed a UR. The UR found the expenses reasonable and necessary. The employer filed a Petition to Compel the Physical Exam of the claimant. The WCJ had initially refused the exam on the basis defendant's reason for the exam was to find a change in the claimant's condition which had been found by the UR to be reasonable. Since the UR found such treatment reasonable, it was unnecessary for such

exam. The Commonwealth Court determined the employer was entitled to the exam and it was so ordered. Davis v. WCAB (Woolworth Corporation) No. 1873 C. D. (2006). Filed July 5, 2007.

EXECUTIVE OFFICER'S AFFIDAVIT WAIVING RIGHTS TO WORKERS COMPENSATION

Claimant's widow filed a fatal claim for benefits when her husband died from cardiac arythmia due to electrocution. Martin Schafer was the sole shareholder of the Defendant "S" corporation and served as its president and chief executive officer. Pursuant to Section 104, claimant had elected to waive his rights to compensation. The Court believed that claimant had the burden to show that decedent had not signed the affidavit. The Commonwealth Court found that claimant had the burden of establishing the lack of decedent's signing the waiver and that it was not the burden of the employer to prove he did. Completion of Form LIBC-513 having been established, the claimant had the burden to show its lack of validity. Schafer v. WCAB (Martin Schafer, Inc., Selective Service), No. 88 C.D. 2007. Filed on November 2, 2007. Originally filed on August 2, 2007.

FAILURE BY AN EXPERT TO KNOW OF PREEXISTING CONDITION

Claimant filed a petition on August 27, 2004 alleging a low back injury and a herniated disc at L5-S1 while at work on November 7, 2003. On February 3, 2006, the WCJ denied her benefits stating that claimant's medical expert was equivocal because the expert had no knowledge of claimant's prior medical records, treatment, or any of the prior diagnostic tests. Where a medical expert has an incomplete history, that is relevant, then the opinions expressed are not competent. Claimant acknowledged that she had suffered from back injuries prior to November 7, 2003. The claimant's expert, a board certified neurosurgeon, failed to appreciate that claimant had complained of back pain since November 3, 2006. The defendant introduced the emergencyroom reocrd for 11/10/03 which disclosed complaints beginning November 3, 2006. Julie Marconi v. WCAB (United Disability Services) 21 PAWCLR 268 (2007).

FAILURE TO FILE AN APPEAL TO THE BOARD WITHIN 20 DAYS

The Board has quashed an appeal which was mailed within the 20 days but not received by the Bureau until after the 20 days. On March 24, 2006, the Board received a Notice of Appeal from the WCJ decision. The WCJ rules require the filing of the notice of appeal shall be in person or by mail. 34 PS. Sec 111.3. If by mail it is deemed complete upon deposit into the mail. The US Postal Service postmark is sufficient when the appeal is properly stamped and addressed but not received by the WCAB. Here the notice of appeal had a Pitney Bowes U.S.Postal Mark and was received 4 days after the 20 day period. Without the proper U.S Postal Service mark the appeal was untimely and was quashed. Vacca v. Philadelphia Gas Works, 22 PAWLCLR 56 Decided April 17, 2007 by Commissioner Wilson.

FAILURE TO FILE A TIMELY ANSWER

In two Commonwealth Court decisions a strict interpretation of the infamous Yellow Freight rule was imposed. (1) The Court's Opinion held that a Claim Petition and correspondence from the insurer were sufficient evidence to find employer/insurer liable for the allegations in the Claim Petition. Specifically, claimant filed a Claim Petition on February 25, 2003 when he alleged an attack on May 17, 2002 as the employee was making a delivery in the scope of his employment. The

Claim Petition was served on the employer, U.S. Specialty, and the carrier claimant believed was the insurer. No Answer was filed. A hearing was held on April 16, 2003, at which the claimant appeared but the employer and carrier did not. The case was continued for claimant's counsel to investigate the proper insurer. A second hearing was held on June 9, 2003. Only the Claimant appeared. Claimant's counsel brought two letters from U.S. Specialty denying coverage and one an admission of coverage. The WCJ continued the hearing a second time for claimant to contact the Bureau to find out who the proper carriers was. The WCJ then dismissed the Petition believing the claimant had failed in his duty to find out who the insurer was. The Board remanded back to the Judge for a reasoned decision. On remand the Judge found the Claim Petition together with a letter by the carrier to a police department asking for a report wherein it stated that it was the carrier for the employer as sufficient for liability. The insurer appealed to the Board. The WCAB reversed stating that the claimant had the burden of proving the insurer was the proper party and when reviewing the Bureau records, along with the referred to correspondence above, did not believe claimant had met his burden of proof. The Commonwealth Court reversed finding substantial evidence (the Petition and letter by the carrier to the local police dept) as sufficient to sustain the claimant's burden of proof applying on the Yellow Freight principles. Brady v. WCAB (Morgan Drive Away, Inc. And U.S. Specialty),1713 C.D. 2006, 22 PAWCLR 49, decided on April 16, 2007 by Senior Judge Flaherty. (2) A claimant suffering hearing loss was awarded 260 weeks of disability based on the failure of the employer to file an Answer to the claimant's Petition notwithstanding evidence submitted by employer to the contrary. The facts of "permanent" loss of hearing due to prolonged exposure to high levels of noise without adequate ear protection was a fact admitted by the failure to Answer by employer. PIAD Precision Casting v. WCAB(Bosco), 379 C.D. 2006, 22 PAWCLR 50 decided April 27, 2007.

FAILURE TO ISSUE NOTICE OF COMPENSATION PAYABLE

A claimant that had received compensation under a Temporary Notice of Compensation Payable for injuries sustained on May 14, 2003 to claimant's head, neck and back when struck by a bundle of newspapers. The claimant returned to work for 2 1/2 hours on July 19, 2003, and a Notice of Denial was issued acknowledging an injury but no disability. The employer was sanctioned 50% penalties on the indemnity payments owed. The Commonwealth Court found that an Notice of Compensation Payable should have been issued and not a denial, which required the claimant to litigate the claim and retain counsel. George Jordan v. WCAB (Philadelphia Newspapers Inc.0 2007 Pa. Comm., LEXIS 128 FILED March 28, 2007. Judge McGinley's strict interpretation needs to be carefully considered in light of recent decisions regarding both penalties and attorneys fees. The Commonwealth Court held, on August 13, 2007, that an employer is not entitled to recoupment of indemnity benefits paid to a claimant because of an error in the calculation of the average weekly wage because the employer failed to issue a Notice of Compensation Payable or an Agreement. Dollar Tree Stores, Inc. v. WCAB (Reichert), 797 C.D. 2007.

NOTE: In the Pitfalls of Pennsylvania Workers' Compensation, failure to issue a Notice of Compensation Payable results in the employer being liable for all injuries claimed by the claimant to be work related.

FAILURE TO PAY MEDICAL FEES

The WCJ has jurisdiction of awarding penalties and counsel fees when carrier fails to timely pay medical bills under the fee review provision of the Act. The Commonwealth Court has determined that if a defendant/carrier fails to pay a medical fee pursuant to the fee review section 306(f.1)(5), the WCJ has jurisdiction to award penalties despite the fact that the fee review procedure has not been exhausted prior to filing the penalty petition. Claimant was injured in 2003 with the partial amputation of her right middle finger. A Notice of Compensation Payable was issued. Claimant developed RSD, which injury was included in the work injury. The carrier repeatedly failed to timely pay the medical providers. As a consequence claimant retained counsel and filed a Penalty Petition. The WCJ awarded a 50% penalty. The Commonwealth Court believed that although the fee dispute provision of the Act requires the provider to file a fee dispute to recover fees, the claimant has the ability to pursue a Penalty Petition when these expenses are not paid timely. The Court held that the WCJ did have jurisdiction of the issue and had the authority to award penalties and counsel fees to claimant. Hough v. WCAB(AC&T) No. 2198 C.D. Filed July 17, 2007.

FEE DISPUTE APPLICATION

A provider must timely file a fee dispute application in accordance with Section 306(f.1)(5) and while an insurer is not obliged to pay medical bills until the proper forms and reports have been submitted, if the insurer does pay without the proper forms and reports, the provider must timely file a fee dispute application. University of Pennsylvania Hospital v. Bureau of Workers' Compensation (Tyson Shared Services, Inc.), 508 C.D. 2007. Filed August 23, 2007.

FEES

Attorneys fees paid to an attorney continue to be owed after his death and to his estate. Angino v. Franks Beverages, 22 PAWCLR 58 decided April 27, 2007 by Chairperson McDermott.

HORSEPLAY

The Commonwealth Court allowed recovery by a claimant for workers compensation benefits where an employee was injured as the result of horseplay. Thus, horseplay can be compensable. The injured worker filed a Claim Petition for injuries sustained on April 1, 2004 (April Fools's Day) which included low back and reflex sympathetic dystrophy. Claimant testified that he was grabbed from behind and from the front. After a forklift operator told the men to get out of the way one of the pranksters fell on claimant causing his injuries. Although each witness had a variation on the facts, generally it was simply horsing around. The WCJ granted the petition by finding that claimant was a victim of horseplay and not an active participant. The employer filed an appeal to the Workers' Compensation Appeal Board. The argument raised by the employer was the violation of a positive work order prohibiting horseplay, that the claimant was aware of the work order, and that the cause of the injuries were a direct result of the horseplay. The appeal board affirmed the WCJ.

The Commonwealth Court distinguished the facts in the present case from the facts of Johnson v. WCAB (Union Camp Corp.), 749 A.2d 1048 (Pa. Cmwlth 2000). The Commonwealth Court found sufficient facts showing claimant as engaged in the roughhousing The Court wrote its opinion on whether the horseplay was so disconnected with the job so as to render him a

trespasser or stranger. The Johnson case, supra., was clearly distinguishable to the Court as the injured worker had been an instigator of a intended malicious behavior towards another employee. The employee was outside his assigned area. Further, the horseplay had the element of hostility. The Commonwealth Court states that horseplay alone will not typically remove claimant from compensation. The result is that successfully applying the positive work order rule will not work unless exceptional circumstances exist for a defense of claimant's work injury. Sysco Food Services of Philadelphia v. WCAB (Sebastiano), No. 817 C.D. 2007. Filed January 14, 2008.

IMPAIRMENT RATINGS EVALUATION

If an employer seeks and obtains an IRE during the pendency of the employer's Termination Petition, the employer is not precluded from obtaining a termination of benefits. Weismantle v. WCAB (Lucent Technologies), 1393 C.D. 2006. Filed June 18, 2007.

An employer is not precluded from filing a Modification Petition based on a Labor Market Survey after an IRE (Impairment Rating Evaluation) that established a claimant was totally disabled with a whole body loss of 50%. Sign Innovation v. WCAB (Ayers), 681 C.D. 2007. Filed December 4, 2007.

INDEPENDENT RATING EVALUATION

The Supreme Court reaffirmed that the employer and its insurance carrier must seek an independent rating evaluation within 60 days after 104 weeks to obtain an automatic self-execution reduction; however, an IRE can be requested after the 60 day window, but to change benefits requires a Decision from a Workers' Compensation Judge. Dowhower v. WCAB (Capco Contracting), 94 M.A.P. 2006. Filed April 17, 2007.

JURISDICTION

An Opinion by President Judge James Collins found that a Judge had jurisdiction to determine a UR notwithstanding the medical records sent by the medical provider more than 30 days after the assignment in contradiction to the County of Alleghenyv. WCAB (Geisler) 875 A. 1222 (2005) which held that a judge had no jurisdiction to review the UR where the provider reviewed has failed to send medical records within 30 days. The Commonwealth Court found the WCJ was required to inquire and hold hearings to determine what efforts were to comply with the URO regulations and in effect overturning the automatic dismissal by Geisler, supra.

Commissioner Hoffman decided that a claimant, who was a resident of Virginia, but was hired by telephone for defendant, a Pennsylvania Company, that the claimant was not principally localized in any state. Claimant testified that he was injured in Washington, D.C. but understood that he was not principally localized in any state. The WCJ found that claimant had entered a contract in Pennsylvania with the telephone company and that claimant's employment was not localized in any state. Lanier v. Arc Tech, 22 PAWCLR 60, decided on April 3, 2007. The Board affirmed based upon Sec. 305(a)(2) of the Act.

LACK OF JURISDICTION BY THE WORKERS' COMPENSATION JUDGE IN A UTILIZATION REVIEW

The Court was asked to determine whether a Workers' Compensation Judge had jurisdiction to review reasonableness and necessity of claimant's medical treatment where the claimant's provider failed to provide medical records to the UR but the the peer review physician issues a written report. In Geisler, supra. the Court found no jurisdiction of the WCJ when the provider failed to send records, but no report was provided by the peer reviewing physician. Claimant had fallen from a scaffold on June 12, 2001. He suffered multiple injuries. A Notice of Compensation Payable was issued. A Petition for Review amending the injuries noted on the NCP was allowed by the WCJ. The employer then filed a UR for treatment of Dr. Paul Heberle. Although URO received no records from Dr. Haberle, the peer reviewing physician prepared a report which essentially found that without records, no effective way existed to evaluate the treatment and determined that care was unreasonable. Claimant filed a petition to appeal the UR. Under the regulation at 34 Pa. Code Sec 127.464, the URO did not have the authority to send records to the peer review physician. The Commonweath Court believed that Geisler was applicable to these facts and the WCJ had no jurisdiction over the matter. Judge Smith-Ribner voiced a strong dissent that the claimant, because of the result, has not gotten reimbursed for prescription costs for which he hd paid out of pocket. Stafford v. WCAB(Advanced Placement Services), No. 542 C.D. 2007 decided September 21, 2007 by Judge Mary Hannah Leavitt.

MASSAGE THERAPISTS

The employer is not liable for a massage therapist who is not a licensed healthcare provider, even if prescribed by a medical doctor. Pennsylvania does not have a program for the licensing of massage therapists, although the massage therapist in this case was a nationally certified massage therapist. Boleratz v. WCAB (Air Gas, Inc.), 147 C.D. 2007. Filed August 24, 2007.

NOTE: The dissenting opinion arguing that massage therapy is compensable if prescribed by a physician.

MEDICAL HOME MODIFICATIONS

Where a carrier has paid in good faith for home modifications, notwithstanding the contractor sending the carrier a substantially larger bill once the work was completed, it was the contractor that had to file a fee review and that the carrier would not penalized for failure to pay for the modifications. The WCJ was without authority to order payment of the additional expenses. Enterprise Rent-A-Car v. WCAB (Claubaugh), 863 C.D. 2007.

NOTICE OF COMPENSATION PAYABLE

A Workers' Compensation Judge may expand a description of an injury in a Notice of Compensation Payable without a claimant filing a Review Petition if the claimant establishes
that the Notice of Compensation Payable erroneously described the injury. Sears Logistic Services v. WCAB (Preston), 634 C.D. 2007. Filed December 5, 2007.

NOTE: The preferred practice is for a claimant to file a Review Petition.

NOTICE OF TEMPORARY COMPENSATION -WHEN DO THE 90 DAYS BEGIN TO RUN?

Judge McGinley addressed the issue of when the NTCP's "clock" begins to run. Claimant was injured on November 30, 2002. He continued working until January 6, 2003. The employer issed an NTCP on February 6, 2003 with benefits beginning on January 31, 2003. On April 28, 2003, a Notice Stopping Temporary Compensation was issued. On June 11, 2003, the claimant filed for penalties for the unilateral suspending of benfits with a request for reinstatement as of April 28, 2003. Claimant took the position that the 90 day period began on the date of disability (January 6, 2003. The defendant took the position that it began when the NTCP was issued or on February 6, 2003. Initially, the Commonwealth Court had remanded the case to the WCJ to determine whether the trigger date was January 6, 2003 or January 31, 2003 when defendant made its first payment. The WCJ found the NTCP filed in a timely fashion. Defendant had argued that a scenario was possible where a claimant could present evidence of a disability more than 90 days before the issuance of the NTCP. Claimant contended that under such circumstance, the statute is clear that claimant is entitled to compensation from the date of disability. The Commonwealth Court agreed with claimant and found that the Notice Stopping Temporary Compensation was filed more than 90 days after the triggering date of disability of January 6, 2003. The important lesson is to understand is that the 90 days is triggered by the first date of disability. Interestingly the Court found that a reasonable contest existed but remanded the issue to the WCJ to decide the issue of penalties, if any. The Courts are cracking down on the use of the penalty provisions. Galizia v. WCAB (Woodloch Pines, Inc), No. 96 C.D. 2007. Filed September 24, 2007.

OFFSET PROVISIONS NOT APPLICABLE TO FATAL BENEFITS OF A WIDOW

The offset provisions of Section 204(aa) with regard to Social Security Old Age Benefits does not apply to Section 307 fatal benefits. Frank Bryan, Inc. v. WCAB (Bryan), 984 C.D. 2006. Filed on April 5, 2007.

OLD AGE SOCIAL SECURITY OFFSET

An employer is not entitled to Section 204 credit for old age social security offset until the employer notifies the claimant with a Bureau form LIBC 756 pursuant the rules and regulations Section 125.50. Maxim Crane Works v. WCAB (Solano), 2224 C.D. 2006. Filed August 14, 2007.

NOTE: We cannot overemphasize the obligations of employers and insurance companies to file timely Bureau forms with a claimant and with the Bureau.

ONE SENTENCE ORDERS

Claimant had been ordered to attend a vocational interview based upon a petition by the employer. The claimant failed to appear for the interview. The WCJ entered an Order simply forfeiting benefits to claimant based upon his failure to attend the interview. The Commonwealth Court has held that under the circumstances of this petition and acknowledgment that claimant failed to appear, the Order was sufficient and a remand would be a wasteful exercise. Joan Bradley v. WCAB (County of Allegheny), 343 C.D. 2006 filed February 23, 2007.

PENALTIES

Penalties were awarded to a claimant in a case filed by Judge Dan Pelligrini where the carrier in a quadriplegic injury failed to pay bills because the proper forms had not accompanied the bills or reports were not filed when the employer had previously paid medical bills not accompanied by these forms or reports. Thus, where the Court determines that the carrier has enough information to pay the medical bills and doesn't, it is no excuse for the carrier to require filing for payment of the bills with the HCFA forms. Seven Stars Farms, Inc. v. WCAB (Griffiths), No. 990 C.D.2007. Filed on November 8, 2007.

In another case, a claimant had sustained a work injury on September 10, 1997. A Claim Petition was filed on March 25, 1998. The employer failed to answer the petition or appear at the hearing before the Judge. The Judge ordered payment of benefits and the employer did not pay. The claimant then filed a Penalty Petition alleging the employer violated the statute by not paying benefits. The employer argued that it had constructively complied with the order because the claimant had been paid by Injured On Duty benefits agreed upon in a separate civil service action. Judge Hagan agreed that under this circumstance no penalties were in order. Claimant appealed arguing that the civil service resolution was irrelevant to the workers compensation proceedings. The Court remanded to the Board and Judge for further findings and learned that claimant had received more in benefits on the Injured On Duty than if he had received workers compensation benefits. Judge Hagan, however, found the employer had violated the Act and assessed a 50% penalty against the employer. The Board affirmed. The employer appealed this decision to the Commonwealth Court. Judge Friedman did not believe the employer was entitled to "self help" and should not disregard the statute. The award to claimant of penalties and the award of ongoing penalties was affirmed by the Commonwealth Court as being within the discretion of the Judge. City of Philadelphia v. WCAB(Sherlock), 881 C.D. 2007. Filed on October 10, 2007.

PENALTIES/ISSUANCE OF INITIAL IMPROPER DOCUMENT

Penalties and attorneys fees were not awarded although a Notice of Compensation Payable was not properly issued at the outset. Claimant sustained an ankle injury on February 3, 2003. A panel physician diagnosed a right ankle sprain. The employer issued a Notice of Temporary Compensation Payable. On April 15, 2003, Dr. Jeff Kahn for the employer examined the claimant. He believed that claimant had suffered a temporary aggravated preexisting condition. The employer thereafter issued a Notice Stopping Temporary Compensation and Notice of Workers' Compensation Denial. On the Denial employer had stated that claimant was not disabled from his injury and that claimant had been released to full duty work, but due to downsizing a job was not available for the claimant. Based on the full duty release, compensation payments were stopped. The claimant testified, as did his medical expert, that the work injury had aggravated his preexisting condition causing his symptoms. The defendant introduced the testimony of two medical experts, Dr. Jon Tucker and Dr. Jeffrey Kahn. Both of defendant's medical experts testified that claimant could perform his full duty work. The WCJ awarded claimant benefits as well as attorney fees of $14,740 and a 50% penalty.

The Workers' Compensation Appeal Board reversed the decision on the award of penalties

and attorney fees. The Commonwealth Court found that the WCJ had issued a reasoned decision where the medical experts had contradicted each other's testimony. Employer felt that a reasoned decision required the WCJ to explain why he accepted one doctor over another. The Commonwealth Court believed the WCJ had issued a reasoned decision by explaining his acceptance of the more severe description by the claimant's medical expert. There is good language in the opinion regarding the WCJ as final finder of facts. The Court then went on to hold that where a genuine issue exists such as here, the employer does not engage in an unreasonable contest relying upon prior authority of Brutico v. WCAB(US Airways), 866 A.2d 1152 (2004). The Court on the penalty issues found that penalties were not appropriate under this case. Since the employer issued a Notice of Temporary Compensation Payable, and claimant received benefits, the prompt investigation requirement had been met. The Court distinguished Spangler v. WCAB (Ford), 602 A.2d 446 (Pa. Cmwlth. 1992) and Geiger v. WCAB (Circle Fine Art Corp.), 654 A.2d 19 (Pa. Cmwlth. 1994), holding them inapplicable to the facts in the present case. Here because a proper Denial was issued, no penalties were in order. The Court distinguished Jordan v. WCAB (Luczki), 921 A2d. 27 (2007) where the Court found for claimant on penalties. In Jordan, the claimant was paid on a salary continuation program which did not justify the denial of compensation. The Court has followed the decision of Gereyes v. WCAB (New Knight, Inc.) , 793 A2d. 1017 (2002). In that case claimant had a wrist injury and returned to work with a wage loss. On the Notice of Workers' Compensation Denial form the employer had placed an "x" by claimant not being disabled. Because the grounds were specified for the denial, the Court held penalties were not properly awardable. Also, where medical benefits are paid on an ongoing basis the defendant is less likely to be penalized. Gumm v. WCAB(Old Republic Insurance Services), 599 C.D. 2007 AND 703 C.D. 2007. Filed January 28, 2008.

PENSION OFFSET

The employer was not entitled to a pension offset to a sum of $4500, which the claimant had rolled over into an IRA. Gadonas v. WCAB (Boling Defense and Space Group), 1943 C.D. 2006. Filed August 1, 2007.

PERSONAL ANIMUS

A claimant suffered a psychological injury when a guest at a hotel grabbed claimant by her buttocks, lifted her shirt, and touched her abdomen. The injury occurred on March 5, 2003. Five days later she was prescribed a sedative and referred to a licensed psychologist. Her physicians removed her from work. As a consequence of this event she had nightmares, fatigue and insomnia, lost forty pounds of weight, no longer had a relationship with her fiancé, feared strangers, and was not working. Her doctor diagnosed Post Traumatic Stress Disorder. The defendant's expert agreed that such an incident could cause the injuries, but she did not believe this incident produced the symptoms. The employer argued that under Sec. 301(c)(1) that work injuries caused by personal animus would not be within the Act. The specific language argued by the employer was under Section 301: "the term injury shall not include an injury caused by the act of a third person intended to injure the employee because of reason personal to him". The Commonwealth Court found that for personal animus to apply some part of the infliction of injury must be personal and intended. The Commonwealth Court

found neither in concluding that the claimant was entitled to benefits. M&B Inn Partners v. WCAB (Petriga), 1201 C.D. Filed January 18, 2008.

REESTABLISHING WORK AVAILABILITY

Does the employer need to establish work availability when claimant was determined by a Workers' Compensation Judge to have failed in prior litigation to accept work offered to her and then is incarcerated? Claimant injured her left foot on Sept. 23, 1994. Her injuries accepted were neck, left shoulder, left knee and left elbow. She stopped working on Nov. 16, 1994, apparently due to her injuries. She underwent an IME on November 27, 1996 with the doctor returning claimant to sedentary duty. Subsequently she was charged with DUI and aggravated assault for which she served time in prison. Without knowing claimant was incarcerated, employer made a job offer of sedentary work on January 21, 1997. The employer filed a Suspension Petition on May 30, 1997alleging the refused offer of work on January 21, 1997. The WCJ issued a Decision on March 31, 1998 finding that the employer was entitled to a suspension as of January 21, 2007, or the date of the offer of work, and further held that claimant would not be entitled to reinstatement of total disability because she had been offered the sedentary job. Claimant was incarcerated until March 28, 2000. Thereafter, she filed a Reinstatement Petition alleging her condition had gotten worse to the point where she could no longer work. The WCJ denied her petition on May 9, 2002, which was NOT appealed. The instant petition for reinstatement on April 26, 2004 again alleged a decrease of earning capacity but the WCJ granted benefits from May 12, 2003 until September 8, 2004 due to surgery. The Appeal Board held that the employer did not have to reestablish job availability. Claimant filed this appeal arguing that the WCJ never found her refusal to accept employment was in bad faith Her reason for not being able to accept the position was incarceration.

The prior holding of Mitchell v. WCAB (Steve's Prince of Steaks) 815 A.2d 620 (2003), had held that once incarceration had been completed the claimant was entitled to benefits. The Court herein found that the Judge went through a Kachinski analysis and determined claimant's benefits should be suspended based on the decision by the WCJ of March 31, 1998. Further, the Court held that once an employee has acted in bad faith, the employer need not keep an available job open indefinitely. Claimant must demonstrate her worsening condition and that she could not perform the work offered. An employer need not reestablish job availability following a period of total disability when the claimant originally refused a job offer in bad faith. The bottom line is that if an employer makes a good faith offer and claimant refuses the offer in bad faith, the employer does not later, after a surgery and total disability, need to reestablish work availability just that her condition has returned to base line. Muretic v. WCAB (Department of Labor and Industry), No. 787 C.D. 2007.

RE-LITIGATION

Where claimant has filed a second review petition to decide the correct AWW based upon a recent decision changing the law, claimant was barred where the issue had been previously litigated or could have been litigated. The Commonwealth Court held that changes in decisional law do not permit such refilings based on the doctrine of "law of the case". Jeffrey Merkel v. WCAB (Hofmann Industries), No. 1586 C.D. 2006. March 6, 2007.

SEXUAL HARASSMENT

The Supreme Court reversed the Commonwealth Court and reinstated benefits to a coal miner who was victimized sexually by a supervisor. The Commonwealth Court had determined that the claimant had not been exposed to abnormal working conditions. The Supreme Court disagreed. The importance of the case is that sexual harassment is cognizable as a work injury under Pennsylvania law. The claimant in the present case had had preexisting emotional problems from a commanding officer in Vietnam. Claimant has flashbacks. In 1994 while working for the defendant, claimant had three incidents in which sexual harassment occurred. Claimant began missing work and claimed total disability. The first incident described the supervisor say "You have a nice looking butt, come up here and sit down next to me". The second incident involved the supervisor stating that he would like to have intercourse with him. The third event was the supervisor telling claimant that he had " a nice pair of legs". The Judge granted benefits. In part the benefits were granted because they were considered abnormal as the supervisor had been disciplined. I t was not normal joking but intended to cause emotional harm. The Board affirmed. The Commonwealth Court on the other hand believed that although the incidents were crude and unacceptable they were actionable in the rough business of mining. The Supreme Court disagreed strongly with the Commonwealth Court and found a course of conduct which constituted an injury for which disability had resulted and thus was compensable.

SCARRING

The WCAB has reversed a WCJ decision granting 17 weeks of compensation to a firefighter who had two marks on the left side of his neck - one was 1 ½ inches long by 1/4 inch wide and a second 1 inch long by ½ inch wide. There were two additional spots of 1/4 inch and 1/16 inch. The WCAB believed that "most" Judges would have awarded between 50-65 weeks modifying the award to 60 weeks.

SECTION 204 OFFSETS

An offset is permitted when a claimant receives social security disability payments which are then converted to old age benefits when he reached 65 years of age. The Court determined that where old age benefits are received, a strict interpretation of the Act requires applying the offset whether or not claimant had received social security disability payments or not. The Court spoke about claimant's intention of continuing to work. Here claimant did not testify. Francis Ropoch v. WCAB(Commonwealth of PA/DPW), 1638 C.D. 2007.

SLEEP DISORDER IS NOT AN INJURY

The Board has held that failure by an employee to adapt to shift changes is not an injury within the meaning of the Act. An injury is a lesion or change in body part which produces pain or harm or lesser use. Patrick Maguire v. FedEx Freight 21 WCLR 266 (PA. W.C.A.B. 2007).

SPECIFIC LOSS BENEFITS

Payment of specific loss benefits did not toll the three year statute of limitations of Section 413 for reinstatement of benefits. Visteon Systems v. WCAB (Steglik), 1179 C.D. 2007. Filed December 14, 2007.

STATUTE OF LIMITATIONS

Judge Bernard McGinley held that where the injured employee's benefits have been suspended the claimant must file a reinstatement petition within the 500 week period. Claimant had been injured on December 11, 1992. He returned to work on March 28, 1994 on a suspension. His reinstatement petition was filed on April 25, 2005. The Commonwealth Court found that during the period of suspension, the statute was not tolled. Thus claimant had 500 weeks from the date of the suspension within which he needed to file his petition. This decision is to be distinguished from the Stanek v. WCAB (Greenwich Collieries), 756 A.2d 661 (2000) where the Supreme Court allowed claimant to pursue total disability benefits after payment of 500 weeks of payment of partial disability benefits. In Stanek, supra, the Court found claimant had petitioned for benefits within three years of his receipt of benefits. In Prosick, supra. the claimant had not petitioned within three years and had filed after the 500 week period had elapsed. A warning to claimants that they need to file their petitions within three years of the date of last receipt of any benefits or be barred. Prosick v. WCAB(Hershey Chocolates), No.1188 C.D. 2007. Filed on November 15, 2007.

The Court reaffirmed its decision in Prosick. Claimant was injured November 2, 1995 and received benefits through January 2, 1996. His benefits were suspended thereafter. A Petition to Reinstate Benefits was filed on September 16, 2005 alleging a decrease of earning power. Based upon Sec. 413(a) of the Act, which clearly states that no compensation will be paid unless a petition has been filed within three years of the most recently received payment of compensation. Stehr v. WCAB (Alcoa), No. 1187 C.D. 2007. Filed on November 29, 2007. Decided by Senior Judge James Flaherty.

SUBROGATION

Subrogation rights and the workers' compensation liabilities of an employer can be transferred to a third party. See Section 319 of the Act and 34 Pa. Code 125.15. Risius v. WCAB (Penn State University), 791 C.D. 2006. Filed April 18, 2007.

SUPERSEDEAS

When an employer appeals to the Workers' Compensation Appeal Board from a Decision of a Workers' Compensation Judge approving a Compromise and Release Agreement and obtains a supersedeas, but subsequently withdraws the appeal and pays the Compromise and Release amount, the employer cannot be subject to a Penalty Petition for frivolous appeal. Gregory v. WCAB (Narbon Builders), 2021 C.D. 2006. Filed June 8, 2007.

TERMINATION DENIED ALTHOUGH INJURIES IN NCP RESOLVED

Commissioner Santone found that despite claimant's leg fracture having resolved, which was the described injury in the NCP, claimant continued having pain due to a nerve injury which the Board felt was not a distinct injury different from the leg fracture which then placed the added burden on the employer to prove the nerve injuries' resolution also. Bonnoni v. WCAB (Akers), 22 PAWCLR 54.

TERMINATION OF BENEFITS DENIED

A recent case was published upon motion on November 7, 2007 from its original filing date of

September 10, 2007, which simply reversed the grant of a termination by the WCJ where the medical testimony accepted by the Judge did not recognize the work injury - a herniated disc. In this case the defendant needed to show that the claimant had recovered from accepted herniated disc injury. Elberson v. WCAB (Elwyn, Inc) No. 2408 C.D. 2006.

UNEXECUTED COMPROMISE AND RELEASE AGREEMENT

Where a settlement has been agreed upon but never signed, the Court will not enforce the agreement. Interestingly the Court held that claimant could not enforce the agreement as this was up to the employer and the agreement had to be signed. The reason for failing to sign the agreement was the insistence by the employer of having a MSA trust approved. Since the terms had not been agreed upon, the Compromise and Release Agreement could not be enforced. Bennet Miller v. WCAB (Electrolux), 552 C.D. 2007.

UNREASONABLE CONTESTS

Judge Bonnie Brigance Ledbetter wrote an Opinion that an employer who defends a Reinstatement Petition by relying solely on the credibility and cross examination of the claimant's medical expert risks an award of attorney's fees if the reinstatement is granted. The Commonwealth Court found that when claimant met her burden on the reinstatement, the employer then was required to show that its contest was reasonable. The significance of the Opinion is the careful scrutiny given the Court on counsel fees awarded as the rule in cases as opposed to the exception and that an employer, to avoid counsel fees, has burden of showing a reasonable basis. Virna Wood v. WCAB (Country Care Private Nursing) 1272 C.D. 2005. Filed December 5, 2006.

UNTIMELY FILED SCARRING CLAIMS

Claimant suffered an injury in 1991, but had neck surgery giving rise to the scarring claim in 2004 Sec. 315 of the Act precludes claimant recovery for specific loss of scarring by the statute of limitations. Kelley v. WCAB (Standard Steel), No. 1434 C.D. 2006, 2007 Pa. Commonwealth LEXIS 99. Filed March 6, 2007.

UTILIZATION REVIEW DETERMINATION

The Commonwealth Court affirmed the Workers' Compensation Appeal Board setting aside a Utilization Review Determination when the Utilization Review report discussed the medical treatment provided by another physician associated with the same practice but did not present any evidence with regard to the named provider. The employer had requested a Utilization Review of the medical treatments of Dr. A, but relied on the office notes and records of his associate, Dr. B, without providing any office notes or records of Dr. A. The employer has requested the review of the medical treatments of Dr. A and "all other providers under the same license and specialty." According to the Commonwealth Court the employer should have specifically named all doctors whose medical records were under review. Bucks County Community College v. WCAB (Nemes, Jr.), 950 C.D. 2006. Filed February 12, 2007.

The Commonwealth Court held that where medical records have been sent to the UR physician reviewer, although not all or the complete records, and the Judge finds the Doctor whose treatments are reasonable is credible, the Geisler decision does not apply and the WCJ has

the authority to determine whether the care is reasonable and necessary. Loc, Inc and Nationwide Insurance/Wasau Insurance Company v. WCAB (Graham), No.536 C.D.2007. Filed on November 8, 2007.

URO DETERMINATIONS

The Commonwealth Court affirmed the Workers' Compensation Appeal Board and Workers' Compensation Judge with regard to findings that Maxidone was not reasonable or necessary for a low back injury, but reversed with regard to blood patches being unreasonable and unnecessary. Sweigart v. WCAB (Burnham Corporation), 1714 C.D. 2006. Filed April 4, 2007.

A favorable URO Determination to an employer that the medical treatments of Dr. A are not reasonable nor necessary does not apply to subsequent treatments by a Dr. B and subject the employer to penalties. Schemck v. WCAB (Ford Electronics), 1011 C.D. 2007. Filed December 5, 2007.

III. BUREAU DEVELOPMENTS

1. On December 5, 2006, Judge Ledbetter was appointed President judge of the Commonwealth Court.

2. A new WCJ has been appointed to the Erie District – Jean Best, formerly of Dallas Hartman's office, will shortly be announced as Judge.

3. Please remember that the Bureau Conference is scheduled to be held from 05/30/07 and 06/01/07 with an agenda that will cover many significant Pa. developments and take the opportunity to meet the Judges along with physicians such as Steven Conti and others. If you wish to be registered, we would be delighted to assist you, just let us know.

4. The fall section meeting was held in Hershey on September 20 and 21, 2007. The most recent case law was presented which allows us to answer any questions regarding workers compensation issues.

IV. LITIGATION DEVELOPMENTS AND RESULTS

Below is a report card of our results in Western Pennsylvania. A win is when our petition is granted or the claimant's petition is dismissed. A loss is when our petition is denied or the claimant's petition is granted. In 2005 we received a new account that wanted to settle as many claims as possible; hence, the increase in the median settlement amount. Our largest settlement has been $150,000 and our lowest $0. Since 2000 we have recovered $458,000 from the Supersedeas Fund.

We have three attorneys serving Western Pennsylvania...Stewart Karn, Jim Ehrman and Fred Trenor. Together our workers' compensation litigation experience is almost 100 years.

We invite you to visit our web page where we have a number of articles and publications, particularly, The Pitfalls of Pennsylvania Workers' Compensation and Recent Developments in Pennsylvania Workers' Compensation.

Report Card

	Win	Lose	settle	Median settlement
1999	73.3%	6.7%	20.0%	$32,500.00
2000	75.9%	10.3%	13.8%	$35,000.00
2001	59.4%	9.4%	31.3%	$40,000.00
2002	33.3%	13.9%	52.8%	$12,500.00
2003	34.5%	6.9%	58.6%	$27,500.00
2004	41.7%	8.3%	50.0%	$23,750.00
2005	33.3%	7.9%	58.7%	$47,500.00
2006	25.7%	5.7%	68.6%	$55,000.00