

INTRODUCTION TO NEW JERSEY WORKERS COMPENSATION

**WITH GEORGE KOCH, ESQ. AND ROBERT RAMSEY,
ESQ.
LESSON PLAN**

- I. **PURPOSE OF THE STATUTORY SCHEME OF WORKERS COMP: TO PROTECT THE WORKER WITH BENEFITS THAT CAN BE RELIED UPON WITH CERTAINTY**
 - a. Medical payments
 - b. Temporary lost wages
 - c. Permanent disability

- II. **STRICT LIABILITY IF THE INJURY HAPPENS WHILE WORKING**

- III. **THIRD PARTY CLAIMS AGAINST NON EMPLOYER DEFENDANTS (AND NON CO-EMPLOYEE DEFENDANTS) CAN BE MAINTAINED FOR PAIN AND SUFFERING**
 - a. If the worker succeeds in a claim against a third party, there is typically a recovery paid to the workers compensation insurance company of approximately two-thirds of the worker's recovery

IV. DOES THE EMPLOYEE RECOVER IF THE EMPLOYER IS UNEMPLOYED OR IF WORKING UNDER THE TABLE OR IF WORKING AS A SUBCONTRACTOR

- a. Medical bills and temporary lost wages are paid directly by the State of New Jersey to the injured employee
- b. Permanent disability by proceeding directly against the uninsured employer
- c. Under the table employees have the right to file claims but may want to file tax returns and pay the taxes
- d. Subcontractors within the control of the employer are covered by Workers Compensation law and insurance possibility
- e. Any double subcontractor (a subcontractor of an employer's subcontractor) is covered by workers compensation of the owner of the job if the sub is uninsured

V. PROCEEDINGS

- a. Rules of Evidence are only loosely applied
- b. Threshold issues are employment and injury on the job
- c. The Coming and Going rule excludes injuries while commuting
- d. Benefits attach to all injuries, even if minor
- e. Medical reports are submitted for both parties

VI. LEGAL REQUIREMENTS

- a. “Demonstrative objective medical evidence of an injury affecting your daily living. “
- b. The case of *Perez* puts the burden on Petitioner to prove the injury and its extent of impact on life
- c. Charts of the amount of recovery appear in the Lawyers’ Diary and change from year-to-year, percentages are percentages of total disability
- d. Mesothelioma and other occupational exposure cases have differing values. Incubation periods are from 17-25 years.
- e. Statute of limitations: two years from when you knew or should have known that you have a disease **and** that it is work related

VII. DIFFICULT CASES

- a. Petitioner must prove that s/he is performing other than the usual task. If you have a heart attack lifting a 300 pound box, and your job is to lift 300 pound boxes, you will not prevail.
- b. Depression: all psychological cases are quite difficult to prove. The *Sunderland* case requires objective proofs and physical observations by the psychiatrist.
- c. Blindness: depends on causation
- d. Closed head injuries: there is a new awareness of these injuries
- e. Cancers: compensable if ingestion is proven along with injury

VIII. **WORKERS COMPENSATION COURTS**

- a. It is an administrative court, like the AOL. Appeals go directly to the Appellate Division.
- b. The Court is administered by the Department of Labor
- c. Judges are appointed by the Governor for a 5 year term before tenure is earned.

IX. **THE PROCESS**

- a. Filing a Petition --- strategy and timing
- b. Electronic versus manual filing
- c. Petitioner's responsibility to track his/her own treatment
- d. Work/argue with insurers regarding their choice of physician for treatment and the possible need for obtaining an independent medical examination and report regarding the injury and treatment needed for the Petitioner

X. **THE TRIAL**

- a. Issues of employment and location of injury
- b. Construct the damage claim
- c. Work out possible issues with the adversary
- d. Determine the value of a claim by negotiation and with assistance from the Workers Compensation Judge
- e. Settle or try the case
- f. Attorneys fees are awardable on lost wages and medical paid, up to 20% of the amount of benefits acquired for the injured party, against the insurance company.
- g. As to permanent disability awards and attorneys fees, 40% is paid by the injured party (about 8% of the total award historically) and 60% by the insurance company

- XI. **RETALIATORY ACTION FOR FILING OF A CLAIM**
 - a. Illegal for employer to discriminate
 - b. Union grievance procedures are available
 - c. Claims at law can be made against the employer

- XII. **PUBLIC POSTING OF WORKERS COMP INSURANCE AND RELATE POSTERS ARE REQUIRED BY NJ LAW**

- XIII. **THE DEFINITION OF EMPLOYEE**
 - a. Casual employees
 - b. Subcontractors
 - c. Second set of subcontractors

- XIV. **WORKERS COMPENSATION INSURANCE IS NO FAULT, ABSENT ANY MALICE OF THE EMPLOYER OR CO-EMPLOYEE**

- XV. **POLICE, FIREMEN AND VOLUNTEER FIREMEN ARE COVERED BY COMPENSATION SYSTEM**