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RECENT DEVELOPMENTS
IN PENNSYLVANIA
WORKERS' COMPENSATION

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BY FRED C. TRENOR AND JAMES S. EHRMAN**

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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.

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 within the definition of employees under the Act and those who voluntarily help responders after completing a community emergency response team program.

II. APPELLATE DEVELOPMENTS

COURSE OF EMPLOYMENT

On December 19, 2006, Judge Mary Leavitt wrote an Opinion holding that an employee walking to work was a covered employee even though a third party tort feason 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.

JURISDICTION

On November 22, 2006, 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 Allegheny v. 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.

UNREASONABLE CONTESTS

On December 5, 2006, 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.

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.

IV. LITIGATION DEVELOPMENTS AND RESULTS

For the period from September through December, 2006, the Pittsburgh office results were as follows:

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|-------------|--------|
| Wins | 31.25% |
| Losses | 6.25% |
| Settlements | 62.50% |

The average settlement was \$27,550 per case with average litigation time 43 weeks.