Recalling the founding of the ACBA and our purpose

By Ron Schuler

On February 28, the Allegheny County Bar Association will commemorate the 150th anniversary of its founding. While other cities established bar associations prior to Pittsburgh (the Hartford County Bar Association purported to be the oldest, founded in 1783), the founding of Pittsburgh’s new bar association occurred at the beginning of a period in which the legal zeitgeist buzzed about the formation of organizations that invited all members of the Pittsburgh legal profession to join and take part in defining its aims and objectives. Our bar association, especially with the jolt of energy it received upon the arrival of James I. Smith, III as executive director in 1962, has become one of the most admired bar associations in the nation for its large scale of membership, innovative spirit and collegiality.

Although democratization has happily given greater opportunities for previously marginalized voices to be heard and overlapped with an “age of democratization,” the ACBA ceased to be an organization of the so-called elite lawyers of Pittsburgh only, and eventually became an organization that invited all members of the Pittsburgh legal profession to join and take part in defining its aims and objectives. Our bar association, especially with the jolt of energy it received upon the arrival of James I. Smith, III as executive director in 1962, has become one of the most admired bar associations in the nation for its large scale of membership, innovative spirit and collegiality.

Over time, as the “age of organization” morphed and overlapped with an “age of democratization,” the ACBA ceased to be an organization of the so-called elite lawyers of Pittsburgh only, and eventually became an organization that invited all members of the Pittsburgh legal profession to join and take part in defining its aims and objectives. Our bar association, especially with the jolt of energy it received upon the arrival of James I. Smith, III as executive director in 1962, has become one of the most admired bar associations in the nation for its large scale of membership, innovative spirit and collegiality.

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ACBA to move into temporary space by March 1

By Mark Higgs

The relocation of ACBA headquarters to the 6th floor of the Koppers Building is underway. The move will be completed by March 1, with no interruption in service levels provided to members. All regular operations will remain unchanged.

The front desk and reception area will be clearly visible upon exiting the elevators on the 6th floor. The Pitt, Duquesne and C Conference rooms will all be located on the 6th floor, while ample signage will help direct members to their new locations. The rooms will be slightly smaller than their 4th floor counterparts. All meetings that would normally occur in the James I. Smith III Boardroom will instead take place in the 9th floor conference area.

Signs on the 4th floor will direct members to temporary ACBA headquarters during renovations.

“Our priority has been to provide our members the best benefits, while choosing the best financial option for the organization,” said ACBA Executive Director David Blaner. “Expect no fluctuation in services we provide during our temporary relocation.”

Welcome New Members

The following were approved as new ACBA members at the February 4 meeting of the Board of Governors.

Active members
Jessica Barrera, Esq.
William Bevan, III, Esq.
Maya Cherityan, Esq.
Anthony W. Cosgrove, Esq.
Gabriel C. Dakis, Esq.
Jacob B. Dunston, Esq.
Kirsten Franzen, Esq.
Dana L. Fruzynski, Esq.
Raul E. Garcia, III, Esq.
Timothy Graham, Esq.
Kelsey Kennedy, Esq.
Jennifer Modell, Esq.
Drew W. Rummel, Esq.
Anna Z. Skipper, Esq.
Sarah Tobias, Esq.
Joseph Turman, Esq.
Allegra Cristina Wiles, Esq.
David M. Zvirman, Esq.

Associate members
Patricia L. Schoenberger, Esq.
Christine Trott-Cosgrove, Esq.

Law student members
Priya Desai
Zoe Gujral
Christopher T. Howe
Trisha Klan
Bert D. Klym
Jenna C. Schlosser
Nicholas C. Schollie
Jean Yesudas

Join the ACBA Workers’ Compensation Section
For more information on the ACBA Workers’ Compensation Section, visit ACBA.org/Workers-Compensation-Section or email liaison Amy Giesy at agiesy@acba.org.

“The full text and/or headnotes for the cases below appear in the online, searchable PLJ Opinions located at www.acba.org.”

Commonwealth of Pennsylvania v. Lauren O’Connor, Luzarra, J.

Criminal Appeal—Sentencing (Discretionary Aspects)—Attempted Homicide—Maximum Sentence—Standard Range
Defendant challenges the maximum sentence imposed for conspiracy to commit attempted homicide, but greatly exaggerates her cooperation with authorities and mitigation evidence.

Criminal Appeal—Sentencing (Discretionary Aspects)—Attempted Homicide—Maximum Sentence—Standard Range
Defendant challenges the maximum sentence imposed for conspiracy to commit attempted homicide, but greatly exaggerates her cooperation with authorities and mitigation evidence.

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The Pennsylvania Workers’ Compensation Act: History and policy over 105 years

By David B. Torrey

Pennsylvania, like most states, began consideration of enacting workers’ compensation legislation in the early years of the twentieth century. A number of factors were at work. They included: 1. Societal pressure for legislation that would address the Industrial Revolution’s epidemic of uncompensated work injuries and deaths. 2. Employer desire to be free of unpredictable tort liability in civil actions. 3. The positive experience of similar programs in England and Germany. 4. The 1911 enactment of such laws in other states, including Massachusetts, New Jersey, New York, and Wisconsin. All of these factors coalesced to motivate the Pennsylvania legislature to consider a workers’ compensation system. Governor John K. Tener, in 1911, established a commission to make recommendations with regard to the advisability and form of such legislation.

In 1912 the commission proposed such legislation. The law was modeled on the British Workmen’s Compensation Laws of 1897 and 1906, which imposed liability for the first time on employers, on a no-fault basis, for work accidents. The British law’s approach ultimately won out over the German concept of compensation insurance, a more comprehensive system which also provided coverages for non-work-related illnesses and injuries. The debate existed with regard to what coverages and benefits were to be included. The most debated issue related to illnesses and injuries.

In 1913, the commission recommended liability be extended to cover injuries caused by products of the work process. The law was ultimately passed on June 2, 1915, to be effective in its present form. The most prominent benefit in the present day is that recovery is reflective of insurance benefits, not damages.

In the decades which followed, the law has been amended several times over the years. The Supreme Court immediately required that in disputed cases, adjudications over compensability had to be based on legally competent evidence, and the law immediately amended the law in compliance. The court also banned lay representation. The remedy for these two acts, a less formal dispute resolution process, was suppression at the outset. In the present day, lawyer representation is generally the rule, with contingent fees capped at 20%. Though the law retains many familiar, century-old aspects, most participants agree that the modern history of workers’ compensation in our state began in 1972. That same year saw the legislature’s resolution to partial disability was eased. The crisis has passed, but workers’ compensation has endured as legislation that has served society well.

Torrey is a Workers’ Compensation Judge and an Adjunct Professor of Law at the University of Pittsburgh School of Law.

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By Ronald Fonner

If you're like me, the Lawyers Journal is a must-read: it is my connection to practice management tips, trends in legal technology, and substantive changes in the law; along with ACBA news and inspiring stories about members advocating for their clients and community.

With this edition, we shine a light on Workers’ Compensation as a practice specialty. Our goal in designing this issue was to provide topics that, while Workers’ Comp-related, overlap with other areas of law. To that end, the pages ahead will outline the benefits available for cancer-stricken fire-fighters, discuss the advent of telemedicine following work injuries, and break down subrogation in cases involving Heart & Lung benefits.

Additionally, with the help of the Honorable David Torrey – a nationally recognized member of our Pittsburgh workers’ compensation bench – we look at how the workers’ compensation system treats the compensability of mental/psychological injuries. ACBA partner USI will detail the need for, and different types of, disability income, while Ametros foreshadows deeper involvement of Medicare set-asides in personal injury settlements.

We also introduce you to the vital role played by the Workers’ Compensation Appeal Board and follow along as the newest Pittsburgh judicial appointee – The Honorable Eric Abes – navigates his first six months of the bench. And, most importantly, we help you look good by providing a handy “cheat sheet” for the most popular questions asked by clients, family and friends!

Like the ACBA as a whole, the Workers’ Comp Section prides itself on collegiality. One of the more unique things about our Section is the annual September golf outing to benefit Kids’ Chance of Pennsylvania. In 2019 alone, the event – which brings together attorneys and judges to Shannopin Golf Club for a morning of CLE followed by lunch and golf – delivered $10,000 to the Kids’ Chance organization, whose scholarship program financially supports the children of individuals who suffer catastrophic or fatal workplace injuries.

We welcome your interest in our Section and encourage you to attend one of our CLE’s, utilize our ACBA partners, and/or reach out to the attorneys who contributed their expertise to complete what is certain to be a collector’s edition Lawyers Journal.

Ronald J. Fonner is a Partner with QuatriniRafferty, PC. He is certified by the Pennsylvania Bar Association as a Workers’ Compensation Specialist and focuses his practice exclusively on the representation of injured workers in claims for workers’ compensation and Heart & Lung benefits.

A Message from the ACBA Workers’ Compensation Section Chair

Ronald Fonner

Scholarships available to children of ACBA attorneys who wish to attend Yale or University of Paris

The children of Allegheny County attorneys who plan to attend Yale or Sorbonne University (the University of Paris) are eligible for significant scholarships thanks to the Kennedy T. Friend Scholarship Fund.

The fund was established by Kennedy T. Friend, a distinguished Allegheny County attorney who died in 1928. His will stated that his estate would benefit the children of Allegheny County attorneys who attend either of these institutions. The children of any attorney with a principle office in Allegheny County are eligible.

Scholarship applications should be submitted at the same time as applications to the school. For more information or to apply, visit www.ACBF.org/Kennedy-Scholarship-Fund or contact Angelina Lowers, the fund’s fiduciary advisor, at 412-807-3309 or agnelina.lowers@pnc.com.

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Disability insurance helps to protect your income

By USI Affinity

When you hear “insurance,” what do you think of? Most would immediately think of the coverages that may be required, such as auto and home or malpractice insurance. Next may be the different types of insurance you get through your employer, which may include a life insurance policy or health insurance. While all these coverages are important, there is one other insurance solution that can make all the difference for you and your loved ones, should the unexpected occur: disability insurance.

Disability insurance helps to protect your income should you develop a disability, whether an injury or illness, that prevents you from working for a period of time. The money that is disbursed on a monthly basis from this policy can go toward paying bills and/or daily living expenses that may be difficult to manage without a steady income for the duration of your disability.

Disabilities are not specific to just one age group.

- The Social Security Administration asserts that it paid out approximately $10.5 billion to 8.5 million disabled workers in 2018. This averages out to $1,234.00 per month for each disabled worker. 1
- Workers out of work with a disability and their dependents account for 13% of the total Social Security benefits paid out. 1
- Over one in four of today’s 20-year-olds will become disabled before age 67. 1


As with any type of insurance, there are aspects of a person’s life that will impact their policy. These factors include age, occupation, gender, smoker status, location and preexisting health conditions.

A feature you will want to look for in a policy is called “own occupation.” The plan should be designed to pay benefits if you are totally disabled and the incapacity has left you completely and continuously unable to perform the substantial and material duties of your regular job. Therefore, benefits are payable even if you can perform a job other than your own.

Just as with life insurance, benefit amounts vary based on the needs of the individual. Coverage does not replace 100% of the insured’s income. However, many insurance policies do pay a high percentage of that lost income, generally 60 percent but could be as high as 70 percent. Each policy and carrier will have different stipulations on how long your benefits are payable. However, this is an important component to pay attention to when reviewing your policy. How long you are able to keep your policy active will depend on your age at the time the policy is put into force.

More often than not, there may be a waiting period otherwise known as an “elimination period.” This is the period of time after the policy is approved that the insured must wait before their benefits become active.

As a member of the Allegheny County Bar Association, Group Long-Term Disability Insurance solutions are available through the ACBA Insurance Program to help you continue saving for your retirement and protect your assets. Contact USI Affinity to learn about your options for disability insurance, online at www.mybarinsurance.com/allegheny/personal-insurance or call 800-327-1550.

Find this page helpful? Want more information and resources to help you run your practice? Check out the ACBA’s Law Practice Management Center at ACBA.org/PracticeManagement.
ACBA Workers’ Compensation Section
golf outing to be held Sept. 17

Outing benefits the educational pursuits of children whose parents were injured or killed in a work-related accident

By Zandy Dudiak

For the “better part of two decades,” the ACBA Workers’ Compensation Section has been raising money through a golf outing for a nonprofit that benefits the educational pursuits of children whose parents were injured or killed in a work-related accident.

This year, the event will return to the links at Shannopin Country Club in Ben Avon Heights on Sept. 17. Participants can enjoy a day of golf, earn a CLE credit, eat lunch and network. A portion of the event proceeds benefits Kids’ Chance of Pennsylvania, a 501 (c)(3) organization dedicated to helping kids who need assistance paying for college or vocational education because a parent was injured or killed in a work-related accident.

The golf outing raised about $10,000 in 2019, the first time in the history of the event that it hit that milestone mark, according to Michael Quatrini, who chairs the Workers’ Compensation Section’s Golf Outing Committee.

“Kids’ Chance occupies a special place in the workers’ compensation world because it’s celebrated and supported by attorneys – those who represent workers and those who represent employers and insurers – and everyone involved in the workers’ compensation process,” Quatrini said.

Support also comes from companies, insurers and medical professionals, he added, as well as event sponsors. The 2019 outing drew an estimated 65 participants, including lawyers, judges and sponsors.

The golf outing also includes the chance for the winning team to earn the prestigious Joseph F. Grochmal Memorial Cup, named for a legendary practitioner and famed golf fan, Quatrini said.

“Joe was revered for his collegiality throughout his practice of law,” Quatrini said. “He was a legend in that sense.”

He said the structure is “unique” for a golfing fundraiser in that the registration fees of participants go toward the cost of golf, food and drink, allowing the sponsorship money to benefit Kids’ Chance.

“We’ve designed the event so every sponsorship dollar goes directly to the Kids’ Chance charity,” Quatrini said.

“By streamlining the frills at the golf events, we’ve been able to increase our impact to Kids’ Chance from the inception of the tournament to the present time.”

The event organizers have also attempted to create a stronger bench-bar atmosphere, a move that has attracted more people to the event, Quatrini said. The 2019 golf outing attracted a record number of judges, in part due to the CLE program that included a panel of four judges who provided helpful insights on the do’s and don’ts of practicing before them.

The topic of this year’s CLE has not yet been decided.

“Over the last five years, we’ve redesigned the golf outing to include a continuing education course prior to the golf outing, followed by a lunch where all attendees sit and break bread before heading out to the golf course,” Quatrini said. “Two years ago, we switched from being a dinner-focused event to a lunch.”

Quatrini is quick to credit the golf outing committee for the success of the event.

Continued on page 8
Abes finds perfect fit as workers’ compensation judge

By Ron Cichowicz

When Eric Abes applied for, and eventually landed, a position as a Workers’ Compensation Judge for the Commonwealth of Pennsylvania, he would be the first. A self-described “lousy student” during his time at GW, Abes enlisted as a lawyer and now as a judge. “I am purely dealing with work-related injuries. The work is interesting and intellectually challenging. I was a claimant lawyer before. I am a trier of fact for workers’ compensation claims, both for initial claims and then as later issues arise,” he said. “I am a trier of fact for workers’ compensation claims, both for initial claims and then as later issues arise,” he said. “I call myself the ‘primary domestic homemaker.’ I do most of the cooking and Robin will tell you I’m the ‘domestic one.’”

Abes was appointed as a Workers’ Compensation Judge for the Commonwealth of Pennsylvania’s Department of Labor and Industry and is an administrative court, which deals only with issues related to workers’ compensation. “My job is amazing and I love it. It’s a different perspective now to be a neutral arbiter.” Acknowledging he has not yet completed a full year in his position, Abes said that he has “zero complaints” about the job. “The best aspects are that the work is incredibly interesting and the people in our office are terrific to work with,” he said. “No way I could have been prepared for how incredibly collegial and nice everyone is. They all remain willing to help me, from the secretaries to the managers and the judges.”

Abes also acknowledged that his position is “incredibly conducive” to being a dad. His hours mostly are set and he doesn’t talk to clients during evenings or on the weekend as he did previously. “My wife and I share domestic duties,” he said. “She’s got a head for numbers, doctors’ appointments and other needs. It’s amazing how her brain functions for those types of needs. ‘I call myself the ‘primary domestic homemaker.’ I do most of the cooking and Robin will tell you I’m the ‘domestic one.’”

Abes said that he has “zero complaints” about the job. The interview process included an oral and written section. The interview panel consisted of two judge managers and the director of the Workers’ Compensation Office of Adjudication, which is part of the Commonwealth of Pennsylvania’s Department of Labor and Industry and is an administrative court, which deals only with issues related to workers’ compensation. Abes was appointed as a Workers’ Compensation Judge on June 24, 2019. “I am a trier of fact for workers’ compensation claims, both for initial claims and then as later issues arise,” he said. “I am purely dealing with work-related injuries. The work is interesting and intellectually challenging. I was a claimant lawyer before. I am a trier of fact for workers’ compensation claims, both for initial claims and then as later issues arise,” he said. “I am purely dealing with work-related injuries. The work is interesting and intellectually challenging. I was a claimant lawyer before. I am a trier of fact for workers’ compensation claims, both for initial claims and then as later issues arise,” he said. “I am purely dealing with work-related injuries. The work is interesting and intellectually challenging. I was a claimant lawyer before. I am a trier of fact for workers’ compensation claims, both for initial claims and then as later issues arise,” he said. “I am purely dealing with work-related injuries. The work is interesting and intellectually challenging. I was a claimant lawyer before. I am a trier of fact for workers’ compensation claims, both for initial claims and then as later issues arise,” he said. “I am purely dealing with work-related injuries. The work is interesting and intellectually challenging. I was a claimant lawyer before. I am a trier of fact for workers’ compensation claims, both for initial claims and then as later issues arise,” he said. “I am purely dealing with work-related injuries. The work is interesting and intellectually challenging. I was a claimant lawyer before. I am a trier of fact for workers’ compensation claims, both for initial claims and then as later issues arise,” he said. “I am purely dealing with work-related injuries. The work is interesting and intellectually challenging. I was a claimant lawyer before. I am a trier of fact for workers’ compensation claims, both for initial claims and then as later issues arise,” he said. “I am purely dealing with work-related injuries. The work is interesting and intellectually challenging. I was a claimant lawyer before. I am a trier of fact for workers’ compensation claims, both for initial claims and then as later issues arise,” he said. “I am purely dealing with work-related injuries. The work is interesting and intellectually challenging. I was a claimant lawyer before. I am a trier of fact for workers’ compensation claims, both for initial claims and then as later issues arise,” he said. “I am purely dealing with work-related injuries. The work is interesting and intellectually challenging. I was a claimant lawyer before. I am a trier of fact for workers’ compensation claims, both for initial claims and then as later issues arise,” he said. “I am purely dealing with work-related injuries. The work is interesting and intellectually challenging. I was a claimant lawyer before. I am a trier of fact for workers’ compensation claims, both for initial claims and then as later issues arise,” he said. “I am purely dealing with work-related injuries. The work is interesting and intellectually challenging. I was a claimant lawyer before. I am a trier of fact for workers’ compensation claims, both for initial claims and then as later issues arise,” he said.

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An overview of Kids’ Chance of Pennsylvania

By Peter J. Gough

Our Mission

The mission of Kids’ Chance of Pennsylvania is to provide scholarship grants for college and vocational education for children of Pennsylvania workers who have been killed or seriously injured in a work related accident resulting in financial need. The hardships created by death or serious disability of a parent often include financial ones, making it difficult for deserving young people to pursue their educational dreams. During the 2018-2019 fiscal year, Kids’ Chance of PA awarded 57 scholarships for a total amount of $179,000. In the last six years, Kids’ Chance of PA has awarded over 330 scholarships, totaling over $1 million dollars to kids in need. Since its inception, Kids’ Chance of PA has awarded 510 scholarships totaling $2,244,000.

Who Qualifies for a Scholarship?

To be eligible for a scholarship grant, applicants must 1) have a parent who has been seriously injured or killed as the result of a work related accident; 2) the injury must meet the criteria of the Pennsylvania Workers’ Compensation Act which, 3) has resulted in financial need.

What Can You Do To Help?

Refer a potential applicant As attorneys in Western Pennsylvania, we are in a unique position to identify and refer potential student applicants to Kids’ Chance of PA, thereby helping us reach more kids who need our help. Our Planning for College initiative was created to identify more applicants, even those who may not yet be of college age, and to capture their information so that we can contact them when the time comes to apply for college and the need for scholarship arises. This program allows Kids’ Chance of PA to leverage the power of a large network of industry professionals, educators and counselors who come in direct contact with the families who need our scholarships.

Your contributions support our program

Many of our donors are law firms, companies, vendors, underwriters, rehabilitation specialists who are involved in the Pennsylvania Workers’ Compensation system. These insurance companies, physicians’ practices and self-insured employers provide the vast majority of our donations and funding. Your or your client’s donations, as a community partner or a scholarship partner will ensure Kids’ Chance of PA continues to make the dream of higher education possible for deserving Pennsylvania students. Thanks to the commitment of our corporate and community partners, 100% of donations from individuals are directed to scholarship grants for eligible applicants. Please visit the Kids’ Chance of PA website, at www.kidschanceofpa.org to find out more.

Peter J. Gough is a Board Member with Kids’ Chance of Pennsylvania and a Certified Workers’ Compensation specialist with QuatriniRafferty, P.C.

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Save the Date – September 17

An overview of Kids’ Chance of Pennsylvania

continued from page 6

the event. The committee includes Greg Fischer and John Gaughan. Ronald Donner, ACBA Workers’ Compensation Section Chair, is an honorary committee member Anne Crilley, who coordinates all the continuing legal education offerings for the golf outing, is an “integral part” of the event, Quatrini added. According to the Kids’ Chance of Pennsylvania website, 57 students were awarded scholarships for the 2019-20 school year. The total amount awarded was $179,000, ranging in amounts from $500 up to $5,000 for the Scholar Sponsor recipients. The Kids’ Chance website notes that hardships created by the death or serious disability of a parent often include financial ones, making it difficult for deserving young people to pursue their educational dreams. Quatrini has seen the impact of these awards. Two of his clients – Kaila and Kylee Clawson – are Kids’ Chance scholarship recipients. “The Kids’ Chance scholarship has helped support me financially,” Kaila said. “I can ease my mind now that I know my financial situation is being resolved. I am very thankful for this program and glad that students like me, have this support to further their education.” Her sister agreed. “I am grateful that this grant can help me financially while I attend college,” Kylee added. “Although this is my last semester, I would like to thank the Kids’ Chance program because this grant will help me start to pay off my loans after I graduate.”

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Peter J. Gough is a Board Member with Kids’ Chance of Pennsylvania and a Certified Workers’ Compensation specialist with QuatriniRafferty, P.C.

Sidebar online

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Introducing our NEW CONFERENCE CENTER!
By Tim Conboy

An employee who is injured in the course and scope of their employment has the right to bring a personal injury claim against a third-party. The employee is the first party. The employer is the second party. Any other individual or entity who is responsible for causing the employee’s injury is a third-party.

While the employee has a right in a third-party case to bring an action to recover the full extent of their damages, which would include non-economic damages that are not recoverable in the workers’ compensation proceeding, the employer retains a right to subrogation under the Pennsylvania Workers’ Compensation statute. This provision is found in Section 319, 77 P.S. Section 671, which states in part: “When a compensable injury is caused in whole or in part by the act or omission of a third-party, the employer shall be subrogated to the right of the employee … against such third party to the extent of the compensation payable under this article by the employer.” The Act provides that the right of subrogation, in other words the lien against the third-party recovery, is reduced by reasonable attorney’s fees and the costs in procuring the third-party recovery.

The method of calculation as to how the employer’s lien against any third-party recovery is calculated is set forth in the Bureau of Workers’ Compensation document LIBC – 380 “Third-Party Settlement Agreement.” This form can be obtained online at the Pennsylvania Department of Labor and Industry Workers’ Compensation website under “Forms.” It is important to note that the current version of the Third-Party Settlement Agreement does not clearly adopt a recent decision of the Pennsylvania Supreme Court.

In Whitmoyer v. Worker’s Compensation Appeals Board (Mountain Country Meats), 186 A.3d 947 (Pa. 2018), the Court held that, where the third-party recovery is greater than the workers’ compensation lien, the employer’s credit against future benefits only applies to future wage loss benefits payable to the injured employee. The court held that the employer/workers’ compensation insurance carrier is not entitled to any credit against future medical expenses. This means that, despite the third-party recovery, the employer, through their workers’ compensation insurance carrier, must continue to pay the injured employee’s medical expenses at the full rate applicable under the Workers’ Compensation Act, without any deduction or credit for the third-party recovery. This is a significant change of the interpretation of the Workers’ Compensation Act. Prior to this decision of the court, most Workers’ Compensation practitioners assumed that the credit not only applied to future wage loss benefits, but also to future medical expenses.

When handling third-party claims on behalf of an injured employee, practitioners often fail prey to a major pitfall: that is, making false assumptions concerning the willingness of workers’ compensation insurance carriers to compromise or waive liens. It is not unusual, particularly in motor vehicle cases where the workers’ compensation lien may exceed the available policy limits in the third-party case, for workers’ compensation insurance carriers to refuse to compromise or waive liens. Many experienced practitioners who faced this situation in the past recall times where it was standard protocol for the workers’ compensation insurance carrier to readily agree that the proceeds of a third-party case would be split as follows: one-third to the injured employee, one-third to the attorney as counsel fees, and one-third to be repaid to the employer/workers’ compensation insurance carrier as satisfaction of the lien in full. However, in these changing times where insurance companies are seeking every dollar they can possibly recover, the old practice of one-third splits is not automatically agreed to anymore. When facing this dilemma, the inexperienced practitioner is well advised to consult with an experienced workers’ compensation practitioner who regularly deal with workers’ compensation insurance carriers and their attorneys, can offer insight as how to reach an agreement to solve the “upside down” situation. Frequently, these situations present opportunities for potential settlement of the workers’ compensation claim in conjunction with settlement of the third-party claim.

In past settlements where the lien exceeded the potential third-party recovery (thereby leaving the injured employee to receive no monies out of the third-party recovery), attorneys have tried to claim counsel fees of 40% and then refund a portion of those fees to the injured employee. This process was not successful in achieving counsel’s goal of getting money to the injured employee. The Commonwealth Court held that this was not in compliance with the Workers’ Compensation Act. While the employee’s counsel characterized the refunded counsel fee as a “gift,” the Commonwealth Court declined to accept counsel’s counsel’s position. The court held that counsel fees in the third-party settlement would be calculated on the basis of only the fees actually accepted by the employee’s counsel, after the so called
PA Supreme Court rules client injured in motor vehicle accident is entitled to workers’ comp benefits but bars subrogation

By Jonathan R. Colton

When representing clients injured in work-related motor vehicle accident cases, personal injury attorneys often rightly assume they must account for a workers’ compensation insurance carrier’s subrogation rights. In Pa. State Police v. W.C.A.B. (Bushta), 184 A.3d 958 (Pa. 2018), however, the Supreme Court of Pennsylvania addressed a particular type of motor vehicle accident case in which the injured client is entitled to workers’ compensation benefits yet subrogation from the client’s tort recovery is barred.

For attorneys who may not be very familiar with the term “subrogation,” a short primer might be in order before addressing Bushta. Subrogation allows an employer or its insurance carrier to recoup benefits it provided to any injured worker. When injured in a work-related motor vehicle accident, the injured worker often pursues a third-party lawsuit against the at-fault driver in addition to receiving workers’ compensation benefits. If the injured worker obtains a monetary settlement against the injured worker’s settlement or award.

In a work-related motor vehicle accident, the injured worker often pursues a third-party lawsuit against the at-fault driver in addition to receiving workers’ compensation benefits. If the injured worker obtains a monetary settlement against the at-fault driver, the driver’s insurance policy will be responsible for reimbursing the injured worker for the workers’ compensation benefits. Because the injured worker in Bushta was a state trooper, however, Bushta required the court to consider not only the MVFRL and Pennsylvania’s Workers’ Compensation Act but also Pennsylvania’s Heart and Lung Act (“HLA”). When state troopers, police officers, firefighters, corrections officers, and certain other public employees are temporarily incapacitated from performing their duties as the result of suffering injuries in the performance of their duties, the HLA provides those employees with payment of their full rate of salary as well as payment for any medical bills related to their work injuries until those employees’ disabilities cease. Those employees may also be entitled to workers’ compensation benefits for the same work-related accident. If an employee is entitled to both workers’ compensation and Heart and Lung benefits, however, the HLA requires the employee to turn over to the public employer “any workers’ compensation benefits, received or collected.”

In Bushta, the state trooper suffered several serious injuries when a tractor-trailer driver hit his police vehicle. The trooper received his full rate of salary pursuant to the Heart and Lung Act. With regard to workers’ compensation wage loss benefits, the third-party action was brought against the Pennsylvania State Police paid those benefits directly to the Pennsylvania State Police, thereby avoiding the need for the trooper to remit those benefits back to the Commonwealth as the HLA requires. The trooper then settled his third-party lawsuit against the tractor-trailer driver, the driver’s employer, and other responsible parties. The Pennsylvania State Police then asserted a right of subrogation against the trooper’s third-party settlement.

The court in Bushta, however, held that the injured trooper never received any workers’ compensation benefits but rather received only Heart and Lung benefits. That distinction was significant because Act 44 never repealed the provision within the MVFRL prohibiting subrogation with respect to Heart and Lung benefits. Thus, the Pennsylvania State Police was not entitled to any reimbursement from the injured state trooper’s tort recovery.

In Bushta, the employer was self-insured, meaning the employer itself, rather than an insurance company or other entity, was responsible for funding the entire amount of any workers’ compensation benefits to which the injured worker may have been entitled. Since Bushta, the Commonwealth Court of Pennsylvania held subrogation also was barred in Kenney v. W.C.A.B. (Lower Pottsgrove Twp. & Del. Valley Worker’s Comp.), 213 A.3d 1055 (Pa. Commw. 2018), which involved an employer insured through a fund both parties agreed operated more like an insurance company than a self-insured employer. Citing Bushta, the court stated the critical factor is “the nature of the benefits for which subrogation is sought…not who is paying the benefits.” A Petition for Allowance of Appeal remains pending in that case. It remains to be seen whether an employer or insurance carrier will be...
A look at Pa’s restrictive rule for mental stress causing mental disability injuries

By David B. Torrey

Under the Pennsylvania Workers’ Compensation Act, virtually all disabilities find their origin in a work-related event. The term encompasses any “adverse and hurtful change.” This was so held in the landmark case Pawlosky v. W.C.A.B. (Latrobe Brewing Co.), 525 A.2d 1204 (Pa. 1987).

This liberal regime finds a major exception, however, in the realm of mental stress causing mental disability injuries. In these “mental-mental” cases, the claimant must show that the stress in question was caused by abnormal working conditions, with the point of reference the worker’s occupation. Thus, a police officer who encounters a dead body, and who thereafter experiences distress and disability, will likely not possess a cognizable claim. On the other hand, an office worker who encounters the same stressor will likely have a potential claim. In any event, the worker’s distress cannot be brought on by a subjective reaction to normal working conditions. This abnormal working conditions rule was first articulated by the Supreme Court in 1987 liberally construed that “abnormal working conditions need not be ‘unique’ working conditions.” Payne v. W.C.A.B. (State Police), 79 A.3d 543 (Pa. 2013).

There, the court awarded benefits to a police officer after he had been traumatized in the wake of fatally striking a woman who had, on a darkened interstate highway, intentionally run in front of his police cruiser. This restrictive rule, born of a fear of fraudulent or exaggerated claims, has been subject to criticism. The rule has had the effect of dissuading lawyers from filing mental-mental claims, and many genuine cases, no doubt, are never prosecuted.

Still, Pennsylvania is in the majority among states relative to mental-mental claims. As in our state, 33 other states, the District of Columbia, and the Longshore Act, all provide room for compensability of mental-mental claims. Virtually all, however, require that the injured worker have been exposed to extraordinary stress working conditions (as measured against the occupation in question) before such a claim is cognizable. Under Illinois case law, as in Pennsylvania, for example, the worker must show “a sudden severe emotional shock which produces immediate disability and is caused by an uncommon nontraumatic work-related experience out of proportion to the incidents of normal work-related experience.” Pathfinder Co. v. Industrial Commission, 343 N.E.2d 913 (Ill. 1976). Further, even in the most liberal states, the worker must, as in Pennsylvania, present evidence that the stressful circumstances were real, to wit, objectively verifiable, as opposed to some mere subjective reaction.

Only in a handful of states – four or five – could this writer, during recent research, discern that no abnormal working conditions rule, or similar rule, applied. Many states actually prohibit mental-mental claims. In this regard, over the last 30 years, several states have amended their laws to exclude mental-mental injuries from compensability. West Virginia is a prominent example. There, the law was amended in 1993 to explicitly exclude the same, with the accompanying statement, “It is the purpose of this section to clarify that so-called mental-mental claims are not compensable under this chapter.”

In all, 17 states have a specific statutory exclusion for mental-mental claims. It is notable, however, that in three of these jurisdictions, Arkansas, Ohio, and Oklahoma, an exception is made when the claim is based on an act of violence. Minnesota, meanwhile, in a similar gesture, establishes Post Traumatic Stress Disorder (PTSD) as a covered injury in the mental-mental context, regardless of the worker’s occupation. A notable trend is for states to make exceptions – to the abnormal working conditions rule, or outright prohibition – for first providers (e.g., firefighters and police officers), who encounter psychological trauma and develop PTSD. The most publicized expansion of rights in this area was in 2018, when the Florida legislature amended Senate Bill 376. Florida, which otherwise excludes mental-mentals, enacted the law in the wake of massacres at the Pulse nightclub and Marjory Stoneman Douglas High School.

Continued on page 14
Recent developments in workers’ compensation for firefighter cancer

By Justin D. Beck

Historically, both paid and volunteer firefighters suffering from a cancer having its genesis in his or her related duties have been eligible for benefits under the general injury provisions of the Pennsylvania Workers’ Compensation Act. Such an approach, however, often presented unique evidentiary challenges, in consideration of both the complex medical histories and individualized exposure profiles which accompanied each case. Acknowledging these realities, the Pennsylvania General Assembly passed Act 46 of 2011, which amended the Workers’ Compensation Act to include an enhanced presumption of causation for those firefighters suffering from cancer who met various stringent criteria.

For a firefighter to gain the advantage of this presumption, he or she must have: (1) served four or more years in continuous firefighting duties; (2) establish direct exposure to a Group 1 carcinogen as recognized by the International Agency for Research on Cancer (IARC); and (3) passed a physical examination prior to asserting a claim of this presumption, he or she must establish that: (1) he or she has cancer; (2) he or she has experienced exposure to a Group 1 carcinogen, as identified by IARC; and (3) that it is the type of cancer as recognized by the Pennsylvania Fire Information Reporting System (PennFIRS). Act 46 further extends the law’s standard 300-week disease manifestation requirement to 600 weeks, while limiting application of the causation presumption only to those cancers manifesting within 300 weeks from the date of last exposure.

As is to be expected with any major statutory amendment, various litigations have ensued in the years since the enactment of Act 46. This has been so as a result of several ambiguities in the law. These cases, in their most general sense, fall under the categories of: (1) proper notice to be provided by a firefighter to his or her fire department; (2) the evidentiary requirements applicable to volunteer firefighters; and (3) the shifting burden of proof framework which must be applied in determining whether a claimant is entitled to the sought-after presumption of causation.

As to the issue of notice, the Commonwealth Court has offered several conflicting opinions. Typically, in any claim for workers’ compensation benefits, a worker must provide notice of his or her injury to an employer within 120 days. However, in cases of insidious disease, where diagnosis and an understanding of causal connection is likely to be delayed, the Workers’ Compensation Act provides for a “discovery rule,” wherein a worker is not charged with maintaining sufficient knowledge, and the 120-day window for providing notice does not begin to run, until the claimant can be said to have more than a bare suspicion of the potential work-relatedness of his or her illness.

In 2018, the Commonwealth Court released two opinions, handed down on the same date, which offered divergent interpretations of the discovery rule. To this end, in City of Pittsburgh v. WCAB (Pischerry), 187 A.3d 1061 (Pa. Cmwlth. 2018), the Court suggested that a claimant cannot ever be conceptualized as having sufficient knowledge for purposes of providing notice until receiving a physician’s affirmative opinion of work-relatedness, while in East Hempfield Township v. WCAB (Stahl), 189 A.3d 1114 (Pa. Cmwlth. 2018), the Court stressed that such an inflexible rule as this would in fact be illogical. The issue presently remains unresolved, with the Commonwealth Court expected to address the same once again in 2020.

In 2019, the Commonwealth Court, addressing the evidentiary requirements in a cancer claim brought by a volunteer firefighter, held that such a claimant satisfies the burden of proving exposure to carcinogens by simply producing reports which document attendance at fire scenes. Bristol Borough v. WCAB (Burnett), 296 A.3d 585 (Pa. Cmwlth. 2019). Moreover, so long as the submitted documentation is derived from PennFIRS reports, the original reports need not be specifically produced.

Finally, in a 2019 plurality opinion, the Supreme Court of Pennsylvania held that firefighters seeking to avail themselves of the presumption under Act 46 must establish that: (1) he or she has cancer; (2) he or she has experienced exposure to a Group 1 carcinogen, as identified by IARC; and (3) that it is the type of cancer that can possibly be caused by such exposure. City of Philadelphia Fire Dept. v. WCAB (Sladek), 195 A.3d 197 (Pa. 2018). Most critically, this latter requirement can be supported by epidemiological evidence. While the binding nature of the holding remains questionable, the Supreme Court

Continued on page 14
Video health is the new wave of work injury care

By Ann Schnure

During our busy workdays, we often fail to stop and take a look around. If we would, we’d realize there’s a seismic shift taking place. Our workplace is evolving right before our eyes, and technology is changing the way we do business. From how we communicate with customers to how we process customer transactions, everything in the workplace – including access to health care – is influenced by technological innovations.

Telemedicine for workers’ compensation is also now an option in many states, but employer adoption has been slower. This is understandable, given the complexities of workers’ compensation and the return-to-work process. But telemedicine for workers’ compensation checks several boxes employers have concerning their workers’ compensation process and employee injury care needs.

1. Telemedicine improves return-to-work outcomes.

When care access is limited, recovery becomes a challenge. Studies have shown some injured or ill employees skip medical appointments due to poor care access, which can prolong recovery or even cause a regression in recovery. Telemedicine connects injured or ill employees directly to clinicians when and where needed, eliminating the need for employees to travel to and from brick-and-mortar facilities for treatment or follow-ups. From the convenience of home or work, employees can “see” a clinician using their mobile device or computer.

2. Telemedicine has the potential to shorten injury case durations.

The longer a workers’ compensation case is open, the more it costs. If an employee only has to log in for an injury recheck – as opposed to driving to a medical facility – clinicians can better monitor an employee’s progress, and the work injury case is less likely to remain open for a lengthy period.

3. Telemedicine can treat some workplace injuries from onset to discharge.

A common misconception about using telemedicine for worker’s compensation is that an employee cannot receive comprehensive treatment via telemedicine and an in-person visit is necessary. Occupa-
tional telemedicine has the potential to be far more than a “one-and-done” or “first-aid” treatment option. Concentra uses video-chat functionality to provide comprehensive care to employees with minor workplace injuries, treating them from injury onset to discharge. This is important because many workplace injuries are minor in nature, which means they can be treated without a visit to the local emergency department or urgent care clinic.

4. Telemedicine is simple and safe to use.

Smartphones and other high-tech devices have become central to our existence. There aren’t many aspects of our daily lives not impacted by technology. Therefore, utilizing telemedicine is not as challenging as some employers might think. Most people are familiar with popular video-chat platforms, such as Skype or FaceTime. Telemedicine platforms have a similar intuitive design, and telemedicine providers take strategic measures to ensure their platform has cybersecurity features that protect patient privacy.

5. Telemedicine regulations are better defined and easier to follow.

In Pennsylvania, there are no guidelines that prohibit the use of telemedicine. However, telemedicine for workers’ compensation is required to have a state medical license. And billing/coding for telemedicine services in Pennsylvania is simple. In fact, every state has telemedicine guidelines that outline everything from billing for services to credentialing policies.

Today’s workplace is no longer confined to four walls and a building. From flexible work schedules to remote employees, today’s workplace is changing. That change requires a fresh approach to managing work-force health. When it comes to work-place injury care, occupational telemedicine is the solution and now is the time to invest in this innovation.

Ann Schnure, CPCU, AIC, LMI, Vice President of Telemedicine Operations, Concentra, is a catalyst for telemedicine’s maturation and adoption by 38 states since mid-2017, when she joined Concentra. A cynosure for the growth of innovation in workers’ compensation, Ann led Macy’s Inc. to impressive growth in its self-insured, self-administered program in 20 years as vice president of risk management. She was the first dean of the School of Workers’ Compensation for the Claims and Litigation Management (CLM) Alliance and has earned the following designations: Chartered Property Casualty Underwriter (CPCU), Associate Casualty Underwriter (AIC), Associate, Chartered Loss Management (LMI) and Associate, Chartered Property Casualty Underwriter (CPCU).
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THIRD-PARTY PITFALLS
continued from page 9
“gift.” Good Tire Service v WCAB (Workmen’s Comp. Act) 8 A.3d 1043 (Pa. Commonwlth Ct. 2009). Practitioners who believe they have an agreement to compromise or waive a workers’ compensation lien in a third-party claim should be aware that, unless the agreement has followed the procedures of the Workers’ Compensation Act, any oral or even a written agreement is not binding on the workers’ compensation insurance carrier. See Risniller v. WCAB (Warmwater Twp.), 768 A.2d 1212 (Pa. Commonwealth Ct. 2000). The appropriate procedures to create a legally binding agreement to compromise or waive a workers’ compensation lien would be to enter into a Supplemental Agreement to that effect; enter into a third-party settlement agreement; enter into a stipulation approved by a Workers’ Compensation Judge; or, include a stipulation in a Compromise and Release Agreement that has been approved by a Workers’ Compensation Judge. The full extent of the pitfalls that face the practitioner handling a third-party claim with a workers’ compensation lien is beyond the scope of this article. When handling a third-party claim with a workers’ compensation lien, counsel should consult with experienced workers’ compensation counsel so as to avoid potential pitfalls in settling the third-party claim.

MOTOR VEHICLE ACCIDENT CASE
continued from page 10
successful in the future convincing a court the specific facts of a work-related motor vehicle case involving the Heart and Lung Act somehow distinguish it from Bushta. Until that day, however, personal injury attorneys should feel confident relying on Bushta to argue subrogation is barred in this particular type of motor vehicle accident case.

MENTAL DISABILITY INJURIES
continued from page 11
School. As of July 2019, meanwhile, Idaho, California, Connecticut, Louisiana, New Hampshire, New Mexico, Nevada, Oregon, and Texas had, during the first half of 2019, enacted laws establishing or expanding the availability of PTSD claims for first responders. As noted above, Pennsylvania recognizes, but heavily burdens, mental-mental claims. However, Pennsylvania may join the trend at easing the burden for first responders to establish PTSD claims. House Bill 432, which is currently being considered by the legislature, recognizes PTSD in a first responder without necessity of requiring abnormal working conditions. This proposed legislation has been through a number of manifestations, but the current version also provides that the PTSD must meet the requirements of DSM-5 and be diagnosed by a licensed psychologist or psychiatrist, and not indirectly intersect firefighter-cancer claims are advised to stay keenly aware of the ever-evolving developments in this volatile area of the law.

VIDEO HEALTH
continued from page 13
in Claims (IRC), and Litigation Management (LMI). Ann is a board member of the Alliance of Women in Workers’ Compensation, a think tank of female thought leaders exploring the emerging trends and challenges in workers’ compensation.

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Judge Bernstein is available for mediations and arbitrations at JudgeBernstein.org
By Shawn Deane

Medical records and payment history.

Workers’ Compensation

Medicare Set Asides

By Shawn Deane

MSAs have been standard practice in workers’ compensation settlements on going on 20 years. With numerous policy memos, the WCMSA Reference Guide established procedures for submission and administration. According to the WCMSA Reference Guide, v3.0, sec. 17.1, CMS has identified opioids and benzodiazepines as frequently abused drugs. These practices are common in MSAs and it is critical that a claimant’s attorney takes CMS’s guidance into account when representing a claimant in a case to or enter into a joint representation agreement with the government to settle a case for less than the full amount of the settlement. In cases where CMS highly recommends Conditional payments are made on the assumption of ongoing responsibility for medical care (ORM) or if there is a settlement. See 42 CFR 411.24(b); and 42 USC 1395kk(b)(2)(B)(v). Typically, ORM is pertinent to workers’ compensation and a settlement is applicable to both workers’ compensation and liability claims.

Workers’ Compensation: Post-Settlement Recovery Against Claimants

In workers’ compensation claims, the entity charged with identifying claimant’s ongoing conditional payments during the pendency of a claim (i.e. during the period of assumption of ORM and prior to a settlement) is the Commercial Resolution Center (CRC). While ORM is assumed, the primary payer is identified as the debtor and recovery occurs against the primary payer. Following a settlement, in workers’ compensation claims, the Benefits Coordination & Recovery Center (BCRC) is the applicable contractor that seeks recovery against the claimant/beneficiary as the debtor for conditional payments. The BCRC may also receive payments from third-party carriers and settle claims. In some instances, if certain conditional payments are not identified and demanded by the BCRC at the time of settlement, the BCRC may subsequently identify conditional payment charges for dates of service prior to the settlement, but which are asserted against the claimant post-settlement.

The claimant’s attorney is often the first individual the claimant will ask should be or she receive a post-settlement conditional payment letter or demand. The following may assist a claimant’s attorney in addressing these issues:

Ensure responsibility is established in the settlement addressing the contingency if a demand is asserted post-settlement.

The claimant’s attorney will be responsible, ensure funds are adequately available for the settlement to address potential demand and investigate with the BCRC to ensure there is no lingering exposure.

Review all charges reflected on the Payment Summary Form (the rooftop of the claim form) for a claimant’s claim. Some charges may be invalid.

Engage in a dispute or appeal with the BCRC to eliminate unrelated charges or conditional payments for which Medicare doesn’t have the right to recoup.

If the insurer is responsible, ensure cooperation of your client by having them execute the requisite Medicare authorization – Proof of Representation (POR) form – so the primary payer/primary carrier may investigate and dispute, appeal and/or resolve conditional payments.

In addition to the monetary aspect of the settlement, the agreement with the government also required the firm to:

Designate a person at the firm responsible for performing Medicare secondary payer duties;

Train the designated employee to ensure that the firm pays these duties on a timely basis; and

Engage in a dispute or appeal with the BCRC to eliminate unrelated charges or conditional payments for which Medicare doesn’t have the right to recoup.

The DOJ’s enforcement of Medicare reimbursement is an important area to watch and plaintiffs’ counsel should hold properly address Medicare conditional payments.

Deane is General Counsel at Ametros.
Pa. Workers’ Compensation Act provides broad coverage for injuries sustained both inside and outside of Pa.

By Shane Miller

There is little dispute that if a Pennsylvania resident suffers a work injury in the Commonwealth, the injured employee can seek benefits under the Pennsylvania Workers’ Compensation Act (Act). But things are instantly more confusing if the injured employee resides in a different state or sustains the injury in a different state. For example, what if a New Jersey or Ohio resident suffers an injury while working in Pennsylvania? Conversely, what if a Pennsylvania resident is injured while working in New York or West Virginia? This article will address whether a non-Pennsylvania resident can obtain workers’ compensation benefits under the Act for a work injury suffered in Pennsylvania. In addition, it will discuss whether Pennsylvania residents can obtain benefits under the Act for work injuries sustained in other states.

Can a non-Pennsylvania resident obtain workers’ compensation benefits under the Act for a work injury suffered in Pennsylvania?

The Act firmly establishes that non-Pennsylvania residents who are injured while working in Pennsylvania can receive benefits under the Act. The Act expressly states that it applies “to all injuries occurring within this Commonwealth, irrespective of the place where the contract of hiring was made, renewed, or extended.” 77 P.S. § 1 (emphasis added). The Act thus applies to all compensable injuries that occur in Pennsylvania, regardless of the injured worker’s residency or place of hire. See Wheeling Pittsburgh Steel Corp. v. W.C.A.B. (Sessco), 828 A.2d 1189, 1194 (Pa. Commw. Ct. 2003) (stating that the Act applies to all injuries occurring in Pennsylvania). Given that non-Pennsylvania residents can receive workers’ compensation benefits under the Act, the Act sets forth a process for an out-of-state employer to provide post-hoc Pennsylvania insurance coverage. Specifically, the out-of-state employer can file a certificate from its own state’s compensation authorities with Pennsylvania’s insurance regulator. Upon proper certification, a qualified self-insurer under the second state’s law (i.e., the state where the out-of-state employer is domiciled) will be deemed to be a qualified self-insured under the Act. Similarly, an employer’s carrier will (upon proper certification) be deemed to be an insurer authorized to write insurance under and subject to the Act. Through this process, workers’ compensation coverage from the second state becomes post-hoc coverage for the employee’s injury in Pennsylvania. Once this post-hoc coverage is established, the next question becomes what benefits must be paid to the injured employee. The Act provides that a self-insurer who obtains post-hoc Pennsylvania coverage must pay full Pennsylvania benefits. 77 P.S. § 411.2(c)(3)(ii). For an insured entity, the carrier’s liability will be at the level demanded by the domiciliary state law, unless a special contractual provision applies. 77 P.S. § 411.2(c)(3)(i). The employer must make up the difference between Pennsylvania benefits and the benefits required to be paid by the carrier under the domiciliary state law. 77 P.S. § 411.2(c)(4).

The Act also clearly establishes that Pennsylvania residents can obtain benefits under the Act for injuries sustained in other states, provided that certain conditions are met. Specifically, an injured worker will be entitled to benefits for an otherwise compensable injury that occurred outside of Pennsylvania in the following circumstances:

1. The employee’s employment is “principally localized” in Pennsylvania; or
2. The employee is working under a contract of hire made in Pennsylvania in employment not “principally localized” in any state; or
3. The employee is working under a contract of hire made in Pennsylvania in employment “principally localized” in another state whose workers’ compensation law is not applicable to the employee’s employer; or
4. The employee is working under a contract of hire made in Pennsylvania for employment outside the United States and Canada. 77 P.S. § 411.2(a).

The Act provides three methods for determining if a person’s employment is “principally localized” in Pennsylvania (or another state). First, a person’s employment is “principally localized” in Pennsylvania (or another state) if

Continued on page 20
Workers’ Compensation practitioners address frequently asked workers’ compensation questions

Q. One of my employees was injured at work yesterday and I didn’t realize my workers’ compensation policy expired two weeks ago. What should I do?

A. My first recommendation would be to renew the workers’ compensation policy as soon as possible. My second recommendation would be to determine whether a workers’ compensation policy from another state could cover the lapse. In that regard, I would ask whether the employer is domiciled in a state other than Pennsylvania, whether the employer has workers’ compensation insurance in that state, and determine whether that state may also have liability for that claim. In the event that there is no argument that coverage could be obtained under a policy with another state, I would recommend that the employer voluntarily pay the claimant’s medical bills and wage loss, if any, and obtain counsel to aggressively pursue a settlement with the injured worker in an effort to avoid potential civil and/or criminal penalties.

Submitted by: Charles T. Monroe, Esq., Weber Gallagher

Q. How many days do I have to report my injury to my employer? Who should I tell?

A. Employees must report injuries within 120 days or the claim will be barred; however, within 21 days will result in loss of benefits until notice is provided. Injuries should be reported to a direct supervisor or manager or the person specifically designated by the employer.

Submitted by: Phillip E. Kindrot, Esq., Edgar Snyder & Associates LLC

Q. After I had my accident, the workers’ comp insurance paid for my treatment. Afterward, my medical provider sent me a bill indicating that workers’ comp didn’t pay them enough. Can they do that?

A. No. This practice is commonly referred to as “balance billing” and is expressly prohibited by 34 Pa. Code, Section 127.211 (a) of the Pa. Workers’ Compensation Act. Similarly, co-payments and deductibles do not exist under the Pennsylvania workers’ compensation laws. When treating for a work injury, if a patient receives a request for payment of any type from a provider, this may be in indication of balance billing or the workers’ compensation insurance company has denied payment and/or the bill was submitted to the injured workers’ personal health care insurance.

Submitted by: Rhett Cherkin, Esq., CBMC Law

Q. Am I required to offer light duty to my injured workers? What if I don’t have enough work?

A. Following a work injury, an employer is obligated to offer a modified duty job to an injured worker if one is available within his or her physical capabilities/work restrictions. A job offer can be beneficial to both the employer and the injured worker; it can serve to mitigate an employer’s workers’ compensation exposure, and it can help the injured worker transition to full-duty work. However, an employer has a business to run and operate, and is under no legal obligation, per the workers’ compensation act, to create a modified duty job for an injured worker if one does not exist.

Submitted by: Ryan Hauck, Esq., Marshall Dennehey

Q. As long as the injured worker is getting unemployment, do I have to turn in their claim? I don’t want them getting double paid.

A. The receipt of unemployment compensation is not a bar to the receipt of workers’ compensation benefits. The injured worker’s employer will be entitled to a credit, however, for any unemployment compensation benefits received by the injured worker if it is determined that he is entitled to workers’ compensation wage loss benefits.

Failing to report their claim in a timely fashion and within the time limits under the Act may ultimately lead to an inability to receive future benefits after the injured worker’s unemployment compensation benefits are exhausted.

Submitted by: Stephanie C. D’Abramo, Esq., Post & Schell, P.C.

Q. How many employees can I have before I need workers’ compensation insurance?

A. In consideration of the mandatory and compulsive nature of the workers’ compensation system in Pennsylvania, there is no minimum number of employees for participation under the Act. Indeed, an employer with only one employee will be found liable for any injury, suffered by the latter, which is found to arise in the course of employment. Failure to secure workers’ compensation insurance is a criminal matter, and may also expose the employer to a civil suit for damages.

Submitted by: Justin Beck, Thomas, Thomas & Hafer

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Coming to a law school near you, the Appeal Board College Tour

By Robert A. Krebs

When I started practicing law 35 years ago I was surprised to learn that workers' compensation had its own parallel system of judges, rules, procedures, appeals, caselaw and statutes. Because workers' compensation is the exclusive forum for all workplace injury, disease and death claims, the cases can be complex with substantial amounts in lost wages and medical benefits at issue. The Workers' Compensation Appeal Board on which I serve hears appeals from the Decisions and Orders of the approximately ninety workers' compensation judges throughout the commonwealth in cases involving traumatic injuries, occupational diseases and fatal claims arising in the course of employment. In 2019 the seven members of the Board issued over 1,000 full opinions in addition to 635 supersedeas orders and 389 other orders including counsel fee petitions, guardianship appointments and miscellaneous petitions.

Typically, the Board hears argument after which a commissioner is assigned to draft an opinion which is then circulated to the other commissioners who may join the opinion or dissent. A majority of all of the commissioners joining the opinion is required for the Board to issue a final decision. Further appeals can be taken to Commonwealth Court, which hears appeals from determinations of government agencies. Even though workers' compensation affects the lives of so many workers, employers and the business community as a whole, law schools have traditionally paid little attention to this area of law. To raise awareness of workers' compensation in the academic community, the Board started a program of holding special argument sessions at the law schools across the state. So far, we have held these special sessions at Duquesne University School of Law, Temple University, Villanova University School of Law, the Penn State Law School and Widener University Law School. Upcoming special sessions are planned for the Dickinson School of Law in March, and the University of Pittsburgh School of Law this November.

For the law school sessions, the Board selects cases with basic issues that the students can follow, such as whether the claimant was an employee or an independent contractor, whether the injury or illness was sustained in the course of employment and whether there is jurisdiction of the claim under the Pennsylvania Workers' Compensation Act. We also look for cases that might be of special interest such as those involving professional athletes or entertainers and the Steelers and Eagles turn up in a number of our appeals. Last September at Widener Law School, we heard our first case on the issue of whether an employer can be required to reimburse a claimant for the cost of medical marijuana for treatment of his work-related condition.

Our first special argument session was held at Duquesne Law School as part of our regular Pittsburgh sitting. Because I have been teaching an employment law course that includes workers' compensation at Duquesne, it seemed like that would be the logical test market for this project. The session was conducted by five members of the Board sitting en banc and we were introduced by then Dean and former Superior Court Judge, Maureen Lally-Green. Coincidentally, the next Spring when we held a special argument session at Villanova School of Law, we were greeted by Associate Dean April

Continued on page 20

PHOTO SUBMITTED BY ROBERT KREBS

Sean B. Epstein addresses the Workers' Compensation Appeal Board from our argument session at Penn State Law. Left to right are: Commissioners Thomas P. Cummings, Jr., Sandra D. Crawford, Robert A. Krebs and Chairman Alfonso Frioni, Jr.

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Sean B. Epstein addresses the Workers' Compensation Appeal Board from our argument session at Penn State Law. Left to right are: Commissioners Thomas P. Cummings, Jr., Sandra D. Crawford, Robert A. Krebs and Chairman Alfonso Frioni, Jr.

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Right: Tom Reilly shares a laugh with Kevin Brown.

Karen Galor, Kezia Taylor and President-Elect Elizabeth Hughes enjoy networking and camaraderie.

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the employee’s employer has a place of business in Pennsylvania (or the other state at issue) and the employee regularly works at or from such place of business. Alternatively, a person’s employment is “principally localized” if the employee worked at or from the employer’s place of business in Pennsylvania (or the other state at issue) and the employee’s job duties required him or her to go outside of Pennsylvania (or the other state at issue) for one year or less. Finally, if the first two methods do not apply, a person’s employment is “principally localized” in Pennsylvania (or the other state at issue) if the employee is domiciled and spends a substantial part of his or her working time in the service of his or her employer in Pennsylvania (or the other state at issue). 77 P.S. § 411.2(d)(4).

Conclusion

In sum, the Act clearly provides that all compensable injuries that occur within Pennsylvania are eligible for benefits under the Act, regardless of whether the injured employee resides in Pennsylvania or another state. In addition, the Act establishes that Pennsylvania residents may be entitled to benefits under the Act for work injuries suffered in other states.

Robert A. Krebs is Commissioner of the Pennsylvania Workers’ Compensation Appeal Board.

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If you have observed or experienced any form of gender bias in your role as an attorney, you may contact any one of the following members of the Gender Bias Subcommittee of the Women in the Law Division. These duty officers will keep your report confidential and will discuss with you actions available through the subcommittee.

Kimberly Brown 412-394-7995
Jeane L. DeBo 412-394-5215
Rhoda Neff 412-406-5434

Northumbria University, where the former President of the Commonwealth Court is currently teaching workers' compensation law, also hosted similar argument sessions of the Superior Court and the Commonwealth Court, and we were pleased to be included. Our special session at Penn State Law at University Park took place in April of 2019 and was co-hosted by the Law School and the School of Labor and Employment Relations where Paul Whitehead, the former Chief Counsel to the United Steelworkers Union, is a professor. Students and faculty of both schools attended the argument, resulting in a packed house.

Our latest special session was held at Widener Law School in September.

The session was attended by Dan Schuckers, the former Prothonotary of the Commonwealth Court who is currently teaching workers’ compensation at Widener, along with a number of students and faculty members. Afterwards, the commissioners got to meet with the law students and get their thoughts on the arguments and listen to their career plans.

On behalf of the Board, I want to extend our thanks to all the attorneys who participated in these special sessions. The level of advocacy has been outstanding, and the students have found the programs to be helpful in their understanding of the law of workers’ compensation and appellate advocacy. Special thanks to Board Chairman Alfonso Frioni and Board Secretary Steven Loux for making this project happen and to all the commissioners for the work they put in on this project. We look forward to seeing everyone this year at Dickinson and Pitt.
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Ying Cao and Vijya Patel, co-chairs of the Asian Attorneys Committee, and Mark Zheng, vice chair, celebrate the Year of the Rat during the 9th Annual Lunar New Year Banquet at Chinatown Inn, downtown Pittsburgh, last month.

Lunar New Year Banquet

Katie Liu performs a traditional Chinese dance during the live entertainment portion of the evening.

Chris and Annie Wildfire, Mark Zheng, Ying Cao, Vijya Patel, Casey Crytzer and Sunny Yang anticipate the evening’s 10-course meal.

ACBA President Lori McMaster addresses a packed room just prior to the banquet’s commencement.

Pittsburgh Legal Journal’s 2019 Court Opinions are for sale in hardbound book and PDF


And now this year, there is also an identical PDF that can be purchased and accessed immediately.

Both the 2019 PDF and the 8.5” x 11” hardbound book are a compilation of all of the opinions published by the Pittsburgh Legal Journal during 2019. Both feature an alphabetical listing of cases by case caption and by a subject-matter index. These opinions come from various divisions of the Allegheny County Court of Common Pleas, and they have been selected based upon precedential value or clarification of the law.

The hardbound book costs $225, plus 7-percent Pennsylvania state sales tax where applicable. Purchasers of the hardbound book will receive the 2019 PDF version at no cost.

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Those interested in purchasing the 2019 print or PDF version, please email or call Melanie Goodwin, ACBA’s Advertising and Sales Coordinator, mgoodwin@acba.org or 412-261-6255. Orders must be received by Friday, March 6 for the hardbound book.

The print volume will be distributed in early spring 2020, and the 2019 electronic version will be emailed upon receiving payment. For those interested in buying PDF versions of earlier years’ opinion volumes, please contact Melanie Goodwin at the above number or email address.

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M: (304) 312-4619
Drew Ecklund, Vice President
O: (724) 909-7334
M: (724) 244-9888

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Sally Griffith Cimini has been named National Chair of Leech Tishman’s Alternative Dispute Resolution Practice Group. An alternative dispute resolution and employment & labor attorney, she has served in various leadership roles within the firm, including Chair of the Employment Practice Group and as a member of the firm’s Management Committee. In addition to serving as National Chair of the firm’s ADR Practice Group, Cimini will continue to serve the Employment Practice Group as an Emeritus Member.

People on the Move

Marla N. Presley has been named Managing Principal of Jackson Lewis P.C. She is a litigator focusing on the representation of employers in wage and hour disputes, class and collective action, and claims of discrimination under Title VII, the Age Discrimination in Employment Act, the Americans with Disabilities Act and various state tort theories. She also appears regularly before administrative judges and agencies.

Jason L. Ott has joined Jackson Kelly PLLC, as Counsel. He leads the Tech & Data practice group. He consults with clients on daily business and counsels them regarding corporate formation, corporate governance, data hygiene, regulatory compliance, FinTech, technology transactions and deal support, and data privacy and security matters. Jason also has extensive experience in representing clients in commercial bankruptcy matters and assisting lenders in loan due diligence, documentation, and facilitation, including distressed asset funding and subsequent workout and debt collection involving real estate and hard asset-based lending.

Erica M. Pietranton has been elected partner at Leech Tishman. A member of the firm’s Litigation Practice Group, she focuses her practice on commercial litigation matters, including those for both businesses and individuals. She has prior experience advocating for clients with respect to a wide variety of legal issues, including contract disputes, chemical exposure and toxic torts, premises liability, professional negligence, products liability, and regulatory law in the gaming industry, among other issues.

Rebecca Canterbury has been promoted to the position of partner at Sprink Law Firm, which handles all areas of family law and criminal defense. Her family law practice includes divorce and child custody with a special focus on high-conflict cases involving allegations of domestic violence, parental alienation, and substance abuse. She routinely represents plaintiffs and defendants at Protection From Abuse hearings.

Change in Status

By Order of the Supreme Court of Pennsylvania, attorney Samir George Hadeed has been suspended from the practice of law in the Bar of this Commonwealth for a period of six months reciprocal with Ohio. The suspension took effect on Jan. 16.

By Orders of the Supreme Court of Pennsylvania, attorney Mark B. Peduto was granted reinstatement from a three-year suspension and Robert Langston Williams was granted reinstatement from a five-year suspension. The reinstatements took effect on Jan. 21.

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