



News & Notes

Governor Corbett Signs Workers' Compensation Reform Bill to Aid Small Businesses

Governor Tom Corbett signed into law House Bill 440, a measure that expands the availability of workers' compensation coverage to small businesses, on June 30, 2011.

The new law authorizes insurers, including the State Workers' Insurance Fund, or SWIF, to voluntarily provide workers' compensation coverage to sole proprietors, partners in partnerships and members of limited liability companies.

"The small-business community has waited too long for this reform. I am pleased that we are finally able to provide a crucial segment of our economy with this deserved protection," Corbett said. "This law is important progress toward making Pennsylvania the preferred state in which to start or run a business."

Specifically, the new law will:

- Extend the availability of workers' compensation coverage to sole proprietors, partners in partnerships and members of a limited liability company.
- Transfer \$4 million from the Workers' Compensation Administration Fund to the Uninsured Employers Guaranty Fund to ensure the latter's short-term solvency.
- Have no adverse effect on the state's general fund or SWIF, and place no burden on the Department of Labor & Industry's Bureau of Workers' Compensation.

"Sole proprietors and other small businesses need access to the peace of mind afforded by workers' compensation coverage," said Department of Labor & Industry Secretary Julia Hearthway. "This legislation makes that protection possible, ensuring that more Pennsylvanians injured on the job can make ends meet while they recover."

Reaching Out to the Workers' Compensation Community

On May 3, 2011, Mistie Snyder, manager of the bureau's Helpline, and John Strawser, manager of the bureau's Compliance Section, participated in the National Federation of Independent Business Small Business Day, answering questions relating to workers' compensation and distributing employer information. Governor Corbett was the guest speaker at this event which was attended by approximately 150 small Pennsylvania businesses.

Representatives from the bureau's Regulatory Adherence & Educational Outreach Section participated in the March and April 2011 Pennsylvania Chamber of Business & Industry's UC/WC Roundtable events in Harrisburg, Erie and Pittsburgh. Manager Lea Kilgore and staff member Callie Dow shared information with the employer-based audience on workers' compensation issues such as claims reporting, benefits, physician choice, time limits and filing, as well as injury types and trends. Attendees provided positive feedback, indicating that they enjoyed hearing from the Bureau of Workers' Compensation directly.

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Employer Information Services
717-772-3702

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

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

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

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

Prosecution Blotter

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

First-time offenders may be eligible to enter into the Accelerated Rehabilitative Disposition (ARD) program. Defendants who enter the ARD program waive their right to a speedy trial and statute of limitations challenges during the period of enrollment; they further agree to abide by the terms imposed by the presiding judge. Upon completion of the program, defendants may petition the court for the charges to be dismissed. Although acceptance into the program does not constitute a conviction, it may be construed as a conviction for purposes of computing sentences on subsequent convictions.

Allegheny County

James R. Blystone and Joyce A. Blystone, owners of Blystone Tree Service in Pittsburgh, were sentenced on Feb. 15, 2011, by Judge Kathleen A. Purkin in Allegheny County Court of Common Pleas. James and Joyce Blystone each pleaded guilty to 18 misdemeanor counts of the third degree, were each sentenced to 18 years' probation and were ordered to pay restitution to the Uninsured Employer Guaranty Fund in the amount of \$282,786.84 as well as the costs of prosecution. The bureau's Compliance Unit reports that Blystone Tree Service is operating as a partnership with zero employees.

Armstrong County

Judge Kenneth G. Valasek entered Thomas Lentz and Jennifer Lentz, owners of Lentz Construction in Sagamore, into the ARD program for first-time offenders on March 3, 2011, in Armstrong County Court of Common Pleas. Thomas and Jennifer Lentz were placed on probation for a period of two years, ordered to pay the costs of prosecution, perform 20 hours of community service and pay restitution to an injured employee in the amount of \$40,597.21. The bureau's Compliance Unit reports that Lentz Construction is no longer in business.

Blair County

Robert B. Yoder, owner of R.B. Yoder Transportation, in Martinsburg, pleaded guilty to one felony count of the third degree on May 5, 2011, in Blair County Court of Common Pleas for failing to insure his workers' compensation liability. Judge Jolene Grubb Kopriva sentenced Yoder to serve six months' probation, pay costs of prosecution and a fine of \$500. The bureau's Compliance Section reports that R.B. Yoder Transportation is now in compliance with Pennsylvania's workers' compensation law.

Chester County

Michael E. Lautensack, owner of MVL Realty Holdings LLC in Berwyn, was sentenced on Jan. 14, 2011, by Judge David F. Bortner in Chester County Court of Common Pleas. Lautensack pleaded guilty to five misdemeanor counts of the third degree, was sentenced to five years' probation and was ordered to pay restitution to the

Uninsured Employer Guaranty Fund in the amount of \$187,185.64 as well as the costs of prosecution. The bureau's Compliance Unit reports that MVL Realty Holdings LLC is no longer in business.

Columbia County

Antoinette T. Kester, owner of Front Street Motors in Berwick, was sentenced on March 17, 2011, by Judge Thomas Arthur James Jr. in Columbia County Court of Common Pleas. Kester pleaded guilty to six misdemeanor counts of the third degree, was sentenced to six years' probation, was ordered to pay restitution to the Uninsured Employer Guaranty Fund in the amount of \$83,463.39, pay the costs of prosecution and was fined \$1,200. The bureau's Compliance Unit reports that Front Street Motors is no longer in business.

Judge Thomas Arthur James Jr. entered Roger S. Davis, owner of Roger Davis Trucking Inc. in Bloomsburg, into the ARD program for first-time offenders on March 9, 2011, in Columbia County Court of Common Pleas. Davis was placed on probation for a period of six years, was ordered to pay the costs of prosecution, restitution to the Uninsured Employer Guaranty Fund in the amount of \$34,189.10 and restitution to the Bureau of Workers' Compensation in the amount of \$159. The bureau's Compliance Unit reports that Roger Davis Trucking Inc. is no longer in business.

Delaware County

Gupreet Singh, owner of First Option Direct Mortgage in Upper Darby, was sentenced on March 14, 2011, by Judge James P. Bradley in Delaware County Court of Common Pleas. Singh pleaded guilty to five misdemeanor counts of the third degree and was sentenced to five years' probation, was ordered to pay restitution to the Uninsured Employer Guaranty Fund in the amount of \$149,031.12 and was ordered to pay the costs of prosecution. The bureau's Compliance Unit reports that First Option Direct Mortgage is no longer in business.

Judge Barry C. Dozer entered Ali Gourgulugil, owner of Femi's Pizza Inc. in Collingdale, into the ARD program for first-time offenders on April 25, 2011, in Delaware County Court of Common Pleas. Gourgulugil was placed on probation for a period of 12 months, was ordered to pay the costs of prosecution, perform 16 hours of community service and was ordered to pay restitution to the Uninsured Employer Guaranty Fund in the amount of \$10,012.67. The bureau's Compliance Unit reports that Femi's Pizza Inc. is in compliance with Pennsylvania workers' compensation law.

Andrew E. Cohen, owner of Performance Logistics LLC, in Folcroft, was sentenced on June 6, 2011, by Judge Michael F.X. Coll in Delaware County Court of Common Pleas. Cohen pleaded guilty to five misdemeanor counts of the third degree, was sentenced to five years' probation, ordered to pay the costs of prosecution, fined \$1,000 and was ordered to pay restitution to the Uninsured Employer Guaranty Fund in the amount of \$310,833.16. The bureau's Compliance Unit reports that Performance Logistics LLC is now in compliance with Pennsylvania's workers' compensation law.

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Prosecution Blotter

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Erie County

Raul Rodriguez, owner of Rodriguez General Contractors in Erie, was sentenced on April 7, 2011, by Judge Michael E. Dunlavey in Erie County Court of Common Pleas. Rodriguez pleaded guilty to one misdemeanor count of the third degree, was sentenced to one year probation, was ordered to pay restitution to the Uninsured Employer Guaranty Fund in the amount of \$74,892.22 and was ordered to pay the costs of prosecution. The bureau's Compliance Unit reports that Rodriguez General Contractors is in compliance with Pennsylvania workers' compensation law.

Luzerne County

Judge Lewis W. Wetzel entered Rosa Schiano Dicola, owner of R&L Inc., doing business as Dicola's Pizzeria, in Hazle Township, into the ARD program for first-time offenders on May 24, 2011, in Luzerne County Court of Common Pleas. Schiano Dicola was placed on probation for a period of six months, was ordered to pay the costs of prosecution and was ordered to pay restitution to the Uninsured Employer Guaranty Fund in the amount of \$24,922.69. The bureau's Compliance Unit reports that R&L Inc., doing business as Dicola's Pizzeria, is now in compliance with Pennsylvania's workers' compensation law.

Philadelphia County

Judge Teresa Carr Deni entered Wei J. Lin, owner of King Trading Inc. in Philadelphia, into the ARD program for first-time offenders on Jan. 21, 2011, in Philadelphia County Court of Common Pleas. Lin was placed on probation for a period of six months and was ordered to pay all court costs. The business, King Trading Inc., pleaded guilty to one misdemeanor count of the third degree on Jan. 21, 2011, for failing to insure its workers' compensation liability. Judge Teresa Carr Deni sentenced King Trading Inc. to pay the cost of prosecution and a fine of \$2,500 and to be placed on probation for a period of six months. The bureau's Compliance Unit reports that King Trading Inc. is in compliance with Pennsylvania workers' compensation law.

Westmoreland County

Joseph Hewitt, owner of JAH Construction in Greensburg, pled guilty to one misdemeanor count of the third degree on Jan. 8, 2009, in the Westmoreland County Court of Common Pleas for failing to insure his workers' compensation liability. Judge Richard E. McCormick Jr. placed Hewitt on probation for a period of one year. The judge also ordered Hewitt to pay the cost of prosecution and make restitution to an injured employee in the amount of \$9,968.34. The bureau's Compliance Unit reports that JAH Construction is no longer in business.

Kids' Chance of Pennsylvania 6th Annual Golf Outing and Recognition Event

On May 31, 2011, Kids' Chance of Pennsylvania held its 6th Annual Golf Outing and Recognition Event at the esteemed Hershey Country Club in conjunction with the Pennsylvania Worker's Compensation Conference.

Sixth Annual – Six years of golfers making a difference in the lives of deserving young people enabling them to pursue their educational dreams. One hundred forty-four dedicated golfers turned out to help raise funds for the Kids' Chance of Pennsylvania scholarship program and to celebrate the organization's accomplishments over the last year.

Dinner speakers included Suzanne Emmet, president of Kids' Chance of Pennsylvania and senior vice president of claims and corporate compliance for Eastern Alliance Insurance Group, and current scholarship recipient Ryan Sankey.

While the golf outing's primary goal is to raise scholarship funds for Kids' Chance, it doesn't prevent golfers from having fun on the course. The 2011 prize winners included:

Longest Drive Women

Julie Norris

Closest to Pin

John McTiernan

Longest Drive Men

Drew Witouski

Winning Foursome (Score: 58)

Gary Simons

John Nickey

Jerry Fischer

John Bullock

With the completion of this event, Kids' Chance looks forward to three 5/10K walk/run events this fall: Sunday, Oct. 2, at Fairmount Park, Philadelphia; Saturday, Oct. 29, at South Park, Pittsburgh; and Sunday, October 30, at City Island, Harrisburg. If you would like to volunteer, participate or sponsor these events, please visit www.KidsChance5k.org.

Through these and other events, Kids' Chance of Pennsylvania demonstrates its commitment to its mission. For the 2010-11 academic year, Kids' Chance awarded 48 scholarships totaling \$121,000. Since its founding, Kids' Chance has awarded grants to more than 427 deserving Pennsylvania students. All of this would not be possible without the generous support of our corporate and community partners, scholar sponsors, Kids' advisors and many donors who provide contributions to fund our scholarships.

For more information about Kids' Chance of Pennsylvania, visit www.kidschanceofpa.org, email info@kidschanceofpa.org or call 610-970-9143.





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

TIPS for Achieving and Maintaining Compliance with Youth Employment Laws*

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

Information about YouthRules! can be found at www.youthrules.dol.gov. For information about the laws administered by the Wage and Hour Division, log on to www.wagehour.dol.gov, or call the Department of Labor's toll-free help line at 1-866-4USWAGE.

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

Bureau Offers Repricer/Provider Training

The Bureau of Workers' Compensation is offering training sessions to assist insurers, self-insured employers, health care providers and vendors in understanding workers' compensation medical billing and payment processes, as well as the workers' compensation fee schedule. The training sessions provide valuable information for all parties involved in the medical billing and payment aspects of workers' compensation. All sessions will be conducted via WebEx and can be accessed from any computer with an Internet connection.

Repricer training sessions will be offered:
Sept. 27 at 9 a.m. or Sept. 29 at 1 p.m.

Provider training sessions will be offered:
Oct. 4 at 9 a.m. or Oct. 6 at 1 p.m.

There is no registration fee to participate in a WebEx session; however, preregistration is required.

To participate in a training session, you must have a computer with Internet access and an email address.

To reserve your date for a training session, email Karla Henneman at khenneman@pa.gov. Questions can be directed to Karla Henneman at 717-787-3486. Additional information can be found at www.dli.state.pa.us. Click on "Workers' Compensation."

Office of Adjudication News

Judge Retires

Workers' Compensation Judge Francis R. Williamson retired from the Workers' Compensation Office of Adjudication, Harrisburg office, on April 22, 2011. Williamson provided dedicated service as a judge in the Harrisburg and Reading areas for more than 19 years. We offer our best wishes for a long and healthy retirement.

Reorganization

On March 28, 2011, the Petitions Section officially became part of the Workers' Compensation Office of Adjudication. While the bureau of Workers' Compensation remains responsible for processing all claims information, the Office of Adjudication, through the Petitions Section, is charged with processing and assigning all petitions filed to one of the 94 current workers' compensation judges for hearing and decision. The address for filing petitions remains the same.

The Fee Review Hearing Office became part of the Workers' Compensation Office of Adjudication effective Feb. 23, 2011. All appeals to initial fee review determinations should now be filed with the Fee Review Hearing Office located at 1010 N. 7th St., Room 318, Harrisburg, PA 17102. Once filed with the Fee Review Hearing Office, the requests for hearing will be assigned to one of seven workers' compensation judges across the commonwealth who have been designated to adjudicate fee review hearing requests. The Fee Review Hearing Office can be reached at 717-425-7758.

\$400 Million and Counting

More and more employers are discovering that safety really does pay.

Employers who follow Pennsylvania's workplace safety committee requirements and regulations can apply for state certification and receive annual 5 percent discounts on workers' compensation insurance premiums. Application is made through the Pennsylvania Department of Labor & Industry, Bureau of Workers Compensation, Health & Safety Division.

The basic committee requirements for certification include that a minimum of two employee representatives and two employer representatives meet monthly, and that the committee be in operation and in compliance with requirements for at least six months prior to submitting an application.

More than 9,300 workplace safety committees already certified in Pennsylvania have accumulated more than \$400 million in total savings just from the 5 percent workers' compensation insurance premium discounts. That's money that is being reinvested in expanding businesses along with implementation of further safety and prevention efforts – but it's no longer going toward insurance premiums!

In addition to the 5 percent workers' compensation insurance premium discount, certified workplace safety committees help reduce the employer's cost of workers' compensation insurance by identifying workplace hazards, reducing injuries and reducing claims.

In an increasingly competitive business climate, any opportunity to save money is welcomed. A workplace safety committee not only improves the safety of your operations, but also adds to the bottom line AND clearly shows employees that management cares about their well being. When that's the case, everybody wins.

For more information on setting up a workplace safety committee for your business and to learn more about the program and requirements, visit www.dli.state.pa.us. Click on "Workers Compensation," then "Health and Safety Division."

Safety Committee Box Score

Cumulative number of certified workplace safety committees receiving 5 percent workers' compensation premium discounts as of July 28, 2011:

9,429 committees covering 1,295,203 employees

Cumulative Grand Total of Employer Savings:

\$414,180,864

A View From the Bench

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

A Case Law Update: A Few Interesting Cases from the Commonwealth Court

Suspension/Retirement/Removal from the "entire work force"

The Commonwealth Court in City of Pittsburgh and UPMC Benefits Management Services Inc. v. WCAB (Leonard), 18 A.3d 367, 2011 WL 1486570 (Pa. Cmwlth.) has again addressed the employer's entitlement to a suspension of benefits when an employee has removed himself from the work force. The Commonwealth Court, as in its prior decision in City of Pittsburgh and UPMC Benefit Management Services Inc. v. WCAB (Robinson), 4 A.3d 1130 (Pa. Cmwlth. Ct. 2010), held that the acceptance of a retirement pension does not equate with retirement and alone is insufficient to establish that a claimant has voluntarily left the work force. The Commonwealth Court restates in Leonard, as it previously held in Robinson, that the standard of review is "the totality of the circumstances," which includes the facts of the case and the type of pension involved.

The Leonard case involved a police officer who injured his right forearm and right knee on Aug. 10, 1994. He was off work and eventually returned to work and suffered an aggravation in November 2004. He went off work and began receiving Heart & Lung (H&L) benefits from Dec. 5, 2004, to Jan. 19, 2006. On Feb. 6, 2006, a Notice of Compensation Payable was issued converting H&L benefits to workers' compensation benefits as of Jan. 20, 2006. On April 1, 2006, the claimant received a service-connected disability pension from the employer. The claimant underwent an IME with Dr. Jon Tucker on Jan. 19, 2007. Dr. Tucker found the claimant capable of performing full-time light-duty or part-time medium-duty work. Based on the IME, the employer issued a Notice of Ability to Return to Work on Aug. 16, 2007. The employer subsequently filed a Petition to Suspend Compensation Benefits, arguing the claimant voluntarily removed himself from the work force as he is capable of light or medium work and has not sought employment.

The workers' compensation judge granted in part and denied in part the employer's suspension petition. The workers' compensation judge granted a suspension from Aug. 16, 2007, the date of the Notice of Ability to Return to Work, to Nov. 30, 2007, and reinstated benefits as of Dec. 1, 2007, the date the claimant testified that he began looking for work. The Workers' Compensation Appeal Board affirmed the workers' compensation judge. The employer appealed to the Commonwealth Court raising two issues: 1) whether the employer is entitled to a suspension as of April 1, 2006, the date the claimant took his service-connected disability pension versus the date of the Notice of Ability to Return to Work; and, 2) whether the claimant is entitled to a reinstatement as of Dec. 1, 2007, because his job search was insufficient to show he re-entered the work force.

As to the first issue, the Commonwealth Court found that the service-connected disability pension the claimant took only showed that he could not perform his date-of-injury-job and that the mere acceptance of that disability pension did not show he had voluntarily left the "entire work force." Therefore, the employer needed to show that the claimant had chosen not to return to the work force. In reviewing the workers' compensation judge's findings, the Commonwealth Court found the judge's finding that the claimant voluntarily removed himself from the work force as of the date of the Notice of Ability to Return to Work, because that is when the claimant knew he had work capabilities, was sufficient indicia that the claimant had voluntarily left the work force.

As to the second issue, the Commonwealth Court found that as the workers' compensation judge credited the claimant's testimony about his job search, which was more than just searching the Internet and newspaper ads, and that this was sufficient evidence that the claimant was engaged in a good-faith job search as of Dec. 1, 2007, as required under Southeastern Pennsylvania Transportation Authority v. WCAB (Henderson), 543 Pa. 74, 669 A.2d 911 (1995), to rebut the presumption that he had voluntarily left the work force.

It should be noted that on April 6, 2011, the Supreme Court granted an Allowance for Appeal in the Robinson case limited to the following issue:

Did the Commonwealth Court err by holding that in a petition to suspend compensation benefits based upon an alleged voluntary withdrawal from the workforce, the employer bears the burden of showing by the totality of the circumstances that the claimant has chosen not to return to the workforce?

Review Petitions/Timeliness

The Commonwealth Court also recently revisited the time limitations under Section 413 to expand work-injury descriptions in the Fitzgibbons v. WCAB (City of Philadelphia), 999 A.2d 659 (2010), and Pizza Hut v. WCAB (Mahalick), 11 A.3d 1067 (2011), cases.

In Fitzgibbons, the claimant filed a Review/Reinstatement Petition seeking to review the Notice of Compensation Payable to add injuries to include her neck, low back, left hip and knee. The claimant suffered a work injury on May 4, 1997. A Notice of Compensation Payable acknowledging her injury as epicondylitis of the left elbow was issued. A Supplemental Agreement was executed suspending benefits as of July 13, 1998, based on a return to work without loss of earnings. She filed a Review/Reinstatement Petition on Aug. 26, 2002. The workers' compensation judge issued a decision on Aug. 5, 2003, dismissing the petition because it had not been filed within three years from the date of her injury. The claimant appealed asserting the workers' compensation judge erred in applying the

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A View From the Bench

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holding from Jeanes Hospital v. WCAB (Hass), 819 A.2d 131 (Pa. Cmwlth. 2003), rev'd, 582 Pa. 405, 872 A. 2d 159 (2005), and Zippo Manufacturing Co. v. WCAB (Louser), 792 a.2d 29 (Pa. Cmwlth. 2002), because the claimant was not seeking to add later injuries, but was seeking to have the Notice of Compensation Payable reviewed for a material mistake since the injuries she was seeking to add occurred contemporaneously with her original left elbow injury. The Workers' Compensation Appeal Board vacated the workers' compensation judge's decision and remanded the matter to the workers' compensation judge to determine if the new injuries arose consequentially from the work injury or were injuries that existed at the time the Notice of Compensation Payable was issued.

The workers' compensation judge issued a new decision on Oct. 12, 2007, finding that the Review Petition should be treated as a Claim Petition and that it was time barred because it was not filed within three years of the injury. The claimant appealed, and the Workers' Compensation Appeal Board affirmed the workers' compensation judge's finding that the petition was not filed within three years of the most recent payment of compensation (her benefits were suspended as of July 13, 1998), and therefore, her petition was not timely. The claimant appealed the Workers' Compensation Appeal Board's order. The Commonwealth Court affirmed the Workers' Compensation Appeal Board, holding that regardless of whether the claimant is seeking to review the Notice of Compensation Payable to correct it under the first paragraph of Section 413 or to add additional consequential injuries under the second paragraph of Section 413, the claimant must file the petition within three years of the date of the most recent payment.

In the Pizza Hut case, the Commonwealth Court applied the same three-year limitation. However, the facts of the case resulted in a different outcome. The claimant (Mahalick) suffered a work injury on Jan. 31, 2003. A Notice of Compensation Payable was issued describing the injury as a low back strain/sprain. A Supplemental Agreement was executed July 23, 2003, suspending benefits as of March 26, 2003. In May 2004, the claimant filed a Petition to Review UR Determination regarding chiropractic treatment. On Sept. 15, 2005, the employer filed a Petition to Terminate Compensation Benefits alleging the claimant was fully recovered from her work injury as of Aug. 19, 2005. On Dec. 16, 2006, the claimant filed a Petition to Review Medical Treatment and/or Billing seeking to amend the description of injury to include lower back bulging discs and facet arthropathy. The workers' compensation judge found the claimant was not fully recovered, that the chiropractic treatment rendered by Dr. Jodon was reasonable and necessary and that the claimant's bulging disc and facet arthropathy were related to her work injury and expanded the description of injury to include those problems. The employer appealed to the Workers' Compensation Appeal Board, which affirmed the workers' compensation judge. The employer appealed the Workers' Compensation Appeal Board order, arguing the board erred in expanding the description of injury because the claimant's Review Petition was time-barred under Fitzgibbons. Although the Commonwealth Court agreed

that a Review Petition must be filed within three years and that the claimant's Review Petition was not filed within three years, it found that the employer's Termination Petition was filed within three years and, under the second paragraph of Section 413, the workers' compensation judge may correct a Notice of Compensation Payable during a termination proceeding without the claimant filing a separate petition, citing Cinram Manufacturing Inc. WCAB (Hill), 601 Pa. 524, 975A.2d 577 (2009). The Commonwealth Court therefore affirmed the Workers' Compensation Appeal Board.

Review Petition/Prior UR/Collateral Estoppel

A Review Petition was also the subject matter in another recent Commonwealth Court case, Securitas Security Services USA Inc. v. WCAB (Schuh), 16 A.3d 1221, 2011 WL 1226266 (Pa. Cmwlth). In the Securitas case, the claimant sought treatment for major depressive disorder from Dr. Matthew Berger in October 2005. The employer filed a Utilization Review (UR) seeking prospective review of all future treatment by Dr. Berger on May 5, 2006. The UR, on July 7, 2006, determined the treatment to be reasonable and necessary. The employer did not appeal the UR determination. On July 30, 2007, the claimant filed a Review Petition to amend the description of injury to include depression and anxiety. The claimant did not present evidence nor did she testify, but rather averred that the employer was estopped from denying liability for the psychological injuries because of the unappealed UR determination. The parties submitted briefs on the issue and the workers' compensation judge granted the claimant's Review Petition relying on the case Krouse v. WCAB (Barrier Inc.), 837 A.2d 671 (Pa. Cmwlth. 2003). The workers' compensation judge found that by availing itself to the UR process, the employer had effectively acknowledged the psychological treatment was related to the work injury. Therefore the workers' compensation judge amended the description of injury to include depression and anxiety. The employer appealed and the Workers' Compensation Appeal Board affirmed the workers' compensation judge's finding that all the elements of collateral estoppel were satisfied.

On appeal to the Commonwealth Court, the employer argued that the workers' compensation judge erred in applying Krouse and the doctrine of collateral estoppel. In Krouse, the Commonwealth Court held that a claimant who had not appealed a UR determination that chiropractic treatment was not necessary or reasonable was barred from pursuing payment of the same treatment in a subsequently filed Review Petition because she was suing for the same relief, the cost of the chiropractic care. The Court in Krouse explained that the judgment in the prior action operates as estoppel in the second action only as to those issues that are identical, actually litigated, necessary to the judgment and were material to the adjudication. In the Securitas case, the Court found that the issue in the Review Petition (whether the claimant's depression and anxiety were causally

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A View From the Bench

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related to the work-related back injury) was not identical, litigated, essential or relevant to the UR determination. The Court found the Workers' Compensation Appeal Board had erred in affirming the workers' compensation judge's decision to grant the claimant's Review Petition solely on the unappealed UR determination and reversed the board. In fact, the Court notes that, statutorily, the UROs may not decide causal relationship between the treatment under review and the work injury. The Court also notes that it is a well-settled principle that the payment of medical bills is not an admission of liability.

Psychological Injury/Police

The Commonwealth Court recently addressed psychological claims in the case of Rodney Washington v. WCAB (Commonwealth of PA, State Police), 11 A. 3d 48, (Cmwlt. Ct. 2011). The Washington case involved a field trooper with the Pennsylvania State Police who filed a Claim Petition alleging he suffered a work-related injury in the nature of post traumatic stress disorder while in the scope and course of his employment as a forensic service unit (FSU) trooper. The claimant argued that he developed post traumatic stress disorder as a result of his investigation of the "Baby Jane Doe" homicide, wherein an infant baby girl was found in a plastic bag in a burn barrel. The claimant took pictures of the scene and the infant, and also attended and photographed the autopsy. The workers' compensation judge found that the claimant had not established that the post traumatic stress disorder was the result of abnormal working conditions. The workers' compensation judge found that the activities the claimant engaged in during the investigation of the "Baby Jane Doe" case were part of his normal, routine activities as an FSU member and did not constitute abnormal working conditions. This case re-affirms that unusual, and even tragic, events involving police have consistently been found by the Commonwealth Court to not constitute "abnormal working conditions" under the rule established by the Pennsylvania Supreme Court in Martin v. Ketchum Inc., 523 Pa. 509, 568 A.2d 158 (1990). See: Rydzewski v. WCAB (City of Philadelphia), 767 A.2d 13 (Pa. Cmwlt. 2001); Young v. WCAB (New Sewickley Police Dep't), 737 A.2d 317 (Pa. Cmwlt. 1999); City of Philadelphia v. WCAB (Brasten), 682 A.2d 875 (Pa. Cmwlt. 1996), *aff'd per curiam* 556 Pa. 400, 728 A.2d 938 (Pa. 1999).

UC Issues Update Newsletter

To read Pennsylvania's Unemployment Compensation Program's quarterly online newsletter that provides critical and up-to-date unemployment compensation information, visit www.uc.pa.gov, click on Employer Services then UC Issues Update Newsletter. To be notified when future editions are posted, sign up for e-Alerts which can be found on the left navigational bar under e-Alerts, Subscribe Now.

10th Annual Workers' Compensation Conference

The 10th Annual Workers' Compensation Conference was held at the Hershey Lodge & Convention Center June 1-2, 2011.

A record number of more than 1,300 registrants attended the event, which offered workshop sessions ranging from the basics of workers' compensation to more advanced topics such as mediation, subrogation and Medicare's impact on workers' compensation.

Attendees expressed their appreciation for an "outstanding" event with lots of information and excellent speakers who were "interesting, knowledgeable and entertaining."

In addition to learning from seasoned experts, attendees had the opportunity to network with other workers' compensation professionals and visit the exhibit hall, where vendors offered services from surveillance to safety equipment.

Our thanks to all of the speakers, attendees, exhibitors and program committee members who made the event a success.

Speaker handouts are available on the department's website at www.dli.state.pa.us. Click on "Workers' Compensation," then "Conferences, Seminars, Training," then "Annual Conference."

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