

# WORKERS' COMPENSATION *NEWS*

Newsletter of the Philadelphia Bar Association Workers' Compensation Section

Volume IV, No. 5

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## *Commonwealth Court Mediation*

By: Kenneth N. Brodsky, Esquire

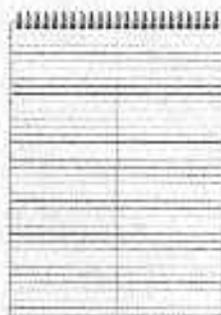
On October 18, 2000, the Workers' Compensation Section of the Philadelphia Bar Association held their monthly meeting and addressed issues concerning the mediation program currently in place before the Pennsylvania Commonwealth Court. In addition to the current Co-Chairs of the Workers' Compensation Section, the panel of speakers included Commonwealth Court Judges James Gardner Colins and Judge Doris A. Smith.

On January 1, 2000, the mediation program became effective subject to the Order of the Commonwealth Court dated September 15, 1999. For a copy of the Commonwealth Court's Order as well as commentary on the Order, it is suggested that practitioners review the PBI publication distributed at the October 18, 2000 seminar. Although not all appeals taken to Commonwealth Court are subject to the mediation process, there are certain basic guidelines that apply once a case is selected for mediation. For example, all parties subject to the mediation program must submit a Statement of Issues and Docketing Statement to the Court. On most occasions, the mediation is conducted by Senior Judge Emil Narick. It was clear from both Judge Colins and Judge Smith that the

Commonwealth Court would like to allow the parties an opportunity to resolve their differences while promoting judicial economy.

However, both Judge Colins and Judge Smith were careful to clarify that if the mediation process is unsuccessful, the parties cases will proceed in due course. Of significance, Judge Colins and Judge Smith advised that the mediation Judge is careful to protect the rights of the parties and does not participate in making a final decision should the mediation process be unsuccessful.

In conjunction with the Commonwealth Court mediation process, the Workers' Compensation Section of the Philadelphia Bar is also exploring the possibility of instituting a mediation program similar to Commonwealth Court that would allow parties the opportunities to expedite and potentially simplify litigation. At the present time, Workers' Compensation Judges in Philadelphia and the surrounding Counties conduct mediation and/or settlement conferences at the request of parties. However, the Workers' Compensation Section of the Philadelphia Bar Association is interested in instituting a standardized system that would benefit all parties. All interested parties continue to work towards a



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program and solution in implementing a local mediation program. It is suggested that if anyone has ideas concerning this issue or is interested in making suggestions regarding a local mediation program, please contact the current Co-Chairs of the Workers' Compensation Section.

**BUREAU OF WORKERS'  
COMPENSATION  
APPOINTS TWO NEW JUDGES**

By: Kenneth N. Brodsky, Esquire

Earlier this year, the Pennsylvania Bureau of Workers' Compensation appointed two new Workers' Compensation Judges. The Bureau has appointed Pamela Santoro, Esquire and Karen Wertheimer, Esquire as Workers' Compensation Judges.

Judge Wertheimer recently provided a brief interview for the newsletter. Judge Wertheimer revealed that she is a 1989 graduate of Case Western Reserve University School of Law. Prior to attending Law School, she was born and raised in Philadelphia. She has extensive legal experience working in various capacities at the following firms;

Fox, Rothchild, O'Brien & Frankel, 1989-1991;  
Post & Schell, 1991-1993;  
Weber, Goldstein, Greenberg & Gallagher, 1993-1995;  
Weinstein, Goss, Schleifer, Eisenberg, Winkler, Rothweiler & Ostroff, 1995-1999.

In addition, Judge Wertheimer has gained business experience outside and away from the

legal profession. Judge Wertheimer has done an average of both 4 years of claimants and 4 years of defense work. She has other experiences in the business world which she feels give her a fresh view in approaching her role and duties as a Workers' Compensation Judge. Judge Wertheimer feels that becoming a Judge is coming home. She expects litigants and counsel to be prepared and sets high expectations for both herself and the parties that appear before her. She advises that she will primarily be sitting and hearing cases in Philadelphia at the State Office Building. However, she may occasionally hear cases in other areas including Malvern.

**RECENT CASE LAW**

A recent Commonwealth Court decision has addressed the issue of payment of medical bills as it relates to the Section 315 statute of limitations. In *Levine v. WCAB*, the Commonwealth Court has ruled that when an employer pays an injured employee's medical bills, the running of the three year statute of limitations for a Workers' Compensation claim is tolled until three years following the most recent payment. The Court concluded that medical benefits are compensation under Section 315 of the Act.

Factually, the claimant was injured in a work related motor vehicle accident in 1988. The claimant never filed a claim for benefits because his employer paid his medical bills. In 1995, the carrier notified the claimant that since he never filed a petition to toll the statute of limitations, his medical benefits in 1997 which was denied by the WCJ pursuant to Section 315 of the Act and the 1919 State Supreme Court decision in *Paolis v. Tower Hills Connellsville Coke Co.* The Appeal Board affirmed the WCJ's decision.

On appeal, the claimant argued that an employer should not benefit by permitting them to make voluntary payments of medical bills and "lull claimant's into a false sense of security".

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The Commonwealth Court, interpreting the 1994 decision of *Berwick Industries v. WCAB (Spaid)*, held that for purposes of filing a claim petition the payment of medical expenses for a work related injury tolls the running of the statute of limitations until three years following the most recent voluntary payment of medical benefits. It will be interesting to watch how this case is utilized and relied upon by both claimants and employers counsel.

## Suggestions and Ideas

### TIPS ON PROFESSIONALISM

1. Review the hearing notice to make sure that the name of the opposing attorney appears on the notice. Contact opposing counsel in advance of the hearing to determine what will transpire at the hearing.
2. For a Compromise & Release Agreement, make sure your opposing counsel has it within 48 hours prior to the hearing date to allow Claimant's counsel at least one day, if not more, to review the language of the agreement. If that is not possible, try to get another date and time from the Judge.
3. Attorneys should tell clients not to bring or at least turn off all cell phones in hearing room.
4. Do not approach the counsel table when another case is before the WCJ.

The above are just a few suggestions on how we can maintain professionalism in the court room. Should you have any suggestions or ideas, please

feel free to contact Patricia A. Toland, Esquire at (215)587-1093 or any of the Chairs of the Section.

## UPCOMING BAR ASSOCIATION NEWS FOR 2001

### 2001 Workers' Compensation Section Luncheon Meetings



The incoming Co-chairs of the Workers' Compensation Section for the year 2001 have scheduled the Section Luncheon Meetings as follows (Noon lunch followed by 12:30 p.m. Meeting, unless otherwise noted):

**January 17, 2001** - Closed head injuries: Neuropsychological claims. Ruben C. Gur, Ph.D., University of PA.

**February 21, 2001** - Hepatitis C, AIDS and other work transmitted blood disorders. Steven Potako, Esquire and Matthew Wilson, Esquire.

**March 21, 2001** - The role of legal nurse consulting in Workers' Compensation claims.

**April 18, 2001** - Anatomic or non-anatomic distribution: The Appropriate Response. John Krauss, M.D., Physiatrist.

**May 16, 2001** - PBI Seminar – TBA

**June 20, 2001** - To cut or not to cut: That is the question. Andrew Freese, M.D., Ph.D, Thomas Jefferson University Hospital, Department of Neurosurgery.

**July 18, 2001** - Section Roundtable Discussion.

**\*September 19, 2001** - Judge's 1<sup>st</sup> year Anniversary. Wine & Cheese Reception .

October 17, 2001 - PBI Seminar -- TBA

November 21, 2001 - State of the Commonwealth.

\* Please note that this date may change depending upon various calendar events in the month of September.

All meetings will be held at the Philadelphia Bar Association, 1101 Market Street, 11<sup>th</sup> Floor, from 12:00 noon until approximately 1:30 p.m.. Please note that no meetings are scheduled for either August or December of 2001 however and in December, 2001, the Section plans to have their annual Holiday Party. Also, the Co-Chairs for the year 2001 are interested in hearing from Members of the Section regarding any potential or suggested topics for the Workers' Compensation Luncheon Meetings. If you have any suggestions or ideas, please feel free to contact Judge Martin Burman, at (610)436-3595, Jeffrey Gross, Esquire at (215)629-7225 or Niki Ingram, Esquire at (215)575-2704.

In an effort to improve attendance, the 2001 Co-Chairs of the Workers' Compensation Section announce the "Bring your opponent to lunch" Program. Parties with difficult cases are encouraged to contact their opponents and attend a monthly meeting with a possibility of participating in a mediation conference at the meeting. The parties are encouraged to contact Judge Martin Burman, Jeffrey Gross, Esquire or Niki Ingram, Esquire.

## ANNOUNCEMENTS

On September 14, 2000, Mildred F. Hayes (nee Urban), Age 81, a Court Reporter for the Commonwealth of Pennsylvania, died at her home, she was of Fall River, MA and a long time West Mt. Airy resident, served her community as a Republican Committee Woman and was active in

the Lion's Club, mother of Richard and Timothy Hayes, sister of Betty McGuigan; also survived by 7 grandchildren. The Section has made a donation to the National Court Reporters Foundation in Mildred's memory.

### COMPENSATION SECTION

Membership in the Workers' Compensation Section of the Philadelphia Bar Association is \$20.00 per year for all members of the Association. Section meetings are generally held monthly at the Bar Association Headquarters, 11th Floor, 1101 Market Street, in Philadelphia. The Section sponsors both educational and social activities for its members and guests.

The 2000 Co-Chairs of the Section are the **Honorable A. Michael Snyder, Patrice A. Toland, Esquire and Daniel J. Siegel, Esquire.** The Chairs-Elect for 2001 are the **Honorable Martin Burman, Niki Ingram, Esquire and Jeffrey Gross, Esquire**

### WC News

*WC News* is the newsletter of the Workers' Compensation Section. The opinions expressed in *WC News* do not reflect the opinions of the Workers' Compensation Section or the Bureau of Workers' Compensation, and are solely the opinions of the authors.

### NEWSLETTER COMMITTEE

Chairs: **Kenneth N. Brodsky & Louis J. DeLucca, Jr.**  
Members: **Kenneth N. Brodsky, Louis J. DeLucca, Jr.**

# **HOLIDAY PARTY**

DATE: December 12, 2000

TIME: 6:00 P.M. TO 8:00 P.M.

LOCATION: Philadelphia Marriott

The Workers' Compensation Section has scheduled the annual Holiday Party for December 12, 2000. Please hold this date for the party. Details and further information concerning the Holiday Party are to follow.

**\*\*\* Support your Section and become involved. Anyone interested in becoming involved with the Workers' Compensation Section of the Philadelphia Bar Association, please feel free to contact the following current Co-Chairs as well as the 2001 Co-Chairs:**

**Judge A. Michael Snyder (215) 560-2125**

**Daniel J. Siegel, Esquire (215) 567-7955**

**Patrice A. Toland, Esquire (215) 587-1093**

**Judge Martin Burman (610) 436-3595**

**Niki Ingram, Esquire (215) 575-2704**

**Jeffrey Gross, Esquire (215) 629-7225.**