

**PHILADELPHIA OFFICE:**The Curtis Center, 4<sup>th</sup> Floor  
601 Walnut Street  
Philadelphia, PA 19106-3304**TWO LAWS FROM THE 2005-2006 LEGISLATIVE SESSION IMPACT WORKERS' COMPENSATION PRACTICE***Act 68 of 2006*  
*Act 109 of 2006*

On July 7, 2006, with Governor Rendell's signature, Act 68, which took effect immediately upon the Governor's approval, and Act 109, which takes effect beginning September 5, 2006, are the first pieces of legislation to have a direct impact on our practice since 2003.

**Act 68 of 2006**

Act 68 amended Section 307 of the Workers' Compensation Act, which provides for a schedule of distribution of monetary benefits to the dependents of deceased employees.

Act 68, originally HB 30 and sponsored by Representative Marie Lederer (D-Phila.), seeks to address and rectify the limitations and outdated concepts of Section 307. Rep. Lederer's impetus to change the distribution of death benefits sprung from the tragic events of September 11, 2001. Rep. Lederer, in her June 14, 2005 address to the House, spoke of Louis Joseph Nacke, II, a Pennsylvania resident and a passenger on Flight 93. Rep. Lederer imparted to her fellow members of the House that Mr. Nacke's spouse, rather than his children from a previous marriage, received his death benefits under the Workers' Compensation Act. Rep. Robert Belfanti (D-Columbia), speaking in support of the bill, informed the House that, when the Workers' Compensation Act was originally enacted in 1915, divorce and subsequent remarriage was an aberration that was not (and did not need to be) considered. It was never intended that the children of deceased employees would not receive workers' compensation benefits but the strict language of Section 307 required that Mr. Nacke's surviving spouse, and no one else, receive his benefits. Act 68 passed both the House and the Senate without opposition.

Prior to Act 68, a surviving spouse received the entirety of the deceased employee's benefits, based upon whether the employee had children and, if so, how many. Act 68 amended Section 307 to now provide that, where the widow or widower is the guardian of all of the employee's children, the spouse receives the a percentage of wages based upon the number of children. If the spouse is not the guardian of all the deceased's children, the benefits are divided among the spouse and the non-custodial children. If there is one child, the spouse and the child divide 60% of the employee's wages equally. If there is more than one child, the spouse receives 33 1/3%, the remainder is divided equally among the children.

Also, prior to Act 68, Section 307 provided that, where there was no surviving spouse entitled to compensation, benefits were to be paid to the guardian of the child or children. Section 307 did not mention or give guidance as to how to divide the benefits in those situations where the employee left more than one child and each child was under the care of a different guardian. After Act 68, Section 307 now divides the benefits payable evenly among the children.

Section 2 specifies that Act 68 shall apply only prospectively (i.e. only to those claims arising on or after the effective date of the Act).

In conclusion, the amendments to Section 307 solve the problems of how to deal with compensating the children of a deceased employee if those children have a different mother or father.

It is interesting to note, however, that in amending Section 307, the legislature did not eliminate the following language contained in subsection (7): "No compensation shall be payable under this Section to a widower, unless he be incapable of self-support at the time of his wife's death and be at such time dependent upon her for support." despite the fact that this language was found to be unconstitutional by the Commonwealth Court in Oknefski v. WCAB (Louisiana Pacific Corp.), 439 A.2d 846 (Pa.Cmwth. 1981).

## **Act 109 of 2006**

Arguably, the greatest practical change to workers' compensation practice in 2006 to come out of the legislature was an amendment to Title 23, the Domestic Relations statutes. Act 109 of 2006 added a new section to Title 23 that mandates judges ensure that child support arrearages are satisfied out of a claimant/plaintiff's award. (Title 23, Section 4308.1).

Section 4308.1 specifically states that overdue support shall be a lien by operation of law against the net proceeds of any monetary award owed to an obligor. The distribution of any such award shall be stayed in the amount of the arrears until the lien is paid; however, insurers may not use this obligation for satisfaction as an excuse to delay payment of a workers' compensation settlement.

The Act's definition of what constitutes a monetary award subject to its requirements is, unfortunately, not as clear as one could wish. Indeed, the definition seemingly uses the terms award and settlement interchangeably, despite their two, very distinct definitions in workers' compensation. As written, the Act only appears to apply to settlements: proceeds from compromise and release awards and commutations, to the extent that such are still viable. This uncertainty in definition may lead to future litigation. Additionally, a monetary award is only subject to the Act's requirements if the net proceeds to claimant are in excess of \$5,000.

The Act provides the procedures the parties and judge must follow regarding the administration and disposition of potential liens against workers' compensation and occupational disease awards. Specifically, no order providing for payment of an award shall be entered by a judge, unless the claimant provides the judge with the following: (1) a statement made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) that includes: (a) his/her full name; (b) his/her mailing address; and, (c) date of birth and social security number and (2) either written documentation of arrears from the Pennsylvania Child Support Enforcement System Website, or, if no arrears exist, written documentation from the Website indicating no arrears. The judge is charged with ordering payment of the lien for overdue support to the Department's State Disbursement Unit from the net proceeds due the claimant.

In the event that there is a dispute as to the amount of arrears owed by the claimant, the amount in dispute shall be placed in escrow in the Department's State Disbursement Unit by the claimant's attorney. These funds will be distributed upon resolution of the dispute. However, this does not stay the distribution of the remaining net proceeds of the monetary award to the claimant. The Act restricts disputes to those alleged mistakes of fact based either on an error in the amount of arrearage or mistaken identity,

In order to determine whether an outstanding child support lien exists, an attorney or insurer is able to use a private judgment search company in lieu of receiving the statement and written documentation of arrears or no arrears. The only caveat is that the private judgment search company must be approved by the Department. The insurer may also use the services of a child support enforcement lien program operated through a central reporting agency also approved by the Department. The fee for a judgment search may be deducted by the attorney or insurer from any payment to the claimant.

The Act also provides for immunity for some of the parties. The attorney, insurer or other paying agent that makes distribution in accordance with the statement and written documentation, report of approved private judgment search or child support enforcement lien program operated through a central reporting agency approved by the Department, shall be immune from any civil, criminal or administrative penalties for making an erroneous distribution. In addition, this section shields the attorney and insurer from any claims made by any person who asserts that he/she is the intended obligee of the outstanding lien for child support. No immunity is provided for the claimant.

The cite for the Pennsylvania Child Support Enforcement System Website is as follows:  
[www.humanservices.state.pa.us/cs/ws/index.aspx](http://www.humanservices.state.pa.us/cs/ws/index.aspx).

Since passage of Act 57 in 1996, checking for child support liens had become, almost, a requirement when resolving claims through Compromise and Release Agreements; however, this was always dependent upon the claimant disclosing this to his attorney beforehand or during his testimony. If disclosed during testimony or on the day of the hearing, the parties were unable to move forward with the Compromise and Release hearing and settlement was delayed. The requirements of Act 109 of 2006 should serve to prevent these delays and annoyances. However, as of this newsletter's publication, the Bureau of Workers' Compensation has not standardized a procedure for the judges to follow in these matters, until such time each judge must establish their own procedure.

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## ADDITIONAL CHANGES PROPOSED TO THE WORKERS' COMPENSATION ACT

On June 26, 2006, the House of Representatives passed House Bill 2738 by a vote of 197-0. HB 2738, if passed by the Senate and approved by the Governor, would make the following changes to the Workers' Compensation Act:

ARTICLE OR SECTION OF THE ACT	CHANGE
§ 306(h)	Minimum compensation increased to \$100 per week for injuries occurring prior to August 31, 1993.
§401	Added and defined the term "resolution hearing" to provide for expedited compromise and release hearings. Also added and defined "mediation" which requires the personal appearance of all parties, including the adjuster who must have or must be able to obtain authority for settlement during the course of the mediation.
§401.1	Mandatory trial schedules are to be established at the first hearing and shall be strictly enforced absent good cause. Schedule must include specific date for mediation, unless futile, which must occur no later than 30 days prior to submission of proposed findings and briefs. Resolution court procedure created. Resolution court hearings must be held within 14 business days of filing. Petition need not be formally assigned at time of hearing; however, proof of filing must be presented. Decisions must be rendered within 5 business days of the hearing.
§401.2	Appeal Board to consist of 3 to 15 appointed members with panels of 3 members permitted, majority needed. Establishes minimum requirements for appointment and adherence to a code of ethics and conduct. Establishes more formal procedures for the consideration and disposition of appeals by the Board.
§414	Limits each judge in any county to no more than 75% of all petitions filed in that county.
§426	Rehearings before the Appeal Board must be before the entire Board.
§442	Caps attorney fees in Compromise and Release agreements, with no underlying litigation, at 20%.
§1401(e)	Sets compensation for judges at amount not less than other administrative law judges.
Article XVI	Establishes an Uninsured Employers Guaranty Fund.

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# MARGOLIS EDELSTEIN NEWS

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