

15th Annual Workers' Compensation Conference (2016)

◆ BASIC WORKERS' COMPENSATION

SUBSTANTIVE ASPECTS OF WORKERS' COMPENSATION

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◆ Theory

1. No-Fault liability as the operative principle
2. Compensation as claimant's exclusive remedy and employer's exclusive liability

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◆ 4 purposes of workers' compensation

1. Humanitarian purpose
2. Cost internalization purpose
3. Promotion of safety
4. Vocational rehabilitation

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◆ History

1. European origins

2. Original PA Act of 1915
(Centennial was: June 2, 2015)
PBA Book on history of the law
by Torrey et al. is available
3. Occupational diseases added:
1937, 1939

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◆ History (continued)

1. Major reforms of 1972, 1974
(liberalization)
2. Contemporary Reforms (retractive)
 - a. 1993 (Act 44: medical cost containment)
 - b. 1995 (Act 1: hearing loss)
 - c. 1996 (Act 57: disability, procedure)
 - d. 2006 (Act 147: procedure)

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◆ Employers and Employees Covered

Critical Statutes:
Sections 103 and 104
"Construction Workplace
Misclassification Act" (2010)
Leading Case: *Southland Cable v. WCAB
(Emmett)* (1991)

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◆ Employers and Employees Covered

1. Special Cases: corporate officers, undocumented workers
2. The control test
3. Temp agencies/PEO's (*2013 statute*)
4. Injuries outside PA
5. Volunteer Firefighters/EMT's

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◆ Casualties & Disablements

Critical Statute: Section 301(c)(1)

Compensable event as "injury," not "accident" or personal injury by accident

Liberal interpretation, 1972-1987

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◆ Casualties & Disablements

Injury as including occupational diseases, as listed in Section 108

Critical statutes:

1. Section 301(c)(2)
2. Section 108
3. Section 301(e)
4. Section 108(r), 301(f) (cancer/firefighters)

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◆ Casualties & Disablements

Leading cases revealing interpretation of the term "injury"

1. *Pawlosky v. WCAB (Latrobe Brewing)* (1987)
2. *City of New Castle v. WCAB (Sallie)* (1988)
3. *Tozey v. AK Steel* (2013)

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◆ Casualties & Disablements

Some special issues:

1. Compensability of mental stress cases
2. Compensability of Hepatitis C
3. Law of "compensable consequences"

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◆ Casualties & Disablements

Parameters of coverage: Pennsylvania test of injury "aris[ing] in the course of employment and related thereto"

1. Meaning of "arising"
2. Meaning of "course"
3. Meaning of "related thereto"

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◆ Casualties & Disablements

Leading case: *Krawchuk v. PECO* (1983)

- ◆ Stress heart attack was compensable, even though it occurred off the premises and after work: persuasive expert medical opinion was that claimant's heart attack had its origin in stressful workplace

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◆ Casualties & Disablements

Course of employment and gray areas:

1. Role of the premises
 2. Social events
 3. Injuries occurring during travel: Routine commuting is not course of employment:
 - * Exception: Traveling employees
 - * Exception: Contract includes travel
 - * Exception: Special Mission
 - * Exception: Special Circumstances
- Issue: Telecommuting Employees*

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◆ Casualties & Disablements

Affirmative defenses

* Burden of proof is always on employer

1. Not a defense: Horseplay
2. Defense: Violation of Law
3. Defense: Intoxication
4. Defense: "Reasons personal"
5. Defense: Violation of positive orders
6. Defense: Intentional self-infliction

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◆ Basis/Form/Amount/Period

[Temporary] Total Disability (TTD)

Can be payable for the duration:
Note: PA does not recognize, in statute,
Permanent Total Disability (PTD)

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◆ Basis/Form/Amount/Period

[Temporary] Partial Disability (TPD)
Maximum Duration: 500 weeks
1. Pre-Act 57 (1996)
Leading case: *Kachinski v. WCAB* (1987) and
Use of job placement (Voc. Rehab) to show
earning power
2. Post-Act 57 (1996): Use of expert to show
earning power; Leading case:
Phoenixville Hosp. v. WCAB (2013)

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◆ Basis/Form/Amount/Period

Partial Disability after 104 weeks of TTD:
maximum 500 weeks

1. Effective, based on *AMA Guides* rating
when below 50% whole body,
after receipt of 104 weeks of TTD
Protz case: 6th or 4th edition?
2. Petitions after impairment rating

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◆ Basis/Form/Amount/Period

1. Specific Loss (permanent injuries)
2. Death benefits

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◆ Basis/Form/Amount/Period

Benefit Calculation

1. The Average Weekly Wage
2. TTD benefit rate

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◆ Basis/Form/Amount/Period TTD Benefit Rate:

1. Maximum for 2016: \$978.00 (SAWW)
 2. Three formulas:
 - a. 2/3 of AWW
 - b. 1/2 of SAWW (fixed)
 - c. 90% of AWW
- (refer to the Bureau's Quick-Reference Benefit Chart, p. 6 of material)

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◆ Medical Benefits

Critical statutes: Section 306(f.1),
Section 306(f.2)

Employer responsible for reasonable and necessary medical care, "as and when needed"

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◆ Medical Benefits

Cost-Containment

1. Employer control (lack of employee choice) for 90 days
2. Medical Fee Schedule: 113% of Medicare for treatment expenses; Fee Review
3. Pharmaceutical controls: 110% of wholesale; New for 2014: H.B. 1846 (Issue: Physician Dispensing)
4. Utilization review

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◆ Subrogation

Critical statute: Section 319

Leading case: *Heckendorn v. Consolidated Rail Corp.* (Pa. 1983)

(employer cannot be joined in third-party action, even if alleged to have been negligent)

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◆ Subrogation ... of Employers

1. Subrogation right broadly enforced, but not an assignment
2. Subrogation applies to all damages (except loss of consortium)
3. Employer may be joined if an express contract of indemnity exists; an employer may secure a subrogation waiver in Pennsylvania

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◆ Subrogation ...of group health insurers and S&A payers

1. Subrogee must exercise diligence or risk waiver
2. Claims are not indexed by the Bureau

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◆ Compromise Settlement (C&R) **Critical Statute:** Section 449

- A. All benefits may be released
- B. All "claims" may be settled: original, accepted; no blanket releases
- C. Approval by WCJ is required; a hearing is required in every case
- D. Criterion of approval: whether the claimant understands the full legal significance of the settlement

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◆ Compromise Settlements

Exciting academic article:

Torrey, *Compromise Settlements Under State Workers' Compensation: Law, Policy, Practice and Ten Years of the Pennsylvania Experience*,
16 Widener Law Journal 199 (2007)

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◆ Critical Aspects of Litigation

Adjudicatory Structure

1. Workers' Compensation Judge (final fact-finder)
2. Workers' Compensation Appeal Board (substantial evidence and legal error review)
3. Commonwealth Court/Pennsylvania Supreme Court (same review)

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◆ Critical Aspects of Litigation

1. Claimant Petitions: Claim, Reinstatement, Review, and Penalty
2. Employer Petitions: Termination, Suspension, Modification, Review
3. Utilization Review
4. Fee Review
5. Mediation of Cases

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◆ Research References
(listed in hand-out)



THE END
