



News & Notes

Vol. 20 | No. 1

"Serving all Pennsylvanians"

Spring 2015

Save the Date! - 14th Annual Workers' Compensation Conference

Mark your calendars for the 14th Annual Workers' Compensation Conference, June 1-2, 2015, at the Hershey Lodge & Convention Center. From exciting speakers and stimulating topics to opportunities for networking and educational credits, this popular event has it all.

For more details and registration information, visit www.dli.state.pa.us and click on "Workers' Compensation," then "Conferences, Seminars, Training."

A Message from the Directors

News & Notes is a quarterly publication issued to the Pennsylvania workers' compensation community by the Bureau of Workers' Compensation (BWC) and the Workers' Compensation Office of Adjudication (WCOA). The publication includes articles about the status of affairs in the workers' compensation community as well as legal updates on significant cases from the Commonwealth Court.

to feature the outstanding article entitled "A View from the Bench," in which judges from the Pennsylvania Workers' Compensation Judges Professional Association summarize recent key decisions from the Commonwealth Court that are of interest to all workers' compensation attorneys.

Among the articles featured in this issue are a summary of WCAIS' recent accomplishments, a projection of enhancements to WCAIS functionality over the coming year and an article introducing BWC's new deputy chief counsel and Legal Division chief, Kelly Smith. Also included is information regarding a gala reception and dinner celebrating the 100th anniversary of the enactment of the Pennsylvania Workers' Compensation Act. Additionally, we continue

We trust that stakeholders in the Pennsylvania workers' compensation system will find this publication interesting and informative, and we invite your input regarding suggested topics for inclusion in future publications. Suggestions may be submitted to RA-LIBWC-NEWS@pa.gov.

- Scott Weiant, Acting Director – Bureau of Workers' Compensation
- Elizabeth Crum, Director – Workers' Compensation Office of Adjudication

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Safety Committee Box Score

Cumulative number of certified workplace safety committees receiving 5 percent workers' compensation premium discounts as of March 25, 2015:

**10,919 committees covering
1,433,979 employees**

Cumulative grand total of employer savings:
\$567,924,874

*Employer Information
Services*
717-772-3702

Claims Information Services
toll free inside PA: 800-482-2383
local & outside PA: 717-772-4447

Only People with Hearing Loss
toll free inside PA TTY: 800-362-4228
local & outside PA TTY: 717-772-4991

Email
ra-li-bwc-helpline
@state.pa.gov

*Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program*

Upcoming WCAIS Enhancement News

As many of you are aware, the Workers' Compensation Automation and Integration System (WCAIS) Release 2 was implemented on Sept. 9, 2013. The WCAIS application integrates, automates and streamlines the Bureau of Workers' Compensation (BWC), the Workers' Compensation Office of Adjudication (WCOA) and Workers' Compensation Appeal Board (WCAB) functions into a single integrated system. The WCAIS Maintenance and Enhancement Team has been working hard to maintain the WCAIS application by performing maintenance operation activities, technology upgrades, defect fixes and prioritized enhancements as requests are made by all WCAIS users.

Program area staff have been working diligently to collaborate with both internal and external WCAIS users to understand and identify operational and system improvements. Past experience, continued external stakeholder communication and focus groups have been instrumental in identifying many key enhancements within the WCAIS processes. Below is a brief description and highlights of upcoming WCAIS system enhancements. Although these are projected enhancements through June 2016, they are only a few of the tasks being pursued by the team. We always reserve the right to substitute these items based on a critical needs analysis.

Scheduled for June 2015 release – Improvements to the organizational hierarchy management business process:

- Issue: The inability to manage multiple locations or units of an organization in WCAIS and the inability to maintain association between organizations of the same type, such as a relationship between two insurance carriers under an umbrella.
- Solution: Enhance WCAIS to maintain the functional hierarchy that may exist within an organization, such as multiple sub-organizations sharing the same FEIN or organizations with multiple FEINs working under the same umbrella. Add new functionality to manage multiple locations or units of an organization in WCAIS via the concept of business units to an organization. Add new functionality to manage association between organizations of the same type via the concept of the "parent-child" relationship.

Scheduled for June 2015 release – Medical fee review enhancements – This change will implement enhancements from the medical fee area that have been documented in the WCAIS Top Team repository and identified to be implemented.

- The WCAIS Maintenance and Enhancement Team performed an analysis on existing medical fee review operations to identify process and application improvement efficiencies. The team developed recommendations to allow insurers to provide fact-finding information on medical fee review through a self-service dashboard, and they identified new business rules to automate specific

determinations to reduce MAFRE workload and improve overall efficiency of MAFRE reviews by improving the process.

- The Med Fee Improvements Project delivers significant benefits to BWC Healthcare Services operations and external stakeholders by streamlining how the fee review operations are conducted and enabling the functions for initiating the submission of fact-finding documentation for medical bills via electronic channel, using the WCAIS self-service dashboard functionality.

Scheduled for June 2015 release – Improvements and automation to records requests business process – Will enable self-service for external stakeholders, increase automation to reduce staff load and improve the overall efficiency of the records process by enhancing the existing process and operations.

- The WCAIS Maintenance and Enhancement Team performed an analysis on existing records request operations to identify process and application improvement efficiencies and cost savings. The team developed recommendations to enable self-service for external stakeholders, increase automation to reduce staff load and improve overall efficiency and timeliness of the records process by enhancing the existing process and operations.
- The Records Request Improvements Project delivers significant benefits to BWC records request operations and external stakeholders by streamlining how the records request operations are conducted. The new process will include:
 - **Self-service channel for initiating records requests:** This feature will allow registered users of the WCAIS application to initiate both regular and subpoena records requests using the WCAIS application dashboard instead of sending records requests through regular mail. In addition, external stakeholders will be able to upload the required supporting documentation as part of initiating the record request through self-service functionality.
 - **Automated processing of records requests:** This feature includes identification of new business rules and conditions for the WCAIS application to process requests, received both via self-service and paper channels, in an automated way. As part of this process, automated actions are implemented for rejections where the information from the request does not exist in WCAIS or for acceptances where the request is from an attorney who has initiated a request with accepted legal language. In addition, the system creates tasks for Claims-Records Unit staff when they are required to validate uploaded supporting documentation and creates tasks for approving or rejecting the request.

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Upcoming WCAIS Enhancement News

Continued from page 2

- **Self-service channel for accessing records:** This feature will allow registered stakeholders to access the records associated with the approved records request from a self-service dashboard. These records will be allowed to be accessed for a fixed period of time from the approval of the request. The system allows the expiration period of this access to be determined by business rules developed with input from all stakeholders. In addition to this function, external stakeholders have the ability to search for submitted requests and the status of their records requests from the dashboard.

Scheduled for December 2015 release – Improvements to customer support-enhanced Helpline business process – Will enable self-service for external stakeholders, improve customer service, streamline the stakeholder issue or query resolution process and manage staff load by enhancing the Helpline business process.

- The WCAIS Maintenance and Enhancement Team performed an analysis of the existing channels through which the commonwealth delivers customer service to the workers' compensation community. Currently, the Helpline receives more than 4,000 phone calls and 300 emails per month from the workers' compensation community. The analysis identified opportunities for process and application efficiencies as well as time and cost savings. Based on these opportunities, the team developed recommendations to enable self-service for external stakeholders, improve customer service, streamline the stakeholder issue or query resolution process and manage staff load by enhancing the Helpline business process.
- **Ability for external stakeholder to initiate helpline tickets via self-service:** This feature allows external stakeholders registered with WCAIS to initiate Helpline tickets using self-service options.
- **Ability to track initiated tickets via self-service:** This feature allows external stakeholders to track their tickets, view the status and receive the resolution of the ticket by ticket numbers using self-service options via their dashboards.
- **Ability for unregistered external stakeholders to initiate tickets and receive responses via mail:** This feature allows unregistered external stakeholders to initiate tickets and receive responses via email, allowing potential WCAIS users to contact the Helpline for a registration-related ticket or other workers' compensation program-related queries.
- **Ability to search the knowledge base of tickets:** This feature compiles the resolved tickets into a knowledge base and allows external stakeholders to perform text-based searches to find resolutions previously offered for issues similar to their issues or queries.

- **Ability to automatically route tickets:** This feature includes new business rules to be implemented once the tickets are recorded by external stakeholders to identify the right internal staff user group for specific categories and sub-categories and route the ticket to them. For example, petition-related tickets will be routed to the internal staff users within the Petitions Unit.
- **Allow staff to route tickets manually:** This feature allows staff users to review and manually route tickets to other internal staff user groups
- **Ability to search for tickets by originator:** This feature allows internal staff users to quickly search for tickets based on the originator to provide an update to the external stakeholder when telephone calls are received.

Scheduled for June 2016 release – Insurer EDI forms solution-process improvements – EDI forms process and application improvements for trading partners and direct filers to obviate the need for claim administrators to submit paper forms to BWC for workers' compensation claim processing. This release is viewed as one that will have significant impact on the workers' compensation process. This change will save both internal and external stakeholders processing time as well as money associated with mailing over 200,000 forms to the bureau annually.

- The WCAIS Maintenance and Enhancement Team performed an analysis of existing EDI Claims Management processes to identify EDI forms process and application improvement for WCAIS users. The team developed recommendations to obviate the need for claim administrators to submit paper forms for workers' compensation claim processing to BWC. This change presents the services requested by stakeholders for implementing the identified improvements of the EDI claims and forms management process.
- The EDI forms solution delivers significant benefits to both the BWC Claims Management Division and external stakeholders by streamlining their workers' compensation claims and forms management processes. The proposed solution uses data from EDI transactions that are submitted to BWC to automatically generate claims forms that are required to be sent to BWC and the injured worker by the Pennsylvania Workers' Compensation Act Rules and Regulations. This will eliminate the need for insurers' claim administrators to send certain paper forms to BWC.
- **Ability to automatically generate LIBC forms:** This feature allows the application to automatically generate LIBC forms based on corresponding EDI transactions. The following forms will be automatically generated by the WCAIS application:

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Upcoming WCAIS Enhancement News

Continued from page 3

- o LIBC-495: Notice of Compensation Payable
- o LIBC-496: Notice of Workers' Compensation Denial
- o LIBC-501: Notice of Temporary Compensation Payable
- **Ability to associate generated forms to claims:** All generated forms will be stored in the FileNet repository and will be associated to the respective claims. This allows internal staff users and external stakeholders to access the forms from the claim summary, as allowed by the security access.
- **Ability to send generated forms via electronic file transfer:** This feature allows direct filers and transaction partners who send EDI transactions to receive the generated LIBC forms electronically via file transfer if that option is chosen by the stakeholder. The WCAIS application will compile the forms into electronic files after completing the end of the day EDI batch processes. These files will be available for the insurers to access via FTP.
- **Ability to access generated forms for web portal users:** This feature allows trading partners who submit their EDI transactions via the EDI Web Portal to access the generated form once they submit their EDI transaction.
- **Ability to perform bulk download/print of generated forms via self-service:** This feature provides claim administrators with the functionality for bulk download and printing of the generated forms through the WCAIS application. It also allows trading partners, direct filers and insurers to access the WCAIS application to bulk download and/or print the forms generated for all of their claims to send to the claimant.
- **Testing with external stakeholders:** As part of this change, the WCAIS Maintenance and Enhancement Team will conduct development sessions and testing with external stakeholders to ensure that the proposed solution meets their business needs.

Both the WCAIS Maintenance and Enhancement Team and external stakeholders have been instrumental in identifying the aforementioned enhancements. As we continue to move forward with the identification and implementation of WCAIS system upgrades, we strongly encourage all WCAIS users to continue submitting their suggestions and concerns to RA-LI-PA-WCAIS-UP@pa.gov. Thank you for your continued efforts in making WCAIS an efficient and cost effective system.

IT'S TIME TO APPLY for the 2015 GOVERNOR'S AWARD FOR SAFETY EXCELLENCE!



If you're proud of your safety and prevention program for its contribution to financial achievements and reducing employee injuries, apply for the Governor's Award for Safety Excellence. The award recognizes outstanding prevention programs and the superior efforts that make these programs so successful. Companies can nominate themselves or be nominated by a third party.

For more information and to download the nomination form:

[**Click Here**](#)

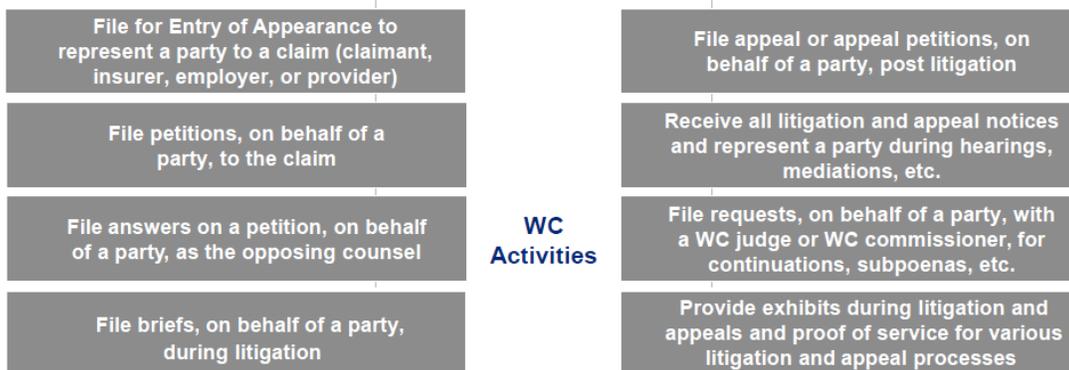
ALL APPLICATIONS MUST BE SUBMITTED BY JUNE 1, 2015, TO:

Margaret (Peggy) Day
Program Coordinator
Bureau of Workers' Compensation
Health & Safety Division
1171 South Cameron Street
Harrisburg, PA 17104

For additional information or assistance, call 717-772-1917 or email marday@pa.gov.

A Few Recent WCAIS Accomplishments

For Attorneys

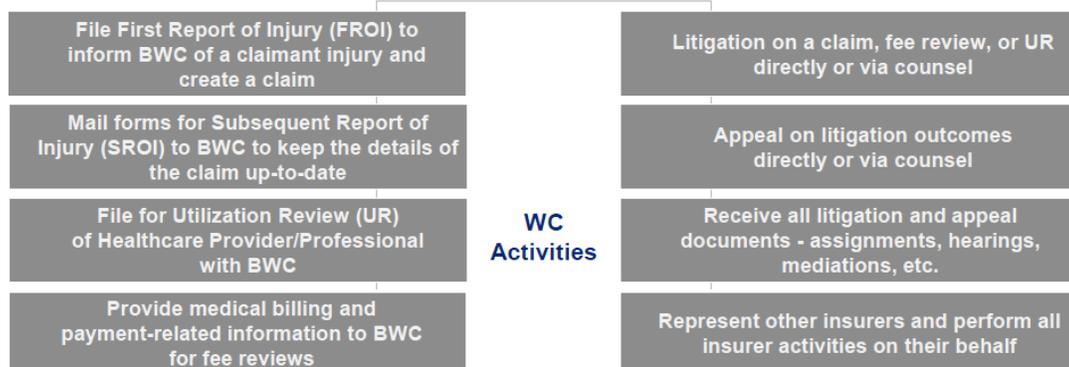


Recent Accomplishments



- Instant access, faster processing and online transactions resulting in operational efficiency
 - 97% of Entry of Appearances - with immediate access to claim info for attorneys
 - 95% of answers completed online, resulting in timely filing of answers
 - 90% of requests to judges & commissioners enables faster turnaround times and operational efficiency
 - 85% of WCOA petitions and appeals – immediate proofs of service for other parties
 - 75% of briefs and exhibits uploaded online – reduces need for manual review at hearings
- Access correspondence, including litigation and appeal documents, from WCAIS immediately
 - 30% receive electronic correspondence, reducing mailing costs
- Over 2,000 are registered in WCAIS
 - 800 unique logins each business day

For Insurers and TPAs



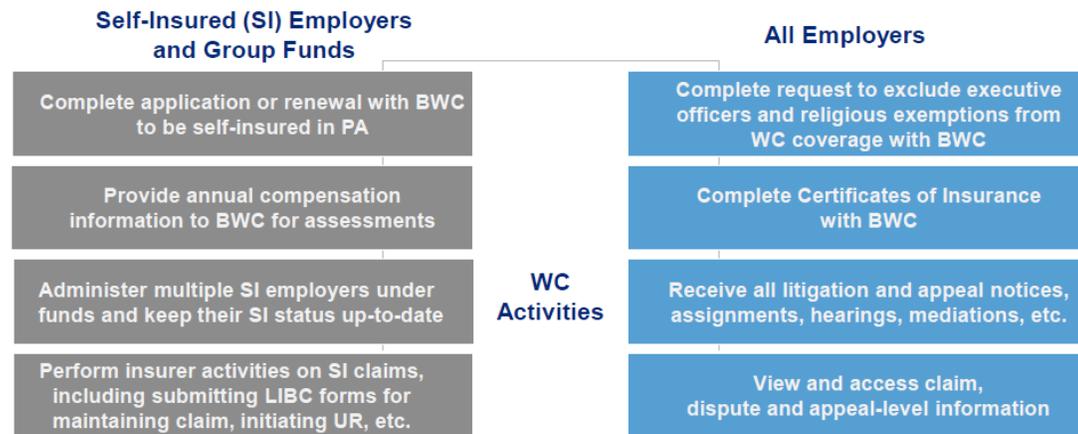
Recent Accomplishments



- Electronic FROIs and SROIs using EDI transactions, increasing efficiency of claims processing and reducing costs
 - 52% of FROIs and 48% of SROIs have been received from a total of 1,067,451 EDI transactions
 - 384 insurers have sent over 487,000 EDI transactions
 - 395 TPAs have send over 579,000 EDI transactions
- Online EDI Web Portal usage for insurers and TPAs to complete FROI and SROI information via self-service
 - 183 insurers and 166 TPAs have used EDI Web Portal
- Around 27% of online access to claims, fee reviews and utilization review, reducing need to communicate with BWC staff for information
- Around 8% utilization reviews completed online - reduced data entry costs and improved assignment time

A Few Recent WCAIS Accomplishments

For SI Employers & Group Funds and All Employers



Recent Accomplishments



- All SI employers are registered online with instant access, faster processing and online transactions, resulting in operational efficiency
 - 100% of SI employers and group funds file renewals online, reducing data entry and mailing costs and increase processing times
 - 100% of annual compensation information is completed online, reducing data entry and mailing costs
 - About 20% of online access to claims, fee reviews and utilization review, reducing need to communicate with BWC staff for information
- About 1% of regular employers have performed online transactions for Certificates of Insurance

For Healthcare Stakeholders

Recent Accomplishments



- Healthcare Professionals
 - 100% IRE Physicians are registered in WCAIS
 - 100% of IRE Physicians complete reauthorization in WCAIS, reducing data entry and mailing costs and improving processing times for renewals
 - 100% of Request for Designation (RFD) Assignments are performed electronically in WCAIS, reducing mailing costs and improving completion times
- Utilization Review Organizations (UROs)
 - 100% UROs are registered in WCAIS
 - 100% of UROs complete reauthorization in WCAIS, reducing data entry and mailing costs and improving processing times for reauthorization
 - 100% of UR assignments to UROs and the completion of the UR Report are performed electronically in WCAIS, reducing mailing costs and improving completion times
- Healthcare Providers
 - 11% of fee reviews have been submitted online by 27 healthcare providers, resulting in faster processing and notice of assignment
 - About 5% of healthcare providers access information on fee reviews and utilization reviews online, reducing need to communicate with BWC staff for information

BWC Appoints New Deputy Chief Counsel

The Bureau of Workers' Compensation recently appointed Kelly K. Smith as deputy chief counsel and Legal Division chief. In her position, Kelly oversees all legal operations and is responsible for legal advice to all sections of the bureau. Prior to assuming this position, Kelly was an assistant chief counsel in the Department of Labor & Industry's Safety, Training and Administration Division and was responsible for legal advice to the Bureau of Occupational and Industrial Safety, the Bureau of Disability Determination, the Bureau of Administrative Services, the Office of Information Technology and the State Workers' Insurance Fund. Kelly also spent two years in private practice with the Harrisburg law firm of Myers, Desfor, Saltzgeber & Boyle, has served as an assistant counsel to the Unemployment Compensation Board of Review and was a law clerk with the Bureau of Workers' Compensation. She graduated from Wells College in Aurora, New York, with a bachelor's degree in political science and public policy and received her Juris Doctor from the University of Denver College of Law in Denver, Colorado.



Deputy Chief Counsel and Legal Division Chief Kelly Smith

PA Training for Health and Safety

"PATHS" Your No-Fee Safety Training Resource

The Bureau of Workers' Compensation, Health & Safety Division's PATHS training resource is bursting in popularity and good news. At the time of our last newsletter, we had 112 FREE safety webinars; we now have 135. Our 15-20 minute recorded webinars now number seven, and we are still forging ahead. As of Feb. 20, 2014, we had trained 1,196 individuals. As of Feb. 20, 2015, we have trained 5,225! We have reached employers and employees in 30 states and four countries as this extraordinary resource continues to expand.

We would like to extend our congratulations to Hanover Hospital in Hanover, Pennsylvania, for 18 consecutive years of certification, an honor they alone have achieved. Dirk Hough, Director of Safety, Security & Emergency Management at the hospital, took over safety committee duties in 2008. He describes one of their biggest challenges being when Hanover Hospital went through a reduction in force in 2010. "We lost several committee members, permanent and non-permanent members, but

through it all we still managed to fulfill our safety obligations," Hough said.

Another success story is the decision to put up a wind screen to prevent hinged trash receptacle lids from flying up after one almost hit an employee – a seemingly simple but effective solution to a potential injury hazard. To quote Karl Jensen, a risk management consultant for a workers' compensation insurance company in Pennsylvania who works with Hanover Hospital's safety committee, "It is a pleasure to work with a committee that is well-run, supported by senior management and made up of members who are genuinely committed to being part of the continuous improvement process."

This is just one example of the PATHS safety initiative working for you. For more information, visit PATHS at www.dli.state.pa.us/PATHS or contact the Health & Safety Division at 717-772-1635. You may reach us at RA-LI-BWC-PATHS@pa.gov.

PATHS is on Facebook!

PA Training for Health and Safety (PATHS) now has a [Facebook](#) page! Follow us on Facebook for our latest health and safety training offerings and all your workplace safety resource needs. PATHS is a one-stop shop for FREE training and information, offering resources such



as webinars, PowerPoints, safety talks, videos and even classroom training. Visit the [PATHS](#) page to browse these resources and to learn how to reduce workers' compensation costs through accident prevention and through qualification for a workers' compensation premium discount!



Dear Colleague:

In early June, 2015, all of us will be marking the centennial of the Pennsylvania Workers' Compensation Act—an amazing piece of living legislation that has proven to be of enormous benefit to millions of workers and thousands of employers. We will celebrate this “Grand Bargain” at a gala cocktail reception and dinner in Hershey on the evening of Monday, June 1, in conjunction with the 2015 Department of Labor & Industry Workers' Compensation Conference June 1-2.

We invite you, your friends, your colleagues and business associates to commemorate this once in a lifetime event. In past years many of you have met for dinner or a drink on that evening of the conference, and often that meant going off-premises to do so. This year, however, the Centennial Gala will offer you the opportunity to stay right at the Convention Center where you can enjoy a terrific reception and meal, with wine and beverages included. We promise you an event you will long remember—and one devoid of long speeches!

Please take the opportunity to register now for the festivities. You may reserve an entire table for 10 at a cost of just \$1,200, or you may individually register for \$125 a person. When you compare the cost of this event with an off-premise dinner, we think you will agree that this is yet another “grand bargain.” Moreover, you can be assured that the evening will not be a late one, so you would still have time for one-on-one socializing.

Your hard work has helped shape our workers' compensation system into the very best in the country. Let's celebrate those efforts together. Mark your calendars now, and please take the opportunity to register for the Centennial Gala using the enclosed form. We'll see you in Hershey!

Very truly yours,

R. Burke McLemore, Jr.

R. Burke McLemore, Jr., Centennial Committee Chair

Steering Committee: R. Burke McLemore (chair), Hon. David B. Torrey, Benjamin L. Costello
Committee: Daniel K. Brimont, Hon. Elizabeth A. Crum, Stephen J. Fireoved, Jeffrey S. Gross,
Barbara L. Hollenbach, C. Robert Keenan III, Toni J. Minner, Peter A. Pentz,
Daniel R. Schuckers, Susan H. Swope, Matthew L. Wilson
Mailing address: Pam Kance | PBA | 100 South Street | P.O. Box 186 | Harrisburg, PA 17108-0186
Tel: 800-932-0311 ext. 2243 | Email: pam.kance@pabar.org | Website: <http://wc100pa.org>



The Pennsylvania Bar Association
Workers' Compensation Section Centennial Celebration Committee
cordially invites you to a

Gala Reception & Dinner

Monday, June 1, 2015
at the Hershey Lodge & Convention Center

to celebrate the 100th Anniversary of the enactment
of the Pennsylvania Workers' Compensation Act.
Join us in marking this historic event.

6 p.m.
Cocktails and hors d'oeuvres

7 p.m.
Dinner
Filet and crab cake entrée
Wine service

Business attire preferred



Please return this form to the PBA Meetings Department.

Yes, I plan to attend the Gala Reception/Dinner at \$125 per ticket.

Name _____ Spouse/Guest Name _____

Sup ID _____ Company _____

Address _____ City _____ State _____ Zip _____

Phone _____ Email Address _____

Yes, I would like to reserve a table, which includes seating for 10 guests at \$1,200 per table.

Sponsoring Company Name _____

A check, payable to PBA, is enclosed.

Or charge my: Mastercard Visa AMEX Discover

Acct# _____ Exp. Date: _____ Authorized amount: \$ _____

Billing Address: _____

Registration deadline for the reception/dinner is May 18, 2015. After the deadline, no refunds will be issued.

Return completed registration form and payment by May 18, 2015 to:
PBA Meetings Department, 100 South Street, Harrisburg, PA 17108-0186
Fax Credit Card Registrations to 717-213-2507
For more information, call 800-932-0311 ext. 2231.



Tee Off for the 10th Annual Kids' Chance of PA Golf Outing!

Register today for the 10th annual Kids' Chance of Pennsylvania Golf Outing and Recognition Luncheon, scheduled for Sunday, May 31, 2015, at the Hershey Country Club. Topping last year's perfect weather and outstanding attendance will be quite a feat, but we are rising to the challenge!

This year's golf outing will begin with a recognition luncheon demonstrating our appreciation for our generous supporters. Kids' Chance scholarship recipients will be in attendance to share their stories as well.

Golf will tee off at 1 p.m., so gather your foursome and plan to head out to the greens for a round of golf. Continue networking and socializing during a beef-and-beer gathering, where we will announce the winners of both the golf and raffle.

The mission of Kids' Chance of PA is to provide scholarship grants for college and vocational education to children of Pennsylvania workers who have been killed or seriously injured in a work-related accident resulting in financial need.

There's something for everyone at the 10th annual Golf Outing, and we are looking forward to another great day of Kids' Chance celebration and support. We hope to see you there!

To register for the golf outing, **[please visit our website.](#)**



Every year, millions of teens work in part-time or summer jobs that provide great opportunities for learning important life skills and acquiring hands-on experience. Federal and state rules regarding young workers strike a balance between ensuring sufficient time for educational opportunities and allowing appropriate work experiences.

TIPS for Achieving and Maintaining Compliance with Youth Employment Laws*

T rain Employees	I dentify Violations	P romote Compliance	S hare Accountability
<ul style="list-style-type: none"> ◆ Obtain compliance-assistance materials (posters, fact sheets, employer's guides and forklift stickers) from www.youthrules.dol.gov or request training from your local Wage and Hour Office. ◆ Incorporate youth employment laws and company policies regarding the employment of youth into training and orientation seminars for managers and teens. ◆ Provide a worksheet for youth to sign as part of initial training to test and verify their awareness of what equipment is off limits to them and what hours they can work. ◆ Attach a monthly youth safety reminder to a paycheck or time card. ◆ Conduct refresher training for all levels of management at regular staff meetings or special training sessions. 	<ul style="list-style-type: none"> ◆ Designate a youth employment compliance director whose responsibility is to monitor compliance. ◆ Conduct unannounced inspections of your establishment or branch location. ◆ Make checking for compliance a regular part of any routine quality or store inspection. ◆ Monitor the hours and times worked by youth under the age of 16 at the time payroll data is collected, and track and transcribe any violations. ◆ Establish a hotline for employees/parents/the public to report potential problems or concerns. ◆ Take time to interview youth at some regular interval to question them on the types of equipment they are operating. 	<ul style="list-style-type: none"> ◆ Create a "buffer zone" to prevent employees from being scheduled up to the latest time or longest shift that could be worked. ◆ Prepare two separate schedules: one for employees under age 16 and one for employees aged 16 and over. Only permit shift swapping among employees on the same schedule. ◆ Require a manager's signature on the schedule for all shift swaps. ◆ Verify the ages of all youth by requiring legally-acceptable proof of age at the time of hiring. ◆ Post the hours youth can work next to the time clock. ◆ Color-code time cards, badges and/or uniforms so that youth can be easily identified. ◆ Post a warning sticker or a stop sign on hazardous equipment. 	<ul style="list-style-type: none"> ◆ Encourage youth to say "no" to a manager who is asking them to work too late or to operate hazardous equipment. ◆ Add "monitoring to maintain compliance" to job descriptions of managers. ◆ Include "compliance with youth employment laws" as a performance factor in managers' reviews and recognize those who successfully maintain compliance on their shifts, in their departments or at their branch locations. ◆ Test youth about their understanding of policies and safety procedures before they start work. ◆ Send a letter to the parents of newly-hired teens informing them of the youth employment laws and who to contact to report any concerns.

Information about YouthRules! can be found at www.youthrules.dol.gov. For information about the laws administered by the Wage and Hour Division, log on to www.wagehour.dol.gov, or call the Department of Labor's toll-free helpline at 866-4USWAGE.

* Different rules apply to farms, and state laws may have stricter rules.

Prosecution Blotter

Section 305 of the Pennsylvania Workers' Compensation Act specifies that an employer's failure to insure its workers' compensation liability is a criminal offense and classifies each day's violation as a separate offense, either a third-degree misdemeanor or, if intentional, a third-degree felony.

First-time offenders may be eligible to enter into the Accelerated Rehabilitative Disposition (ARD) program. Defendants who enter the ARD program waive their right to a speedy trial and statute of limitations challenges during the period of enrollment; they further agree to abide by the terms imposed by the presiding judge. Upon completion of the program, defendants may petition the court for the charges to be dismissed. Although acceptance

into the program does not constitute a conviction, it may be construed as a conviction for purposes of computing sentences on subsequent convictions.

The violators and locations are as follows:

Chester County

Robert J. Sciarra, Jr., agent for O'Connor Brothers Construction Services, Inc., was sentenced on Jan. 5, 2015, by Judge James P. Macelree in the Chester County Court of Common Pleas. Mr. Sciarra pled guilty to five third-degree misdemeanor counts, was sentenced to five years probation and was ordered to pay restitution to the Uninsured Employers Guaranty Fund in the amount of \$136,897.91.

A View From The Bench

Prepared by the Committee on Human Resource Development of the Pennsylvania Workers' Compensation Judges Professional Association.

Update on Common Law Marriage

In the Summer 2014 edition of *News & Notes*, Vol. 19, No. 2, we reviewed the Commonwealth Court's decision in *Cooney v. WCAB (Patterson UTI, Inc.)*, 94 A.3d 425, 2014 WL 2615423, that held that cohabitation in a state that does not recognize common law marriage is insufficient to establish such a marriage. Therefore, the court held that the widow was not entitled to fatal claim benefits when the parties had moved to Pennsylvania after the date of our statutory abolition of common law marriages, effective Jan. 1, 2005, by Act 144 of 2004. The Supreme Court denied the "widow's" petition for allowance of appeal by its Feb. 10, 2015, order. *Brett Cooney (Deceased) – Amanda Serrano v. WCAB (Patterson UTI, Inc.)*, 393 WAL 2014.

UEGF Is Not Indirectly Liable for Counsel Fees

In *Trautman v. WCAB (Blystone Tree Service and Uninsured Employers' Guaranty Fund)*, 389 C.D. 2014, 104 A.3d 600, (Pa. Cmwlth.), filed Nov. 14, 2014, the Commonwealth Court addressed the liability of the Uninsured Employers' Guaranty Fund (UEGF) for unreasonable contest (UC) counsel fees assessed against the uninsured employer. The workers' compensation judge awarded those fees against the employer but declined to award them against the UEGF. Claimant appealed, the Workers' Compensation Appeal Board affirmed and claimant appealed to the Commonwealth Court.

Claimant's contention before the court was that the employer would not be financially able to pay the fees, so the UEGF should be ordered to pay them and then seek reimbursement from the employer. Claimant argued that, since §1605(b) of the act authorizes the UEGF to seek reimbursement from the uninsured employer of §440 fees that it has paid, the legislature must have intended that the UEGF pay them in the first instance. The court declined to accept that reasoning. Section 1601 of the act specifically provides that the UEGF is immune from §440 fees. The court reasoned that it would be absurd

to provide, and thus could not have been intended by the legislature, that the UEGF would not be directly liable under §1601 for UC fees, even for its own misconduct, but could be held indirectly liable under §1605(b) to pay for fees for conduct by another entity over which it had no control. The act directs that the UEGF is not to pay UC attorney's fees under any circumstances.

Statutory Employer Status Must Be Analyzed through Separate Provisions

In *Zwick v WCAB (Popchocoj)*, 428 and 429 C.D. 2014, 106 A.3d 251, (Pa. Cmwlth.), filed Dec. 11, 2014, the Commonwealth Court has further clarified that §302(a) and §302(b) are distinct provisions and apply to different scenarios. The court relied upon the Pennsylvania Supreme Court's decision in *Six L's Packing Co. v. WCAB (Williamson)*, 44 A.3d 1148 (Pa. 2012).

In *Zwick*, the claimant suffered disability and amputation injuries while performing construction work for his uninsured employer, Rodrigues. He filed claim petitions against Rodrigues and the Uninsured Employers' Guaranty Fund (UEGF), which joined Zwick, a licensed realtor and investor who rehabilitated residential properties and who had contracted with Rodrigues to work on the project during which the claimant was injured. He did not own the property where the injury occurred but was in charge of fixing it for resale by the owner. He hired Rodrigues, as well as other subcontractors, to do various aspects of the project. Zwick did not know that the claimant worked for Rodrigues until after the injury. Zwick did not carry workers' compensation insurance. The workers' compensation judge (WCJ) found that Rodrigues was claimant's employer but that Zwick was not a statutory employer, because the work that Rodrigues did was not a regular part of Zwick's business. The WCJ found that Rodrigues was primarily liable and the UEGF was secondarily liable, and the WCJ dismissed the joinder of Zwick. The UEGF appealed.

The Workers' Compensation Appeal Board, relying upon §302(a), also found Rodrigues primarily liable but reversed the WCJ's dismissal of the joinder and found that Zwick

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was a statutory employer and thus secondarily liable, and, because neither Rodrigues nor Zwick had coverage, found the UEGF potentially liable but with recourse against both. Zwick appealed, arguing first that §302(b) applied and that he did not come within its definition because he did not occupy or control the premises where claimant was injured and that construction was not part of his regular business. Then he argued that §302(a) did not apply because the injury did not happen while the claimant was performing the listed activities in that section. The court rejected both arguments. The Supreme Court's decision in *Six L's* did not limit §302(a)'s application to moving soil, rocks, minerals or trees. Rather, in addition to subparagraphs (1) (i) and (ii), it pertained to contractual delegation of parts of an employer's regular or recurrent business activities to another, as set forth in subparagraph (2). The WCJ had essentially found that construction rehabilitation was a part of Zwick's overall business, that Zwick had hired Rodrigues to perform construction tasks so that the property could be sold, and that Zwick was actually the general contractor for the project. Zwick met the §302(a) (2) criteria for statutory employer status and was directly liable to the claimant. The court made clear that if the claimed statutory employer meets any of the criteria in either §302(a) or (b), liability attaches.

Partial Disability versus Suspension

In the case of *Janice Donahay vs. WCAB (Skills of Central PA, Inc.)*, No. 869 C.D. 2014, 2015 WL 446253, Pa. Cmwlth., filed Feb. 4, 2015, the Commonwealth Court of Pennsylvania agreed with the WCJ and the Workers' Compensation Appeal Board in finding that the claimant was not entitled to receive ongoing partial disability benefits after returning to work, even though she was earning less than her pre-injury wages, because her loss of earnings was not attributable to her work injury but rather was the result of economic conditions. Prior to her work injury, claimant worked a great deal of overtime because the employer was understaffed. While she was off work, a change was made, and the number of staff was increased so that there would be less overtime, a cost-saving measure for the employer. Claimant returned to work with physical restrictions but was able to return to her time-of-injury position because the mentally-challenged adults located in the group home where she worked were all fully ambulatory. She also spent approximately one day per week doing paperwork, both before and after the work injury, as a team leader. She had not been asked to do anything beyond her doctor's medical restrictions after she returned to work, and if there was something that she could not lift, she would simply leave it for some other staff member to take care of. She testified that if a client decided not to walk, she would have to call another staff member for assistance, that she would not be able to catch a falling client or be able to help them up, and that the protocol was to call 911 if a client falls. She also testified that she would not be able to care for a client who was in a wheelchair, but she had not been asked to do so. As the team leader, the claimant would set the work schedule for herself and the other residential services assistants who were assigned

to that group home. Her doctor did not testify that she was limited in her number of hours that she was allowed to work and did not testify that she was unable to perform her time-of-injury job due to her medical restrictions.

The Commonwealth Court first noted that under *Landmark Constructors, Inc. vs. WCAB (Costello)*, 747 A.2d 850 (Pa. 2000), the term "disability" is synonymous with loss of earning power, and a worker whose injury has caused a decrease in their earning power is entitled to receive partial disability benefits amounting to 66 2/3 percent of the difference between their pre-injury average weekly wage and their earning power thereafter, provided that reduction in earning power is "caused by the compensable injury." The court cited *Harle vs. WCAB (Telegraph Press, Inc.)*, 658 A.2d 766 (Pa. 1995) for the principle that a claimant whose post-injury earnings are less than the pre-injury earnings is not automatically entitled to partial disability benefits, and no disability benefits are due unless the reduction in earnings is tied to a loss of earning power attributable to the work injury. The court also cited *Trevdan Building Supply vs. WCAB (Pope)*, 9 A.3d 1221 (Pa. Cmwlth. 2010), because that case involved a situation where overtime work was eliminated by the employer, due to a downturn in the economy that required a restructuring of the workforce. In *Trevdan*, the WCAB had reversed the WCJ's grant of a suspension, and the Commonwealth Court reversed the board and granted the suspension. In discussing *Trevdan*, the court wrote in relevant part as follows: "The claimant (Pope) had returned to work at his pre-injury hourly wage but experienced a loss of earning because he was no longer able to work overtime... Because the claimant was doing his regular job and his loss of wages as of Oct. 1, 2007, was due to economic circumstances, we held that the claimant's disability benefits should be suspended as of that date."

In *Donahay*, claimant argued that the previous decision of the Supreme Court in *Harper & Collins vs. WCAB (Brown)*, 672 A.2d 1319 (Pa. 1996), was directly on point and required the grant of partial disability. The Commonwealth Court analyzed the holding of that case and disagreed with the claimant, explaining that, in the *Harper & Collins* case, the claimant was returned to work in a light-duty position, rather than her pre-injury position, and the claimant was unable to perform her pre-injury position because of her medical restrictions, but that was not the situation confronting claimant Donahay, who was in fact able to perform her regular position and was returned in her regular position. The court further noted that any concern that there might be something that would occur at work that she was unable to do physically was merely hypothetical, and she would most likely be able to schedule around that since she is lead worker. The court clearly felt that the claimant's loss of earning power was not due to her work injury but rather was only caused by economic circumstances; therefore, she was not entitled to partial disability benefits.

Loss of Use Claim for Multiple Extremities

In *Jacqueline Fields vs WCAB (City of Philadelphia)*, No. 42 C.D. 2014, 104 A.3rd 79, Pa. Cmwlth., filed Nov. 14, 2014, the Commonwealth Court considered whether

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benefits for multiple specific losses arising from the same injury should be paid consecutively (one at a time) or concurrently (all at the same time). In concluding that such benefits should be paid consecutively, the court considered a number of its own prior precedents as well as the Pennsylvania Supreme Court's decision in *Turner vs. Jones and Laughlin Steel Corp.*, 389 A.2d 42 (Pa. 1978). In *Turner*, the Supreme Court held that a claimant who has two separate losses that qualify for total disability benefits under Section 306 (c) (23) has the option during their lifetime to elect to take each specific loss benefit separately, instead of receiving Section 306 (c) (23) total disability benefits, depending upon what the WCAB, in its discretion, determines would provide the optimum benefit available to the claimant within the statutory scheme. The Supreme Court noted in that decision that, generally, total disability benefits would be more beneficial because they have no time limit.

In *Fields*, claimant argued that *Turner* stands for the proposition that Section 306 (c) (23) gives the WCAB discretion to determine that the best option for the claimant is concurrent payments, as that ensures that she will receive the maximum compensation possible within the statutory scheme. Commonwealth Court disagreed. The court stated that "(T)he Board's discretion under Section 306 (c) (23) ... has never been construed to mean that benefits for multiple specific losses arising from the same injury be paid concurrently in order to maximize weekly benefits. In this regard, it must be noted that concurrent payments would not increase the total amount of specific loss benefits paid, but would simply provide higher weekly benefits paid over a shorter period of time. Moreover, the plain language of Section 306 (c) (21) of the Act dictates that the City pay Claimant's specific loss benefits consecutively." The court then explained that the commutation provisions of the act are not consistent with the relief claimant was requesting. The court stated, "The Legislature provided a specific mechanism for accelerated payments and there is no authority or statutory support for the concurrent payment of benefits for multiple specific losses arising from the same injury."

Loss of Use of Legs Due to Back Injury

In *Scott Arnold vs WCAB (Lacour Painting, Inc.)*, No. 565 C.D. 2014, 2015 WL 340617, Pa. Cmwlth., filed Jan. 28, 2015, the claimant sustained work-related injuries to his lumbar and thoracic spine, described in the Bureau of Workers' Compensation documents as a "burst fracture at L1, bilateral displaced transverse fractures at L1, nondisplaced fracture throughout the bilateral lamina and spinous process at T12," and he was voluntarily paid total disability benefits. His review petition, alleging that he had suffered specific loss of use of both legs separate and apart from his accepted back injury, was granted by the WCJ. Following surgery, the claimant had been confined to a wheelchair, and although he could stand on his left leg, his right leg felt dead, he felt nothing in his left leg below the knee and he could not walk more than

a few steps. He also testified that he was suffering from lower back pain but that, in his own opinion, the lower back pain by itself would not have prevented him from returning to work.

Regarding the WCJ's decision, the court wrote:

"The WCJ found that (in a report) Dr. Freed had opined that claimant suffered from incomplete paraplegia, neurogenic bowel and bladder movement, chronic and persistent pain as a result of the work injury, and that the Claimant had an ongoing unresolved spinal fracture injury with residual problems separate and apart from the loss of use of both of his legs... The WCJ found the Claimant's testimony and Dr. Freed's report credible and persuasive, and found that the Claimant had proven total loss of use of both of his legs as a result of the December 19, 2007 work injury, as of the date of his work injury, for all practical intents and purposes... However, the WCJ denied the Review Petition insofar as its sought specific loss benefits, concluding that only the Board had authority under Section 306 (c) (23) to determine whether Claimant's loss of use of his legs could be characterized as anything other than a total disability benefit. The WCJ declined to make any credibility determination or finding concerning whether Claimant's total loss of use of his legs was separate and distinct from that which would normally follow from Claimant's work injury because, in his view, this authority rested exclusively with the Board."

Claimant appealed the WCJ decision and also filed a specific loss petition with the WCAB. The board affirmed the WCJ's decision and order, and it denied the specific loss petition, holding that Section 306 (c) (23) created a presumption in favor of total disability and that the board's role was confined to determining whether another provision would prove more beneficial to the claimant. The board's opinion discussed the Supreme Court's decision in *Turner vs. WCAB (Jones and Laughlin Steel Corp.)*, 389 A.2d 42 (Pa. 1978), which was already discussed above in the *Jacqueline Fields* case. The Commonwealth Court dismissed claimant's argument that he had been denied procedural due process before the board. The court held (as it had in the *Fields* case) that the claimant was not entitled to receive two awards of specific loss benefits concurrently. The court's opinion concluded as follows: "Accordingly, because the Claimant has failed to identify any reason consistent with the statutory scheme of the Act why specific loss benefits would be more financially advantageous to him than total disability benefits, we conclude that the Board did not abuse its discretion in denying the Specific Loss Petition. The orders of the Board are affirmed."

Course of Employment: Dog Bite

In *Hoover House Restaurant vs. WCAB (Soverns)*, No. 309 C.D. 2014, 103 A.3rd 441, Pa. Cmwlth., filed Nov. 10, 2014, the claimant sustained facial lacerations and permanent scarring when he was bitten by a co-worker's dog while on a smoking break. The workers' compensation

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judge concluded that the injury was compensable under the Workers' Compensation Act. The evidence showed the claimant was on a permitted smoking break in an approved area where everybody smoked and the employer had provided an ashtray for the employees' use. A co-worker's dog had been dropped off by the co-worker's father and was apparently tied in that area outside, and during his smoking break, the claimant petted the dog and let the dog lick his face. Then when he went to stand up, the dog growled and bit his lower lip, causing a visible scar on the center part of his chin, directly below his lower lip. The claimant also missed six days of work and incurred numerous unpaid medical bills.

On appeal, the employer challenged whether the WCJ had issued a reasoned decision, whether the claimant's actions constituted merely a temporary departure from his employment and were actually furthering the employer's business interest, and whether or not the claimant was in the course of his employment. After dispensing with the reasoned decision arguments, the court noted that claimant was injured on the employer's premises, and "Claimant did not actively disengage from his work to pet the dog" [unlike the claimant in *Trigon Holdings Inc., vs WCAB (Griffith)*, 74 A.3d 359 (Pa. Cmwlth. 2013), but rather more similar to the claimant in *The Baby's Room v. WCAB (Stairs)*, 860 A.2d 200 (Pa. Cmwlth. 2004), because he was on a break expressly permitted by the employer in an area designated by the employer as the break area, and his activity in petting the dog was only a temporary departure from his work duties]. The court also distinguished this situation from that which presented itself in *Penn State University vs. WCAB (Smith)*, 15 A.3d 949 (Pa. Cmwlth, 2011), and the facts in various other course of employment cases which were discussed. The court did not agree that the claimant had essentially abandoned his employment or had intentionally participated in some inherently high-risk behavior that would be sufficient to remove the claimant from the course and scope of his employment. The court concluded that the act of petting the co-worker's dog was simply "an inconsequential departure from... (claimant's) job as a line cook."

C & R, Possible Apportionment of Counsel Fee

In *Mayo v. WCAB (Goodman Distribution, Inc.)*, No. 683 C.D. 2014, 2015 WL 110141, Pa. Cmwlth., filed Jan. 8, 2015, claimant's former attorney petitioned for review of an order of the Workers' Compensation Appeal Board (WCAB) that affirmed an order of a workers' compensation judge (WCJ) approving a Compromise and Release Agreement and ordering payment of the entire attorney fee in the C & R Agreement to claimant's current attorney. Claimant's former attorney contended that the WCJ and the WCAB erred in awarding the current attorney the entire fee, where the former attorney represented claimant for a majority of the time, performed mostly all of the work regarding his claim and was negotiating a settlement at the time of his discharge. The former attorney asserted that the WCJ should have equitably apportioned the C & R attorney fee. The WCAB concluded that the WCJ has the authority to determine

what constitutes a reasonable attorney fee, that the WCJ and the WCAB have the authority to allocate the attorney fee between two attorneys who represented a claimant, and that a claimant's right to change counsel does not permit the claimant to unilaterally negate his liabilities toward former counsel.

The order of the WCAB, affirming the WCJ's determination that the entire fee should be paid to current counsel, was affirmed by the Commonwealth Court. The Commonwealth Court reasoned that claimant's former attorney received a 20 percent fee, totaling \$14,952.34, from February 2009 through March 2012 and continued to receive this contingent fee even after being discharged by the claimant. In addition, the former attorney was discharged two to four months prior to the C&R hearing, and the former attorney never had a settlement offer from the defendant prior to discharge. The Commonwealth Court determined that the former attorney's earned fee (\$14,952.34) was adequately enforced and protected, and he was not entitled to an additional fee from the C&R proceeds.

IRE, MMI and Possible Need for Additional Surgery

In *Neff v. WCAB (Pa. Game Commission)*, No. 130 C.D. 2014, 2015 WL 263941, Pa. Cmwlth., filed Jan. 22, 2015, the Commonwealth Court affirmed the decision of the WCAB, finding that the defendant met its burden in the underlying modification petition based upon an impairment rating evaluation (IRE). The claimant argued that the modification was based upon an invalid IRE, because it is undisputed that claimant could undergo additional surgery in an attempt to improve her elbow condition, and, therefore, claimant has not yet reached MMI. However, the WCJ found persuasive and credible the IRE physician's medical opinions that claimant had reached MMI by the date of the IRE and that the ongoing effects of the acknowledged work injury have resulted in a one percent whole person impairment. The Commonwealth Court reasoned that, because the physician's credited medical opinions establish that claimant had reached MMI in accordance with the Guides to the Evaluation of Permanent Impairment (*Guides*), employer's modification petition was not based on an invalid IRE. They distinguished this from an earlier case, *Combine v. WCAB (National Fuel Gas Distribution Corp.)*, 954 A.2d 776 (Pa. Cmwlth. 2008), appeal denied, 967 A.2d 961 (Pa. 2009), wherein the IRE physician testified that an opinion of MMI was unnecessary. In *Neff*, the IRE physician unequivocally and repeatedly opined that claimant had reached MMI, regardless of whether she undergoes surgery in the future, and that claimant had an impairment rating of one percent. Because this credited testimony established that claimant was at MMI and the impairment rating was calculated in accordance with the most recent edition of the *Guides*, claimant is not entitled to a reversal.

PA Liquor Control Board v. WCAB (Kochanowicz)

In *PA Liquor Control Board v. WCAB (Kochanowicz)*, No. 760 C.D. 2010, 2014 WL 7403464, Pa. Cmwlth., filed Dec. 30, 2014, defendant petitioned in this mental injury case for the review of an order from the Workers' Compensation

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Appeal Board (WCAB) that affirmed the decision of the workers' compensation judge (WCJ) granting claimant's claim petition for benefits for a work-related mental injury. The Commonwealth Court initially reversed the board's order, concluding that claimant had failed to establish that his mental injuries were the result of "abnormal working conditions." During the initial appeal, the court noted that claimant had been provided pamphlets and training on workplace violence and robberies and evidence that demonstrated that 99 robberies occurred in the area of claimant's store in the six years prior to the robbery in question. The court concluded that claimant could have anticipated being robbed at gunpoint; therefore, the robbery did not constitute an abnormal working condition. *PA Liquor Control v. WCAB (Kochanowicz)*, 29 A.3d 105, 110-11 (Pa. Cmwlth. 2011) (*Kochanowicz I*).

Claimant appealed to the Supreme Court, which granted the appeal, vacated the Commonwealth's order in *Kochanowicz I*, and directed the Commonwealth Court to reconsider the order in light of *Payes v. WCAB (PA State Police)*, 79 A.3d 543, 552 (Pa. 2013). In *Payes*, the Supreme Court held that, because mental injury cases are highly fact-sensitive, a reviewing court must **give deference to the fact-finding functions of the WCJ and limit review to determining whether the WCJ's findings of fact are supported by the evidence.** See *PA Liquor Control v. WCAB (Kochanowicz)*, 85 A.3d 480 (Pa. 2014) (*Kochanowicz II*) (Emphasis added).

In addressing the remand, the Commonwealth Court provides a brief review of the precedential case law in this area. In *Martin v. Ketchum, Inc.*, 568 A.2d 159, 164 (Pa. 1990), the court established that, in order to establish a mental injury, a claimant must: 1) prove by objective evidence that he has suffered a psychiatric injury, and 2) prove that the injury is not a subjective reaction to a normal working condition. This standard was further refined by *Wilson v. WCAB (ALCOA)*, 669 A.2d 338 (Pa. 1996), where the Supreme Court indicated that, even if a claimant identifies an actual employment event that precipitated a psychiatric injury, the claimant must still prove the event(s) to have been abnormal before he can recover. See also *Antus v. WCAB (Sawhill Tubular Division, Cyclops Industries, Inc.)*, 625 A.2d 760, 766 (Pa. Cmwlth. 1993), *affirmed*, 639 A.2d 20 (Pa. 1994), *PHRC v. WCAB (Blecker)*, 683 A.2d 262 (Pa. 1996), *Hershey Chocolate Co., v. Commonwealth*, 682 A.2d 1257, 1264 (Pa. 1996) and *Davis v. WCAB (Swarthmore Borough)*, 751 A.2d 168, 177 (Pa. 2000).

Under *Payes v. WCAB (PA State Police)*, 79 A.3d 543, 552 (Pa. 2013), the Supreme Court held that whether or not working conditions are "normal" is a mixed question of law and fact and must be evaluated on a case-by-case basis, because certain mixed questions are more heavily weighted toward fact, while others are more heavily weighted toward law. The Supreme Court went on to say that **the more fact-intensive the inquiry, the more deference a reviewing court should give to the WCJ's findings below.** 79 A.3d at 549, n. 3 (Emphasis added). The court cautioned that, in performing such a

review of the WCJ's findings of fact, the findings may only be overturned if they are arbitrary and capricious.

On remand, applying the *Payes* analysis to the facts in *Kochanowicz*, the Commonwealth Court concluded that the WCJ's findings were supported by substantial evidence, and it supported the conclusion that the armed robbery that caused claimant's mental injury was not a normal working condition.

Mr. Kochanowicz (claimant) was a 30-year employee and the manager of a liquor store that experienced an armed robbery in April 2008. During the robbery, a gun was held to claimant's head while the safe and cash register were emptied into a back pack. Claimant and a co-worker were then tied to a chair with duct tape. Importantly, this was the first robbery the claimant had experienced in his 30-year course of employment, and he had no history of any psychological treatment.

Both medical experts testified that claimant was experiencing Post Traumatic Stress Disorder (PTSD) as a result of the robbery. Claimant's expert also credibly testified that the PTSD was a disabling condition. The only remaining issue then was whether the armed robbery constituted an "abnormal working condition."

In reviewing the armed robbery, the WCJ concluded that, despite the number of incidents of robberies at liquor stores and the training claimant received on how to deal with such incidents, a robbery at gunpoint with the gun pointed to the back of claimant's head constituted an abnormal working condition. The WCJ's findings in this regard rely on the reasoning of the Supreme Court in *Payes II*. Specifically, the conclusion that, even in positions where individuals routinely face dangerous or stressful situations, a **"singular extraordinary event"** may occur that would constitute an abnormal working condition.

In this instance, the WCJ concluded that, despite receiving training about workplace violence, including specific information on robberies and the general frequency of liquor store robberies, the training materials themselves seemed to indicate that armed robberies were relatively rare events, like "flood, fire and other disasters." In addition, the judge noted that, in over 30 years of employment, this was the first time claimant had been involved in an armed robbery; thus, the robbery constituted a "singular extraordinary event" that was an abnormal working condition. Thus, the WCJ concluded that claimant's PTSD was compensable. In reviewing this conclusion on remand from the Supreme Court, the Commonwealth Court indicated, in light of *Payes II*, it must give deference to the WCJ's factual determination that the armed robbery constituted an abnormal working condition and was thus compensable.

Finally, the Commonwealth Court distinguished *McLaurin v. WCAB (SEPTA)*, 980 A.2d 186 (Pa. Cmwlth. 2009). The court noted that under *Payes II*, deference is to be given to the WCJ as the fact-finder. In *McLaurin*, the WCJ credited defendant's evidence that a high frequency of life-threatening passenger disturbances constituted a normal working condition, whereas in *Kochanowicz*, the

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WCJ concluded that the armed robbery was not a normal working condition, as claimant had never experienced such a situation before, despite 30 years of employment. Thus giving deference to the WCJ's findings as to what constituted an abnormal working condition, the WCJ's conclusion that the robbery was an abnormal working condition was supported by the credible evidence and could not be overturned on appeal.

Nancy Keller v. WCAB (UPMC Presbyterian Shadyside)

In this concurrent employment case, *Nancy Keller v. WCAB (UPMC Presbyterian Shadyside)*, 370 C.D. 2014, 2014 WL 7014068, filed Dec. 15, 2014, at the time of her Nov. 24, 2006, work injury at UPMC Presbyterian Shadyside (UPMC), claimant was also employed at Monongahela Valley Hospital and at the University of Pittsburgh (Pitt). Prior to her work injury, on Aug. 2, 2006, claimant had tendered her resignation from a full-time teaching position with Pitt, effective Dec. 31, 2006. Thereafter, claimant subsequently sustained a work-related wrist injury while working for UPMC on

Nov. 24, 2006. Claimant testified that, as of Nov. 24, 2006, she had intended to return to Pitt in a part-time teaching position the following fall, but no evidence was presented which supported that she ever returned to Pitt on or after Dec. 31, 2006.

On appeal to the Commonwealth Court, claimant appealed the WCAB's determination that claimant's voluntary resignation from her position at Pitt precluded any wage loss from her position at Pitt being included in calculating post-injury partial disability benefits.

Claimant argued that, while she did resign from her position at Pitt, the unavailability would have been temporary, as she intended to return to Pitt in the fall of 2007. Despite this contention, the Commonwealth Court noted that when claimant resigned, there was no guarantee that she would be rehired by Pitt in the fall, and, as a result, that portion of the wage loss attributable to the lost earnings from Pitt were attributable to her decision to resign and had no relationship to her work injury. As the reasons behind the wage loss were personal to the claimant and not related to the work injury, the Commonwealth Court affirmed the decision of the board that the wage loss from Pitt was not to be included in the calculation of claimant's on-going partial disability benefits.

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