WORKERS' COMPENSATION

PRACTICAL SKILLS SERIES

2011 Edition Written by

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I. Introduction

Workers' Compensation is a statutory method of providing benefits to an employee (or the employee's dependent) who suffers a personal injury or death by accident or occupational disease arising out of and in the course of employment. The concept of fault and consequently negligence is not usually present.

The workers' compensation system provides medical care and pays compensation for temporary and permanent disability. It is an administrative system that differs from the civil tort system. In the civil tort system, a plaintiff suing in Superior Court for a fall or auto accident may recover damages for pain, suffering, and loss of quality of life. In the workers' compensation system, however, pain, suffering and loss of quality of life are not principal criteria on which awards are based. Pain, suffering, and loss of quality of life are relevant, for the most part, only to the extent they prevent the worker from doing his job. Interference with "ordinary pursuits of life" though may be considered in determining if an injury crosses the threshold below which there can be no award. *Perez v. Pantasote, Inc.* 95 N.J. 105 (1984). Also, cases have held that a worker may receive compensation for sterility, impotence, loss of a testicle, and bodily disfigurement such as significant scars even where there is no diminution in earning power or capacity to work. See *Akef v. Basf Corp.*, 305 N.J. Super 333 (App. Div. 1997); *Stepnowski v. Specific Pharmaceuticals*, 18 N.J. Super 495 (App. Div. 1952*); Everhart v. Newark Cleaning & Dying Co.*, 119 N.J.L. 108 (E & A 1937); *Hercules Powder Co. v. Morris County Court of Common Pleas*, 93 N.J.L. 93 (Sup. Ct. 1919). Despite these cases, workers' compensation judges base awards on functional loss, with an emphasis primarily on loss of ability to work and impairment of earning capacity. See N.J.S.A. 34: 15-36.

Given the lesser emphasis on pain, suffering, and loss of quality of life in workers' compensation cases, petitioners' attorneys should ascertain if a party other than the employer may be held responsible for an injury. If so, both a workers' compensation suit and a civil suit will be necessary to fully protect the worker's rights. A severely injured worker also may be entitled to Social Security benefits and a Disability Retirement. Clients with potential rights of recovery beyond a workers' compensation claim should be advised, however, that the employer's insurance carrier may be entitled to offsets for recoveries outside of the workers compensation system because in this state there is a policy of preventing "double recovery."

New Jersey is not a "wage loss" state but utilizes the "whole man" or "medical impairment" theory to establish disability. The intent of Title 34 is to create a ceaseless flow of benefits to the worker. This flow begins with payment of any medical bills necessary for the injured worker's care and treatment, along with temporary disability benefits. Theoretically, if there is permanent partial disability, the payment of permanent partial disability shall begin as soon as the payments for temporary disability benefits cease. It is most often the failure of the workers' compensation insurance carrier to furnish necessary medical treatment, or to continue temporary disability benefits, or to promptly tender permanent partial disability benefits, that creates the need for the attorney. Filing the

appropriate motions or petitions, rectifies the situation to insure that the worker receives continuous and proper benefits.

Workers' compensation benefits accruing to an employee are: hospital, medical and rehabilitation expenses; and after a seven-day waiting period, temporary disability benefits. Weekly benefits are based on 70 percent of the claimant's weekly wage, subject to a ceiling of 75 percent of the State Average Weekly Wage (SAWW), as determined annually by the Commissioner of Labor, and a minimum rate of not less than 20 percent of the State Average Weekly Wage.

After discharge from active curative medical treatment, or on the claimant's return to work, temporary disability benefits are discontinued and the employer or its insurance carrier (hereinafter referred to as the respondent) may be required to pay permanent partial disability or total permanent disability.

If the injury or occupational disease results in the death of the employee, his or her dependent(s) may bring an action for dependency benefits.

Workers' compensation claimants petition the court for benefits, as distinguished from damages sought by plaintiffs in civil tort actions. Under N.J.S.A. 34:15-8, the remedy of Workers' Compensation is exclusive and an employer or a co-employee may not be sued for negligence arising out of the employment. Suit for intentional tort, however, has been retained.

There are several sources of information about workers' compensation law in New Jersey. One is the New Jersey Division of Worker's Compensation web site, located at www.state.nj.us/labor/wc/wcindex.htm. Among other things, this site summarizes recent legislative and regulatory changes and recent workers' compensation decisions, including administrative decisions by Judges of Compensation. Texts of opinions can be accessed from the web site. Numerous forms are available for downloading, including Claim Petitions, Answers, Substitutions of Attorney, Requests for Social Security Information, subpoenas, interactive Orders Approving Settlement, Section 20 settlement orders, total disability orders with Second Injury Fund and Social Security offsets, med-temp motions, and interrogatories. The workers' compensation law under Title 34 is also available, along with the Rules of the Division of Workers' Compensation as set forth in Chapter 12 of the New Jersey Administrative Code.
The *Workers' Compensation Research* manual, prepared and used by workers' compensation judges, can also be found on the Division of Workers' Compensation website. The manual contains an introduction and sixteen chapters covering major points of workers' compensation law.

Jon Gelman's treatise, *Workers' Compensation Law, 3rd ed.*, Vol. 38, 39, and 39A of the New Jersey Practice Series (West Group) is another excellent source of knowledge. In addition, Jon Gelman has a web site at www.gelman.com that includes articles and various connections.
There is also *Geaney's New Jersey Workers' Compensation Manual for Practitioners,*

Adjusters, and Employers, co-distributed with the New Jersey Institute of Continuing Legal Education, 2006 Edition, an outstanding summary of New Jersey Workers' Compensation law.

For attorneys who have access to Westlaw, the Workers' Compensation Administrative Decisions database (NJWC-ADMIN), a sub-category of the New Jersey Administrative and Executive Material database, houses opinions by Judges of Compensation in New Jersey. A lawyer desiring to learn a particular judge's philosophy or orientation might find this database helpful. This database can also be consulted to find explanations of law or complex calculations that are not available in published Law Division, Appellate Division, or Supreme Court opinions.

The COURTS on-line program, accessible at the Division of workers' Compensation website, allows law firms and insurance companies to receive calendar notices via e-mail. This program also enables participants to check the status of cases on line to find out, among other things, the judge assigned to a case, the next scheduled hearing date, the pleadings history, court orders, and the presence of liens.

The workers' compensation electronic filing program, administered through COURTS on-line, allows firms to file electronically claim petitions, answers, and amended petitions and answers, and to receive legal documents from other law offices participating in the program. Information about these programs is posted on the Division webpage.

II. Coverage

A. Who is Covered

1. Covered Employees

For general definitions in workers' compensation, refer to N.J.S.A. 34:15-36. In that section, "employer" is defined as being "synonymous with master, and includes natural persons, partnerships, and corporations". All employers operating in New Jersey, except for State, county, municipality, and public school districts, must carry workers compensation insurance through an authorized carrier or through an approved self insurance program. For information on the violation of this requirement, see the section F of this chapter on the Uninsured Employers Fund.

N.J.S.A. 34:15-36 defines "employee" as being:

> synonymous with servant, and includes all natural persons, including officers of corporations, who perform service for an employer for financial consideration, exclusive of (1) employees eligible under the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. § 901 et seq.), for benefits payable with respect to accidental death or injury, or occupational disease or infection; and (2) casual employments, which shall be defined, if in connection with the employer's business, as employment the occasion for which arises by chance or is purely accidental; or if not in connection with any business of the employer, as employment not regular, periodic or recurring; provided, however, that forest fire wardens and forest firefighters employed by the State of New Jersey shall, in no event, be deemed casual employees.

As stated in *Re/Max of N.J., Inc. v. Wausau Insurance Cos.*, 304 N.J. Super. 59 (Ch. Div. Atlantic Cty. 1997), *aff'd* 316 N.J. Super. 514 (App. Div. 1998):

> . . . the term "employee" is given a broad definition and includes "all natural persons ... who perform services for an employer for financial consideration." N.J.S.A. 34:15-36. It is also clear that the term "employee" is to be liberally construed so as to bring as many persons as possible within the coverage of the Act. *Hannigan v. Goldfarb*, 53 N.J. Super. 190, 195, 147 A.2d 56 (App. Div. 1958). As a consequence, a variety of working relationships have been held to be covered by the Act, including those not necessarily confined to traditional employment settings. *Ibid*; *Marcus v. Eastern Agricultural Ass'n, Inc.*, 58 N.J. Super. 584, 590, 157 A.2d 3 (App. Div. 1959), *rev'd on dissent*, 32 N.J. 460, 161 A.2d 247 (1960).

Some workers are covered under other Workers' Compensation laws. For example, federal employees are covered by the Federal Employers' Compensation Act, 5 U.S.C.A. § 810 *et seq.* Railroad employees are covered by the Federal Employers' Liability Act, 45

U.S.C.A. §§ 51, 54, 56, 60. Members of a ship's crew are classified as seamen and are covered under the Jones Act, otherwise known as the Merchant Marine Act, 46 U.S.C.A. § 668. Longshoremen and harbor workers are covered under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A. §901 *et seq.* The law has recently been changed to reflect that sole proprietors and partners may opt to be covered under workers' compensation.

Minors under 14, or between 14 and 18 without working papers, or permits, are paid double temporary and permanent partial disability as a penalty. Also, minors have the right to elect civil recovery for negligence of employer or workers' compensation benefits.

Certain volunteers and other uncompensated public safety workers are entitled to workers' compensation benefits. Under N.J.S.A. 34:15-43 volunteer fire, rescue, first aid, and certain other "authorized workers" doing public duty or responding to an emergency (including the 9-11 terrorist attacks), "who may be injured in the line of duty" are entitled to benefits. The terms of duty also include participating in parades, fund raising, public drills, and authorized maintenance and repair. An "authorized worker" is defined as any person performing any public fire duty or public first aid or rescue squad duty [. . .] at the request of the chief or acting chief of a fire company or the president or person in charge of a first aid or rescue squad for the time being." Injured or killed responders to the 9-11 attacks are entitled to compensation even if they were not authorized to respond by their volunteer organization so long as they served in "any organization duly created and under the control of or supervision of any commission, council or any other governing body of any municipality" or any board of fire commissioners within fire district of any state.

Under N.J.S.A 34:15-75, qualified volunteers are entitled to compensation at the maximum rate. They are further entitled under N.J.S.A. 34:15-7.2 and N.J.S.A. 34:15-43.2to a presumption of compensability for cardiovascular injuries and respiratory impairments.

The applicability of N.J.S.A. 34:15-43 was tested in *Capano v. Bound Brook Relief Fire Co.*, 356 N.J. Super. 87, (App. Div. 2002), where the petitioner, a 93-year old former fire chief, fell and broke his hip while putting a log on a wood-burning stove in the fire house. Long finished with active firefighting, petitioner typically came to the firehouse early each evening, cleaned up a little, then watched television and chatted with the firefighters. Prior to the accident, the petitioner lived independently and was able to care for himself. Afterwards, according to the findings of the compensation judge, he became an invalid requiring nursing home care for the remainder of his life. The Appellate Division sustained the decision of the compensation judge that the petitioner was entitled to benefits under N.J.S.A. 34:15-43 and that the accident rendered him permanently and totally disabled.

Noting that N.J.S.A 34:15-43 included authorized maintenance and repair activity as compensable work and that N.J.S.A. 34:15-74 included as an authorized worker "any person performing any public fire duty [. . .] at the request of the chief or acting chief of

the fire company," the Appellate Division concluded that petitioner was performing public fire duty by helping to maintain the firehouse when he fell. Furthermore, as to the fact that petitioner became totally disabled by a fractured hip, the employer must take employees "subject to all the weaknesses and infirmities he possess[es], even though they render the individual more susceptible to injury. *Id.* at 94, citing *Bober v. Independent Plating Corporation,* 28 *N.J.* 160, 164, and *Belth v. Ferrante & Son, Inc.,* 47 *N.J.* 38, 45-46 (1966).

Additionally, illegal aliens are entitled to workers' compensation benefits. In *Mendoza v. Monmouth Recycling Corporation*, 288 N.J. Super. 240 (App. Div. 1996), the Appellate Division held that unlike employment benefits, illegal aliens may file for and collect workers' compensation benefits. The court reasoned that workers' compensation benefits are funded through insurance premiums and self insurance funds, rather than by the government. Moreover, workers' compensation compensates for injury for work already performed rather than ties the worker over while he seeks future illegal employment. Because illegal aliens have redress to the courts for tort remedies, it would make no sense to disallow benefits in the employment setting; both are based on tort principals. Finally, allowing an employers escape payment of compensation to illegal aliens would only offer an economic incentive to hire more illegal workers while, at the same time, provide a less safe working environment.

2. Workers Not Covered

Specific groups of workers are not entitled to workers' compensation benefits. Coverage does not extend to independent contractors. *Petrone v. Kennedy*, 75 N.J. Super. 295 (App. Div. 1962). An inmate of a penal institution is not an employee. *Drake v. Essex County*, 192 N.J. Super. 177 (App. Div. 1983). Similarly, casual employees are excluded from receiving benefits.

Pursuant to N.J.S.A. 34: 15-36, "casual employment" is not covered. The statute defines casual employment as that "which arises by chance or is purely accidental, or if not in connection with any business of the employer, as employment not regular, periodic or recurring." In *Martin v. Pollard*, 271 N.J. Super. 551 (App. Div. 1994), cert. denied 137 N.J. 307, the petitioner, a tenant of respondent hired part-time to paint one of respondent's houses, was adjudged a casual employee. *Cierpik v. Borough of Manasquan*, 2 N.J. Super. 110 (App. Div. 1949) held that a worker hired to clean up after a hurricane, an unexpected event, was merely a causal employee.

Under the "special employee doctrine," a worker may be deemed to have two employers for purposes of workers' compensation coverage. This doctrine, typically applicable to workers placed by employment agencies, bars an employee from bringing tort actions against either employer. *Kelly v. Geriatric and Med. Serv.* 287 N.J. Super. 567, 573 (App. Div. 1996), affirmed 147 N.J. 42. The plaintiff in *Kelly*, a nurse, was placed by an employment agency in a health care facility, where she fell on a wet floor. She sued the facility for negligence claiming she was employed by the agency but not the facility, which should therefore be liable civilly for damages. In holding that plaintiff was a special

employee of the facility, the court found that the following criteria were satisfied: (1) the employee had an express or implied contract for hire with the special employer; (2) the work performed is essentially that of the special employer; (3) the special employer has the right to control details of the work; (4) the special employer pays the wages; and (5) the special employer has the power to hire, discharge, or fire the employee. *Id.* at 571-572.

a. Employee or Independent Contractor

Independent contractors are not entitled to workers' compensation benefits. *Petrone v. Kennedy*, 75 N.J.Super. 295 (App. Div. 1962), held that a carpenter adding a room to a residence was an independent contractor and therefore not covered by the Workers' Compensation Act despite the fact that the carpenter was paid by the hour. The court stressed that the petitioner was experienced in his trade, had his own tools, worked only sporadically for the homeowners, and was not under their supervision. *Id.* at 298-299. The key issue in *Petrone* is control: "those who do a piece of work according to their own methods without being subject to the employer's control" are independent contractors. *Id.* at 303. A worker may still be deemed an employee even if control is not exercised so long as employer possesses *the right of control. Kelly v. Geriatric and Med. Serv.* 287 N.J. Super. 567, 575-576 (App. Div. 1996), affirmed 147 N.J. 42.

As stated in *Re/Max of N.J., Inc. v. Wausau Insurance Cos.*, 304 N.J. Super. 59 (Ch. Div. Atlantic Cty. 1997), *aff'd* 316 N.J. Super. 514 (App. Div. 1998):

> In addressing the employee/independent contractor issue in other factual settings, our courts have applied two tests; the so-called "control test" and the "relative nature of the work test." *Ibid*; *Tofani v. Lo Biondo Brothers Motor Express, Inc.*, 83 N.J.Super. 480, 484-92, 200 A.2d 493 (App. Div.), *aff'd o.b.*, 43 N.J. 494, 205 A.2d 736 (1964). The "control test" is the older of the two and, in general, is based on the notion that when an individual is an independent contractor, that person carries on a separate business and contracts to do work according to his or her own methods, without being subject to the control of an employer, except as to the results. When the relation is that of employer and employee, on the other hand, the employer not only retains the right to control what is done but also to direct the manner in which the work is completed. *Kertesz v. Korsh*, *supra*, 296 N.J.Super. at 152, 686 A.2d 368 citing *Cappadonna v. Passaic Motors, Inc.*, 136 N.J.L. 299, 55 A.2d 462 (N.J. Sup. 1947), *aff'd*, 137 N.J.L. 661, 61 A.2d 282 (N.J. Err. & App. 1948). Significantly, our courts have held that the "control test" is satisfied so long as the employer has the right of control, and it is not necessary to prove its actual exercise. *Brower v. Rossmy*, 63 N.J.Super. 395, 405, 164 A.2d 754 (App. Div. 1960), certif. denied, 34 N.J. 65, 167 A.2d 54 (1961).
>
> As for the "relative nature of the work test", not only is it the more modern of the two, it is also believed to be the more realistic test in terms of the objectives of the workers compensation act, *Kertesz v. Korsh*, *supra*, 296

N.J.Super. at 154, 686 A.2d 368; Larson, Workmen's Compensation Law,. 43.50 at 8-10. As characterized by the Appellate Division dissent, adopted by the Supreme Court.

> The test ... [is] essentially an economic and functional one, and the determinative criteria [are] not the inclusive details of the arrangement between the parties, but rather the extent of the economic dependence of the worker upon the business he serves and the relationship of the nature of his work to the operation of that business.

[*Marcus v. Eastern Agricultural Ass'n, Inc.*, *supra*, 58 N.J.Super. at 603, 157 A.2d 3 (Conford, J.A.D. dissenting).]

A critical focus is the workers' degree of independence and whether his or her work is an integral part of the regular business of someone else. *Kertesz v. Korsh*, *supra*, 296 N.J.Super. at 154, 686 A.2d 368.

The "relative nature of the work test" may also be used to attribute employee status to a worker. Under this test, an employment relationship will be found if there is substantial economic dependence on the alleged employer and functional integration of respective work operations or if the work performed was an integral part of the regular business of the alleged employer. *Sloan v. Luynando*, 305 N.J. Super. 140, 148 (App. Div. 1997), citing *Caicco v. Toto Brothers, Inc.*, 62 N.J. 305, 310 (1973) and *Rossnagle v. Capra and Shell Oil Co.,* 127 N.J. Super. 507, 517 (App. Div. 1973). Applying this to a truck driver in *Caicco*, the court stated:

> The hauling of materials performed through decedent's labors was a cog in the wheel of respondent's operation as a subcontractor . . . in as realistic a sense as the hauling being done by respondent's regular employees. Decedent had made himself substantially dependent on respondent, economically, during the period in question. The fact that he sought work from others during slack periods with respondent does not derogate from that fact. Nor does the circumstance that he maintained the superficial trappings of an independent businessman so long as substantial economic dependence on respondent and functional integration of operations persisted. *Id.*

The relative nature of the work test was applied to deem the petitioner an employee in *Auletta v. Center of Child Development*, 338 N.J. Super. 464 (App. Div. 2001). The claimant was a part-time psychologist in a private school for special education students. He worked two days a week during regular school hours and was issued a 1099 federal tax form. He conducted individual and group psychotherapy, and he participated in school games and field trips. The school director give him a list of students to work with but would not direct the treatment plan. Materials used at the school, such as psychological tests, pens, papers, and therapeutic games, were supplied by the school.

Using the relative nature of the work test, the Appellate Division found that the claimant was an employee rather than an independent contractor. Under this test the petitioner's work must be "an integral part of the regular business of the defendant; and (2) the petitioner must be substantially economically dependent on the employer. *Id.* at 472. The court considered it relevant that the petitioner was one of two school psychologists together providing coverage for the school on four out of five school days per week. These psychologists helped to review and revise the Independent Assessment Plans for most students. These factors established that the petitioner was an integral part of the school's regular business. In addition, the 30% of petitioner's income derived from his work with the school created economic dependence. The court commented that economic dependence can be found with as limited involvement as three days per month, citing *Kertesz v. Korsh*, 296 N.J. Super. 146 (App. Div. 1996), which found economic dependence for a petitioner working three days a month as a sheet rocker. *Auletta* at 473.

The Appellate Division in *Auletta* declined to say if the petitioner satisfied the control test. After noting that the relative nature of the work test has lately been relied upon more, it wrote that the question of control is a difficult one under the circumstances. On one hand, petitioner devised his own treatment plans for sessions with the students. On the other hand, he met daily with a school official, who directed him to address emergent matters prior to normal therapy sessions and who provided him with supplies. In any event, a decision on this issue was unnecessary because the petitioner qualified as an employee under the relative nature of the work test. *Id.* at 469, 472-473.

Status as an independent contractor leads to significant consequences for workers and employers alike. If the worker's own fault is the sole cause of injury, a finding that the worker is an independent contractor will preclude civil recovery against the respondent; there will be no third party to pursue and no workers' compensation benefits available. But if the respondent is at fault and the worker turns out to be an independent contractor, the respondent can be held liable for civil tort damages in an amount greater than that potentially available under workers' compensation law.

B. What is Covered

1. Going and Coming Rule

Injuries sustained going to or coming from work are, as a general rule, not compensable. This is referred to as the "going and coming rule" or the "premises rule". Prior decisions by the courts were sharply modified by the passage of the Workers' Compensation Reform Act which went into effect in January, 1980. Under N.J.S.A. 34:15-36, employment starts "when an employee arrives at the employer's place of employment to report for work" and terminates "when the employee leaves the employer's place of employment." Any area not under the control of the employer is not a covered area. An exception, however, is made when the employee is required by the employer to be away from the employer's place of employment. If the employer pays for the travel time, going to and from the place of employment, or if the employee uses an employer's authorized vehicle the employee is covered.

According to N.J.S.A. 34:15-36 "employment" is:

deemed to commence when an employee arrives at the employer's place of employment to report for work and shall terminate when the employee leaves the employer's place of employment, excluding areas not under the control of the employer; provided, however, when the employee is required by the employer to be away from the employer's place of employment, the employee shall be deemed to be in the course of employment when the employee is engaged in the direct performance of duties assigned or directed by the employer; but the employment of employee paid travel time by an employer for time spent traveling to and from a job site or of any employee who utilizes an employer authorized vehicle shall commence and terminate with the time spent traveling to and from a job site or the authorized operation of a vehicle on business authorized by the employer. Travel by a policeman, fireman, or a member of a first aid or rescue squad, in responding to and returning from an emergency, shall be deemed to be in the course of employment.

Employment shall also be deemed to commence when an employee is traveling in a ridesharing arrangement between his or her place of residence or terminal near such place and his or her place of employment, if one of the following conditions is satisfied: the vehicle used in the ridesharing arrangement is owned, leased or contracted for by the employer, or the employee is required by the employer to travel in a ridesharing arrangement as a condition of employment.

As stated in *Kristiansen v. Morgan*, 153 N.J. 298 (1997):

The premises rule is based on the notion that an injury to an employee that happens going to or coming from work arises out of and in the course of employment if the injury takes place on the employer's premises. *Cressey v. Campus Chefs, Div. of CVI Serv., Inc.*, 204 N.J.Super. 337, 342- 43, 498 A.2d 1274 (App. Div. 1985). The premises rule "limits recovery to injuries which occur on the employer's premises ... by confining the term “course of employment” to the physical limits of the employer's premises." *Id.* at 342, 498 A.2d 1274. Thus, unless one of the statutory exceptions not implicated here is triggered, an employee who is not physically on the employer's premises is not technically in the course of the employment. *Livingstone v. Abraham & Straus, Inc.*, 111 N.J. 89, 96, 543 A.2d 45 (1988).

The Legislature used the phrase "excluding areas not under the control of the employer" in its definition of employment because it intended to include areas controlled by the employer within the definition. That phrase was intended to make clear that the premises rule can entail more than the four walls of an office or plant. The pivotal questions under the premises rule are

> (1) where was the situs of the accident, and (2) did the employer have control of the property on which the accident occurred. *Livingstone, supra*, 111 N.J. at 96, 543 A.2d 45.
>
> Although the Act does not define "control," this Court has stated that control exists when the employer owns, maintains, or has exclusive use of the property. *Livingstone, supra*, 111 N.J. at 104, 543 A.2d 45.

"The premises rule is based on the notion that an injury to an employee that happens going to or coming from work arises in the course of employment [only] if the injury takes place on the employer's premises. [. . .] The premises rule limits recovery to injuries which occur on the employer's premises . . . by confining the term "course of employment" to the physical limits of the employer's premises." *Brower v. ICT Group*, 164 N.J. 367 (2000). Just where the physical limits of the employer's premises begin and end depends on the employers "right to control" (as opposed to actual control of) the area where the accident occurred. In *Brower*, the employee punched out on the time clock, left the office to go home, and fell while descending stairs leading from leased offices in the building to the street. Because the employer "had the capacity to deny use" of the stairway to its employees and because the stairway was not a common area, the court found the accident compensable. Id. at 373-374.

2. OFF-PREMISES ACCIDENTS: MINOR DEVIATIONS, OFF-PREMISES PERFORMANCE OF DUTIES, PERSONAL COMFORT, AND PAID TRAVEL TIME

a. *Jumpp v. City of Ventnor* (Minor Deviation Exception)

Rather than working at a set office or location, some employees, such as delivery drivers and those who work in traveling sales, work at various locations and in transit between them. Such was the case with Robert Jumpp, a pumping station operator who monitored stations throughout the City of Ventnor. During the course of a workday, Mr. Jumpp, with the knowledge and permission of his employer, stopped at the local post office on a personal errand to check his mail. On the way back to his city-owned vehicle, he fell and injured his hip and leg.

In *Jumpp v. City of Ventnor*, 177 N.J. 470, 482 (2003), Mr. Jumpp's claim was denied because he was not performing his "prescribed duties at the time of the accident." In 1979, the New Jersey Legislature for the first time defined employment, in N.J.S.A. 34:15-36, pursuant to a package of amendments intended to reduce costs. *Id.* at 480. N.J.S.A. 34:15-36, in addition to addressing employment in the traditional sense of a single-premises workplace, defines the scope of off-premises employment as follows:

> [W]hen the employee is required by the employer to be away from the employer's place of employment, the employee shall be deemed to be in the course of employment when the employee is engaged in the direct performance of duties assigned or directed by the employer.

Though the Supreme Court denied Mr. Jumpp's claim, it retained the minor deviation rule, which it felt was inapplicable in this particular case. The minor deviation rule allows an otherwise qualified employee to collect benefits if he is injured during a minor deviation from work such as stopping to "have a smoke, or to get some fresh air, or to use the telephone, or to satisfy other human needs incidental to" the employment. *Id.* at 479. Also included within the rule would be "phone calls to babysitters and physicians as well as coffee and lunch breaks." *Id.* at 483. However, subsequent to the 1979 amendments, a lunch break taken off premises by an on-premises employee is not automatically covered as a matter of law. *Id.* at 480-481, citing *Ward v. Davidowitz*, 191 N.J. Super. 518 (App. Div. 1983).

Jumpp makes the following comparison between application of the minor deviation rule to on-premises and off-premises cases:

> This is not to say that off-premises employees are to be treated differently from on-premises employees. Simply put, on-premises employees are not within the scope of employment until they arrive at the employer's place of business, and they shed that status when they depart. Because off-premises employees may not report to a single "premises," the statute provides that they are to be compensated only for accidents occurring in the direct performance of their duties.. Those are *not* different standards but only descriptors of the same standard in different contexts. Employees who are where they are supposed to be, doing what they are supposed to be doing, are within the course of employment whether on or off-premises except when they are commuting. Nothing in N.J.S.A. 34:15-36 suggests that the Legislature intended to create a higher bar for determining the scope of employment for off-premises employees than for those whose regular work location is at the employer's place of business.
>
> Off-premises employees enjoy the same ability to deal with certain basic needs enjoyed by on-premises employees such as phone calls to babysitters and physicians as well as coffee and lunch breaks. Although the line is difficult to draw, those minor deviations are different in kind from shopping excursions during lunch hour or a visit to a travel agent to plan a vacation, even when the agent works in the same building as the employee seeking benefits. [. . .] In cases involving an alleged minor deviation, the question is not whether the off-premises employee was "satisfying a personal need, the completion of which is neither incidental to his . . . employment . . . not beneficial to the employer," but rather, whether that employee has embarked on a personal errand that would have been compensable if carried out by an on-premises employee. [Citations omitted.]

Jumpp attempts to clarify an area of law subject to much litigation. But the Court itself admits that the distinction between a minor deviation and a personal errand beyond the direct performance of employment duties is a line "difficult to draw." The decision boils down to the majority's belief that petitioner's "deviation was no different from the office worker who takes an afternoon break and crosses the street to pick up his personal mail at

the local post office. Neither deviation would be compensable." *Id.* at 484, citations omitted. The dissent, however, believes that petitioner's trip to the post office was equivalent to "an on-premises employee who gets personal mail at work," which would be compensable. *Id.* Because these distinctions are difficult to draw and credible arguments can be made on each side, it is unlikely that *Jumpp* will be interpreted as a sweeping denial of future claims under the minor deviation rule.

b. *Lozano* and *Sager* (Complusion Exception)

In *Lozano v. Frank DeLuca Construction*, 178 N.J. 513, the New Jersey Supreme Court held that recreational or social activities compelled by an employer are compensable work-related conduct. Lozano was a general laborer at various construction sites to which he was transported by his boss, the company owner, Frank DeLuca. On the day of the accident, DeLuca and Lozano had finished their work. Lozano was waiting for DeLuca to drive him home, but DeLuca and the homeowner were driving around a track in go-carts owned by the homeowner. DeLuca finished a few laps and then told Lozano to "get in" the go-cart. Lozano initially refused, protesting that he could not drive. However DeLuca again told Lozano to "get in," that "it was easy." Lozano understood this to be an order from his boss. Consequently, he started driving the go-cart but crashed shortly thereafter-sustaining severe injuries to his left ankle. *Id.* at 159-160.

Lozano called upon the Supreme Court to interpret the law applicable to recreational or social activities after the 1979 amendments to the Workers' Compensation Act, which was intended generally to limit compensability for such activities. *Id.* at 160-161; 164-165. As amended, N.J.S.A. 34:15-7 states that employees shall be compensated for "injuries arising out of and in the course of employment except when "recreational or social activities are the natural and proximate cause of the injuries.'" An exception to this rule, however, provides that the employee is entitled to compensation where "such recreational or social activities are a regular incident of employment and produce a benefit to the employer beyond employee health and morale." See N.J.S.A. 34:15-7, and *Lozano* at 160-161. Interpreting the statute, the Supreme Court held:

> When an employee establishes that his or her employer *required* participation in an activity of a recreational or social nature, courts should consider the activity as they would any other compensable work-related assignment. By contrast, recreational and social activities that the employer merely sponsors or encourages are precisely the type of activities that the Legislature intended to exclude from coverage. In those cases, the act requires the employee to establish that the activity is a regular incident of employment and provides some benefit to the employer beyond the improvement in employee health and morale. *Id.* at 533.

Due to a difference in power between employer and employee, indirect pressure may also constitute compulsion. To establish indirect compulsion:

> [T]he employee must demonstrate an objectively reasonable basis in fact

> for believing that the employer had compelled participation in the activity. Whether the employee's belief is objectively reasonable will depend largely on the employer's conduct and must be assessed on a case-by-case basis. Relevant factors include, but are not limited to, whether the employer directly solicits the employee's participation in the activity; whether the activity occurs on the employer's premises, during work hours, and in the presence of supervisors, executives, clients, or the like; and whether the employee's refusal to attend or participate exposes the employee to the risk of reduced wages or loss of employment. The absence of one factor is not fatal. As noted, that list is not exhaustive and other fact patterns may suggest compulsion. However, an employee's mere subjective impression of compulsion standing alone will not bring an activity within the scope of employment. *Id.* at 534-535.

The Supreme Court remanded the case for the compensation judge to determine under the newly annunciated guidelines whether "Lozano had an objectively reasonable belief that DeLuca had required him to drive the go-cart." *Id.* at 169.

Sager v. O.A. Peterson Const., Co. 182 N.J. 156 (2004) involved a New Jersey domiciled carpenter employed by a New Jersey company. He had been working at a Long Island construction site since July 2001, to where he reported for a 7:00 a.m. to 3:30 p.m. shift on September 11, 2001, the day of the terrorist attacks on the World Trade Center. Stuck in New York because of bridge and tunnel closings, Sager, two co-workers, and their supervisor decided to work at the job site. They were too upset to take a lunch break. However, at 3:00 p.m., the supervisor "said we will go out, we will have an early dinner, come back to the job. We will keep working." The group stopped at a diner and were traveling back to the job site when their van collided head-on with another vehicle causing injuries to Sager. *Id.* at 158-161.

The compensation judge found the accident compensable as a "special mission" because it was authorized and directed by the on-site supervisor, who had authority to make such a decision and who expected that the workers would be paid for their overtime work. The Appellate Division reversed the compensation judge because it found that Sager "was neither required by his employer to be away from his place of employment nor engaged in the direct performance of his employment duties." *Id.* at 161.

Writing for the Supreme Court's majority, Justice Zazzali reversed the Appellate Division and found Sager's accident compensable under the compulsion doctrine. As explained by Justice Zazzali, "when an employer directs or requires an employee to undertake an activity, 'that compulsion, standing alone, brings an activity that is otherwise unrelated to work within the scope of employment.'" *Id.* at 163, quoting *Lozano v. Frank DeLuca Constr.*, 178 N.J. 513, 532 (2004). In *Lozano*, the Supreme Court found compensable a construction site accident where a mason contractor crashed a go-cart after being order by his supervisor to drive it.

The policy behind the compulsion doctrine, stated in *Lozano* and reaffirmed in

Sager, is to avoid imposing on the employee the Hobson's choice of either disobeying the employer and risk losing the job or obeying the employer and risk having no compensation benefits if injured. *Sager* at 163, quoting *Lozano* at 532-533.

That the compulsion doctrine stands alone as a basis for compensability was further emphasized by Justice Zazzali's comment that there was no need not address "the compensation court's 'special mission' reasoning." *Sager* at 163. Hence *Sager* demonstrates that one basis of compensability is sufficient, even if the facts disqualify an accident from compensability under other theories of liability. There is no conflict, therefore, between *Sager* and *Jumpp*, *supra*. *Sager* simply differs from *Jump* because the employee in *Jumpp* was on a personal errand and "the analysis centered on the 'minor deviation' rule" rather than on an alleged compulsion, which was not an issue presented to the Supreme Court in *Jumpp* for consideration. *Sager* at 167.

Dissenting in *Sager*, Justice Wallace argued that the case should be remanded because the compensation court failed to "apply the 'reasonable belief" standard to petitioner's decision to go out to dinner." *Id.* at 172-173. This standard, set forth in *Lozano*, requires an employee to show "an objectively reasonable basis in fact for believing that the employer had compelled participation in the activity." *Id.* at 167, quoting *Lozano* at 168. The majority, however, found that this standard was satisfied because "the employer acknowledge[ed] its directive" and "the compensation court credited the employer's testimony." *Id.* at 168.

c. *Scott v. Foodarama Supermarkets* (Travel-time Exception)

In *Scott v. Foodarama Supermarket*, 398 N.J. Super. 441 (App. Div. 2008), the Appellate Division denied benefits to an employee alleging compensability based on the travel time exception to the going and coming rule. Scott was an undercover store detective for Fooderama required to work 48 hours per week, paid from check-in to departure from individual stores, but paid nothing for work in excess of 48 hours. He was required to travel from store to store so as not to lose his cover. Fooderama paid him $200 per month for wear and tear on his car, and reimbursed him for tolls, expenses, and gasoline for trips to and from his home and between stores. One night, while traveling home from work, he had a car accident and was injured. *Id.* at 444.

Breaking down applicable parts of N.J.S.A. 34:15-36, the Appellate Division noted that Scott was not in the direct performance of his duties at the time of the accident. Therefore he had to rely on the travel time exception of N.J.S.A. 34:15-36, which provides for compensation when an employee "is paid travel time by an employer for time spent traveling to or from a job site." The amount paid for a going or coming trip should be "identifiable." Unfortunately for Scott, though he was reimbursed for gasoline, wear and tear, and various expenses, he was not paid employment wages for his travel time. *Id.* at 446-448.

d. Cooper v. Barnickel Enterprises, Inc. (Basic Needs/Personal Comfort Exception)

Cooper v. Barnickel Enterprises, Inc. 411 N.J. Super. 343 (App. Div. 2010) involved a job foreman and master plumber authorized to drive his employer's truck to and from work and between job sites. On the day of the accident, Cooper had driven from a job site to his union hall, where he was to discuss with a union instructor plans for an upcoming job, and obtain a copy of a code related to plans for this job. The instructor, however, was busy teaching a class when Cooper arrived. Consequently Cooper, who felt that he "had enough time to kill," decided to take a coffee break at a delicatessen located about five miles from the union hall, where coffee was not available on Saturdays. About two miles from the delicatessen, while driving his employer's truck, Cooper had an accident resulting in total disability.

The Appellate Division sustained the judge of compensation's finding that the accident was compensable under the personal comfort doctrine:

> [The judge of compensation found that the petitioner was an off-site employee who, facing an extended wait to consult with an expert concerning a work-related issue, was injured while driving for a cup of coffee. It cannot be expected that he would stand like a statute or remain at the union hall with nothing to do for such a period, particularly when there was no coffee available at the site. We cannot conclude in these circumstances that the injuries were no compensable merely because petitioner chose to take his authorized "coffee break" other than at the closest location. The distance of the coffee shop from respondent's off-site jobsite was reasonable given the rural nature of the community [. . .] and the time petitioner had to wait to seek the counsel he sought. The judge found the petitioner to be credible, and under *Jumpp*, accidents occurring during coffee breaks for off-site employees, which are equivalent to those of on-site workers, are minor deviations from employment which permit recovery of workers' compensation benefits. *Jumpp* [at] 177 N.J. 483. [*Cooper* at 348.]

As seen in the passage quoted above, the Appellate Division in *Cooper* follows the Supreme Court's opinion in *Jumpp*, which specifically referenced coffee breaks and lunch breaks as activities subject to the basic needs/personal comfort doctrine.

e. *Acikgoz v. New Jersey Turnpike Authority* (Employer's Control of Accident Location)

Acikgoz v. New Jersey Turnpike Authority, 398 N.J. Super. 79 (App. Div. 2008), determined that where two coworkers were involved in a head-on collision, the employer had not exercised sufficient control over the accident location so as to render the accident compensable. On the day of the collision, Acikgoz, a traffic protection worker for the New Jersey Turnpike Authority, punched out at 4:30 p.m. at the end of his shift. Acikgoz

was driving home when he was struck by a co-employee on a Turnpike overpass that led directly to and from the complex of buildings known as the maintenance yard, where he had punched out. These buildings were shared by the Turnpike Authority and the New Jersey State Police.

The compensation judge found that Lowden, the other employee, was driving towards the maintenance yard in petitioner's lane of travel to get his paycheck and was not on union business as he had claimed. Instead he was coming from a union office in East Brunswick where he had been on "union release time," which was treated by the Turnpike Authority as "an excused absence with pay." These findings were deemed by the Appellate Division to be supported by substantial credible evidence. *Id.* at 84-87.

The Appellate Division explained that the "arising out of and in the course of employment" portion of N.J.S.A. 34:15-1 has two parts. The "arising out of" section requires proof of a causal connection between that accident and the employment. The "course of employment" part requires proof of a connection between "the time, place and circumstances of the accident" and the employment. However, N.J.S.A. 34:15-36, otherwise known as the premises rule, states that employment commences upon the employee's arrival at the place of employment and ends when the employee leaves the place of employment, "excluding areas not under the control of the employer." *Acikgoz* at 87-88. Under the premises rule, an employee may be "in the course of employment" even if not engaged in work duties, off the clock, or even on the way out of the building. For instance, there was compensability where an employee who punched out at the front of the employer's building was injured at the back of the building while approaching the lot where his car was parked. *Id.* at 88, quoting *Kristiansen v. Morgan*, 153 N.J. 298, 397 (1998), modified at 158 N.J. 681 (1999).

In sustaining the decision of the judge of compensation denying compensability, the Appellate Division pointed out that the overpass where the accident occurred was not under the Turnpike Authority's exclusive control: it was also used by the State Police and the general public. The fact that the Turnpike Authority owned and maintained the overpass was discounted because the Turnpike Authority "owns and maintains the entire New Jersey Turnpike system," and to base compensability on this alone would "essentially abrogate the premises rule." *Id.* at 90. The Appellate Division also considered relevant the compensation judge's findings that the petitioner had left the employee parking area, that the access road leading to the overpass was only one of several ways in and out of the maintenance yard, and that the Authority "neither encouraged nor discouraged use of the roadway." *Id.* at 89-90.

While the finding that Acikgoz was not in the course of his employment at the time of the accident left him without remedy in the Division of Workers' Compensation, he retained the right to pursue a negligence claim against Lowden in Superior Court. Under N.J.S.A. 34:15-8, as interpreted by *Mule v. N.J. Mfrs. Ins. Co.*, 356 N.J. Super. 389 (App. Div. 2003), a co-employee may not be sued at law if he causes injury arising from employment while both parties are in the course of employment. *Acikgoz* at 91-92. Had there been no negligence on the part of Lowden (that is, if the accident were the fault of

Acikgoz alone), Acikgoz would have been left without a remedy. Had Acikgoz been in the course of employment at the time of the accident but not Louden, and, assuming Louden's negligence, Acikgoz would have had the right to pursue both a workers' compensation and a civil negligence claim, subject to any applicable lien pursuant to N.J.S.A. 34:15-40.

3. Intoxication, Suicide and Assaults in a No-Fault System

The workers' compensation system compensates regardless of fault unless the work-related injury or death is self-inflicted or due to intoxication. Whereas a plaintiff in a personal injury case must prove negligence, a worker injured on the job may receive benefits without having to prove the employer failed to exercise due care. The New Jersey Legislature, in passing the workers compensation laws, decided it would be unfair and counterproductive to deny benefits to a negligent worker performing his job in good faith. Take, for instance, a salesman in the office who, mistakenly thinking his chair is behind him, attempts to sit but falls to the ground and suffers a herniated disc. It makes no difference that this is his own fault. Under the workers' compensation system, where fault is irrelevant, he is entitled to medical treatment, temporary disability benefits, and permanent disability benefits. The Legislature believed that a system that litigates fault would be overburdened with proceedings to determine who is negligent and who is not.

The concept of fault, while not normally in workers' compensation statutes, is found in the New Jersey Workers' Compensation Statute, N.J.S.A. 34:15-7. Compensation coverage may be denied when the injury or death is intentionally self-inflicted or when intoxication or unlawful use of controlled dangerous substances, or willful failure to make use of a reasonable and proper personal protective device furnished by the employer are involved.

When intoxication is a defense the burden of proof is on the employer to establish by the preponderance of evidence that the injury or death of the employee was produced solely by the intoxication in order to escape liability for compensation. *Kelly v. Hackensack Water Co.*, 23 N.J. Super. 88 (App. Div. 1952).

The difficulty of proving intoxication as a sole cause is apparent in *Tlumac v. High Bridge Stone*, 187 N.J. 567 (2006). In this case the petitioner was a truck driver who, on the day before the accident, drank approximately ten beers while roofing his house.
After finishing the roof, he skipped dinner, showered, had yet another beer, went to sleep at 8:00 PM, and then rose at 2:15 A.M. to get ready for work. He drank a coffee before reporting to the depot at 3:15 A.M., from where he drove off with 77,000 pounds on his tractor-trailer, on route to Virginia. Thirty miles down the road, he fell asleep, drove off the road, and collided with a parked truck and a utility pole. Estimates of his blood-alcohol level at the time of the accident ranged from .10 to .18.

At trial, the petitioner's widow presented evidence that in the month prior to accident he had driven, during a twelve-day period, a total of 230 hours—averaging more

than 19 hours per day. His wife also had broken her hip, forcing upon him additional family responsibilities. Though the respondent's expert testified that alcohol was the primary cause of the accident, he also admitted that the driver's mental state and alertness, which can be affected by sleep depravation, could have been contributing factors along with speed of the vehicle and roadway lighting.

The Appellate Division held that sufficient evidence existed for the compensation judge to find that intoxication was not the sole cause of the accident. The time of the accident, the stress of the petitioner's home life, his burdensome work schedule in the weeks before the accident, and his work on the roof all may have contributed to the accident along with the petitioner's alcohol consumption. If the legislature had intended to deprive workers of benefits where alcohol is a contributing factor, they observed, the statute would have been written differently.

As a result of this decision, some have proposed amending the statute. While deterring or punishing irresponsible behavior, such an outcome would also shift the burden of caring for the severely injured or their needy survivors onto society at large. As the court pointed out, their interpretation "is in keeping with the remedial purpose of the Workers' Compensation Act to make benefits readily and broadly available to injured workers through a non-complicated process" Id. at. 573.

Although self-inflicted, a suicide may be compensable where it is shown to be the result of an employee becoming dominated by a disturbance of mind directly caused by the employee's original work-related injury and its consequences, which is of such severity as to override normal rational judgment. *Kahle v. Plochman Inc.*, 85 N.J. 539 (1981).

Under common law, the employer could assert an "aggressor defense" to bar the alleged aggressor in a fight from receiving compensation benefits. But the aggressor defense was not incorporated into the Workers' Compensation Act of 1911, and its viability was significantly curtailed in *Martin v. Snuffy's Steak House*, 46 N.J. Super. 425 (App. Div. 1957). In *Martin*, the petitioner, a waitress, slapped a chef who provoked her with foul language during a dispute over the performance of their respective duties. The chef retaliated by hitting back and throwing her against a door. When she filed a claim, her employer denied benefits because she struck the chef.

The court found their dispute was employment related. If employment is a contributing cause of injury, the injury arises out of the employment and is covered under the Workers' Compensation Act. Only where an act of aggression arises from a "privately motivated, purely personal feud" will it be deemed not to have arisen out of employment. *Id.* at 441. See *also Howard v. Harwood's Restaurant Co.*, 25 N.J. 72 (1957).

Though *Martin* curtails the aggressor defense, it leaves a small door open to the employer if the claimant is responsible for "premeditated and deliberate action" by way of "willful intention to injure another." *Martin* at 441. Nevertheless the court suggests this defense will not apply to most fights: "We do not consider that the Legislature meant to punish a workman for a playful shove, an angry curse, or even an impulsive slap or punch,

by depriving him of compensation." *Id.* Furthermore, "many assaults result from impulsive, thoughtless or unintentional acts, often trivial in origin, although the result may be serious or even fatal. *Id.*, quoting 41 Ill.L.Rev. 310. In this context, the judge must consider that the Worker's Compensation Act, unlike the tort system, is not based on fault; instead it is remedial social legislation designed to put the cost of accidents on employers. *Id.* at 433-434.

An employee assaulted at home by an unidentified assailant was entitled to compensation where the victim was a plant manager, the company was in the midst of a strike, the victim had been previously threatened, and there were prior attempts to hurt him. *Meo v. Commercial Can Corp.*, 80 N.J. Super. 58 (App. Div. 1963). But in *Bermudez v. Bell Container Corp.*, 67 N.J. Super. 280 (Law. Div. 1961), a union shop steward was denied compensation after a coworker whom he prevented from receiving union benefits assaulted him at the respondent's plant. The claim was precluded because, according to the court, the dispute involved a grievance related to internal union affairs rather than the workplace itself: "respondent's business was in no way affected or advanced by the controversy. There is no showing that the risk of injury was connected with the petitioner's fulfillment of his contract of service or that it was generated by any aspect of the employer's business whatsoever." *Id.* at 283-285.

In contrast to *Bermudez*, the claim of an employee in charge of management-labor relations was sustained in *Grant v. Grant Casket Co.*, 137 N.J.L. 463 (1948), after a union officer assaulted him during a dispute over a proposed layoff. *Bermudez* distinguishes Grant because the risk taken by the injured employee there "was incident to advancement of the employer's labor relations. *Bermudez* at 284.

4. Prohibition Against Employer Retaliation

N.J.S.A 34:15-39.1 prohibits an employer from terminating an employee in retaliation for filing a workers' compensation claim. If a petitioner is fired in retaliation, a discrimination complaint can be filed against the employer with the Division of Workers' Compensation. However, if the termination is not in retaliation of the claim, but because of the disabling condition, there may be a claim as per the Americans with Disabilities Act.

In addition, an employer can discontinue an employee's health benefits coverage while they are unable to work as a result of a job related injury. However, there may be some protection under the Federal Family Medical Leave Act. Workers' Compensation judges have no authority in this area.

C. Recovery for Accidents and Occupational Diseases

1. Generally

An accident is an unexpected event or mishap resulting in injury. *Burnell v. Wildwood Crest Police Crest Police Department*, 176 N.J. 225, 236-237, 248 (2003). In most instances the injury occurs concurrently with the event or mishap, but certain injuries

remain latent and only manifest themselves after the passing of time. This is the case with post traumatic stress disorder with a delayed onset, which by definition remains dormant for at least six months after the trauma. *Id.* at 243.

In addition to accidents, recovery may be had for an occupational disease which is defined in N.J.S.A. 34:15-31(a) as "all diseases arising out of and in the course of the employment, which are due in a material degree to causes and conditions which are or were characteristic of or peculiar to a particular trade, occupation, process or place of employment." Examples of occupational illnesses or diseases include asbestosis or lead poisoning. The legislature, however, has restricted this by indicating that "deterioration of tissue, organ, or part of the body in which the function of such tissue, organ, or part of the body is diminished due to the natural aging process" will not be compensable. *Id.* at (b).

A misdiagnosis or nondiagnosis during the course of an employment-related medical treatment or examination has been deemed an "accidental injury" giving rise to benefits. In *Travisco/Wescott v. Middlesex County Department of Human Services*, 96-008613 and 96-047106 (decided June 9, 2000), petitioner's decedent was given a pre-employment physical by Roosevelt Hospital in which a "spot" on the decedent's lung appeared on an x-ray. The hospital failed to properly notify the decedent, and the spot developed into fatal lung cancer a few years later.

Travisco/Wescott expanded the reach of *Hawksby v. Depietro*, 319 N.J. Super. (App. Div. 1999), which barred an employee from bringing a civil suit against a plant physician for failure to diagnose cancer. Focusing on the tort immunity codified in N.J.S.A. 34:15-8, *Hawskby* characterized the plant physician as a "fellow employee" and precluded a malpractice action against him. In both cases, the employee's only remedy against the negligent physician was workers' compensation. Thus the preclusion of civil remedies for medical malpractice in the context of employment has expanded the definition of "accident" and "employee" under New Jersey workers' compensation law.

N.J.S.A. 34:15-8 limits a worker's remedy to the workers' compensation system and thereby precludes civil claims against the employer and individuals employed by the employer, except in cases involving intentional wrong. See *Millison v. E.I. du Pont de Nemours & Co.*, 101 N.J. 161, 185 (1985), holding that the intentional wrongs of a company physician are not subject to the immunity provisions of N.J.S.A. 34:15-8.

> [T]he issue of tort liability of employee-physicians is potentially broader than the plant physician treating an industrial accident. It is not inconceivable in today's health care climate that some employers will employ physicians to provide general health care to employees. In any event, creating a significant breach in the otherwise sturdy wall of co-employee immunity is not the privilege of an intermediate appellate court. *Id.* at 102.

Travisco/Wescott in effect held that the employees of Roosevelt Hospital administering the physical were employees of Middlesex County as well. Given the

dismissal of a civil suit against the hospital pursuant to *Hawksby,* there was no other remedy left to the worker. Thus preclusion of civil remedies for medical malpractice in employment contexts has expanded the definitions of "accident" and "employee" under our workers' compensation law.

2. Causation

a. Causation Involving Accidents

(i) Arising out of and in the Course of Employment

N.J.S.A. 34:15-7 grants a right of compensation for accidents "arising out of and in the course of" employment, "without regard to the negligence of the employer. . . ." An accident may arise out of employment yet not occur in the course of employment, in which case it is not compensable. In *Stroka v. United Airlines*, 364 N.J. Super 333 (App. Div. 2003), petitioner, a stewardess for United Airlines, was scheduled to work on the hijacked plane out of Newark that crashed in Pennsylvania on September 11, 2001, but she had requested and had been given the day off. After learning the flight had crashed, she developed post-traumatic stress disorder. Because there is a relation "between the job of flight attendant and the risk of hijacking" and a relation between the hijacking and petitioner's workplace, the events of September 11th were "incidental to and arose out of the employment." However on the day of the crash, petitioner was not engaged in "activity that could conceivably constitute 'a clear and substantial benefit to her employer.'" "Nothing happened while she was working which led to her current condition." Thus her post-traumatic stress disorder did not occur during the course of her employment

An enlightening discussion of the differences between "arising out of employment" and "in the course of employment" can be found in *Valdez v. Tri-State Furniture*, 374 N.J. Super. 223 (App. Div. 2005). The petitioner Valdez worked as a furniture wrapper in a small, distinct section of a larger warehouse whose remaining space was used by two other companies, including Federated Department Stores, the company for whom Tri-State was under contract to uncrate, unwrap, repair and rewrap furniture. Petitioner was not required to operate a forklift to do his job, though there were several forklifts in the adjacent area used by the other companies. *Id.* at 229.

On the day of the accident, petitioner was working overtime with his supervisor to construct an office. This required hanging sheetrock inside the office. However, some of the sheetrock was located outside of the Tri-State area. Though neither petitioner nor his supervisor had ever operated a forklift before, they decided to operate forklifts owned by Federated and located in Federated's area of the warehouse. Video showed them operating the forklifts "in an unorthodox manner." Eventually, while attempting to park the forklift, petitioner had an accident resulting in amputation of his leg. *Id.* at 229-230.

Petitioner claimed he had decided to use the forklift to move the sheetrock and because he thought he would be more useful knowing how operate such equipment. He asserted that when he realized that he could not operate the machinery, he attempted to

park it, at which time the accident occurred. Tri-State claimed there was an unwritten policy for its employees not to operate forklifts, though petitioner stated he was unaware of this policy, and another Tri-State employee was authorized to and did use forklifts to transport supplies into Tri-State's area

In assessing whether petitioner was injured while in the course of his employment, the Appellate Division noted that "in the course of employment" "refers to the time, place, and circumstances of the accident in relation to the employment. *Id.* at 232, citing *Coleman v. Cycle Transformer Corp.*, 105 N.J. 285, 288 (1986). In this instance, Tri-State argued that "the accident occurred outside of [its] designated area and that the forklifts were used primarily by Federated" and the other company. The Appellate Division pointed out that "if an employee sustains an injury in an area controlled by the employer his injury is deemed to occur 'in the course of employment.'" However, control may be present where the employer has a right to control, even if that right is not exercised. The Appellate Division found in petitioner's favor because, among other things, he was indisputably 'on the clock' and in the company of his immediate supervisor when he was injured." It was also relevant that another Tri-State employee used the forklifts to transport supplies and that Tri-State "used the whole warehouse for storage and delivery of its furniture." *Valdez* at 234-235.

The other question addressed was whether the accident arouse out of Valdez's employment. As the Appellate Division explained, arising out of refers to "causal origin." *Id.* at 222. Thus:

> It must be established that the work was at least a contributing cause of the injury and that the risk of occurrence was reasonably incident to the employment [and that] it must be more probably true than not that that the injury would have occurred during the time and place of employment than elsewhere. [*Id.* at 235-236, citations omitted.]

The compensation judge, in ruling against the petitioner, had held that the petitioner had "abandoned his job to pursue a purely personal interest when the accident occurred." *Id.* at 235. Thus the compensation judge found that Valdez's driving of the forklift was a non-compensable personal risk. An example of a personal risk would be heart attack suffered on the job, though unrelated to employment. This is not compensable. On the other hand, risks directly associated with employment (hand caught in a machine) and neutral risks (employee struck by lightning while on the job) are compensable.

The Appellate Division, in reversing the compensation judge, reasoned that Valdez's accident involved equipment used by Tri-State for business purposes. He would not have used it but for the fact that he thought he could thereby help his employer and but for the involvement and acquiescence of his supervisor. Petitioner "was exposed to a risk unique to his work place." *Id.* at 238-239. Consequently these facts are distinguishable from *Trotter v. County of Monmouth*, 14 N.J. Super. 430 (App. Div. (1976, cert denied 73 N.J. 42. Compensation was denied in *Trotter* where the employee,

against his supervisor's orders, crashed a co-worker's motorcycle off premises, without having obtained permission to use it. See discussion in *Valdez* at 238.

Liability is imputed to the respondent if the petitioner can prove that an injury arises out of and occurs in the course of employment. Respondents interpose defenses that focus on, among other things, subsequent injuries, idiopathic events, other pre-existing conditions, "natural" causes, and injuries arising while the worker is merely going to or coming from work. The discussion below considers these defenses.

(ii) Subsequent Injuries

In *Kelly v. Federal Shipbuilding & Dry Dock Co.*, 1 N.J. Super 245 (App. Div. 1949), petitioner suffered a compensable injury to his left knee requiring him to wear a cast. While at a subsequent wedding reception, he attempted to save a child from falling, but fell himself and broke his right wrist. Evidence suggested the cast contributed to his fall by "preventing him from regaining his balance" before landing. Where a subsequent injury is at issue, the employee has a right to compensation if it is directly connected in a chain of physical causation with the compensable injury, even where the second injury is "wholly independent and not merely an aggravation of [the] compensable injury." *Id.* at 248. A negligent act on the part of the employee, however, may break the chain of causation. The court in *Kelly* found that the employee's "instinctive" attempt to help the child innocently contributed to his broken wrist and was therefore compensable. *Id.* See also *Hoogen v. Ritz Carlton Hotel*, 14 N.J. Misc. 555 (1936), where the court ruled in favor of a petitioner who fell while walking on crutches on his way to receive treatment for a work-related injury.

(iii) Idiopathic Events

Shaudys v. IMO Industries, 284 N.J. Super 407 involves a petitioner who twisted and injured his left knee while admittedly in the course of employment. The employer argued that the injury did not "arise out of employment" because it was idiopathic: "caused by a purely personal condition having no work connection whatever. . . ." *George v. Great Eastern Food Products, Inc.* 44 NJ 44, 45 (1965); *Verge v. County of Morris*, 272 N.J. Super 118, 128 (App. Div. 1994). To bar recovery, the employer has the burden of demonstrating that the event was "caused solely by disease or infirmity peculiar to the individual and not a condition of the employment." *Spindler v. Universal Chain Corp.*, 11 N.J. 34, 39 (1954); *Shaudys* at 415. Common examples of idiopathic events include falls engendered by a non work-related heart attack or epileptic seizure. *Verge* at 124. In *Shaudys*, the court distinguished between a heart attacks, which are "usually caused by natural or "non-occupational causes" and accidents like the petitioner's knee injury, which "generally do not result from solely internal, "natural causes."" *Id.* at 417. Thus *Shaudys* limits the scope of the idiopathic event defense.

In *Verge*, *supra*, the court remanded the case to the trial court because the judge precluded respondent from presenting evidence "bearing on the issue of whether petitioner twisted her knee because she slipped on the rug while at work or whether her knee twisted

or gave-out to an idiopathic or personal cause." *Id.* at 129. Respondent "cannot be denied the opportunity to prove by direct or circumstantial evidence that petitioner did not accidentally slip, but rather that her knee condition caused the event and, therefore, her injury was caused solely because of her per-existing or personal infirmity or condition." *Id.* at 128. To satisfy this burden, however, respondent must prove the petitioner did not slip on a rug as she claimed. If the slip occurred as she described, it is not an idiopathic event. *Id.* Though the employer's burden of proving an idiopathic cause is significant, a recent published administrative decision shows that it can be met. In *Beres v. Township of Marlboro*, 93-056155 (2000), the petitioner suffered from a pre-existing condition that had caused her to fall on occasions prior to the accident. She was injured when her leg suddenly gave out at work while she was walking down a hallway. The court noted, "the mere fact that petitioner happened to be at work at the time her leg gave out does not give rise to a finding of compensability." However, even if a fall is determined to be idiopathic and thus not work related, any injury resulting from the fall is compensable.

(iv) Employment as a Contributing Cause but not the Sole Cause

Verge, supra, distinguishes between an idiopathic event, where the sole cause of injury is a purely personal medical condition, and a situation where the employment is a "contributing though not the sole cause of the accident." In the latter instance, the worker is entitled to compensation but not in the former. A slight connection between the injury and the worker's employment is all that is required. In *George, supra,* the employee suffered from a non work-related heart condition that caused dizziness, which led to a fall on a concrete floor resulting in a fractured skull and subsequent death. Noting that the employer takes the employee as he finds him, the court held that if either the circumstance causing the injury (petitioner striking his head on the floor) or the result on the employee's person (fractured skull and death) is "unlooked for," the injury is compensable. This situation is to be distinguished from one where, for instance, the employee simply dies at his desk from an idiopathic heart attack. *Id.* at 163.

(v) Aggravation of a Preexisting Condition

In *Sexton v. County of Coumberland/Coumberland Manor*, 404 N.J. Super. 542 (App. Div. 2009), the petitioner, a nurse, alleged that inhaling perfume at work aggravated her preexisting chronic obstructive pulmonary disease (COPD). There were two exposures to sprayed perfume on the day of the accident, each one causing successively worse breathing difficulties. She reported the first incident to her supervisor and was put on desk duty until the second exposure, which caused her to leave the building and go home sick. She was taken to a local hospital the following day and thereafter became oxygen dependant. A smoker up to the time of the accident (she quit thereafter), she had been diagnosed with COPD 15 years prior and used an inhaler as needed (Id. at 545-547).

There was no dispute that the accident occurred "in the course of" the petitioner's employment. The court focused instead on whether the accident "arose out of" the

employment. Quoting *Howard v. Harwood's Rest. Co.*, 25 N,J. 72, 83 (1957), the Appellate Division noted that New Jersey has adopted the "but for test." Under this test, an incident arises out of employment if it is more probably true than not that that the injury would have occurred during the time and place of employment rather than elsewhere." *Sexton* at 549.

Analysis under the but for test demands assessment of three kinds of risks: (1) those clearly related to the employment such as fingers getting caught in a machine; (2) "neutral risks" arising from unforeseeable circumstances outside of the employment, such as being struck by lightning; and (3) risks personal to the employee, "where the personal proclivities of contacts of the employee that give rise to the harm" (such as where the employee is attacked at work by an enemy bearing a grudge unrelated to the employment—See Giles v. W. E. Beverage Co., 133 N.J.L. 137 [Sup.Ct.1945], affirmed 134 N.J.L. 234 [1946])." The first two categories of risk are compensable. The third is not. *Sexton* at 549-550.

Another example of what was deemed a personal risk can be found in *Coleman v. Cycle Transformer Corp.*, 105 N.J. 285 (1986), where compensability was denied for a woman on unpaid lunch break who accidentally set her hair on fire. But in *Reynolds v. Passaic Valley Sewage Comm'rs*, 130 N.J.L. 437 (Sup Ct. 1943), the employee suffered an epileptic seizure and burned his face when he fell against a pot stove. Because the stove was placed there by the employer and connected with the employee's service, the injury was held compensable, even though the cause of the fall was personal and unrelated to the job. However in *Money v. Coin Depot Corp.,* 299 N.J. Super. 434 (App. Div. 1997), where the employee killed himself playing Russian Roulette while on duty as a security guard, his widow was denied benefits because such "highly aberrant conduct" was considered purely personal to the employee. Therefore it did not arise out the employment because it was not incidental to the employment in the sense of a connection with what a worker has to do to perform his job. *Money* at 437-438. Such conduct differs from compensable "horseplay cases" where the deviation from the course of employment is considered minor. See *Diaz v. Newark Indus. Spraying, Inc.,* 35 N.J. 588 (1961): the petitioner, a window cleaner, playfully squirted a co-employee, who reacted by throwing a pail, which caused injury.

The Appellate Division in *Sexton* found that the risk of an allergic reaction from perfume sprayed by a co-employee is a compensable neutral risk rather than a non-compensable personal risk:

> Sexton plainly would not have been exposed to the perfume if she had not been at work [. . .] The nature of the risk was that a co-employee might do something that could injure Sexton. The specific nature of the injurious conduct need not be foreseen. A co-employee might irrationally attack her, accidently bump into her, or spill a slippery substance on the floor on which she might slip and fall. As it happened, a co-employee repeatedly sprayed perfume in Sexton's presence, allegedly injuring her. The employer placed the co-employee in a position of harm. [*Sexton* at 553,

554.]

It makes no difference that in this case there was an "egg-shell skull" petitioner: "Employers take their employees as they may find them, 'with all of the preexisting disease and infirmity that may exist.'" *Id.* at 555, quoting *Verge v. County of Morris*, 272 N.J. Super. 118, 125 (App. Div. 1994). See also *Capano v. Bound Brook Relief Fire Co.*, 356 N.J. Super. 87, 94 (App. Div. 2002).

b. Causation Involving Occupational Disease

(i) *Lindquist* – Application of a Liberal Standard to Occupational Causation

a. Causation in Light of the "Original Bargain"

In the recent, landmark case of *Lindquist v. City of Jersey City Fire Department*, 175 N.J. 244 (2003), the New Jersey Supreme Court clarified the standard of causation applicable to occupational claims in a manner favorable to petitioners. Justice Coleman enumerated the burden of proof as follows:

> It is sufficient in New Jersey to prove that the exposure to a risk or danger in the workplace was in fact a contributing cause of the injury. That means proof that the work related activities probably caused or contributed to the employee's disabling injury as a matter of medical fact [citations omitted]. Direct causation is not required; proof establishing that the exposure caused the activation, acceleration or exacerbation of disabling symptoms is sufficient. [*Id.* at 259-260.]

Workers asserting occupational claims receive the benefit of the doubt because the Workers' Compensation Act "involved a historic trade-off whereby employees relinquished their rights to pursue common-law remedies in exchange for automatic entitlement to certain, but reduced, benefits whenever they suffered injuries . . ." *Id.* at 257 quoting *Millison v. E.I. de Pont de Nemours & Co.*, 101 N.J. 161, 174 (1985). At the "heart of this 'original bargain,'" Justice Coleman observes, "is the notion that the burden of proof on claimants would be easier . . . under workers' compensation laws than under common law." *Lindquist* at 258, quoting Jason M. Solomon, "Note, Fulfilling the Bargain: How the Science of Ergonomics can Inform the Laws of Workers' compensation," 101 Colum. L. Rev. 1140, 1156 (2001).

Lindquist involved the claim of a Jersey City fireman employed from 1972 to 1995 when he retired at the age of 47. During his employment, he was exposed to smoke from fires as well as burning chemicals, plastics, household cleaners, and propane. He also smoked approximately three-fourths of a pack of cigarettes per day for twenty-two years until he quit in approximately 1992 or 1994. Prior to retirement, he developed shortness of breath, decreased capacity for physical exertion, and a phlegmy cough.

Petitioner's expert, Dr. Eisenstein, an internist specializing in heart and lung medicine, testified at trial that petitioner's emphysema was primarily due to his exposure as a fireman and secondarily due to smoking, though Dr. Eisenstein failed to cite studies connecting non-smoking firefighters to occupational emphysema. Dr. Eisenstein based his opinion on facts concerning petitioner's work, his own fifty years of medical experience in the field, and the x-rays and pulmonary tests he performed. Dr. Hutt, an internist and pulmonologist testified for respondent. He attributed the emphysema to cigarette smoking and a family history of emphysema but could not rule out that work exposure "might have in some small way contributed to the development of the lung disease." *Id.* at 254.

Culbert v. City of Jersey City Fire Department, 175 N.J. 286 (2003), is a companion case to *Lindquist*. Possessing similar facts and issues, the decision, citing *Lindquist*, upheld the petitioner's claim for the same reasons.

b. *Fiore* is Inapplicable to Pulmonary Claims

The trial judge in *Lindquist* ruled that petitioner's emphysema "is due in a material degree" to the occupational exposure and awarded 30% of total disability. But the Appellate Division found that petitioner's evidence of causal connection was insufficient to support the award. The Appellate Division applied the stringent *Fiore* standard [*Fiore v. Consolidated Freightway*, 140 N.J. 452 (1995)], applicable to heart disease, in which a petitioner must prove the work exposure is greater than personal factors such as cigarette smoking. In reversing the Appellate Division, Justice Coleman held that N.J.S.A. 34:15-7.2 limits *Fiore* to cardiovascular and cerebrovascular claims only:

> Because *Fiore* does not apply to pulmonary cases, the Appellate Division should not have applied its holding here.
>
> The controlling test [. . .] is whether the work exposure substantially contributed to the development or aggravation of emphysema. Petitioner had the burden to demonstrate by a preponderance of the evidence that his environmental exposure while fighting fires was a substantial contributing cause or aggravation of his emphysema. To satisfy that obligation, he was not required to prove that his work exposure exceeded the exposure caused by smoking cigarettes. Nor was he required to "prove that the nexus between the disease and the place of employment is certain" because that would violate the preponderance of the evidence standard. [*Id.* at 264 (citations omitted).]

c. Scientific Studies

Although scientific studies were not presented at trial, the Supreme Court took the unusual step of finding scientific studies on its own initiative and taking judicial notice of them. *Id.* at 273-277. The importance placed on scientific evidence in *Lindquist* signals

that use of such studies will determine the outcome of many occupational cases including but not limited to those involving exposure to toxic substances. Therefore attorneys on both sides should be prepared to introduce evidence of scientific studies or risk losing the case. Scientific evidence offered by petitioners will be liberally construed in light of the bargain theory whereby workers accept reduced benefits in exchange for more certain compensation:

> [In deciding causation, the Division of Workers' Compensation] should utilize the original bargain rationale for workers' compensation and ergonomics to assist with the determination. Ergonomics refers to the applied science for the workplace that is broadly defined as "the science relating to man and his work." Ergonomics and other applicable principles should be the lens through which the determination of whether emphysema is an occupational disease that is related to a firefighter's exposure should be viewed. [*Id.* at 257-258 (citations omitted).]

When, as in *Lindquist*, opposing evidence on each side is inconclusive, the court suggests that the bargain rationale will tip the scales in favor of the petitioner. Though a study of firefighters in Alberta showed no link between fire fighting and pulmonary disease, other studies, such as one comparing lung disease among police officers and fire fighters, reached a different conclusion. Despite this equivocal evidence the decision favoring petitioner is

> compelled by the principles that the Act represents social legislation, and is to be interpreted to expand rather than limit coverage, and that under the social compromise theory it is intended that a petitioner's burden of proof be lighter than in a common-law tort action. [Id. at 281.]

d. The Preponderance of Evidence Standard

Justice Coleman's decision raises the prospect that a possible connection, as opposed to a preponderance of evidence, may be sufficient in some cases to establish causation: "When the possibility of causal connection is established, we cannot deny relief in all cases simply because science is unable decisively to dissipate the blur between possibility and probability." But Justice Weintraub's concurring opinion asserts:

> More than a possible causal connection exists in this case. Although we do not relax the requirement that petitioner must prove his case by a preponderance of the evidence and that his evidence must be scientifically reliable, we must examine the evidence in light of science's inability to provide conclusive answers to every question.

Justice Coleman also states, elsewhere in the opinion, that causation must be proved by a preponderance of the evidence. *Id.* at 263. Petitioners' attorneys should assume that the preponderance of evidence standard remains the effective standard for proving causation in occupational claims.

e. Submission of Proofs

Lindquist raises but leaves unanswered the question of how occupational causation must be proved. On one hand, the court reminds us that pursuant to N.J.S.A. 34:15-56, a Judge of Compensation is not bound by the Rules of Evidence, though rulings must be based on competent evidence. *Id.* at 260. A judge's power to relax formal rules of evidence combined with the Supreme Court's judicial notice of medical studies raises the possibility, though not the likelihood, that authoritative medical publications might be introduced at trial without an evidentiary foundation. In addition, in *Bird v. Somerset Hills Country Club*, 309 N.J. Super 517, 524 (App. Div. 1998), the court held that reputable medical journals may be admitted at trial without support from the testimony of a physician because of our "public policy behind not strictly applying the rules of evidence to workers' compensation hearings in order to simplify the presentation of proofs."

Another reason for acceptance of learned treatises is the disadvantage a petitioner is subject to in bringing medical witnesses to court:

> The compensation judge pointed out that N.J.S.A. 34:15-60 limits the petitioner's forensic physician witness fees to $200 for a report and $250 for testimony, with a total of not more that $450. There is a $1500 ceiling on treating physicians. Employers and insurers are not subject to such limits. The compensation judge explained that "learned treatises level this playing field." [Id.]

Petitioners' attorneys should not assume, however, that learned treatises will be admitted without the backing of an expert witness. It is a good idea to have an expert witnesses review applicable medical studies that support their opinions and explain why on the witness stand if the case goes to trial.

Justice Coleman asserts that the *Rubanick* standard should govern "the admissibility and reliability of medical causation evidence" in workers' compensation cases and should be "used in weighing the credibility of opinion evidence presented by experts." *Id.* at 261. See *Rubanick v. Witco Chemical Corp.*, 125 N.J. 421 (1991). In *Rubanick*, which involved a civil claim for toxic exposure, the court held that in toxic-tort litigation,

> a scientific theory of causation that has not yet reached general acceptance may be found to be sufficiently reliable if it is based on a sound, adequately-founded scientific methodology involving data of the type generally relied on by experts in the scientific field. The evidence of such scientific knowledge must be proffered by an expert who is sufficiently qualified by education, knowledge, training, and experience in the specific field of science. The expert must possess a demonstrated professional capability to assess the scientific significance of the underlying data and information, to apply the scientific methodology, and to explain the bases for the opinion reached. [*Rubanick* at 449, and *Lindquist* at 262.]

The passage above suggests that in a workers' compensation case, evidence of scientific knowledge reasonably relied upon by experts, such as medical studies and publications, must be introduced through an expert witness. Unlike a civil case, however, an N.J.R.E. 104 hearing challenging admissibility of expert testimony is not part of workers' compensation proceeding. This is because the Rules of Evidence do not apply (*Id.* at 260-261) and because all evidence, in any event, is reviewed by the same trier of fact: the Judge of Compensation, who is more qualified than a jury to separate reliable from unreliable evidence.

Rubanick enables toxic-tort plaintiffs to admit evidence previously inadmissible under the more restrictive standard in *State v. Kelly*, 97 N.J. 178 (1984), requiring the proponent of scientific evidence to establish its general acceptance in the scientific community. Such general acceptance could be proved by expert testimony as to what is accepted in the applicable community, by authoritative scientific writings, or by judicial opinions indicating that the expert's premises have gained general acceptance. *Id.* at 210. *Rubanick* recognizes that despite strong indications of harm caused by toxic exposure, a toxic-tort plaintiff "may never recover if required to await general acceptance by the scientific community of a reasonable, but as yet not certain, theory of causation." *Rubanick* at 434. In *Rubanick* the issue was should the evidence be admitted. In a workers' compensation setting, however, admission is less of an issue because the trier of fact will be exposed to the evidence anyhow. *Lindquist* instructs the Judge of Compensation to use *Rubanick* to weigh the credibility of scientific evidence presented, taking into consideration the difficulty encountered by petitioners in proving certain occupational claims.

f. Presumption of Pulmonary Disease Favors all Firefighters

N.J.S.A. 34: 15-43.2 establishes a rebuttable presumption that a voluntary firefighter impaired from respiratory disease is so impaired because the disease is occupational or work-related. Though the statutory language mentions only volunteer firefighters, *Lindquist* extends the presumption to paid firefighters too because "there is no plausible reason the Legislature would have intended a difference when voluntary and paid firefighters sustained the same pulmonary conditions after fighting the same fire together." *Id.* at 265-266. To take advantage of the presumption, the firefighter must establish (a) the disease developed or first manifested itself while the firefighter is with a fire department; (b) a medical examination indicates the disease was not present when the firefighter was first employed by or volunteered with the department; and (3) the disease first develops or manifests itself within 90 days from the event medically determined to have been the cause.

Evidence in *Lindquist* of petitioner's smoking and family history of asthma failed to rebut the presumption. *Id.* at 266. Pursuant to N.J.R.E. 301, "a presumption discharges the burden of producing evidence as to a fact (the presumed fact) when another fact (the basic fact) has been established. . . . If no evidence tending to disprove

the presumed fact is presented, the presumed fact shall be deemed established if the basic fact is found or otherwise established." If evidence in rebuttal is presented, as it was in *Lindquist*, the judge must evaluate it and make an appropriate determination.

(ii) 1979 Amendments

Pursuant to a 1979 amendment to N.J.S.A. 34:15-31, a compensatory occupational disease must be related "in a material degree" to conditions "characteristic of or peculiar to a particular trade, occupation, process or place of employment." Where a preexisting non-occupational condition is aggravated by an occupational disease, the employee is entitled to compensation, but the employer is entitled to a credit for any previous loss of function proven by the employer. N.J.S.A. 34:15-12 (d).

Prior to the 1979 Amendment, *Giambatista v. Thomas A. Edison, Inc.*, 32 N.J. Super 103 (App. Div. 1954) addressed the situation of a worker suffering from a pre-existing nail fungus aggravated by employment-related immersion into benzene. The employer was found "liable in compensation for the end result" when a disease is "superimposed upon and affect[s] a prior non-occupational condition." In cases of accidents, the court noted, employers must compensate for "all of the consequences flowing from [the] accidental injury, irrespective of the fact that such consequences may be much more severe by reason of [a] preexisting condition or defect." *Id.* at 114. Occupational diseases, the court reasoned, should be similarly treated given that "the employer takes the employee as he finds him. . ." *Id.*

The 1979 amendments created a standard of causation for occupational claims different from that applicable to accidents: N.J.S.A. 34:15-31 requires a connection "in a material degree" to a condition "peculiar to a particular trade, occupation process or place of employment." In contrast, N.J.S.A. 34:15-7 mandates compensation for "accidents arising out of and in the course of employment," without including a material degree requirement. Despite this difference, there is no easy way to distinguish in occupational claims between causation, in the sense of some relation between the job and occupational disease, and material causation as written in the statute. *Lindquist* reminds us that the Workers' Compensation Act must be liberally construed to cover as many workers as possible. *Id.* at 258. Furthermore the Act calls for a "conscious endeavor to maintain a liberally just line between those [occupational diseases] which may be said to have had some work connection and those which may be said to have been unrelated to the employment." *Id.* at 277, quoting *Tocci v. Tessler & Weiss, Inc.,* 28 N.J. 582, 587 (1959). An occupational claim with a causal relationship to employment greater than *de minimus* will likely be deemed material unless the claim involves cardiovascular or cerebral vascular injuries, which claims require proof that the work exposure exceeds the exposure caused by personal factors such as cigarette smoking. See N.J.S.A. 34:15-7.2 and *Fiore v. Consolidated Freightway*, 140 N.J. 452 (1995).

The distinction between post-1979 law on occupational causation and pre-1979 law is summarized by our Supreme Court in *Fiore v. Consolidated Freightway*, 140 N.J. 452, 468-470 (1994):

> The 1979 amendments modified section 31 in three ways. First, the Legislature deleted the pre-existing definition of occupational disease that included diseases "due to the exposure of any employee to a cause thereof arising out of and in the course of employment" [. . .] The purpose of the deletion was to ensure that employers would be liable solely for those diseases "characteristic of and peculiar to a particular employment. . . ." [citation omitted]. As one writer explains, the practical effect of the revision is best presented by an example. If an employee contracted pneumonia as a result of working in a freezer as a packer, the condition would be a compensable occupational disease because it would be due to a cause which is peculiar to the employment. If the same employee contracted pneumonia as a result of incidental exposure to a fellow employee with pneumonia, however, this might not be compensable because the condition may not be due to a condition characteristic or peculiar to the employment {Fred Kumpf, *Occupational Disease Claims under the Workers' Compensation Reforms*, 12 Seton Hall L. Rev. 470, 473 (1982)}
>
> Second, the legislature added subsection b, which restricts compensability be providing: "Deterioration of a tissue, organ or part of the body in which the function of such tissue, organ or part of the body is diminished due to the natural aging process thereof is not compensable." Subsection b further restricts compensability be excluding from compensability degenerative changes due to the natural aging process [. . .].
>
> Third, the Legislature redefined a "compensable occupational disease" both to restrict and broaden coverage. The new definition restricted coverage by requiring that the disease be "due in a material degree" to "causes or conditions . . . peculiar to the place of employment." In effect, the "material degree" standard imposes on a claimant a burden to "show a greater nexus between the malady and the employment." Kumpf, supra, 12 Seton Hall L. Rev. at 473. This amendment broadens coverage by adding the phrase "peculiar to the place of employment." This addition "[e]xpand[s] the definition of compensable occupational disease to include diseases due in a material degree to conditions characteristic of the place of employment" [citation omitted]. The expanded definition includes claims that not only result from a particular trade, but also from a particular place of employment. For example, a teacher who develops asbestosis from working in a classroom with a flaking asbestos ceiling would be covered under Section 31 [citation omitted]. By compensating diseases arising out of he workplace, and not the "ordinary diseases of life," section 31 comports with the rationale underlying the compensation of occupational diseases. . .

(iii) *Peterson* and *Kozynski* (Applying the "Material Degree" Standard to Preexisting Conditions)

Peterson v. Hermann Forwarding Co., 267 N.J. Super 493 (App. Div. 1993) addresses the "material degree" standard in the context of a preexisting condition. The petitioner in *Peterson* injured his neck, shoulders, hip, and back in a vehicle accident in October 1982 while working as a driver for Hermann Forwarding. After missing one month of work, returning briefly, and then getting laid off, petitioner procured new employment as a driver with Mid-Florida in March 1983. Repeated long distance driving in a bouncing truck led to additional pain in already injured parts of his body. Petitioner then left Mid-Florida and worked part time and sporadically for McAllen Trucking in October 1993, and from March through early June 1984 as his symptoms worsened. He also was employed by Pilot Trucking for two days in November 1983 and part time as a driver for Yellow Freight from April through June 18, 1984, his last day of employment. An MRI taken in 1985 showed two cervical and two lumbar herniations. Petitioner's orthopedic expert found a causal relation between the 1982 accident and all subsequent employment but he could not apportion a percentage of disability to each employer.

Peterson held that the petitioner failed to show that his subsequent employment contributed to his disability in a material degree or "degree substantially greater than de minimis." *Id.* at 504. In explaining its decision, the court said:

> Clearly because of his preexisting conditions [the October 1982 accident], petitioner's work activities at the subsequent employment caused him to suffer greater pain than he would have experienced had he remained sedentary. However, an employer is not required to compensate an employee for pain. [A worker is entitled to treatment that would relieve sufferings incident to an accident arising from his employment whether or not a cure might at the same time be effected. *Hanrahan v. Township of Sparta*, 284 N.J. Super. 327, 333 (App. Div. 1995) (citing *Howard v. Harwood's Restaurant*, 25 N.J. 72, 88 (1975).] There must be proof of a work-related injury or condition resulting in permanent disability. See N.J.S.A. 34: 15-36. All of these subsequent jobs required physical activity, including lifting, loading and unloading of trucks. The work, however, did not appear to be any more strenuous than petitioner, or others in his occupation would otherwise routinely encounter as a truck driver. Nor would the work have caused injury resulting in permanent disability, despite the fact that petitioner suffered pain while engaged in such activities. . .
>
> We acknowledge that Dr. Shapiro opined that each day petitioner worked in the two-year period from 1982 to 1984, doing the same type of work, put him at risk of increasing disability. . . . However, Dr. Shapiro's diagnosis following his initial exam of October 16, 1984, revealed conditions of a traumatic nature which were obviously attributable to the 1982 accident [. . .] Dr. Shapiro's subsequent examinations revealed a progressive worsening of petitioner's disabling conditions, despite the fact that there was no further work effort. . . We are persuaded that where

> the subsequent employment, without the intervention of additional trauma or physical insult, merely causes pain from preexistent conditions to be manifested, that liability should not attach to the subsequent employer even where the result is that the employee then realizes that continued employment is not feasible. [. . .]
>
> Certainly petitioner's disability increased, however, that was due to the progression of the disease, as it continued to do so after all employment had ceased. . . [*Id.* at 504-505, 509.]

Peterson was left with a remedy against Herman Forwarding, which the court found fully responsible for his injuries including the progressive worsening of his condition resulting in total disability. *Id* at 509. If, however, Peterson's 1982 accident had occurred outside of his employment, he would have had recourse in superior court, beyond PIP coverage, against the other driver only if the accident were the other driver's fault; there would be no relief for him under the workers' compensation system. The Second Injury Fund cannot be brought in without a work-related injury.

Like *Peterson*, *Kozynsky v. Edison Products Co.*, 222 N.J. Super 530 (App. Div. 1988) also addresses the issue of apportioning disability among subsequent employers. The initial injury occurred when petitioner fell in a meat locker and rendered symptomatic a previously asymptomatic back condition. Six months later she worked as a nail polisher for one month after which time she was employed for six weeks at Head Start. She then took a job with Edison Products as an assembler. Her expert witness was unable to apportion disability among the subsequent employers. Focusing on the fact that there were no specifically aggravating injuries at the subsequent employers, the court noted: "absent evidence of any definite accidental events, it would unjustly place a nearly impossible burden upon a subsequent employer to require that it demonstrate that a brief employment did not contribute substantially and occupationally to an increase in the disability resulting from an initial accident." *Id.* at 537.

Peterson and *Kozynsky* demonstrate that New Jersey courts are reluctant to find liability, in the absence of compelling evidence, for alleged occupational injuries developed subsequent to a related identifiable traumatic injury. To surmount this hurdle, petitioners' attorneys should try to identify specific instances of aggravation and include them in the claim petition as traumatic events in addition to the applicable subsequent occupational claim. Furthermore examining experts should be requested to apportion liability; and, if possible, the petitioner should be examined upon leaving one job for another so that a percentage of disability can be identified for purposes of apportionment. Finally, the petitioner's attorney should look for a measurable worsening of the medical condition due to work effort or other occupational exposure.

Where a subsequent injury is an accident, our courts are more inclined to hold subsequent employers or insurance companies responsible and to apportion liability, even when determining the proportion of responsibility is difficult. In *Quinn v. Automatic Sprinkler Company*, 50 N.J. Super 468 (App. Div. 1958), the petitioner sustained three compensable injuries to his arm. The first two had resolved prior to the third. After the

third, the petitioner filed a petition to modify the first two awards due to an increase in disability stemming from the treatment, and he filed a new claim for the third event. A different insurance company was responsible for each claim though each accident occurred while the petitioner worked for the same company. Though the evidence furnished no precise basis for apportionment, the court found that each episode "contributed substantially to the final condition of disability" and affirmed the county court's decision to divide responsibility equally among the insurance companies.

(a) Recent Developments

In *Singletary v. Wawa*, 406 N.J. Super. 558 (App. Div. 2009), the petitioner was employed continuously for the respondent convenience store from 1987 to 2007, where, among other things, she worked the cash register, stocked shelves, took inventory, and worked in the deli. She injured her neck when she fell at the store in 1992. After this accident, an MRI disclosed a herniation at C5-6. In 1996 she underwent a discectomy and fusion at C5-6 and, in 1998, received a permanent partial disability of 30% for this injury. She fell at work and further injured her neck in December 2001. The MRI taken after this accident showed herniations at C4-5 and C6-7. She was treated with physical therapy and injections into May 2002. In November 2003, she received a compensation award of 45% of total, with a credit for 30%. All benefits up to this point were paid by AIG. However, on January 1, 2002, Wawa became self insured. *Id.* at 561-563.

For over four years after her last treatment in May 2002, petitioner received no medical treatment until 2006 when she complained to her family physician, who recommended another MRI. In October 2006, petitioner filed an occupational claim against Wawa for occupational exposure beginning in November 2003 as well as a reopener against AIG based on a worsening of her condition form the December 2001 accident. A motion for medical benefits and temporary disability benefits was filed in August 2007 resulting in an order by the judge of compensation that AIG, without prejudice to later seek reimbursement from Wawa, pay for diagnostic testing, treatment, and temp benefits. The two insurers agreed to send petitioner to Dr. Delosatta, who in March 2008 performed a discectomy and fusion at C4-5. *Id.* at 562-563.

At a subsequent hearing to determine which insurer should pay, petitioner described the strenuous aspects of her job duties, testified that her pain had worsened since November 2003, such that she developed new symptoms including daily headaches and "pressure at the base of her skull, and that consequently she reduced her work hours in 2007." Dr. Delasotta testified that an MRI taken in July 2006 along with a myelogram from November 2007 demonstrated objective evidence of a "progression of the degenerative process" at C4-5, which now required surgery whereas surgery was not necessary in 2002. Dr. Delasotta also testified that the two prior accidents along with the initial fusion also materially contributed to the petitioner's current condition. Nevertheless, he opined that petitioner's work duties during the occupational exposure period "aggravated and accelerated the underlying pathology at C4-C5." He further stated that had petitioner stopped working after the 2001 accident, she "probably would not have needed the C4-5 surgery. *Id.* at 563-564.

Based upon this evidence, the judge of compensation ruled that petitioner's back condition had deteriorated due to her work between November 2003 and 2007. Therefore he ordered Wawa to reimburse AIG and found Wawa responsible for future benefits owed to the petitioner. On appeal, Wawa, relying on *Peterson* and *Kozinsky*, argued that petitioner's "subsequent employment" under Wawa's coverage "did not legally and materially contribute to petitioner's disabilities." However the Appellate Division upheld the compensation judge's findings: "This is not a case where the subsequent employment 'merely caused pain from preexisting conditions to be manifested.' Rather [petitioner] suffered additional physical insult every day she worked at Wawa because of the heavy lifting and other stressful tasks required by her job." *Id.* at 565-568.

Singletary illustrates that a successful defense under *Peterson* and *Kozinsky* depends on fact-specific circumstances. There was a relatively long period of exposure in *Singletary*, which combined with unrebutted testimony of the treating physician that comparative differences in diagnostic test findings proved an occupational worsening of petitioner's condition in light of the arduous nature of petitioner's job. Under these circumstances, the *Peterson-Kozinsky* defense was unsuccessful.

(iv) Level of Risk

Cases on occupational causation have not clearly delineated the level of risk required to prove a connection with a "particular trade, occupation, process or place of employment." In *Laffey v. City of Jersey City*, 289 N.J. Super 292, (App. Div. 1996) the court, without detailed explanation, held that a policeman who worked in what was characterized as an old and dusty police station failed to establish that the "conditions surrounding his work environment were peculiar to his employment." *Id.* at 305. On the other hand, *Magaw v. Middletown Board of Education*, 323 N.J. Super. 1, 12-13 (App. Div.) 1999, affirmed the claim of a physical education teacher alleging work-related tonsil cancer. The teacher was not required to demonstrate a higher degree of exposure to cigarette smoke than other school workers in order to prove circumstances peculiar to employment. "Exposure at his place of employment to a chain smoker compared with his efforts to minimize all other exposure, rendered smoke exposure at his place of employment peculiar or characteristic." *Id.* at 12. According to Judge Kumpf, "Section 31 does not require the showing of a "peculiar risk" but only an "increased risk." Still, a claimant must show that the condition would not have occurred to the same extent without the work exposure. If the work environment is no different than that which the general public is normally exposed to, then the condition would not be peculiar to the employment. *Laffey* at 305-306.

(v) Objective Medical Evidence

Laffey also set a rigorous standard with respect to the amount of objective evidence required under N.J.S.A. 34:15-36 to sustain an occupational claim. In rejecting a police officer's proofs of causal connection between a polluted work environment at various Jersey

City locations and his pulmonary disease, the court pointed to a lack of (1) quantitative evidence concerning the level of pollution and duration of exposure; (2) the component elements of the pollution; (3) scientific studies linking exposure to the alleged pollutants to petitioner's condition; (4) scientific studies showing that police officers are more prone to such environmental exposure than "any other resident or employee of New Jersey." *Id.* at 306-307.

Two cases distinguish Laffey on the issue of objective medical evidence. In *Kiczula v. American National Can Co.*, 310 N.J. Super. 293 (App. Div. 1998), the court affirmed a finding that an assembly line worker's exposure to dust and fumes caused her lung disease. The evidence was "stronger than Laffey" because

> The testimony here listed the specific pollutants to which petitioner was exposed, and discussed the duration of exposures. True, no studies of the air quality were done, but there was certainly more than mere subjective characterizations. In addition, the medical testimony was also stronger. A medical article discussed here specifically theorizes that WG is a kind of hypersensitivity disorder and states that many researchers consider it to be "aggravated by inhalation of an environmental agent or agents." [Also,] petitioner was much better once she was removed from the source of the pollutants in question [from which an inference can be drawn based on a] "cautious reasonable probability." *Id.* at 303.

Where a physical education teacher alleged he contracted lung cancer from sharing an office with a smoker, the court in *Magaw v. Middletown Board of Education* 323 N.J. Super. 1, 12 (App. Div. 1999) noted there is no requirement of proof that "physical education teachers have a higher exposure to cigarettes than other school workers. Unlike *Laffey*, where expert testimony constituted "sweeping generalizations based on virtually no documented medical authority," the evidence in *Magaw*, though "imperfect," was sufficient to sustain the administrative judge's finding. Though no evidence directly linking second-hand smoke to tonsil cancer was presented, a study was introduced showing that second hand smoke contains the same toxic agents as smoke inhaled by a smoker, though in lower amounts; and a credible expert testified that "medicine knows that primary smoke causes lung, head and neck cancers and that secondary smoke causes lung cancers." This combined with the other evidence that tobacco is a major risk factor in developing tonsil cancer and that petitioner was pervasively exposed to second-hand smoke for twenty-six years creates a logical inference connecting second hand smoke with tonsil cancer.

Finally, it should be noted that occupational heart disease claims impose higher standards of proof with respect to causation, which include the additional requirements of N.J.S.A. 34:15-7.2. For a discussion of this issue, see *Fiore v. Consolidated Freightway*, 140 N.J. 452 (1994).

(vi) *Bond* (Manifestation of Previously Undetected Disease)

When an occupational disease fails to become manifest, even where causation exists, a respondent may avoid liability under the rule enumerated in *Bond v. Rose Ribbon & Carbon* Mfg. Co., 42 N.J. 308 (1964). In *Bond*, the petitioner was exposed to work conditions sufficient to cause tuberculosis, but the existence of this disease remained unknown and undisclosed while the employer was covered by Insurance Company of North America. Only after New Jersey Manufacturers succeeded the Insurance Company of North America did the tuberculosis become identified. Under these circumstances, the Supreme Court stated:

> Where . . . an employee is exposed to work conditions which activate or cause a progressive occupational disease, and the existence of such disease remains undisclosed and unknown over a period of time, it is impossible upon ultimate revaluation of its existence by medical examination, work incapacity, or manifest loss of physical function, to pinpoint in retrospect, the triggering date of such activation or inception. It is also impossible to reconstruct the daily rate of progress of the disease from its genesis to discovery through one of the afore-mentioned means. . . . Therefore, any apportionment of compensation liability between the successive employments or insurance coverages, must of necessity be speculative and arbitrary. To avoid the morass into which litigation would be pitched were apportionment required, and to eliminate the recognized unsatisfactory nature of any such attempted ascertainment, we conceive that the most workable rule [. . .] is to hold liable that employer or carrier during whose employment or coverage the disease was disclosed . . . by medical examination, work incapacity, or manifest loss of physical function. Although this test is admittedly arbitrary and may on occasion cause some apparently unfair results, over the years it should result in an equitable balancing of liability.

Bond is particularly important to defense attorneys, who can use it to avoid liability in occupational claims including more than one insurance company, employer, or both. In such situations, defense attorneys should look for a petitioner's inability to prove manifestation of a disease via work incapacity, loss of physical function, and medical evaluation. The presence of any of these three elements can preclude a *Bond* defense. From a petitioner's standpoint, it may be easier to settle a claim if there are two or more deep pockets instead of one. Nevertheless the petitioner remains entitled to full compensation when *Bond* applies.

(vii) When *Bond* Does Not Apply: *Levas* and the Apportionment of Occupational Disease

In *Levas v. Midway Sheet Metal*, 317 N.J. Super. 160 (App. Div. 1998), the petitioner, alleging occupational pulmonary disease, had worked for a series of employers that had exposed him to pulmonary irritants, the last being Midway Sheet Metal, for whom he worked merely one week. At trial, his pulmonology expert, Dr. Hermele,

apportioned his permanent total disability at 50% during the course of an employment shortly prior to his last employment at Midway Steel, after which he became totally disabled. According to Dr. Hermele's testimony, the petitioner's condition initially manifested itself during the course of this prior employment and then worsened thereafter. Nevertheless, the Judge of Compensation, applying *Bond*, ruled that the full responsibility for the petitioner's pulmonary disease fell upon Midway. In reversing the judge of compensation, the Appellate Division held that if there is a manifestation of partial disability during a previous employment, full disability cannot be imposed on the last employer.

The Appellate Division cited N.J.S.A. 34:15-12(d), which requires that a credit be given when a subsequent employer establishes previous loss of function. In *Levas*, the evidence demonstrated that "petitioner's occupational condition manifested itself, both medically and functionally, prior to his Midway employment and, most probably, as early as the February 1990 hospitalization and commencement of pulmonary treatment thereafter." *Id.* at 350. This differs from the situation in *Bond*, where the occupational disease failed to become manifest until a subsequent employment.

Because the compensation judge misapplied *Bond,* there was a failure to assess if the pervious successive employments materially contributed to the petitioner's occupational disease to a degree substantially greater than *de minimis*. Hence the case was remanded for allocation of responsibility among those remaining employers.

On remand, the judge of compensation apportioned the responsibility equally among the various employers, some of whom appealed, leading to a second published opinion in *Levas v. Midway Sheet Metal*, 337, N.J. Super. 341 (App. Div. 2001). The Appellate Division noted with some dismay that none of the respondents "made any effort to assist the judge, by way of additional medical testimony or otherwise, in an appropriate method of allocating the responsibility of petitioner's total disability," though it is their burden to do so once the petitioner establishes a compensable exposure. *Id.* at 346-347. The following critique of the compensation judge's decision suggests the type of analysis required of litigants and judges:

> [O]n remand the compensation judge concluded that all of the . . . employments aggravated and exacerbated petitioner's pre-existing condition and contributed to his increasing disability to a material degree. But, he did not focus upon the voluminous medical records in this case to determine whether there were any incremental, measurable increases along the way, in what was at that point only a partial permanent condition. In particular, the judge did not analyze the medical evidence at the time of the D & M Sheet Metal employment or the expert opinions that found petitioner's condition at that point had become manifest. It is at this point that petitioner began to have breathing problems which he had not had prior thereto. The manifestation was such that it required hospitalization and the commencement of treatment. While the compensation judge rejected Dr. Hermele's assessment that the disability at that point was fixed at fifty percent, he gave no reasons therefore except that he thought it

> speculative, despite Dr. Hermele's reliance upon the then medical records. Moreover, he did not reject the doctor's opinion that the condition was manifest, nor did he reject the opinion of Dr. Freedman. The judge also failed to consider the evidence of additional hospitalizations during the Raritan Valley Sheet and Metal employment. [*Id.* at 357-358.]

Careful review of medical records to find evidence of manifestation of disease or injury and loss of function is critical. If the medical evidence is insufficiently specific, there can be no apportionment to a prior employment, as the court points out by distinguishing the facts in *Levas* with those in *Giagnacovo v. Beggs Bros.*, 64 N.J. 32 (1973):

> The petitioner in *Giagnacovo* was a bricklayer. During his employment with the first of his successive employers, he was treated for an aggravation of pre-existing arthritis in his right wrist. X-rays were taken and he was informed that the condition was such that he would at some point require surgery. Based upon this, the compensation judge assessed five percent permanent partial disability against the first employer. Thereafter petitioner worked for three other employers during which employments the wrist was "constantly aggravated, constantly bother[some]." There was nothing, however, in the record of further medical treatment, additional medical episodes, or other similar evidence that would be reflective of a measurable increase in the disability until the employment with the last employer when the condition worsened such that it required surgery. The compensation judge concluded that at that point the disability had increased to fifty percent partial permanent. Forty-five percent was then assessed against the last employer. In rejecting the last employer's contention that because the condition was manifested and, indeed, measured during the first employment, that employer should assume the subsequent increase in disability, the Supreme Court observed that the early x-ray and advice that surgery would be required at some future time was insufficient to allocate the subsequent forty-five percent increased disability to the first employer as it did not reflect a then fixed, arrested and measurable forty-five percent increase. The compensation judge's allocation of five percent partial to the first employer and forty-five percent to the last was affirmed. [*Levas* at 355-356.]

c. Causation Involving Treatment Recommended After Settlement

In *Rivelli v. MH&W Corporation*, 383 N.J. Super, 69 (App. Div. 2006), the Petitioner, while undergoing physical therapy for an work-related back injury, developed unstable angina, which, in combination with a preexisting heart condition, rendered him totally disabled. The Order Approving Settlement required the respondent to provide "such reasonable and necessary care as the petitioner's related" cardiological condition requires". *Id.* at 73. Subsequent to the order, petitioner filed a post-judgment motion to compel the respondent to pay for the drug Lipitor, a known cholesterol-reducing drug, which, the petitioner submitted, also had recently been used to treat heart disease itself. In response, the Respondent asserted that petitioner's need for Lipitor was not causally related to his cardiac incident during the physical therapy but would only serve to reduce his high cholesterol, an independent risk factor for his heart disease having no bearing on

the aggravation occurring during physical therapy. Initially the Appellate Division reversed the compensation judge's decision that Lipitor must be provided because there was no finding "that the petitioner's hyperlipidemia was related to, or caused by, his compensable heart condition." *Id.* at 74.

However, after this decision, the FDA approved the use of Lipitor not only to treat high cholesterol but also to treat cardiovascular conditions, including angina. As a result, the petitioner moved to reopen the appellate case and obtained a remand to the Division of Workers' Compensation to supplement the record: "We deem it appropriate to remand for further proceedings directed to the relationship between petitioner's work-related condition and his hyperlipidemia and the use of Lipitor to treat a condition for which the employer is responsible."

3. Heart Conditions

Particular standards of causation apply to cardiovascular and cerebral vascular workers' compensation claims in New Jersey. Two Supreme Court cases enunciate these standards applicable respectively to (1) traumatic cases (when the worker suffers a heart injury alleged to be attributable to a particular strain) and (2) occupational cases (based on alleged accumulated work stress over a period of time). Though delineated differently, the standards are quite similar: both require a more rigorous burden of proof than is required in other kinds of accident and occupational disease claims.

The standard of proof in traumatic cardiac claims is governed by *N.J.S.A.* 34:15-7.2 as interpreted by *Hellwig v. J.F. Rast & Company, Inc.*, 110 N.J. 37 (1988). Per *N.J.S.A.* 34:15-7.2, to establish causation in an accident or traumatic case, a claimant must prove that the work effort involved "a substantial condition, event, or happening in excess of the wear and tear of the claimant's daily living and in reasonable medical probability caused in a material degree" the cardiac injury or death. Material degree means "an appreciable degree or a degree substantially greater than de minimis." The claimant does not have to prove that the work effort that causes death exceeds the petitioner's ordinary or routine work effort. *Hellwig* at 51. However it must be shown that the work effort exceeded the wear and tear of the claimant's daily living exclusive of work. The expert witness must consider "the worker's medical history, the intensity and duration of the precipitating work effort, and the time interval between the work effort and the evidence of heart dysfunction." *Id.* at 54.

As set forth in *Fiore v. Consolidated Freightways*, 140 N.J. 452, 467-468 (1995), to establish causation in an occupational cardiovascular claim, as opposed to a traumatic claim, the worker must prove:

(1) The disease is due in material degree to causes arising out of the workplace which are characteristic of or peculiar to the particular occupation;
(2) The work exposure exceeds the exposure caused by the petitioner's personal risk factors, such as smoking; and

(3) The employment substantially contributed to the development of the disease, meaning that without the exposure the disease would not have developed to the extent that it caused the disability resulting in the claimant's incapacity to work.

In applying the second factor, above, the medical expert and trier of fact should compare "the work effort and the daily-living effort," in other words, were the stresses and strains of work greater than the stresses and strains of activities outside of employment. *Id.* at 467-468 (1995), interpreting N.J.S.A. 34:15-31 and 34:15-7.2.

Hellwiag and *Fiore* evince a similar intent to increase for petitioners the burden of proof. In *Feltman v. Transistor Devices, Inc.*, 355 N.J. Super. 36 (App. Div. 2002), the Appellate Division, discussing *Hellwig* and *Fiore*, wrote:

> Recognizing that section 7.2 imposed a more stringent standard upon claimants seeking to recover for coronary disease injuries, however, the Court [in *Fiore*] concluded that an equally enhanced standard should apply to a cardiovascular claim arising under section 31. The Court held:
>
> > We conclude generally that an employee claiming an occupational heart disease must show that the disease is due in a material degree to causes or conditions that characterize the employee's occupation and that substantially contribute to the development of the disease. [Citation omitted.]
>
> *Hellwaig* and *Fiore* thus both indicate that the Legislature and the courts have been concerned with the compensability of injuries occurring from cardiovascular disease, and accordingly have held such claims to a heightened standard of proof.

The material degree requirement in *Fiore* is the same required of all occupational workers' compensation claims. However to this is added the requirement that the work exposure substantially contributed to the development of the disease. The repeated emphasis on causal connection ("material degree" and "substantially contributed") suggest that the degree of causal relationship, independent of comparison with outside activities, will be more rigorously scrutinized in occupational heart claims than in other occupational claims. These requirements parallel those in *Hellwig*, which likewise uses the words material ("caused in material degree") and substantial ("substantial condition, event or happening") in noting the burden of proof. *Hellwig* applies a strict occupational standard to heart injuries arising from alleged accidents. Ordinary accidents are not subject to material degree standard used to evaluate occupational claims. *N.J.S.A.* 34:15-7 mandates only that accidents "arise out of and in the course of employment."

Both *Fiore* and *Hellwig* require a comparison of the employment environment and demands with the circumstances and environment of the worker's life outside of the workplace. *Fiore* emphasizes personal risk factors such a smoking, obesity, and

diabetes. *Hellwig* focuses on the "wear and tear of the claimant's daily living," which could refer to the amount of stress and strain exerted by a claimant in personal activities such as housework and sporting activity. *Hellwaig* requires the expert to examine the claimant's medical history. Given the opinions in *Fiore* and *Hellwig* and the fluidity of these categories, it is likely that all of these categories will be considered in the analysis of occupational and accidental claims.

The question of when a heart attack occurs is crucial. If it occurs during strenuous work activity, especially prolonged strenuous activity, the claim will be easier to prove than if it occurs at the end of a weekend or vacation. This is what transpired in *Hellwig*, where the worker died on the job after hours of lifting, walking, and climbing stairs and ladders in hot weather.

To cover all options, the worker's attorney should file both occupational and traumatic event petitions, except when the injury occurs long after a period of work, in which case an occupational claim may be all that is necessary. For instance, a manual laborer suffers a heart attack in bed at home 10 hours after vigorous work in the warehouse. If the proofs are equivocal on the question of traumatic event, they may be stronger on the occupational issue, or *vice versa*. Even if the worker dies in the act of on-the-job strain, it may also be that a long history of hard labor created a heart condition that contributes to the death. Or, as in *Fiore*, the worker's heart condition may be related to exposure to a toxic work environment.

In *Feltman*, the, the 63-year old vice-president of a military parts subcontractor died from a heart attack hours after returning home from an allegedly stressful three-day business trip. The evidence established that Mr. Feltman was morbidly obese, that his job involved primarily office work, and that he led a sedentary lifestyle. Though the Appellate Division accepted that his life outside of work was less demanding than his job, it observed that this, in and of itself, does not show that the job led to the heart condition. The compensation judge found that Mr. Feltman had a history of high blood pressure and high cholesterol, that cardiac symptoms appeared several weeks before the trip, that he handled stress well, that his condition did not decline during the trip, and that he considered the trip successful. According to the employer's expert, the cause of death was the natural progression of coronary artery disease, and obesity and hypertension are risk factors for heart attack. The compensation judge ruled that Mr. Feltman's age, high blood pressure, and morbid obesity, rather than work stress, contributed to the natural progression of the coronary heart, which caused his death. In affirming this decision, the Appellate Division stated that the judge's findings should only be overturned if unreasonably reached considering the credible evidence on the record.

From a petitioner's viewpoint, *Feltman* presents relatively weak facts. There was no history of extended strenuous work activity on which to ground an occupational claim. And the claimant died not while engaged in heated negotiation with a general contractor but after he returned home. There was only limited evidence to suggest that he experienced a high level of stress while away. Under the circumstances, the Appellate Division felt bound to respect the findings of the trial judge.

4. Stress as a Cause of Action

Historically, stress has been recognized as a compensable cause of action in workers' compensation in New Jersey, and awards have been entered for many years for stress induced disability. Essentially, the cases involving psychiatric disability resulting from stress can be classified in two categories: where stress produces physical symptoms and where stress produces purely psychiatric symptoms. Recovery will be difficult, though, when stress exacerbates a pre-existing condition, or when stress is caused by normal working conditions.

The seminal case is *Walck v. Johns-Manville*, 56 N.J. 533 (1970), which grew out of an 1962 accident. It deals with the psychiatric reaction to mental stress resulting in a physical manifestation, namely a fatal heart attack. *Walck* predated the amendment to the Workers' Compensation Statute in 1979, which constituted a comprehensive revision of the Workers' Compensation Statute by dramatically increasing benefits to the injured worker while significantly containing costs to the employer.

In *Walck*, at no time over the years did the treating physician's records or the records of the respondent's clinic give the slightest hint that any of the worry that Mr. Walck suffered from was associated with his employment or his job security.

The court held that there had to be a causal connection between a fatal heart attack and the work strain. In order to be compensable, the heart attack "must arise out of the employment, that is, it must be due to some realistic sense and material degree to a risk reasonably incidental to the employment." The court felt that there must be some essential relationship to the work or its nature. Simply because the petitioner in the last year of his life had a feeling of insecurity or worry that he might lose his job was not enough. The court stated that there must be a reasonable basis in fact. A heart attack attributed to an emotional strain resulting from unfounded or imaginary worry would not be sufficient.

The court concluded:

> If the nature of the employee is such that he is a worrier, the mere fact that he becomes unnecessarily tense and nervous as to whether or not he is going to keep or lose his job, without more, would not make a heart attack compensable, even if the attack did result from that worry.

In the *Walck* case, the court indicated that purely subjective anxiety, because Walck was a worrier, did not give rise to a right of compensation, because such anxiety cannot be considered a risk arising out of the employee's work. There was no reasonable basis for the petitioner's perception. There was no evidence produced that there were any disputes between petitioner and his supervisor or that the supervisor had written any adverse reports about him. Thus, his claim was rejected.

The next significant case was *Williams v. Western Electric*, 178 N.J. Super. 571 (App. Div. 1981), which involved an occupational claim whereby petitioner's work on an assembly line allegedly aggravated a pre-existing underlying schizophrenia. Experts for both sides agreed that petitioner did suffer from pre-existing underlying schizophrenia. The issue presented to the court was whether or not mental illness, which was exacerbated by alleged repetitive mental stress, was compensable.

In *Williams*, the court relied on the testimony at the trial level of both the petitioner's expert and the respondent's expert. Petitioner's expert testified that the underlying schizophrenic disease produced a tendency to look at the world through one's own pathological conceptualization of it, which showed a subjective reaction in the petitioner's mind to the conditions of work. Respondent's expert testified that the petitioner "attributes his difficulty to those things around him," stating:

> Those are not the true etiology, those are the rationalization of a psychotic mind. The only place a man can be is on his job or off and he carried his schizophrenia with him on the job and off the job, but it doesn't mean that the job contributed in any way to that schizophrenic process.

Ultimately, it was held that petitioner's mental illness was not compensable since it "could not be in any realistic sense and a material degree to a risk reasonably incidental to the employment nor could it be realistically viewed as bearing some essential relation to the work or its nature."

The court found that the petitioner had a purely subjective reaction to his job because of his schizophrenia. This was a case where a diseased mind reacted to normal work demands. *Williams* solidified the holding of *Walck* and held that the case was not compensable, as the evidence consisted of petitioner's subjective reaction to the demands of his job, not the objective reality.

In *Goyden v. State of New Jersey Judiciary*, 256 N.J. Super. 438 (App. Div. 1991) *aff'd o.b.*, 128 N.J. 54 (1992), the petitioner alleged a strictly psychiatric disability for job-related mental stress. The Division of Workers' Compensation awarded the petitioner 100 percent total disability for chronic and severe depression attributable to his work as a supervisor of records in the Office of the Clerk of the Superior Court. The Appellate Division reversed with a finding that the petitioner was not entitled to benefits. Ultimately, this rejection of benefits was affirmed by the Supreme Court. 128 N.J. 54 (1992).

In *Goyden*, the petitioner started working in the clerk's office in 1959, and in 1976, he became a supervisor of records. This position was held from 1976 until retirement in 1984. In 1983 there was a change in supervisory personnel and an increase in filing backlogs, as well as a change in procedure whereby documents were filed locally rather than centrally. By the time of retirement, the petitioner's work had suffered due to his preoccupation with a grievance which he had filed against his new superior and justified disciplinary action could have been taken against him but was not. The only negative

comments in his evaluation were placed by his old supervisor with whom the petitioner had no problems.

The court held that an employee's disability claim cannot be based on legitimate criticism in an evaluation. Merited criticism, it held, is common to all occupations and places of employment. Section 31 of the Workers' Compensation Act requires that compensable occupational disease claims include all diseases "arising out of and in the course of employment which are due in a material degree to causes and conditions which are or were characteristic of or peculiar to a particular trade occupation process or place of employment."

The Appellate Division enumerated three tests. First, the working conditions must be objectively stressful and credible evidence must support the finding that the claimant reacted to them in a stressful manner. Second, the objectively stressful work conditions must be peculiar to a particular workplace. Third, there has to be objective evidence supporting the medical opinion of a resulting psychiatric disability over and above the mere subjective statement of the claimant. Petitioner Goyden's predisposition, due to his underlying personality disorder, led to the stress which would have occurred regardless of the workplace conditions. Further there was no indication of these conditions peculiar to the workplace or that they would have been stressful to others without such a predisposition.

In *Wernowski v. Continental Can Co.*, 261 N.J. Super. 269, 275 (App. Div. 1993), the Appellate Division remanded the action to a compensation judge for further fact-finding. It provided the following guidance on remand:

> What is clear from the above-cited cases is that the employee need not show he or she suffered some physical disability before a psychiatric injury is deemed compensable. The issue is whether there is objective evidence that the repetitive stimuli, viewed realistically, were "peculiar" to the workplace. If so, there must be competent objective, medical evidence that the psychiatric disorder is "due in a material degree" to the repetitive work-place stimuli. N.J.S.A. 34:15-31. Regrettably, the judge of compensation did not apply these principles. The question here is not, as the judge viewed the issue, whether petitioner suffered from aluminum poisoning. The judge must apply the *Williams* "objective-material" test by focusing on petitioner's perception that he suffered from the disease, not whether he suffered from it. A remand for new finding is therefore necessary.

In *Mathesius v. Saint Barnabas Medical Center*, 265 N.J. Super. 83 (App. Div. 1993), the petitioner sustained a stroke allegedly because of the stress of her working conditions. The petitioner worked as a volunteer for the employer and later became a coordinator and unit manager. She began the patient relations department, which she headed for 14 years. In 1984, a new supervisor joined the staff, and the petitioner believed that the new supervisor did not like her, although she was unable to provide any specifics.

On January 22, 1988, the petitioner advised her supervisor that she was going to have cataract surgery and expected to be out of work for a few days. She inquired of her supervisor whether or not he wanted her to take home materials which were necessary to complete her year end report while she was recuperating, but the supervisor told her that there would be sufficient time upon her return to work; the report was not due until the second week of February.

On January 30, 1988 in the evening, while at home recuperating from cataract surgery, the petitioner received a call from her assistant advising her that she would have to have her year end report completed by the following Monday and on her supervisor's desk. The petitioner did not attempt to confirm this information with her supervisor. After the conversation with her assistant, the petitioner was very upset and went directly to the hospital to gather her materials to do the report. She spent about 30 minutes at the hospital and then returned home. She set her alarm for the next morning and went directly went directly to work on the report and did not eat either breakfast or lunch. She finished the report at about 8:00 p.m. Sunday night and called her assistant to say that the report was completed. Later that evening, she sustained a stroke. The respondent conceded that the petitioner experienced stress and that stress contributed to her subsequent stroke. However, it raised the issue as to whether or not the stress was objectively related to her employment so as to make the injury compensable.

The Appellate Division found that there was no evidence to support a reasonable basis for the petitioner's belief that her employer created a stressful situation. The court stated that there was no evidence that petitioner's supervisor actually issued the order. It relied on her testimony that she had been doing this report for 14 years and that it was never due before the second week in February. Further, she had no first-hand information that it was due February 1, 1988.

In *Cairns v. City of East Orange*, 267 N.J. Super. 395 (App. Div. 1993), it was held that a layoff notice is a danger that confronts every worker, and a claim that such a notice caused emotional distress does not support a finding that workers' compensation benefits are to be paid.

The petitioner in *Cairns*, along with approximately 700 others at his place of employment, received a general layoff notice, which was followed by a specific layoff notice. Within two days, he sought treatment from the employer's physician. The court determined that there was a legal question as to whether the risk of termination is a risk which arises out of the employment. It stated:

> In short, unemployment is not a risk arising out of employment. It is, without exhausting all the possibilities, a risk basically arising out of the economy; of economic forces; of competition both foreign and domestic; of leveraged buy-out; of profit and loss statements -- the bottom line; of falling revenues and/or rising expenditures; poor management; poor judgment; and even political considerations.

It was held that the case law has defined the phrase arising out of employment to be a risk reasonably incidental to employment. The court held that the receipt of a layoff notice is neither peculiar to the employment nor essentially related to the work or the nature of the work. Rather layoff decisions and notices relating to termination are common to all employment. It stated that in the present economic climate such layoffs have become a necessary part of doing business. The appellate court further stated:

> to permit recovery in these circumstances would place the employer in the position of being of [sic] an insurer of the general health and welfare of the employee and unduly subject all employers to innumerable potential claims.

In *American Motors Insurance Company v. L-C-A Sales Company*, 155 N.J. 29, 38 (1998) the New Jersey Supreme Court noted that *Cairns* was "based largely on 'the underlying policy considerations rather than the clear language of the act,'" quoting *Carins* at 399. *American Motors Insurance Company* addresses the question of third-party coverage for an employer sued civilly for violating the Law Against Discrimination. Observing that *Cairns* involves a general economic risk applicable to all employment, the Court distinguished the situation in *Cairns* from one where an "employee-specific layoff notice" illegitimately targets an individual. Though *American Motors Insurance Company* does not address a workers' compensation claim, its reasoning nevertheless suggests that a layoff notice targeting a specific employee may create a right to compensation benefits if an illegitimate or illegal purpose is involved.

In *Prettyman v. State of New Jersey*, 298 N.J. Super 580, 594 (App. Div. 1997), the court stated that *Walck* and *Williams* do not apply when an alleged psychiatric disability is caused by a specific event rather than a stressful work environment. Wrongly suspected of stealing from a coworker, petitioner was removed from work by the State Police and taken to a station for aggressive questioning. The court applied the "but for" test to determine that the petitioner's injuries arose out of her employment: but for the fact that she came to be suspected of theft while carrying out her usual duties, she would not have been taken for questioning a few days later. Respondent's contention, based on *Cairns*, that police investigations of theft are as normal to the workplace as layoff notices, was rejected along with the argument that the interrogation was a separate event that did not arise "during the course of employment." Among other things, the court's distinction in *Prettyman* between a specific event and a stressful environment suggests that a worker's predisposition cannot be used to bar specific event claims. Hence the court noted that the "employer takes the employee as the employer finds the employee, with all of the pre-existing diseases and infirmiti[es]." Evidence of the petitioner's emotional and excitable nature, precluded by the trial judge, was not deemed significant to respondent's defense. *Id.* at 592-595.

Limits to psychiatric stress claims apply to fact-specific circumstances and, in some cases such as *Cairns*, are based on considerations of public policy. These limits, however, do not apply to psychiatric injuries arising from accidents or occupational diseases that have caused other injuries, such as, for example, a machinist depressed after losing an arm or a construction worker depressed due to occupational pulmonary disease. A psychiatric claim in these latter instances would be limited only by *Saunderlin v. E.I. du Pont Company*, 102

N.J. 402, 412 (1986), which requires reasoned, objective, professional psychiatric analysis of the patient's state of mind.

a. Summary

An employee making a stress claim must establish 3 elements:

1. Proof of objectively stressful work conditions which the worker reacts to in a stressful manner. In *Goyden*, a mere subjectively perceived conflict with a supervisor did not rise to the level of a compensable psychiatric claim. However work conditions such as backlog and staff shortages are subject to objective verification. *Id.* at 456. *Williams* makes clear that an employee's subjective reaction is not to be disregarded, though it cannot be the sole ingredient of the formula for compensation. *Williams* also teaches that objectively verifiable work conditions need not be outside of the ordinary work stresses: "The requirements of unusual strain or stress as a causative factor was rejected [. . .] and we, as an intermediate court, cannot revive that approach." *Id.* at 106. Thus *Williams* specifically rejected the Wisconsin rule, which requires proof that the psychiatric injury must result from "greater dimensions than the day-to-day mental stress and tensions which all employees must experience." *Id. Walck* must be distinguished from any psychiatric claim brought before the Division. In *Walck* the petitioner alleged a heart attack due to stress at work. He claimed that after the retirement of his long-time supervisor, he became nervous, tense, and insecure about his work performance and about his ability to hold his job under his new supervisor. But the court found that his anxiety was purely subjective and based on an unfounded imaginary worry as opposed to a reasonable basis in fact.

2. Work conditions peculiar to the workplace (not just common to everyone). *Fiore v. Consolidated Freightway*, 140 N.J. 452, 468-470 (1994) illustrates "peculiar to the workplace" as follows:

> As one writer explains, the practical effect of the revision is best presented by an example. If an employee contracted pneumonia as a result of working in a freezer as a packer, the condition would be a compensable occupational disease because it would be due to a cause which is peculiar to the employment. If the same employee contracted pneumonia as a result of incidental exposure to a fellow employee with pneumonia, however, this might not be compensable because the condition may not be due to a condition characteristic or peculiar to the employment. [Quoting Fred Kumpf, *Occupational Disease Claims under the Workers' Compensation Reforms*, 12 Seton Hall L. Rev. 470, 473 (1982).]

Goyden held that merited criticism by a supervisor is common to all occupations and is therefore not peculiar to any particular trade or occupation. *Id.* at 451. In *Williams*, the petitioner had preexisting schizophrenia and evidence indicated he was equally irritated by things and people on and off the job. The facts in psychiatric claims brought before the Division must be distinguished from *Goyden* and *Williams.*

3. Objective medical evidence showing that the work conditions were the material cause of the psychiatric disability as defined in *Saunderlin v. E.I. Dupont Company*. Professional analysis in psychiatric claims, as opposed to physical claims, depends upon "analysis of the subjective statement of the patient." *Saunderlin v. E.I. Dupont Company*, 102 N.J. 402, 412 (1986). Though subjective evidence requires analysis beyond mere subjective statements and will not be present when the physician simply "parrots" the patient's complaints, objective evidence of a physical manifestation is not required in psychiatric claims. *Id.* at 412, 416. The distinction between objective and subjective "is not between physical and mental (or body and mind) but between independent professional analysis and the bare statement of the patient." Interposition of a professional judgment between a subjective statement and an award of disability does not involve exclusion of the subjective statement: any medical examination "must begin with the [patient's] subjective statement." In physical disability claims, medical analysis often goes beyond subjective statements by virtue of clinical and laboratory tests. But in psychiatric claims, diagnostic criteria include descriptions of states of mind "discoverable only through" the subjective statement. *Id.* at 412-414. Reasoned analysis of the subjective statement of a psychiatric patient is objective within the meaning of N.J.S.A. 34:15-36. *Id.* at 313-314. But where petitioners saw their psychiatrists only once upon recommendation of their attorneys and the psychiatric reports merely dressed the complaints in "psychiatric nomenclature," the claims for psychiatric disability were dismissed. *Id.* at 418-419.

5. Modification of Awards

Judgments or orders approving settlement may be reviewed and modified within two years of the last payment of benefits if the incapacity of the injured employee has subsequently increased. N.J.S.A. 34:15-27. In an application to review and modify, the claim is based upon a deterioration of the work-related condition from an existing award, as opposed to a subsequent claim stemming from occupational or traumatic causes. For instance, a worker sustains a blow to the forehead and eyebrow for which he receives an award of 3% of partial total. Subsequently the worker develops a cataract in the eye, which is traceable to the traumatic event and therefore constitutes a worsening of a previously compensated injury. Under these facts, the worker is entitled to a modification. *Svec v. Westfield Motor Sales, Inc.*, 105 N.J. Super 226 (Law Div. 1969). To prove the worsening of a previous condition, the record must permit a comparison of the worker's present disability to his disability at the time of the prior award. *Donofrio v. Haag Bros., Inc.,* 10 N.J. Super 258, 260 (App. Div. 1950). It is not necessary, however, that the same doctor makes the comparison: a changed condition may properly be shown by a doctor who examines the worker and compares his findings to the findings of an earlier examining doctor. *Goldklang v. Metropolitan Life Insurance Company*, 130 N.J. Super 307, 311 (App. Div. 1974).

The two year limitations period on a Petition to Review or Modify an award runs from two years after the last receipt of benefits, which means either two years from the last date of payment of money or two years from the last date of authorized medical

treatment. *N.J.S.A.* 34:15-27. Ongoing medical monitoring provided by the employer's insurance company, such as tests for asbestos-related diseases, will toll the statute, but an independent medical exam (IME) will not. *Milos v. Exxon Co. U.S.A.*, 281 N.J. Super. 194 (App. Div. 1995), aff'd, 143 N.J. 333 (1996). For instance, a petitioner, 22 months after receipt of the last payment on an Order Approving Settlement for a back injury, informs the employer's carrier that his back hurts and he wants further treatment. The employer sends her for an IME and the doctor says no treatment is warranted. If no Petition to Review or Modify is filed before the end of 24 months, the right to reopen will forever be barred.

In *Brandt-Shaw v. Sands Hotel*, 282 N.J. Super. 106 (App. Div. 1995), the Appellate Division allowed the petitioner to reopen the case to seek compensation for an injured body part not included in the original judgment, though included in the original claim petition. The employee fell on July 14, 1987 and filed a petition alleging injury to her back and left knee. On January 24, 1989, she was awarded 22 per cent disability for her left leg but nothing for her back. In 1989 she reopened the case and was awarded, on May 13, 1991, a 5% increase in disability to her knee. She applied again for a review or modification on February 18, 1993, asking for medical treatment for her back injury.

In vindicating the employee's right to benefits for her back, the court noted that the petition was filed within two years of the last receipt of benefits arising from the accident, even though these benefits were for the knee rather than the back. The Appellate Division relied extensively on *Yeomans v. Jersey City,* 27 *N.J.* 496, (1958). In *Yeomans*, the New Jersey Supreme Court affirmed the right to reopen to obtain compensation for a heart condition, even though it was not alleged in the claim petition and was not included in the initial award. What counts is a subsequent increase in incapacity and that the "increased incapacity is causally related to the same accident upon which the initial award was founded." *Brandt-Shaw* at 108-109, quoting *Yeomans* at 508.

It was noted in *Brandt-Shaw* that "unlike *Yeomans*, petitioner had alleged the back injury in the first instance. For petitioner it was not the assertion of a new complaint, merely a claim that the initially claimed incapacity had subsequently increased." *Id.* at 110. Despite the relative strength of the former claim over the latter, in both instances the worker is entitled to relief.

At times it may not be clear if a worker's given condition is due to the worsening of a prior condition or to a subsequent occupational exposure or accident. In such a situation, especially if the worker changed employers or the employer switched insurance companies after the award (in both instances, unless two different employers have the same insurance company, there will be two potential sources of money to pay compensation), a separate claim should be filed in addition to a petition for review and modification. Often such a claim will be occupational: a petitioner with an award for a bulging disc, for example, may end up with a herniation a year later without the intervention of a traumatic event. If his/her job duties subsequent to the award involve repetitive lifting, twisting, or bending, the cause of the deteriorating condition could involve both the natural course of the initial trauma as well as subsequent work-related activity. A defense attorney, if only one of two

respondents is brought in, should convince the petitioner's attorney to file another petition so that the burden of the petitioner's worsened condition can be shared.

6. Commutation

Commutation in workers' compensation law is the payment of compensation benefits in a lump sum that otherwise would be paid over time. *N.J.S.A.* 34:15-25 allows a party to apply for commutation, at present value discounted at 5% simple interest, when it is in the best interests of the worker or his dependents. The statute iterates the general policy of workers' compensation law that payments are intended "in lieu of wages" and are to be received as such. With this in mind, the statute further states that only an "unusual circumstance warrants a departure from the normal manner of payment," and that such circumstances would not include payment of debts or payments to doctors or lawyers.

Many petitions for commutation are brought by workers or dependants in time of financial stress. Given the potential for rash, short-sighted decisions in times of need, the statute requires that judges approve a commutation only if it is "for the best interest" of the employee or dependents. If the full benefits are used up, and another financial crisis arises, nothing will be left. This is one reason why benefits are paid over time in the first place: to protect the long-term interests of benefit recipients by preventing irresponsible up-front spending.

A good discussion of commutation can be found in *Harrison v. A&J Friedman Supply Co.*, 372 N.J. Super. 326 (App. Div. 2004). The Appellate Division held that if the statutory criteria are satisfied, commutations may apply to total disability and dependency benefits, even though *N.J.A.C.* 12:235-6.3(d) states that "[n]o award for total disability or dependency benefits shall be commuted." As the court notes, the administrative rules related to workers' compensation in Chapter 12 of the Administrative Code are authorized in N.J.S.A. 34:1-20 and 34:1A-3(e). These provisions authorize the Commissioner of Labor to promulgate rules and regulations that facilitate enforcement of the workers' compensation laws. However such rules must not be "inconsistent with the law" and must be "authorized by law." *Harrison* at 329, quoting N.J.S.A. 34:1-20 and 34:1A-3(e) respectively. Because *N.J.S.A.* 34:15-25, the statute authorizing commutations, contains no language barring commutations in cases of total disability or dependence benefits, the Administrative Code regulation was deemed "plainly and palpably inconsistent with the statute." *Id.*

The facts of the case involved a totally disabled worker with an opportunity to purchase her Manhattan residence for $370,000, but she could only obtain a mortgage for half that amount. Consequently she applied for a commutation, which the judge of compensation denied outright because of *N.J.A.C.* 12:235-6.3(d). In reversing and remanding for further findings, the Appellate Division observed that a fact-sensitive review must be undertaken to determine Ms. Harrison qualified for commutation. A consideration of applicable case law was also recommended to the trier of fact:

[W]e commend to the compensation judge the guidance provided by the

> express language of *N.J.S.A. 34:15-25,* and the past experiences of our courts, *see Jensen v. F.W. Woolworth Co.,* 92 *N.J.L.* 529, 532-35 (E. & A.1919) (employee's application for commutation allowed where the employee required funds, otherwise unavailable, to obtain a life-saving operation); *Vieira v. On Shore Constr. Co.,* 297 *N.J. Super.* 518 522 (App.Div.1997) (employee's application for commutation allowed where the employee demonstrated undue hardship and there appeared a likelihood that the employee would obtain "an apparently substantial [recovery or settlement on an upcoming] third-party claim"), in order to illuminate the future examination of appellant's application. In this regard, we note further that, in *Jensen,* the Court liberally construed the language of the statute in order to allow commutation so the employee could pay a physician for life-saving surgery even though the statute's last sentence stated (as it still does) that "[c]ommutation shall not be allowed for the purpose of enabling the injured employe[e] ... to make payment to physicians ...." 92 *N.J.L.* at 532, 106 *A.* 808. [*Id.* at 331-332.]

With respect to the particular facts in *Harrison*, the Appellate Division suggested consideration of Ms. Harrison's ability to meet her needs without weekly compensation benefits, the availability of other funds, and the possibility of alternate financing. *Id.* at 332. Furthermore commutation could be refused where the purchase price does not reflect fair market value or where the residence is a poor investment. *Id.*

D. Notice, Statutes of Limitations and Jurisdiction

The workers' compensation practitioner should be aware of both notice requirements, which mandate notification of claims, and the applicable two-year limitations period in which a claim petition must be filed. Failure to comply with the notice provisions regarding accidents may result in preclusion of some or all benefits. The occupational notice requirement, N.J.S.A. 34:14:33, was repealed in January 2004. This section mandated written notice to the employer either within five months after termination of the occupational exposure or ninety days after the employee knew or should have known (1) the nature of his disability and (2) its relation to her employment, whichever occurs later. There was an exception, however, if the employer possessed "actual knowledge" of the occupational disease during the period of employment. Occupational claims still remain subject to N.J.S.A. 34:15-34, which requires that a claim petition be filed within two years after the claimant first knew the nature of the disability and its relation to the employment.

1. Occupational Claims

a. Notice

As mentioned above, the notice requirement mandated by N.J.S.A. 34:14:33 was repealed in January 2004. It is not presently clear, however, if the repeal of this statute applies retroactively to claim petitions filed before January 2004. Therefore the workers' compensation practitioner should be familiar with the occupational notice provisions of N.J.S.A. 34:14:33. The discussion which follows applies to the old law.

In cases of occupational disease, notice was, until January 2004, governed by N.J.S.A. 34: 15-33, the relevant portion of which states:

> [U]nless the employer during the continuance of the employment shall have actual knowledge that the employee has contracted a compensable occupational disease, or unless the employee . . . shall give the employer written notice or claim that the employee has contracted a compensable occupational disease, which notice to be effective must be given within a period of five months after the date when the employee shall have ceased to be subject to exposure of the occupational disease, or within ninety days after the employee knew or ought to have known the nature of his disability and its relation to his employment, whichever period is later in duration, no compensation shall be payable on account of the death or disability by occupational disease of the employee.

If the employer does not have "actual knowledge" of the occupational disease during the period of employment, written notice must be given either within five months of the end of the occupational exposure or within ninety days after the employee knew or should have known (1) the nature of his disability and (2) its relation to her employment.

(i) *Brock* and *Bollerer* (Employer Knowledge)

When there is no written notice pursuant to N.J.S.A. 34:15-33, one fallback position is the employer knew of the applicable occupational disease. Examples of what suffices as "actual knowledge are discussed in *Brock v. Public Service Electric and Gas Company*, 325 N.J. Super 582 (App. Div. 1999). Actual knowledge does not require first-hand knowledge but rather "knowledge in common parlance, such knowledge as most of us are confined to in the daily areas of life." *Id.* at 588, quoting *Allen v. City of Millville*, 87 N.J.L. 356, 358 (Sup. Ct. 1915). In *Bollerer v. Elenberger*, 50 N.J. 428 (1967), the court applied the "reasonably conscious employer" test where a bakery proprietor noticed the employee's inability to carry out routine tasks and coworkers saw that the employee had difficulty moving his right arm and leg.

Knowledge will be imputed where a reasonably conscious employer has grounds to suspect the possibility of a potential compensation claim. *Id.* at 432. The employer in *Bollerer* did not specifically know that the baker's cerebral vascular condition was work-

related; nevertheless, an "obvious and precipitous" work-impairing change in the baker's physical condition would have led a reasonable employer to suspect a work-connected injury. In reaching this conclusion, the court noted that "employers may generally be charged with pertinent knowledge far superior to that of their employees; they are undoubtedly now aware that many industrial accidents may occur without external trauma and they must guide themselves accordingly." *Id.* at 432.

Bollerer demonstrates that "actual knowledge" can be imputed and therefore loosely defined. The court in *Brock*, however, draws a distinction between a case like *Bollerer*, where the employee was observed having difficulty at work, and a situation where the employee is not encountering observable problems during the course of employment. In *Brock*, the employee's pleural asbestosis manifested itself only after his retirement, and no notice was given within the ninety day or five month period set forth in N.J.S.A. 34: 15-33. Rejecting an attempt to impute knowledge by showing that other employees were known to have suffered form asbestos-related lung disease, the court dismissed Brock's claim and held that N.J.S.A. 34: 15-33 imposes on an employer no duty of inquiry as to an employee's medical condition beyond the time of employment. Otherwise the employee would find itself in the "untenable position of being subject to a claim by any employee into infinity." *Id.* at 589.

b. Statute of Limitations in Occupational Claims

Occupational claims are subject to the two-year statute of limitation set forth in N.J.S.A. 34:15-34. N.J.S.A. 34:15-34 begins with the general statement that "there shall be no time limitation upon the filing of claims for compensation for compensable occupational disease . . . provided, however, that. . ." The exceptions discussed herein that follow the initial statement should be read in light of the legislature's general intent to keep open the period for filing occupational claims. N.J.S.A. 34:15-34 goes on to state that where the employee has knowledge of the claim, a petition must be filed "within two years after the date on which the claimant first knew the nature of the disability and its relation to the employment." This language is virtually identical to the 90-day notice provision of N.J.S.A. 34: 15-33. N.J.S.A. 34:15-34 further provides that if the employer and claimant have made an "agreement of compensation" the employee's claim shall be barred if a petition is not filed within two years after the employer's failure to pay pursuant to the agreement. There is an exception, however for asbestosis, lead poisoning, and other enumerated and related diseases.

Unlike the statute of limitations applicable to civil actions, which can be waived, (See *White v. Karlsson*, 355 N.J. Super [284 App. Div. 2002]), the occupational and accident limitations periods in workers' compensation are not subject to waiver.

(i) Employee Knowledge (*Earl*)

Whereas *Brock* and *Bollerer* address the issue of an employer's "actual knowledge" with respect to satisfying the occupational notice requirements of N.J.S.A. 34:15-33, *Earl v. Johnson and Johnson*, 158 N.J. 155 (1999), interprets the two-year occupational statute of imitation in N.J.S.A. 34:15-34. In contrast to *Bollerer* and *Brock*, *Earl* concentrates on subjective awareness—not the subjective awareness of a hypothetical employee, but the subjective awareness of the employee in question. "Knowledge of the 'nature' of a disability includes knowledge that the injury is compensable. The definition of 'compensable occupational disease' includes diseases 'due in a material degree' to conditions characteristic of a particular place of employment." *Earl* at 161, citations omitted. *Earl's* discussion of employee knowledge of a disability is relevant to both notice and statute of limitation requirements.

The petitioner in *Earl,* a secretary whose duties included work in a poorly ventilated file room, developed respiratory problems in the winter of 1988. She was treated briefly by her family physician. Subsequently in February 1989, she suffered a breathing attack, was treated by her physician again, and returned to work two weeks later. In April 1989, another breathing attack put her in the hospital, where her doctor diagnosed her with asthma and sent her to a pulmonary specialist. Upon her request immediately thereafter, Johnson and Johnson limited her duties in the file room though she continued to be exposed to dusty files until October 1, 1993. Johnson and Johnson argued that the claim petition, filed on September 10, 1993, was barred because Earl know of her breathing condition in 1989 and believed it was related to her work environment. Though the Appellate Division agreed with Johnson and Johnson and overturned the trial judge's decision, the Supreme Court reversed the appellate decision.

Earl's doctor diagnosed her with asthma in 1989 and advised her to avoid stairs, dust, pollen, animals, and cutting grass, the Supreme Court noted, but she was not told to change her work environment. Her request to spend less time in the file room stemmed from "immediate physical discomfort caused to her by the gypsum dust, rather than her knowledge of the onset of a permanent respiratory disability." *Id.* at 162. Furthermore Earl's initial awareness of her disease failed to indicate knowledge that her disability was permanent and debilitating. *Id.* at 163. Thus the September 1993 claim petition was determined to have not been filed more than two years after the claimant knew the nature of her disability and its relation to her employment. This knowledge came about only after Earl underwent pulmonary function tests that diagnosed loss of pulmonary function in November 1993. *Id.* at 162, 164.

In its analysis, the Court focused on Earl's own perceptions of her injury and on what her doctors said:

> [I]t is possible to have a work-related health problem that is not sufficiently debilitating to be compensable. Earl's testimony indicated that she initially perceived her problems in that light. When asked about the 1989 diagnosis, Earl testified that her doctor was "treating me for my asthma" and "something to do with

> respiratory." These statements do not indicate that petitioner know the nature of her disability. [In] *Bucuk v. Edward A. Zusi Brass Foundry*, 49 N.J. Super. 187 (App. Div.), certif. denied, 27 N.J. 398 (1958), the court stated, "knowledge of the nature of [the] disability connotes knowledge of the most notable characteristics of the disease, sufficient to bring home substantial realization of its extent and seriousness." Bucuk had been told that he had silicosis, but he had not been told what silicosis meant—that he suffered from a permanent debilitating condition of the lungs caused by exposure to silica that was, in his case, accompanied by emphysema. Accordingly, the Appellate Division upheld the County Court's determination that Bucuk did not know the nature of his disability. [*Id.* at 163.]

Bollerer and Earl demonstrate the different standards of knowledge applied to employers and employees: knowledge of occupational diseases are easily imputed to employers; knowledge of the nature of occupational diseases and their relationship to employment are more difficult to impute to employees. This distinction is based on the employer's superior position with respect to obtaining knowledge about occupational injuries. Though petitioners' attorneys will encounter clients with a high level of medical sophistication, many claimants are minimally educated, and some are illiterate. Employers "may generally be charged with pertinent knowledge far superior to that of their employees; they are undoubtedly now aware that many industrial accidents may occur without external trauma and they must guide themselves accordingly. *Bollerer* at 432.

(ii) The Meaning of "Compensation" (*Scheffield*)

N.J.S.A. 34:15-34, the statute of limitations for occupational disease, also allows a claim to be filed "within two years after the last payment of compensation." This provision could be important if a petitioner has not filed a claim within two years of learning the nature of the disability and its relation to employment but has nevertheless received "compensation" from the employer. Compensation is broadly defined in New Jersey to include medical treatment as well as the payment of financial benefits. *Sheffield v. Schering Plough Corporation*, 146 N.J. 442,454 (1996). In *Sheffield*, the court defined compensation to include not just medical benefits authorized by the workers' compensation carrier but "private plan disability and medical benefits provided . . . pursuant to [the employer's] scheme of compensation for disabled employees." *Id.* at 458.

In *Sheffield*, medical treatment was not furnished directly by employer through workers' compensation providers. Instead, Schering Plough advised Sheffield to apply for long-term disability benefits through the company's private-plan and paid medical bills only through a private plan. When Sheffield finally filed an occupational claim petition for her injuries, the company argued that the statute of limitations had run because the claim petition was filed more than two years after she knew or should have known of her injuries and its relation to her employment and because no workers' compensation benefits were provided to extend the applicable time. In siding with Sheffield, The Supreme Court held that the statute was extended because of Schering Plough's conduct.

The precise nature of employer conduct that can extended the time to file a claim, however, is unclear. The opinion can be interpreted broadly or narrowly. At times, it appears limited to conduct that "lulls" the worker into a false sense of security because due to actions by the employer, the employee "may well believe" that benefits are being "voluntarily" provided. *Id.* at 453, 460-461, 463.

Other parts of the opinion suggest that regardless of whether the employee has been "lulled" into thinking compensation benefits are being provided, the limitations period will be extended whenever an employer, through a private plan, provides benefits that could have been required under the Workers' Compensation Act:

> We hold that the private-plan disability and medical benefits provided to Sheffield pursuant to Schering's scheme of compensation for disabled employees constituted payments of compensation within the meaning of N.J.S.A. 34:15-34. See 2B Larson, supra, Section 78.43 (c), at 15-272.17. (When payment of either income or medical benefits has been made by a private employer-employee benefit association or insurance plan, this has usually ... been held to toll the statute."); see also *Dunay*, supra, 60 N,J. Super at 551 (holding that injured employee's receipt of medical payments and weekly benefits from employee benefit association constituted compensation by employer tolling the statutory period.) [. . .] There can be no question that the medical benefits Sheffield received were in the nature of compensation for medical treatments that could have been required under the act as necessary to cure and relieve ... the effects of the injury" to her back. [*Id.* at 458.]

A third possibility, raised but not addressed by the opinion, is that employer misconduct could extend the limitations period:

> We need not determine whether or to what extent employers assume an affirmative obligation to inform their employees of the availability of workers' compensation benefits. In our view, however, when an employer undertakes to advise an injured employee to apply for certain disability or medical benefits that are authorized by the employer, the employer necessarily assumes a further obligation not to divert the employee from the remedies available under the Act. The advice to Sheffield by Schering's Benefits Department that she disclaim the work-related nature of her back injury when submitting claims for medical benefits arguably could support the conclusion that the company would be precluded from asserting the statutory bar by reason of its conduct, a question we need not reach and do not decide. [*Id.* at. 460.]

The dissent in *Sheffield*, though disagreeing with the majority, wishes to limit the majority opinion only to payments made under circumstances that lull the employee into refraining from filing a petition. Still it acknowledges and expresses concern about the

broader reading of the decision. *Id.* at 465-468.

In *Earl*, where the plaintiff received benefits through an employer-sponsored health plan, the Supreme Court refrains from rendering an opinion on the limits of *Sheffield.* Nevertheless the court leans sympathetically towards the plaintiff's position: "One thing is certain: '[W]hen an employer undertakes to advise an injured employee to apply for certain disability or medical benefits that are authorized by the employer, the employer necessarily assumes a further obligation not to divert the employee from the remedies available under the Act.'" *Earl* at 169, quoting *Sheffield* at 460. A broad application of *Sheffield* to the facts of *Earl*, where the employee was treated by an employer-sponsored insurance company, gives employees a strong argument in favor of tolling the statute of limitations. This argument would be relevant where the employee fails to connect properly a debilitating occupational condition with her job but has otherwise been treated under the employer's health insurance plan.

Because *Sheffield* addressed an occupational claim and the occupational limitations provisions, the decision raises the question of whether it applies to accidents too. An argument in favor of this position is that N.J.S.A. 34:15-51, applicable to accidents, contains identical language as N.J.S.A. 34:15-34, requiring that a claim petition be filed "within two years after the last payment of compensation."

(iii) Continued Exposure (*Earl* and *Brooks*)

Yet another argument for tolling the statute of limitations was considered but not disposed of in *Earl.* Petitioner contended that "even if she were found to have had knowledge of the nature of her disability more than two years before she filed her claim, the statute of limitations did not begin to run until the end of her employment because of continued exposure to pulmonary irritants." *Earl* at 164-165. This issue was framed in terms of whether *Brooks v. Bethlehem Steel Co.* 66 N.J. Super 135 (App. Div. 1961) is still good law after a 1974 Amendment to the Workers' Compensation Act. Prior to 1974, N.J.S.A. 34:15-34 "forever barred" claims not presented within 5 years of the date of the last exposure. The legislature deleted this provision because "[e]xperience has revealed that by their very nature occupational diseases often do not become manifest until years after exposure." *Id.* at 165. *Brooks* held that the statute of limitations will be tolled in an occupational claim where the employee continues "in the same kind of work as allegedly produced the disability." *Brooks* at 138. Because the *Earl* court disposed of the case on the issue of petitioner's knowledge, however, it left open the question of continued exposure. It noted, however, the following:

> It appears to be the administrative understanding of the workers' compensation bench and bar that claimants who wait until the end of their exposure to bring claims involving occupational disease will not be denied that opportunity on statute of limitations grounds, assuming that they bring their actions within two years after the cessation of exposure if they know the nature of the disability and its relation to the employment. In many work places, workers feel pressure not to file claims for

> workers' compensation while they are still employed. The culture of the work place discourages workers from filing claims because to do so is seen as an act of disloyalty to the employer. Despite statutes prohibiting discrimination against workers who bring claims, workers still fear that taking action means risking their jobs. [*Id.*]

Despite the above, an unpublished 2010 case, which has been subject to discussion and citation within the Division of Workers' Compensation, places restrictions on the time in which certain occupational claims may be filed. In *Huntoon v. Borough of Clementon*, 2010 WL 2990769 (App, Div. 2010), the petitioner commenced employment as a clerk for the respondent in 1994. In 1998, she complained to her family physician of numbness and tingling in her right hand and was told that this was probably work-related due to her repetitive typing at work. At trial in 2009, she admitted that she was aware in 1998 that "she had a work-related disability."

In April 2001, she complained of right hand pain and was diagnosed with right carpal tunnel syndrome, and a wrist brace was prescribed. Petitioner saw this doctor again in June 2003, at which time he diagnosed "carpal tunnel syndrome right (keyboard use)." In July 2003, she returned and was given a prescription of Celebrex and told to continue using the wrist brace. In July 2004, an EMG/NCS confirmed "a severe degree of carpal tunnel syndrome in her right hand." She advised her doctor that she was "convinced she has [carpal tunnel] syndrome [secondary] to work." On October 23, 2006, she hurt her right hand at work while trying to stop some files from falling.

On April 30, 2007, she filed an occupational claim petition alleging right carpal tunnel syndrome due to repetitive motion from 1994 to the present. This claim petition was amended to add a second insurance company that insured the respondent from 1994 to January 1, 2001.

Under these facts, the compensation judge dismissed the claim with prejudice pursuant to N.J.S.A. 34:15-34. He noted that "she had a work-related disability in July 1998, and failed to timely file an occupational claim" and "that at the very latest, petitioner knew in July 2004 that she had work-related carpal tunnel, and that [t]wo [diagnoses] of carpal tunnel syndrome within six years, confirmed by EMG/NCS is sufficient to have alerted petitioner that she did, in fact [have] a viable occupational claim."

Distinguishing *Earl*, the Appellate Division, in agreement with the judge of compensation stated:

> For this same reason, we reject petitioner's contention that the statute of limitations did not accrue until the date of last exposure. Contrary to petitioner's viewpoint, the Court in *Earl, supra,* did not hold that the statute of limitations for an occupational disease claim is tolled once the exposure ends. *Id.* at 164. Rather, the Court noted that a claim petition will not be barred if filed after a period of exposure ends, as long as it is filed

> within two years of when he or she knew the nature of the disability and its relation to the employment. *Id.* at 161. The Court considered the petitioner's claim petition timely because despite when the period of exposure ended, she had filed her claim within two years of when she knew the nature of her disability and its relation to her employment. *Id.* at 164.
>
> The facts in *Earl* are distinguishable from those here. There, the petitioner did not become aware of the extent of her disability until several years after her first exposure, and she did not know she had a permanent loss of pulmonary function until medical testing confirmed it. *Id.* at 160, 162. Here, petitioner was twice diagnosed with carpal tunnel syndrome in her right hand, the EMG/NCV study in 2004 confirmed this diagnosis, and petitioner knew in 1998, or in 2004 at the latest, that her disability was work-related. Thus, regardless of any continued exposure, petitioner's claim petition is time barred.

The petitioner here might have had a chance of at least some recovery had she filed an accident claim petition for the incident on October 23, 2006. If she were able to prove that this accident made worse her preexisting condition, then she might have obtained at least the difference between her condition before and after the accident date, with the respondent getting a credit for the preexisting occupational carpal tunnel syndrome.

c. Jurisdiction in Occupational Cases

The right to subject matter jurisdiction based solely on occupational exposure occurring in New Jersey is governed by *Williams v. Port Authority of New York and New Jersey*, 175 N.J. 82 (2003). *Williams* requires one of the following where the attempt to acquire subject matter jurisdiction is based on exposure in New Jersey:

1. A period of work exposure in this state that was not insubstantial under the totality of circumstances and given the nature of the injury;
2. The period was not substantial but the materials were highly toxic; or
3. The disease for which compensation is sought was obvious or disclosed by medical examination, work incapacity, or manifest loss of physical function. [*Id.* at 90.]

The *Williams* petitioner worked four months in New Jersey at the start of his employment. During this time he was exposed to exhaust fumes and various chemicals. Thereafter he worked twenty-one years in New York, where he was exposed similarly to fumes and chemicals. In 1993 he first sought treatment for pulmonary disease. Because the employment contract was entered into in New York and the petitioner lived there throughout his employment, he relied solely on location of exposure as a basis for New Jersey jurisdiction.

An accident in New Jersey confers jurisdiction. *Boyle v G & K Trucking Co.*, 37 N.J. 104, 108 (1962). But occupational claims are more complex because, unlike accidents, many occupational diseases "remain unknown or undisclosed throughout a long history of continued work exposure." *Williams* at 89. Under N.J.S.A. 34:15-31(a), occupational claims must be proved to a "material degree," and under *Perez v. Pantasote, Inc.* 95 N.J. 105 (1984), minor injuries (such as the fractional share attributable to Mr. Williams' four-month exposure) are not compensable. *Williams* at 89-90, 93. Additionally, pursuant to *Bond v. Rose Ribbon & Carbon* Mfg. Co., 42 N.J. 308 (1964), when a series of employers contribute to an occupational disease, the employer under whom the disease becomes manifest is liable. "Just as [following *Bond*] there would be no apportionment of disability if petitioner had been performing the same work for a different employer during the same four months . . . the Division should not have exercised jurisdiction simply because petitioner worked for the same employer the entire time." *Williams* at 92.

However where highly toxic materials, such as asbestos and PCB's, cause a seriously disabling occupational disease, a "more flexible standard" than the three-pronged test applies: for jurisdictional purposes, "injury will be presumed to have occurred beginning with the early exposure . . ." *Id.* at 91.

In both occupational and accident claims, if a choice of forum is available, the employee may select jurisdiction in the state "offering the highest available amount of compensation." *Boyle v. G & K Trucking Co.*, 37 N.J. 104, 112 (1962).

2. Accidents

a. Notice

Notice provisions involving accidents differ from notice provisions for occupational claims. In the case of work-related accidents, the Compensation Act requires that the injured employee, or someone on the employee's behalf, give notice within specified time periods or suffer consequences: If no notice is given within the first fourteen days, then no compensation is due until notice is given or knowledge is obtained. Notice given after fourteen days but before the expiration of thirty days will bar compensation only to the extent that the employer can demonstrate prejudice. If notice is provided after thirty days but before the expiration of ninety days, the employee must show "that his failure to give prior notice was due to his mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation or deceit of another person, or to any other reasonable cause or excuse. Failure to give notice within ninety days will result in preclusion of the claim. N.J.S.A. 34:15-17.

b. Statute of Limitations

The statute of limitations for accidents is governed by N.J.S.A. 34:15-51. This provision mandates that claims be filed within two years after the accident, or, if applicable, within two years after the employer breaks an agreement to provide compensation, or two years after the last provision of benefits subsequent to the accident. Unlike the occupational

statute, which hinges on what the employee knew about her disability and its relation to her employment, the accident statute requires a claim to be filed two years after the accident unless after the accident the employer agreed to provide or actually provided benefits. In the case of accidents, our legislature appears to have assumed that an employee will know when an injury-producing accident occurred, thus triggering the two-year count.

Once the two-year period has run, it will be difficult to toll the statute unless a credible argument can be made that there was an agreement to provide benefits or that compensation was actually tendered. A petitioner's attorney facing this situation could draw an analogy to *Scheffield* by looking for ways the employer may have provided compensation, including company-sponsored health insurance, where the compensation carrier has denied benefits. The petitioner's attorney might also search for implied agreements, such as a supervisor who tells the injured employee to go home and see a doctor. Arguably the employee would understand this to mean the employer agreed to pay for treatment. Three months later the worker receives a bill asks the employer about it. If the employer then refuses to pay, the failure-to-pay date is arguably established; and the employee gains three additional months. Finally, if all else fails, the employee may argue that he was unaware of the nature of his injury until a time significantly later than the accident. Under limited circumstances, a court might consider an accident to be analogous to an occupational disease.

In sum, cases on notice and statute of limitations elucidate creative ways to jump the various hurdles, even when significant periods of time have lapsed in terms of giving notice and filing claims. Petitioners' attorneys should make good use of these arguments and not summarily turn away potential claimants whose claims, upon a cursory examination, appear tardy. On the other hand, defense attorneys may continue to press arguments like the successful one in *Brock* that too liberal a construction of the law will open the floodgates to claims *ad infinitum*.

c. Accidents with Delayed Onset of Injury (*Burnell* and *Adams*)

When injury occurs not at the time of a mishap, unexpected event, or a trauma but sometime later, the requirements of notice and claim limitations begin to run when "the worker is, or reasonably should be, aware that he has sustained a compensable injury." *Burnell v. Wildwood Crest Police Crest Police Department*, 176 N.J. 225, 252 (2003). *Brunell* involved the separate claims of a police officer and police dispatcher. Each experienced a specific job-related trauma: Samuel Santiago witnessed the death of another officer; Diana Burnell dispatched an officer to a location where he was killed. The symptoms allegedly resulting from these traumas, however, remained hidden and emerged more than two years later. Only then were these claimants diagnosed with post traumatic stress disorder.

Santiago filed both an accidental and occupational petition; Burnell filed one petition only. The cases were consolidated and then dismissed by the trial judge because "neither petition was filed within two years of the 'accident.'" *Id.* at 232. After the

Appellate Division affirmed the trial judge's decision, the Supreme Court reversed. Under the Workers' Compensation Act, notice cannot be contemplated without the happening of an injury: an accident requires not just an unexpected mishap or event but actual harm as well. Otherwise an injured worker, in contravention of the legislative policy of covering as many workers as possible, may be unjustly denied benefits:

> [I]t is theoretically possible for PTSD and other diseases with a quiescent period to remain dormant until more than two years after the traumatic event. If the statute is read to time the notice and the filing of a claim from the traumatic event, a worker's right could expire before there was any evidence whatsoever that he had been injured. [*Id.* at 252.]
>
> [Thus], in the limited class of cases in which an unexpected traumatic event occurs and the injury it generates is latent or insidiously progressive, an accident for workers' compensation filing purposes has not taken place until the signs and symptoms are such that they would alert a reasonable person that he had sustained a compensable injury. . [*Id.* at 254.]

The Supreme Court, in effect, applies to a limited category of accidents a version of the "discovery rule" applicable to occupational claims, which delays application of notice and claims requirements until the worker "discovers" or realizes a compensable injury has occurred. But this narrow exception created in delayed onset cases is not intended to swallow up the notice and claims limitation provisions pertinent to more typical accidents. When applied to delayed onset accidents, the discovery rule is subject to stricter construction:

> It remains the fact that the accident calculation begins when the worker knows or should have known he has incurred any compensable injury (for example, medical bills, temporary disability, or permanent disability). On the contrary, the occupational disease clock does not begin to run until the worker knows the true nature and seriousness of the disability. That distinction gives the worker more latitude in notifying the employer and filing a claim based on occupational disease, presumably because there the employer could have anticipated such a disease as a natural hazard of the job. Less latitude is afforded the worker who in injured in an unexpected accident. Once he knows he has sustained any compensable injury, he must act. [*Id.*. at 261, Citations omitted.]

When a worker should realize he has sustained a *compensable* injury will be a point of litigation. Workers may claim that despite the happening of an accident there was no reason to believe it was serious enough to qualify for compensation. See *Earl v. Johnson & Johnson*, 158 N.J. 155, 163 (1999), stating that it is not necessarily true that receipt of medical treatment amounts to knowledge of the nature of the disability. But given the Court's intent to narrow the exception, and its reference to medical bills, a worker who seeks treatment shortly after an accident might not be exempted even if he believed his injury was too slight to qualify for permanency under *Perez v. Pantasote Inc.* 95 N.J. 105 (1984).

Though *Burnell* establishes a limited exception to the discovery rule applied to accidents, *Schwartz v. Federal Shipbuilding & Dry Dock Co.*, 16 N.J. 243 (1954) remains applicable to accidents that may be characterized as more traditional. In *Schwartz*, a locker fell on the petitioner's groin and testicles. The petitioner knew he had suffered an injury but was unaware until much later that the injury would lead to testicle cancer. His employer examined him fifteen and sixteen months after the accident to determine if there was a causal relationship, but medical treatment was not provided, and benefits were denied. A claim petition was filed just under two years after the last exam but more than two years after the accident. Under this set of facts, it was held that the time period in which the claim petition could be filed had expired:

> The decedent's course of conduct is indicative that he was aware he had suffered an injury at the time of the accident. He know he was injured but he did not know he was suffering from a malignancy, and the fact he did not learn of the malignancy until more than two years after the accident cannot be made to extend the statutory period. [*Id.* at 251.]

The company exam sixteen months after the accident failed to extend the time period for filing a claim: "A mere medical examination for the purpose of determining the causation, or question of liability under the statute cannot be classified as payment of compensation so as to effect the removal of the bar of the statute with respect to the filing of claim petitions." *Id.* at 250.

Burnell also held that post-traumatic stress disorder may qualify, depending on the circumstances, as either an accident or occupational disease, even if the facts fit neatly into neither category. Where a claim does not perfectly fit either category, it will not necessarily be precluded: the trial court must still assess the proofs and then see if the claim "could be characterized as accidental injury or occupational disease." If post traumatic stress disorder develops from work-related events, a determination must be made as to where the proofs "fit best." *Id.* at 262-263. Without a "definable traumatic event" and an injury, there cannot be an accident. However the presence of a single traumatic event and an injury may be consistent with an occupational disease as well as an accident. If the event and injury are unexpected, they may qualify as an accident; if they result from a unique hazard of the job, they may qualify as an occupational disease. "In order to prove an occupational disease, the worker must establish that his condition was not unexpected but that it was 'due in material degree to causes and conditions which are or were characteristic of or peculiar to the particular trade, occupation, process or place of employment.' N.J.S.A. 34:15-31." *Id.* at 248-249. Where an injury can be characterized as both an accident and an occupational disease, the worker's attorney should assert both claims keeping in mind that a more liberal limitation period still applies to occupational claims.

Former professional football running back George Adams attempted unsuccessfully to capitalize on *Burnell* and stretch *Earl v. Johnson and Johnson* in *Adams v. New York Giants*, 362 N.J. 101 (App. Div. 2003). Adams alleged entitlement to compensation for a hip injury sustained in 1986 even though the claim petition was

not filed until 1996, five years after his retirement from football and seven years after he parted with the Giants. As set forth by the court, the facts work against Adams, who testified that during a half-speed practice in August 1986 he was struck full-steam in the hip by a defensive lineman. His left hip "just snapped out," his "whole left side was numb," and he knew that he had hurt himself. *Id.* at 103. He received medical treatment by the Giants and missed the entire 1986 season. After reviewing a CAT scan and a bone scan, the team doctor diagnosed an "evulsion within a fraction of his femoral head with some degree of necrosis." *Id.* at 104. Though he played during the 1987, 1988, and 1989 seasons, he testified that "he functioned at only about seventy-five to eighty percent of his former athletic capacity," and he remained under medical observation *Id.* at 105. He signed with the New England Patriots in 1990 and played the full season there. But after the first regular season game in 1991 he was released because he "could not get the job done." *Id.*

Dr. Turner, testifying for Adams, and Dr. Canario, testifying for the Gaints, agreed that Adams' severe subluxation of the hip involved destruction of the small artery from inside the socket to the head of the femur, which caused death of bone tissue. As noted by the court, Dr. Warren, the Giants' team physician, found hip joint necrosis while Adams remained with the team. By 1995, the progression of bone deterioration had reached the point where Adams required hip replacement surgery, after which he filed his claim petition. However the surgery was unsuccessful, and a second procedure was recommended, triggering a motion for medical treatment and temporary disability benefits. Both Dr. Turner and Dr. Canario agreed "that the incident at the 1986 Giants training camp was the direct and sole cause of Adams' problem and that further surgery was necessary to alleviate his pain and limitation of mobility." *Id.* at 107.

The compensation judge ruled that the injury was an "accident" governed by the two year limitation set forth in *N.J.S.A.* 34:15-51. On appeal, Adams argued that his injury was not an accident but rather "an initial trauma exacerbated by repetitive physical trauma to the left hip, which caused a 'pathological process that is within the realm of an occupational disease' under *N.J.S.A.* 34:15-34." *Id.* at 109. He further asserted that "he did not know the nature of his disability until 1995 when he was first advised of the extent and seriousness of his injury and the need for a hip replacement" and that therefore "his petition was filed within the time prescribed by *N.J.S.A.* 34:15-34." *Id.* Though Adams acknowledged feeling pain and limitation of motion after the 1986 incident, he claimed that he did not consider himself disabled and he did not fathom that he would need hip replacement in the future. Because he was allegedly "unaware of the nature and extent of the initial trauma as well as the effect of successive traumas common to a football player," he argued that the case is governed by *Earl v. Johnson and Johnson*, 158 *N.J.* 155 (1999), *supra.*

Unlike *Adams*, however, *Earl* involved an occupational claim where there was no specific traumatic compensable event that falls into the category of an accident. No evidence was presented supporting the claim that Adams' hip injury was caused by repetitive contact, as opposed to the incident in 1986. To circumvent these hurdles, Adams also relied on *Burnell.* But the court found that the 1986 injury was not hidden

or otherwise latent but rather should have been known to him, even if he did not know at the time that he would need surgery nine years later:

> While Adams clearly did not anticipate the severity of his disability ten years after the accident, he either was aware or, as a reasonable person, should have been aware of the disabling nature, seriousness and probable compensable character of his injury well before two years preceding his filing of a claim for compensation. [*Id.* at 111-112.]

As noted in *Burnell*, there is a distinct concern about opening the floodgates on exceptions to discovery rule. *Burnell* at 261. Unfortunately for Adams, the facts in his case are quite similar to those in *Schwartz v. Federal Shipping & Dry Dock Co.*, 16 N.J. 243 (1954), *supra*, where there was a clear accident (in the traditional sense of the term), significant enough to be compensable, but with additional serious future consequences that did not manifest until after expiration of the limitations period.

Things may have turned out differently for Adams had he filed his petition within two years of quitting professional football and had he presented evidence that the 1986 injury was aggravated by exposure to the violent contact of the game. Then he could have pursued both accidental and occupational claims. Where more than two years have elapsed from the last exposure, even where there is a prior accident, it may be argued that the petitioner had no reason to know there was an occupational exposure that aggravated or accelerated a condition subsequent to the accident.

Burnell and *Earl* each allow workers to extend the limitations period when they neither knew nor should have known of injuries. However *Earl,* applicable to occupational claims, operates within a statutory framework that allows the extension as a general rule. *Burnell*, on the other hand, applies to accidents and is a closely guarded exception to a rule. Whenever there is any doubt as to the running of a limitations period, both accident and occupational claim petitions should be filed if the facts support both claims.

When a worker is injured in a specific incident involving a regular exposure of the job—e.g., a football player getting hit, a manual laborer lifting heavy objects, etc.—there will usually be justification to file both an accidental and an occupational claim petition. In the case of the football player and the manual laborer, it may also be argued that certain "accidents" are also expected as part of the nature of the job, and thus they constitute occupational diseases as well. Such events are both expected as part of the nature of the job and unexpected because the worker may not anticipate specific injury every time he partakes in dangerous activity. This logic fits within the discussion of occupational and accidental claims in *Burnell.* It should be noted, however, that in *Earl* the court distinguished accident from occupational disease as follows: "an occupational disease is distinguishable from an accident, because an accident 'rises from a definite event, the time and place of which can be fixed, while [an occupational disease] develops gradually over a long period of time.' " *Earl, supra,* 158 *N.J.* at 164, citations omitted. Under this criterion, it becomes harder to characterize a specific event as fitting within the framework of an occupational disease.

d. Jurisdiction in Cases of Accidents

An accident, defined as an unexpected event or mishap, *Burnell* at 236-37, is unlikely to occur in more than one state. A petitioner injured in a New Jersey accident may assert jurisdiction here pursuant to *Boyle v. G & K Trucking Co.*, 37 N.J. 104, 108 (1962). *Williams v. Port Authority of New York and New Jersey*, *supra*, 175 N.J. 82 (2003) addresses the question of jurisdiction based solely on location of occupational exposure when the location is shared by more than one state.

New Jersey grants jurisdiction if the employment contract was entered into here. *Gotkin v. Weinberg*, 2. N.J. 305, 307 (1949). Residence in New Jersey also confers jurisdiction where at least some employment contacts can be found here too. *Bunk v. Port Authority of New York and New Jersey*, 144 N.J. 176, 180-181 (1996); *Parks v. Johnson Motor Lines*, 156 N.J. Super. 177, 180-181 (App. Div. 1978); *Beeny v. Teleconsult*, Inc., 160 N.J. Super. 22, 27-28 (App. Div. 1978). See *Connolly v. Port Authority*, 317 N.J. Super. 315, 320 (App. Div. 1998) and *Williams v. Port Authority of New York and New Jersey*, 175 N.J. 82 (2003) for a summary of situations conferring jurisdiction in New Jersey.

E. The Uninsured Employer's Fund

All employers operating in New Jersey must carry workers' compensation insurance or be self insured. Employers include corporations, partnership and sole proprietorships. There is a surcharge on all workers' compensation policies that finances the uninsured employers fund which protects an employee who is injured while working for an uninsured employer. If an employer does not have coverage, an employee can notify the Office of Special Compensation Funds at (609) 292-0165. Civil and/or criminal penalties may result. All employers are required to post proof of coverage in a prominent location at the place of business.

For uninsured employers, any accidents occurring on or after May 27, 1988, the uninsured employers fund controls. N.J.S.A. 34:15-120.1 *et seq.* This fund pays for reasonable medical expenses and temporary disability benefits, but does not pay permanent disability, death benefits or extra compensation for unlawful employment of minors. These claims if awarded will be docketed with the Superior Court as a lien against the employer. The lien must then be enforced in Superior Court.

The Fund does not cover casual employment and is off-set if temporary disability benefits or reasonable medical expenses are paid by the defaulting employer. A fine of $1,000.00 plus fifteen percent of the award entered, not to exceed $5,000.00 for one claim, is imposed against the defaulting employer.

Pursuant to this statute the commissioner has promulgated rules which control where there is a claim for benefits from the uninsured employers fund. Pursuant to these rules the petitioner's attorney shall notify the fund of a claim against the fund within forty-five days of the date that the petitioner is aware that the employer is uninsured. The fund is

notified by the petitioner's attorney filing a notice of motion to join the fund with the Division of Workers' Compensation. The petitioner's attorney must obtain written confirmation from the Compensation Rating and Inspection Bureau, 60 Park Place, Newark, New Jersey 07102, that the employer is not insured. A copy of that confirmation shall be included in the motion. In addition, the petitioner's attorney has to make personal service of the claim petition and motion to join the fund on the respondent. Proof of service thereof has to be filed with the Division of Workers' Compensation and with the attorney representing the fund. Also copies of bills and receipts of all medical expenses should be provided to the fund.

If the respondent is unable to be served, petitioner's attorney shall make a motion, with the director of the Division of Workers' Compensation for substituted service pursuant to civil practice rule 4:4-4(e). The motion shall be supported by convincing evidence that the petitioner had made all reasonable attempts to serve personally the respondent.

The petitioner's attorney shall also serve the respondent with the subpoena *duces tecum*, requiring the respondent to appear and to produce all records pertaining to the petitioner, returnable on the same date as the motion to join the fund.

The fund has the authority to join a third party insurance carrier when it appears that such third party is involved in the cause of action.

Generally it takes 90 to 120 days after the date of an award for payments to be made from the fund. This includes a 45-day waiting period during which an employer is permitted to make full payment of the award.

III. Medical and Hospital Service and Treatment

A. Medical Benefits Defined

In New Jersey, it has been held than an examination merely to determine causation for litigation purposes is not the same as an examination for diagnosis. See *Schwarz v. Federal Shipbuilding and Dry Dock Company*, 16 N.J. 243 (1954) and compare *Sampson v. Thornton*, 14 N.J. Super. 353 (App. Div. 1951), *aff'd*, 8 N.J. 415 (1952). But actual treatment is not necessary to constitute medical benefits within the meaning of New Jersey's Act. For example, it has been held that a physician's instructions to a worker to obtain and wear a brace was the furnishing of medical care. *Mangieri v. Spring Tool Company*, 62 N.J. Super. 32 (Law Div. 1960).

As defined in N.J.S.A. 34:15-36:

> "Medical services, medical treatment, physicians' services and physicians' treatment" shall include, but not be limited to, the services which a chiropractor is authorized by law to perform and which are authorized by an employer pursuant to the provisions of R.S. 34:15-1 et seq.

N.J.S.A. 34:15-15.2 requires that the character of hospital services furnished any worker be "semi-private" room care.

Although many jurisdictions require reimbursement for convalescent care at home when it is necessary, and of the type that would be required to be paid by the insurance carrier under the appropriate statute, New Jersey has not followed that rule, and family convalescent care is not reimbursable. *Coates v. Warren Hotel*, 18 N.J. Misc. 122 (Dept. Labor), *modified*, 18 N.J. Misc. 363 (C.P. 1940).

If, for any reason medical or surgical treatment necessitated by an original compensable injury either directly or indirectly causes a new injury, there is no question as to its compensability. *Randolph v. E.I. duPont de Nemours and Co.*, 130 N.J.L. 353 (S. Ct. 1943). See also *Bisonic v. Halsey Packard, Inc.*, 58 N.J. Super. 166 (Law Div. 1959), *aff'd*, 62 N.J. Super. 166 (App. Div. 1960).

B. Duration of Benefits

Medical and hospital services and treatment are provided for in N.J.S.A. 34:15-15. While medical benefits may be one of the first things due petitioner, the right to such benefits may continue even after a final judgment has been entered. The respondent is obligated to furnish medical treatment, provided its necessity occurs within two years of the last provision of benefits. For example, in a compensable heart attack case, where the petitioner received 25% permanent partial disability, electrocardiograms, anticoagulants, and occasional medical treatment could be required for life. To compel payment for future medical expenses, the date of which may be uncertain, the petitioner's final judgment must so provide.

The Act clearly provides that the employer must furnish to the worker all medical and surgical treatment as well as hospital services as may be necessary to cure and relieve the worker of the effect of the injury and to restore the function of the injured member or organ where such restoration is possible. 34:15-15 was amended January 1, 1980 to add, "The mere furnishing of medical treatment or the payment thereof by the employer shall not be construed to be an admission of liability."

N.J.S.A. 34:15-15 requires an employer to furnish treatment "necessary to cure and relieve the worker of the effects of the injury and to restore the functions of the [worker's] injured member or organ where such restoration is possible." Some employers are reluctant to provide only palliative treatment. But *Hanrahan v. Township of Sparta*, 284 N.J. Super 427, 336 (App. Div. 1995), held that the phrase "cure and relieve" is not conjunctive: treatment must be provided as long as competent medical testimony establishes treatment is necessary to either cure the worker or relieve the worker of symptoms. The worker need not prove that the treatment would both cure and relieve. Even if the worker is unlikely to improve with further treatment because "the pathology would remain the same," he is entitled to treatment (including physical therapy) that would relieve pain and "thereby improve his ability to function."

There is a point, however, "beyond which reason dictates that the pain or disability experienced by the worker is insufficient to warrant the expense of active treatment." *Id.* A mere showing that the injured worker would benefit from added treatment is not enough. *Raso v. Ross Steel Erectors*, 319 N.J. Super 373, 384. (App. Div. 1999). Nevertheless, New Jersey appellate decisions tend to liberally interpret allowable benefits including incidentals such as transportation and nursing care. *Id.* at 382.

C. Respondent Controls Choice of Physician

As a general rule, medical treatment is controlled by the employer. The employee may not go to his own doctor without obtaining prior authorization from the carrier; otherwise the employee risks personal responsibility for payment of medical bills. But the employer's right to control treatment may be lost if the treatment offered is ineffective or unreasonable. *Benson v. Coca Cola*, 115 N.J. Super 585 (Law. Div. 1971). See also *N.J.S.A.* 34: 15-15 providing that if the employer fails to offer treatment, the employee may obtain it, though the employee first must request it first.

N.J.S.A. 34:15-15 states that if the employer "shall refuse or neglect" to provide medical treatment, the employee "may secure such treatment and services as may be necessary [. . .] and the employer shall be liable to pay therefore." However the employer shall not be responsible to reimburse the employee or a third party unless a request was made to the employer and the employer then refused to provide the treatment. But, pursuant to N.J.S.A. 34:15-15, such a request need not be made if:

1. The nature of the injury required such services and, and the employer [. . .], having knowledge of such injury, shall have neglected to provide the same;

2. The injury occurred under such circumstances as to make impossible the notification of the employer; or

3. The circumstances are so peculiar as shall justify [. . .] the expenditures assumed by the employee.

To these three exceptions another was added in a follow-up to *Benson*, *supra*, involving the same parties: *Benson v. Coca Cola*, 120 N.J. Super 60 (App. Div. 1972). In this second *Benson* case, the court acknowledged the employer's right to a "fair opportunity to provide adequate treatment in the first instance." However "where such a request would be futile, it is unnecessary that the formality be accomplished." *Id.* at 64. A factor to be considered in this analysis is the adequacy of the treatment, consideration of which is also relevant in an assessment of whether there was a refusal in the first place:

> the adequacy of the proffered treatment is significant to whether the employer did in fact refuse or neglect to provide treatment, because inadequate treatment may be equated with a refusal or neglect to provide the treatment required by the statute, i.e., adequate treatment. Thus it is seen that a finding as to the adequacy of the proffered treatment is also crucial. [*Id.* at 65.]

The best way to determine the adequacy of treatment offered, and consequently if there was a refusal or a futility to make a demand, is to see, after the fact, whose "diagnosis proved to be right." *Id.* at 66.

To avoid at least a part of the complex problems presented by the second *Benson* case, the petitioner's attorney should submit a written demand for adequate treatment, whenever possible, prior to the time the treatment is obtained.

D. Excessive Medical Bills

At times, respondents will refuse to pay a medical bill because it is claimed excessive and pursuant to N.J.S.A. 34:15-15, the respondent may pay part of the bill. Try submitting the partial payment to the physician along with an explanation such as:

> The carrier has declined to pay this bill in full. Pursuant to N.J.S.A. 34:15-15, it hereby tenders without prejudice, the reasonable and usual fees which are charged and prevail in the same community for the same physicians, surgeons and hospital services.

Sometimes this explanation satisfies a physician, and partial payment of the bill is accepted as complete satisfaction; which avoids the necessity of motions and unnecessary time in court. In fact, in many cases, the bill may be excessive and the carrier may very well be justified in the position it has taken.

E. Medical Benefits are Compensation Benefits

It should be clearly understood that medical benefits are a part of and equivalent to compensation benefits. *Pfahler v. Eclipse Pioneer Division of Bendix Aviation Corporation*, 38 N.J. Super. 156 (App. Div. 1955), *aff'd*, 21 N.J. 486 (1956). Of course, the question of medical benefits can become extremely important since the furnishing of medical benefits extends the statute of limitations for two years.

F. Physical Examinations

N.J.S.A. 34:15-19 provides that an employee must submit to a physical examination and X-ray within this state at a reasonable time and place, and as often as may be reasonably requested, by a physician or physicians authorized to practice medicine in this state. If an employee refuses to submit to the examination, then the right to compensation during the continuance of such refusal ceases. Further, this cessation is final with respect to the period of suspension and the employee cannot recoup the lost compensation after finally submitting to the examination and eventually obtaining an award.

Even though the statute provides that the physical examination is to be within the state of New Jersey, often the insurance carrier requests the employee to submit to an examination in either New York or Philadelphia. As long as the insurance carrier is willing to pay travel expenses there would appear to be no valid reason for not agreeing to the examination. The larger medical facilities in New York or Pennsylvania are necessary for some special examinations. However, if an employee or the employee's attorney does not want the examination to take place, the statute is clear and the petitioner can refuse. As always, keep a client's welfare in mind, and if the exam would be beneficial, advise a client to submit.

As mentioned above, the petitioner cannot make the ultimate choice as to the examining physician. However, important statutory options do exist. N.J.S.A. 34:15-19 entitles the employee to have a doctor of his/her own choosing present during the examination. N.J.S.A. 34:15-68 establishes the right to request that respondent's doctor be of one's own sex. Furthermore, the courts have recognized that a petitioner's apprehension as to treatment, and confidence in his own physician, may be justifiable grounds for refusing treatment tendered by the employer. In *Bisonic v. Halsey Packard, Inc.*, it was held that an employee could reasonably refuse to undergo corrective surgery for a hernia condition when the surgeon was chosen by the employer and the employee had a palpable, subjective apprehension of receiving such treatment from a physician not his own. The court thus held as compensable the surgery subsequently performed by the petitioner's physician.

Although the *Bisonic* holding is narrowly confined to the refusal of imminent surgery, it and the above statutory provisions imply a recognition of an individual's right against unreasonable assaults to one's bodily privacy. The astute lawyer for petitioner should be aware of this trend.

G. Rejection of Simple Medical and Surgical Treatment

Respondents have had some success with N.J.S.A. 34:15-23. This section provides that whenever an employer is prejudiced by an injured employee rejecting necessary medical and surgical treatment that does not endanger the petitioner in any rational manner, then the compensation award may be modified. Under this section, the Workers' Compensation Division found that a woman was 100% totally disabled from a psychological condition of dementia praecox, or a psychosis, but that 75% of her disability was related to her obstinate refusal to accept medical aid offered by the respondent. Under these circumstances, an award of only 25% was entered.

Similarly, where a petitioner suffered 100% loss of the use of a leg, but refused to cooperate with respondent's physicians and refused all effort to reduce the degree of permanent injury, the compensation was modified to 90%. See respectively, *Iannucci v. Public Service Company*, 8 N.J. Misc. 771 (Dept. Labor 1930); *Rowell v. Bowers*, 8 N.J. Misc. 720 (Dept. Labor 1930).

H. PIP Benefits

An injured worker also covered by automobile insurance (Personal Injury Protection or PIP) benefits may obtain medical treatment from a PIP medical provider if the compensation carrier refuses to provide treatment or provides inadequate treatment. Counsel for petitioner should notify the compensation carrier that treatment is being sought elsewhere and state the reasons why. The PIP carrier may seek reimbursement from the compensation carrier of all reasonable and necessary medical expenses paid. *Chubb Group v. Trenton Board of Education*, 304 N.J. Super. 10 (App. Div. 1997). If bills for reasonable and necessary treatment are submitted by an eligible insured, the PIP carrier must pay them even though the insured also qualifies for workers' compensation benefits. *Id.* at 14; *Hetherington v. Briarwood Coachlight*, 253 N.J. Super. 484, 487 (App. Div. 1992). The Division of Workers' compensation, under N.J.S.A. 39:6A-6 and N.J.S.A 34: 15-15.1, has jurisdiction to hear a PIP carrier's subrogation claim, even if the injured employee fails to pursue remedies under the workers' compensation system. *Chubb Group* at 15-16. In defense of claims brought in the Division, the respondent may challenge bills alleged to be unreasonable and unnecessary, pursuant to N.J.S.A. 34: 15-15. *Id.* at 19.

I. Bills for Unauthorized Medical Treatment

The question of unpaid medical bills, particularly in the context of a Section 20 settlement where the case cannot be reopened, has become an important issue, and a potentially dangerous one for petitioners and their counsel, following the New Jersey Supreme Court's decision in *University of Massachusetts v. Christodoulou*, 180 N.J. 334 (2004). The facts in *Christodoulou* arise from an accident in which Mario Christodoulou was critically injured in Massachusetts while driving a car owned by his employer. He was taken to the University of Massachusetts Memorial Medical Center, where he died two months later after receiving extensive medical treatment billed at $712,683.85. Mario's father Steve, through his attorney, filed a claim petition on behalf of his son's

estate and a dependency claim petition on behalf of himself and his wife. Auto Action, Mario's employer, denied that the accident had occurred in the course of Mario's employment and that Mario had been supporting his parents. Counsel for the hospital was in touch with the Christodoulous' attorney, who had listed the hospital as a medical provider on the claim petition and promised to present the medical bills for payment in the compensation proceeding. At a subsequent hearing, the employee and dependency claims were settled pursuant to *N.J.S.A.* 34:15-20 for $50,000 due to the difficulties with proving the claim. The settlement order also included a provision that "Respondent (Auto Auction) will hold Petitioner (Steve Christodoulou) harmless for any medical or hospital bills arising out of the accident on 6-28-96." *Id.* at 342.

After the settlement, the Christodoulous' attorney wrote to the hospital's attorney, informing him that hospital's rights had been preserved because of the hold harmless clause in the settlement order. However when the hospital presented its bills for payment to AIG, the carrier's administrator, AIG refused to pay, arguing that the hold harmless clause was applicable only to Steve Christodoulou, not to the Estate of Mario, which had incurred the obligation. The University of Massachusetts then moved to reopen the compensation proceeding to collect on the bill, and to vacate the settlement, but their motions were denied. Consequently they brought a civil collection action in the Law Division of the Superior Court against Mario (by his Guardian ad Prosequendum), Steve, Auto Auction, AIG, and Garden State Insurance Company (for whom AIG administered the claim). Counsel for the Christodoulous was named in the suit "for discovery purposes only." Subsequently he was named as a defendant in a separate action for legal malpractice. In an unpublished opinion, *University of Massachusetts v. Goldberger*, 2005 WL 2860982 (App. Div. 2005), the court found that he violated a duty of care to the hospital because he "knew or should have known that the non-client will rely on [his] representations and the non-client is not too remote from the attorney to be entitled to protection. *Id.* at 3, citing *Petrillo v. Bachenberg*, 139 N.J. 472, 485 (1995).

In the Law Division collection suit, a motion for summary judgment filed by the Christodoulous was denied. On appeal of this denial, the Appellate Division reversed, ruling that summary judgment should have been granted. The Appellate Division found that the hospital failed either to intervene in the compensation case pursuant to N.J.A.C. 12:2353.10(a)3, which enables medical providers and insurance carriers to intervene, or to file a timely petition pursuant to *N.J.S.A.* 34:15-15, which authorizes providers to file a claim petition. In other words, the hospital needed to take action in the Division of Workers' Compensation prior to the Section 20 settlement. The Appellate Division expressed concern that the policy behind Section 20 settlements, to resolve completely all issues for all of the parties, would be subverted if the collection action were allowed to proceed. *Id.* at 343-344.

The Supreme Court expressed concern about the fact that not only was the hospital deprived of its contractual rights but that this was done after "multiple representations made by the Christodoulous' counsel to Plaintiff's counsel that the medical bills would be submitted to the compensation court for payment." *Id.* at 349. Scanning the language of Section 20 and its legislative history, the court found no basis to

conclude that medical providers are required to yield their contractual right to payment for services rendered. Consequently the court held that an employer and employee cannot extinguish the rights of a medical provider that does "not participate or do[es] not have the opportunity to participate in a [workers' compensation] settlement." Likewise workers' dependants and PIP carriers cannot be compelled to surrender their rights under a Section 20 settlement without their consent. *Christodoulou* at 348, citing *Kibble v. Weeks Dredging Construction*, 161 N.J. 178, 195-195 (1999) and *Hetherington v. Briarwood Coachlight Company,* 263 N.J. Super. 484, 489 (App. Div. 1992).

Beyond the question of fairness to medical providers, the Supreme Court disapproved of a result that would require "providers to intervene or file a claim petition in every pending workers' compensation proceeding in order to protect their contractual right[s]." Such an outcome would "entail additional collection costs" which would be passed on to patients, and could act as a disincentive to care for injured workers. *Id.* at 353. Nevertheless, *Christodoulou* not only prompts employees to address medical bills in compensation court but also suggests that medical providers should consider intervention:

> Our holding will encourage the parties to address the payment of medical and hospital bills when negotiating a settlement. Because employees' contractual obligation to pay for medical services rendered will not be extinguished by a settlement, the employee will have an incentive to arrange for payment of the bills in the settlement or to present them in a compensation proceeding in order to obtain payment from his employer. To the extent that a common law collection action allows a medical provider to proceed only against the employee, a medical provider also will have an incentive to intervene in a pending workers' compensation action to proceed against the potential deep pockets of the employer and its insurer. [*Id.* at 351.]

Where the stakes are high, as in *Christodoulou*, it would behoove medical providers to intervene to ensure collection of unpaid bills. The same can also be said for third-party insurers, such as PIP carriers and private insurers who have paid for services arising from a compensable event. N.J.S.A. 34:15-15 allows health care providers to file a petition in the Division of Workers' Compensation. And under N.J.S.A. 34:15-15.1, insurance companies or other organizations paying for medical treatment are entitled to reimbursement if the petitioner is so entitled.

Though providers are encouraged to participate in workers' compensation proceedings, they are prohibited from prosecuting a civil collection action while a compensation case is pending. Any action brought in the Law Division must be transferred to the Division of Workers' Compensation. *Id.* at 352. A petitioner's attorney who receives a bill or collection letter from a medical provider should advise that provider in writing of their right to join the compensation case and urge them to do so. Providers should also be told that the compensation attorney does not represent them, and that they may not bring a civil action until the compensation case is resolved. A petitioner's attorney may consider bringing a motion to join a provider if it chooses not to intervene and the employer disputes the bills. Effort should be made to resolve all issues

in the compensation proceeding so as to avoid subsequent civil litigation. However if the petitioner demands to put through a Section 20 settlement, the attorney should advise him on the record that he may face a civil collection action.

Two issues related to unpaid medical bills were noted in *Christodoulou* but left undecided: (1) Must a provider, told that its bills will not be presented for payment in the compensation proceeding, intervene in the compensation case; and (2) Is a provider bound by a compensation court decision that its fees are unreasonable.

J. Medical Provider Claims

A recent increase in disputes between compensation carriers and medical providers has led to numerous claims filed in the Compensation Division by medical providers. These claims have caused various complications in the resolution of cases (including but not limited to delays) and questions about how they should be fairly and expeditiously addressed. Consequently, a Task Force to address these issues was appointed. It was headed by Judge Dietrich and included petitioners' and respondents' attorneys as well as a medical doctor. Their findings and recommendations, issued on November 5, 2010, is set forth below:

TASK FORCE REPORT ON MEDICAL PROVIDER CLAIMS

Insurance carriers and medical providers have experienced an increase in disputes concerning the appropriate payment for medical treatment rendered to petitioners. Consequently, medical providers have sought to have these disputes addressed in a variety of forums. The Division of workers' Compensation has experienced a significant increase in the filing of these disputed claims. This has resulted in a delay in the administration of petitioner's claims before the division. Due to the volume of these claims, all interested parties are seeking a means by which to address these disputes as efficiently, quickly and fairly as possible.

At present, the law permits medical providers to file their own application in the workers' compensation court to bring the issue to the fore, or in the alternative, to file a motion to intervene in a case already filed by a petitioner. See, N.J.A.C. 12:235-3.10(a) (3). Medical provider applications (hereinafter, "MPCs") may be filed with the Division of Workers' Compensation (hereinafter, "the Division"), whether or not the petitioner has already filed a claim petition. Motions to intervene, by their very nature, require that an underlying claim petition already exist. The Division has created the appropriate forms to support an MPC by a medical provider. The sheer number of MPCs that have been filed in the Division spurred the creation of this Task Force. We have been asked to review the proper procedures to handle these MPCs and to make appropriate recommendations, including, but not necessarily limited to: addressing the burden of proof that our legal system imposes upon the parties; to bring uniformity within the Division of Workers' Compensation in the administration and adjudication of these disputes and to ensure that the benefits of the injured worker are protected.

THE ISSUES

At the first meeting of our Task Force, several issues were addressed; they will be touched upon here in no particular order of importance. Pursuant to statute N.J.S.A. 34:15-15, the employer is empowered to authorize all medical providers in an accepted compensable workers' compensation claim. With that right, employers, through their workers' compensation insurance carrier or administrator, often enter into contracts with certain medical providers to provide services. This, however, is not the norm. In most cases, it would appear that there are no written contracts between the insurance carriers and medical providers. There is often no written understanding between medical providers and insurance carriers as to what constitutes reasonable and customary charges. The parties in these disputes rely on the medical provider codes, often referred to as CPT (Current Procedural Terminology) or HCPCS (Healthcare Common Procedure Coding) that are assigned to particular units of medical treatment to determine the appropriate charges. It quickly became apparent to this task force that such coding is both an art and science. Assigning the appropriate codes can be a labyrinthine process that falls within the expertise of individuals trained in the coding process. Medical bills are generated by utilizing these codes, and insurance carriers and administrators pay for medical benefits based upon coded procedures. There are independent companies who have been used by insurance carriers to review coded bills, revise bills and to negotiate the disputes that invariably arise between the medical providers and the insurance companies. Some carriers effect this process in-house.

In medical provider claims, the issue typically is not a contractual one; instead, the issue often is what constitutes the usual, customary and reasonable charges and the payment that should be made for a given medical service rendered to an injured claimant.
One primary concern for this Task Force was the manner in which a MPC should be handled in conjunction with the underlying claim petition. For example, can the petitioner's claim petition be resolved without the resolution of the medical provider claim? The Task Force also considered the burden of proof needed to establish the medical provider's case. See, N.J.S.A. 34:15-15.1. Discovery issues and representation by counsel were also addressed by the Task Force.

FINDINGS & RECOMMENDATIONS

The Task Force was charged with a review of the current situation involving medical fee disputes. The Task Force was comprised of a judge, five attorneys and a surgeon. The attorneys on the Task Force represent both petitioners and respondents. As part of our charge, the Task Force requested information from several groups that actively participate in the handling of MPCs. We heard presentations on behalf of hospitals, trauma centers, physicians, insurance carriers and companies that examined medical bills and attempt to resolve disputes between medical providers and carriers.
The Task Force also requested statistical information from the Division. The Division does keep track of filed MPCs; however, it does not track numbers for motions to intervene. At our request, Mr. Christopher Leavey, Administrator of the Division, generated statistics to aid in our analysis. In 2009, the Division received 1210 MPCs. The

filings to date for the year 2010, extrapolated out over the course of a full year, would yield approximately 1400 MPCs for this year.

During our meetings, it came to the attention of the Task Force that "balance billing" is a problem. This is the practice wherein authorized medical providers accept fees paid by the carrier and then issue a bill to the petitioner for any remaining balance. In an effort to eradicate this practice, the Task Force recommends an amendment to N.J.S.A. 34:15-15. Section 15 of the Act requires that employers furnish and pay for physicians, surgeons and hospital services for the injured worker. Having reviewed the statute and the case law, the Task Force believes that there is a need to clarify that balance billing in the workers' compensation setting is inappropriate. Accordingly, the Task Force recommends the following amendment to N.J.S.A. 34:15-15 which we would propose would appear as a paragraph between the final two paragraphs of that section. This additional language would read as follows:

> "Fees for treatments that have been authorized by the employer or its carrier or its third party administrator, or which have been determined by the court to be the responsibility of the employer, its carrier or third party administrator, shall not be charged against or collectible from the injured worker. Sole jurisdiction for any disputed medical charge arising from a workers' compensation claim shall be vested in the Division of Workers' Compensation."

In regard to the negotiation of workers' compensation claims at the pretrial level, it is the Task Force's recommendation that where a claim petition for permanency and an MPC claim have been filed, the Division should consolidate and list the claims together. The Division should use all possible resources to identify and link related claims. Although the claims would be consolidated and listed together, and while the Task Force recognizes that it is judicially efficient to dispose of all claims in one proceeding, it is our opinion that a settlement of an injured workers' claim petition should not be delayed until such time as the MPC claim has been resolved. Conversely, if the carrier and the medical provider have settled their claim, there should be no barrier to entering an Order disposing of the MPC matter in advance of the petitioner's settlement/trial. In other words, when a related claim petition and MPC claim exist, they can be resolved separately. With Motions to Intervene, it is difficult to resolve petitioner's underlying claim petition without resolution of the disputed charges. Therefore, it is the opinion of the task force that the filing of an MPC is preferable to the filing of a Motion to Intervene.

The Task Force is of the opinion that continuing education is crucial to efficient and effective handling of medical provider application claims. We would encourage an educational campaign directed to the bench, bar and carriers to familiarize them with the proof requirements and procedures. It is suggested that time be allotted at the next Bench Bar meeting to review the findings of this Task Force.

During the various presentations before the Task Force, it became evident that many

medical providers were seeking a streamlined procedure, something akin to arbitration or an "informal" in order to quickly resolve their disputes with the carrier. The Task Force recognizes that the law of New Jersey and our statute in particular, does not permit an informal handling of such claims. The law in New Jersey requires that a corporation be represented by an attorney at law in any judicial proceeding. This means that the medical providers, doctors and hospitals who wish to pursue a cause of action in the Division must retain counsel. Often, the attorney representing the entity responsible for paying the medical benefits may differ from the respondent counsel in the underlying claim. If the case must be tried there may also be a need for the production of expert witnesses to establish what constitutes usual customary and reasonable charges and payment.
Recently, there was a proposal for rules which would permit an informal disposition of medical provider claims; however, rules were never promulgated to effectuate this suggestion. Moreover, the majority of comments provided to this committee concerning an informal procedure were overwhelmingly negative.

Certainly, the medical providers and carriers do not have to use the workers' compensation court as a venue to address their disputes. If they so choose, these parties can agree upon an arbitration or mediation process. Presently, they can also litigate the matter in the Superior Court, as well. However, if they choose to litigate the dispute in the Division, it is the opinion of the Task Force that the parties must submit to the Rules of the Division. Once a party submits an MPC claim, it is the Task Force's opinion that the party bringing the claim has the burden of going forward with proofs for every element in contention. Each claim is unique and stands or falls on its own merit. Discovery may be necessary and special interrogatories should be permitted as provided for by the Rules of the Division.

The parties to a MPC claim in the Division should be required to adhere to the Rules of the Division concerning discovery. A medical provider should be required to produce the corresponding medical records to substantiate its claim. Either party, however, can file a motion for a protective Order with the court should a discovery request be overreaching or should a given discovery request seek proprietary information or processes. In presenting proofs before the court, and in response to discovery, judges should insure that names and personal identifying information included in the records, other than that of the Petitioner, be redacted before being presented to all parties. Discovery, in the discretion of the Court, should be broad, to determine the full range of payments in the geographical area for the medical procedure or service at issue. Selected samples of payments made for similar services will not suffice.

The medical provider may be required to testify in order to substantiate his or her claim. However, if the dispute only concerns the amount of the payment, and not the necessity of the treatment, the parties may be able to litigate the matter without the testimony of the actual medical provider. Many times, in this setting, we can envision a scenario where the only issue is one of assessing the appropriateness of the medical coding. The accuracy of the coding could be determined by a judge from the testimony of each side's respective coding expert.

There are many factors that a judge may consider in determining the usual, customary and reasonable (UCR) charges of a given medical treatment and the appropriate payment for said treatment. While the list below should not be considered to be exhaustive, it certainly can act as a useful guide for the parties to consider in presenting proofs and likewise, to the jurist, in deciding a case:

1. The new WCRI report, Benchmarks for Designing Workers' Compensation Medical Fee Schedules. Fee schedules vary dramatically from state to state and based upon the type of payer;
2. The fees customarily paid for like services within the same community;
3. The fees paid to the same physician or medical provider by other payers for like treatment;
4. The fees billed and the accepted payments for such bills by a given provider. The Court may wish to consider the disparity in payments accepted from different sources (i.e. Medicare vs. PIP and commercial carriers);
5. A review of the Health Insurance Claim Forms ("HCFA") submitted by the provider to the claim payer and the Explanations of Benefits ("EOB") that that claim payer sends to the provider. The EOB provides the amount billed for a given procedure or service performed on a particular date of services. The EOB also provides the amount paid and, where applicable, identifies the reason why a disparity may exist in the amount billed and the amount paid. The use of certified professional coders may be employed to review the bill along with the medical records to be sure that it is consistent with CPT coding standards;
6. The HCFAs or EOBs from other medical providers in the same geographic area or community for the same medical treatment provided;
7. Using commercial and/or private databases such as Ingenix's Prevailing Healthcare Charges System ("PHCS"); the Medical Data Resource ("MDR") database, and; Wasserman's Physician Fee Reference ("PFR") database to name a few;
8. The type of facility where the procedure was performed. For example, was the services provided at a Level 1 trauma center versus a community hospital;
9. Consideration of whether there was a contract between a claim payer and the medical provider, such as a PPO network, in which case the contract would be controlling;
10. Consideration of Medicare/Medicaid reimbursement rates;
11. Testimony from medical office personnel as to what services were billed for, the payments received and how the bill was formulated;
12. Consideration of state sanctioned PIP fee schedules;
13. Consideration of commercial carrier authorized payments.

CONCLUSION

The opinions expressed in this document reflect a consensus among the Task Force members. This Task Force has attempted to identify and address the difficulties that have arisen as a result of the influx of the MPC petitions. Certainly there are no overnight solutions. We made the foregoing suggestions to assist our courts and our practitioners in

resolving these claims. As the parties become more familiar with the new terms and concepts, the process for handling these claims will become smoother. Every opportunity should be taken to discuss issues that arise in the handling of medical provider claims. With education and experience the parties will learn the techniques necessary to quickly resolve the disputes. The Division can expect that what now appears as thorny problems will eventually become part of the regular day-to-day negotiations in our courts.

IV. Temporary Disability

A. Temporary Disability Defined

Temporary disability is classically defined as the condition that exists until the injured worker is as far restored as the permanent character of the injuries will permit. *Reynolds v. Passaic Valley Sewerage Commrs.*, 130 N.J.L. 437 (S. Ct. 1943), *aff'd* 131 N.J.L. 327 (E. & A. 1944). A classic example in New Jersey is the case of the loss of a leg. Here, temporary disability ends when the stump is healed, and the worker is able to get about. *Helmholtz v. Union Building and Construction Co.*, 22 N.J. Misc. 343 (C.P. 1944). In that particular case, it was held that once the employee is in a wheelchair or on crutches, temporary disability ceases.

When an employee is disabled for more than seven days, including weekends and holidays, he or she becomes eligible to receive temporary disability benefits retroactive to the first lost day of work due to the accident. While being unable to work and under a physician's care, the employee is entitled to benefits at a rate of 70% of his or her average gross weekly wages, not to exceed the maximum rate of 75% of SAWW or fall below the minimum rate of 20% of SAWW. These benefits continue until the employee goes back to work or has reached maximum medical improvement (MMI), a state in which additional treatment will no longer improve the employee's medical condition.

An injured employee usually waits about two weeks before receiving the temporary disability benefits. A delay of thirty days or more is presumed to be unreasonable. If unreasonable or negligent delays in the payment or denial of a claim, the respondent may be liable for an additional amount of 25% of the amounts due plus any reasonable attorney fees incurred in the delay.

B. The Seven-Day Waiting Period

The seven-day waiting period, defined in N.J.S.A. 34:15-14 provides that:

> No compensation other than medical aid shall accrue and be payable until the employee has been disabled 7 days, whether the days of disability immediately follow the accident, or whether they be consecutive or not. These days shall be termed the waiting period. The day that the employee is unable to continue at work by reason of his accident, whether it be the day of the accident or later, shall count as one whole day of the waiting period. Should the total period of disability extend beyond 7 days, additional compensation shall at once become payable covering the above prescribed waiting period.
> Amended by L.1945, c. 74, p. 389, § 7; L.1966, c. 126, § 3, eff. March 1, 1967.

The waiting period need not immediately follow the accident. *Frasier v. L. Bamberger & Co.*, 10 N.J. Misc. 781, 160 A. 630 (1932), *affirmed* 110 N.J.L. 447, 166 A.

101. The seven days also do not need to be consecutive. An injured employee may recover compensation for intermittent periods of recurrent intervals of temporary disability. *Colbert v. Consolidated Laundry*, 31 N.J. Super. 588 (App. Div. 1954). Thus, if a man is hospitalized for corrective surgery after he has returned to work and after temporary disability payment has ceased, he is entitled to receive additional temporary benefits for the time he is hospitalized and out of work while recovering from the corrective surgery.

Conversely, an injured employee whose temporary disability does not extend beyond waiting period is not entitled to compensation for temporary disability. *Adolph v. Breen Iron Works*, 17 N.J. Misc. 101, 5 A.2d 310 (1939). Similarly, an employee who continues to work for six weeks after returning to work six days after an accident is not entitled to compensation. *Kohaworsky v. Clifton Paper Mills*, 7 N.J. Misc. 222 (1929).

C. Duration of Temporary Disability

1. Introduction

The workers' compensation statute provides for the payment of temporary disability benefits for up to 400 weeks (7.7 years). Though it is rare that payments or treatment last this long, treatment can and often does take a substantial time. Sometimes the employer is reluctant to provide additional treatment after the initial course of treatment fails. If this should occur and the employee cannot return to work a Motion for Medical Treatment Temporary Disability Benefits should be filed. Issues of temporary disability and medical treatment frequently overlap such as when requests for both medical treatment and temporary disability are denied. Temporary disability benefits should not be an issue when there is no need for medical treatment because the worker at this point is usually either able to work, eligible for permanent disability, or both. Medical treatment may be ordered, however, after a worker is finished with temporary disability benefits, and after permanent disability has been determined too. *Van Tuyl v. Federal Shipbuilding and Dry Dock Company*, 32 N.J. Super. 406, 411-412 (App. Div. 1954).

Temporary disability benefits continue "until the employee is able to resume work and continue permanently thereat or until he is as far restored as the permanent character of the injuries will permit, whichever happens first. *Monaco v. Albert Maund*, 17 N.J. Super. 425, 431 (App. Div. 1952). If an employee attempts to return to work too soon but cannot perform the job, the employee's right to temporary disability continues but the days actually worked are deducted. A worker who loses both arms and can never return to a job is temporarily disabled until the stumps heal. *Id.* at 430-431. But if a worker can return to employment, even if maximum recovery has not been reached, temporary disability ends. *Calabria v. Liberty Mutual Insurance Co.*, 4 N.J. 64 (1950).

A student returning to college full time after being injured and temporarily totally disabled at a summer job may not continue collecting temporary disability benefits beyond the date of his return to school. *Tamecki v. Johns Manville*, 125 N.J. Super 355 (App. Div. 1973), cert. denied, 64 N.J. 495 (1974), focused on several factors in denying the student's claim: (1) he intended to and did in fact return to school full time; (2) he

was unavailable to work because of his return to college; (3) his return to college was a step in his "economic development"; (4) the petitioner suffered no loss of wages because he voluntarily removed himself from employment; and (5) it is bad social policy to create a "fictitious wage-earning status for the unemployed work[er]." *Id.* at 359-360.

2. Restricted Duty

Authorized treating physicians sometimes order an employee to restricted duty or "light work" while continuing active medical care; the compensation carrier then cuts off temporary disability benefits. So long as the employer provides full-time restricted employment within the worker's capacity, temporary disability benefits may be stopped, but not if the employer fails to offer suitable work. *Harbatuk v. S&S Furniture Systems Insulation*, 211 N.J. Super 614, 628-629 (App. Div. 1986). Furthermore *Harbatuk* favorably described an Oregon decision supporting the principal that a worker need not seek easier work in a different field while under active treatment to cure a work-related medical condition:

> [C]laimant's failure to work at some job other than his usual profession during the period before his condition became stabilized did not affect his entitlement to temporary total disability compensation. The court noted that such an award is intended to compensate an injured worker at least until the extent he may be expected to recover from his injury is established. The court felt that it would be unreasonable to require a claimant to train for or adapt to a new line of work while his ability to return to his usual line of work is not yet fixed. [*Id.* at 626-627.]

A worker returned to restricted duty who loses income in the process may be entitled to temporary disability benefits. In *Tobin v. All Shore All Star Gymnastics*, 378 N.J. Super. 495 (App. Div. 2005), the petitioner was the president and owner of a gymnastics school, as well as a salaried instructor. For her duties as president and owner she received no salary. After injuring her shoulder at work and collecting temporary disability benefits, her authorized treating doctor returned her to light duty. This allowed her to resume her function as owner and president; however she could not continue as an instructor for several more months, during which time she had to hire another instructor to replace herself.

Under these circumstances, the Appellate Division affirmed her right to receive temporary disability benefits until she could return to function as a salaried instructor. Citing *Harbatuk*, the court pointed out that the ability to perform some light work is insufficient reason to deny benefits to a worker "trained in a skill which she cannot perform because of her injury or when her employer has no light work available." *Id.* at 501. Though Ms. Tobin did, in a sense, return to restricted duty, she did not and could not return to a position that paid her for working within the restrictions. In addition to thus losing her own salary, she also had to pay another person to replace her in the position of instructor. For these reasons she was entitled to temporary disability benefits.

3. Right to Keep Job

Malone v. Aramarck, 334 N.J. Super 669 (Law Div. 2000), held that an employer need not keep an at-will employee's job open indefinitely until the employee can return to work. Mere failure to hold the employee's job open for a period of over one-year does not violate the New Jersey Law Against Discrimination. The court relied on *Galante v. Sandoz*, 192 N.J. Super 403 (Law Div. 1983), aff'd, 196 N.J. Super 568 (App. Div. 1984), which held that an employee injured at work may subsequently be terminated for absences pursuant to a neutral absence control policy. Noting that "a worker out on extended leave in many circumstances puts significant pressure on other workers in the workplace and on management," the court reasoned that "at a certain point, holding a job open for an extensive or indeterminate period of time becomes untenable." *Id.* at 680.

Just what that "certain point" is, however, is not clear, though it appears to be somewhere between 12 weeks and one year. The Family and Medical Leave Act, 29 U.S.C.A. 2601, et seq., gives qualified workers up to 12 weeks of leave with job protection. If the employer gives proper notice to the worker, the period of leave can run concurrent to temporary disability benefits. Also under the Americans with Disabilities Act, 42 U.S.C.A. 1201, et. seq., a leave of absence to recuperate or obtain treatment may constitute a reasonable accommodation that the employer must provide. The extent of leave will depend on the facts of the case, but the leave may not be indefinite. *Id.* at 675.

Though *Malone* refused to give the at-will employee plaintiff an absolute right to get back his job, it kept alive his claim for retaliatory discharge. N.J.S.A. 34:15-39.1 prohibits retaliation against a worker who seeks compensation benefits and gives rise to a common law claim for compensatory and punitive damages. *Malone* at 676. Unlike the *Malone* plaintiff, certain workers also have, pursuant to collective bargaining or employment contract, a right to have their job preserved while out on sick leave as well as a possible implied contractual right to keep a job pursuant to company policy. *Id.* at 674. Therefore employers must be careful about terminating workers on leave. On the other hand, absent a violation of a law prohibiting retaliation or discrimination, a breach of contract, or breach of a law requiring an employer to keep open a job, there is no civil redress for termination of an at-will employee out on extended medical leave. The fact of termination, however, will not end the employer's obligation to provide temporary disability benefits if the worker otherwise qualifies.

4. Sick Leave

Workers given accumulated sick leave (which pays full salary instead of 70% of salary) are entitled to neither temporary disability benefits nor reimbursement of sick leave, unless they are school employees. N.J.S.A. 18A:30-2.1 allows teachers and other school employees to receive their full salaries and lose no sick leave during periods of work-related disability. A teacher planning not to work during the summer recess, however, may not collect temporary disability benefits. *Outland v. Monmouth-Ocean Education Service*, 154 N.J. 531, 542 (1998). Once allotted sick leave is used up, the worker will be eligible for temporary disability benefits if the worker is otherwise qualified.

D. Disqualification of Right to Receive Temporary Disability Benefits

Cunningham v. Atlantic States Cast Iron Pipe Co., 386 N.J. Super. 423 (App. Div. 2006), allows an employer, under certain circumstances, to deny temporary disability benefits to a worker terminated for cause. As a general rule, temporary disability benefits are payable during the period of temporary disability until such time as the worker may resume employment or reaches maximal medical improvement (is as far restored as the permanent character of the injuries will permit), whichever occurs first. *Id.* at 427-428, citing N.J.S.A. 34:15-38, and *Monaco v. Albert Maund*, 17 N.J. Super. 425, 431 (App. Div. 1952). However in *Cunningham*, the petitioner was terminated for cause for violating a company policy prohibiting three consecutive, unexcused absences. Eight days later, the Petitioner saw his authorized treating physician in regard to a workers' compensation injury with Atlantic States for which he had previously received medical treatment. The physician wrote a note stating that the petitioner could not work because of the knee injury and would likely remain unable to work for about six months.

At trial, Atlantic States asserted that the petitioner was not terminated but instead abandoned his job, and because he voluntarily removed himself from the labor market, he was not entitled to temporary disability benefits. This argument attempts to draw an analogy with *Electronic Associates, Inc. v. Heisinger*, 111 N.J. Super. 15, 20 (App. Div.), certif. denied, 57 N.J. 139 (1970). In *Heisinger*, the court held that a pregnant employee who retired because of her pregnancy was not entitled to temporary disability benefits for a work-related injury that manifested itself after her retirement. Cunningham argued, and the workers' compensation judge found, that he was terminated for cause. *Cunningham* at 432. The Appellate Division asserted that it makes no difference if Cunningham was justly fired or if he abandoned his job; instead the dispositive question is whether or not he lost income because of his disability:

> We do not know whether he made any efforts to seek employment before his visit with [the doctor]. Once advised by [the doctor] that he could not work for about six months, he might not reasonably be expected to have sought employment. But he left his job whether characterized as voluntarily or as a termination for cause in violation of a company policy he know would result in termination), and, without new employment secured, he did so at his peril. His leaving was not related in any way to his disability. [*Id.*]

Despite this particular result, denial of temporary disability benefits might be avoided if a worker can show he was terminated and therefore lost income due to disability or to an employer's attempt to avoid payment of benefits. *Id.* at 429. In response, an employer may counter that the employee abandoned the job. This argument returns to the distinction avoided by the Appellate Division in *Cunningham.* But in the language of *Cunningham*, it is just another way of saying that the job loss is unrelated to the disability and therefore a function of the employee's own volitional conduct.

Even when an employee is denied temporary disability benefits, *Cunningham* suggests that the duration of benefit loss may be limited to the time it would have taken to

find new employment. It is the worker's burden to prove he was available and willing to work and that he would have been working if not for the disability. *Id.* at 432-433. This may be accomplished in part by the testimony of an occupational expert who could "show how long it would have likely taken for him to secure employment had he not been disabled," although such expert testimony is not necessarily required. *Id.* at 434. In addition, it would be helpful if a worker in a similar situation can show he applied for other jobs after separation from the Respondent but prior to becoming temporarily totally disabled. Given Cunningham's short, eight-day window of opportunity, however, this would have been difficult.

The Appellate Division acknowledges that proofs are more difficult in a situation like Cunningham's, as compared to, for instance, that of a teacher able to establish a pattern of summer employment, as in *Outland v. Monmouth-Ocean Education Service*, 154 N.J. 531, 542 (1998), which held that a teacher not planning not to work during the summer recess may not collect temporary disability benefits. The teacher "knows in advance of his or her availability of summer work and would be expected to plan to arrange it. Cunningham's separation from employment, on the other hand, was not planned in advance." *Cunningham* at 434.

Tragic consequences may follow a worker's inability to prove he could have obtained employment within a given time frame but for a disability. Such a situation might arise where an employee in prime working age, with a long history of steady employment, quits or is fired just before discovering a legitimate work-related disability but, like Cunningham, has not had time to procure new employment. If the temporary disability period lasts for years, such an individual could end up financially devastated. The worker's counsel should always (1) look for possible illegitimate reasons for the termination and raise them at a med-temp motion; and (2) be prepared to show that the worker would have obtained new employment after a set time period.

E. Wages Defined

Wages control the rate at which permanent disability as well as temporary disability and death benefits will be paid. The wage schedule contained in N.J.S.A. 34:15-12 was revised by the Workers' Compensation Amendments enacted January 1, 1980, which had as its underlying motivation, (1) the increase in benefits to seriously injured workers and, (2) to save money by holding down any increase in benefits to those less seriously injured workers. Statewide Average Weekly Wage (SAWW) was established by this amendment and is a new label for an old concept. As of September 1 of each year, the Commissioner of Labor will determine what the salaries earned by all employees covered by the Unemployment Compensation Law were for the previous year. This total salary will be divided by the number of workers who paid into the system, arriving at the statewide average weekly wage. This figure will be used in establishing the compensation rates for the following year, thus in effect three different years are involved. As of September 1, 2001, the Commissioner will use wages paid workers in 2000 to determine the rate of compensation in 2002 (which has been set at $629.00). The worker loses out here for he or she will always be two years behind the actual average weekly wage.

For injuries producing temporary disability and permanent total disability the rate was amended from 66-2/3% to 70% of the worker's weekly wage subject to a maximum of 75% of the SAWW. 20% of SAWW was established as the new minimum rate for temporary and permanent total disability replacing the old $15 weekly minimum. Two new rate schedules for permanent partial disability were enacted by the Workers' Compensation Reform Act of 1980. The first retains a fixed rate scale from 1 through 180 weeks, and thereafter uses a percentage of SAWW. The second, which took effect on January 1, 1982, is calculated from the initial week as a percentage of SAWW.

1. Rate of Wage Fixed by Output

When the wage is fixed by the employee's output, daily wages are calculated by dividing the number of days the worker was actually employed into the total amount the employee earned during the preceding six months, or so much thereof as shall refer to employment by the same employer. In other words, if the person worked 30 days of the previous six months, and earned six hundred dollars, you divide 30 into $600, for a wage of $20 per day.

2. Hourly Wage

When the wage is paid by the hour, the daily wage is found by multiplying the hourly rate by the customary work day in the character of the work involved. Pursuant to the amendment of 34:15-37 on January 1, 1980, the weekly wage is formed by multiplying the daily wage by the customary number of working days constituting an ordinary week in the character of the work involved; provided, however, if the employee worked less than the customary number of working days, as in part time employment, the weekly wage is no longer reconstructed, rather it is determined merely by multiplying the hourly rate by the number of hours of work regularly performed.

3. Gratuities

Gratuities are included in the weekly wage when the employee or employer has kept a regular daily or weekly record of the amounts received. To determine how much to add to wages earned, you compute the average weekly amount of gratuities over a period of six months. If no record has been kept of gratuities, then the Judge of Compensation can fix the average amount of weekly gratuities.

4. Board and Lodging

Board and lodging, if not otherwise established by the parties, are valued in N.J.S.A. 34:15-37 at $25 per week. Although it is rare, you may occasionally find cases where employees are offered lodging but not board, or vice versa. This is often the case with chauffeur or country club caddies. Unfortunately, the statute does not separate board from lodging. For what it is worth, when the 1925 rate was $5.00 for board and lodging, $3.00 was assigned to board and $2.00 to lodging, which is a ratio of 3 to 2.

F. Calculating Temporary Disability Payments

Temporary disability benefits are calculated at 70% of the employee's average weekly wage up to a limit. The limit for the year 2001 is $591.00. This limit is set at 75% of the State Average Weekly Wage, which in 2001 is $787.82. $591.00 is 70% of $844.27. A worker injured in the year 2001 who earns more than $844.27 per week will only be able to collect temporary disability benefits of $591.00 per week, even though this amounts to less than 70% of his earnings. Each year, the limit of temporary disability benefits tends to increase slightly along with the State Average Weekly Wage. Employers who refuse to provide temporary disability benefits can be forced to do so by a motion. Like motions for medical care, motions for temporary disability benefits must be heard within 30 days of filing.

It is important to remember that the date of the accident controls the rate for temporary disability benefits. If an employee worked regular overtime, this should be included in the worker's weekly wages. Wages are based on the actual salary, so wages are never reconstructed in the calculation of temporary disability.

Assume for example that a worker hired as a store manager-in-training for $500.00 per week is injured in a work-related fall after one month of employment, during which time she missed several days due to a cold. Prior to this job the worker was employed for two years elsewhere at a salary of $300.00 per week. The rate of temporary disability would be $350.00, the rate paid "under the contract of hiring in force at the time of the accident," pursuant to N.J.S.A. 34:15-37. In this example, there would be no calculating of the rate based upon earnings for six months prior to the accident because the wages were "not fixed by the output of the employee" at that job. Similarly, there would be no deduction for time lost due to sickness because $500.00 per week was the rate in effect regardless of sickness. If, however, the worker in our example earned overtime compensation, she would be entitled to have the overtime wages taken into consideration in calculating the rate of temporary disability so long as it could be established that overtime was a "normal and regular characteristic" of her earnings. *Triano v. Carbon Steel Products Corp.* 63 NJ 226, 234 (1973).

A relatively small difference in a disability rate can lead to a large difference in the permanency award, even where the difference in the amount of overall temporary disability awarded remains small. For example, if the rate of a worker injured in 2001 is $276.00 as opposed to $205.00, the $71.00 difference in temporary disability received over the course of six months is $1,846.00. The difference in permanent disability at these rates, however, for a settlement of 35% of partial total is much greater. At the $276.00 rate the total award is $57,960.00; at the $205.00 rate, it is $43,050.00, a difference of $14,640.

Katsoris v. South Jersey Publishing Co., 131 N.J. 535 (1993) held that a part-time worker's wages may be reconstructed for purposes of calculating permanency benefits, even though wage reconstruction to calculate temporary disability was prohibited by the Worker's Compensation Act of 1979. Wage reconstruction is the extrapolation of a

worker's part-time wages to a full-time week for a worker of a given occupation. Under *Katsoris*, wage reconstruction depends on fairness under the applicable circumstances: where the worker's part-time employment was merely supplemental to a different full-time job for which the worker suffered no disability, wage reconstruction was unwarranted.

It is extremely important in substantiating petitioner's temporary disability claims that you prepare careful documentation of your client's lost time and visits to doctors. In an involved case, the respondent insurance carrier may obtain a retail credit search on your client and may find a return to part-time employment. Many times a client will not inform you of these facts. You must carefully review this situation with your client and be certain that you are told of any employment activity.

G. State and Private Temporary Disability Benefits

Individuals disabled from non work-related causes may collect disability benefits for up to 26 weeks under state or private plans pursuant to the Temporary Disability Benefits Law of N.J.S.A. Title 43. These benefits, which typically pay 66% of a worker's wages, become important when an employer denies a claim for benefits. Petitioners' attorneys should always have their clients apply for state or private temporary disability benefits if a compensation claim is initially denied, especially if the fact of disability is clear and the denial is based on an issue of causation. Otherwise the disabled worker will likely have no source of income unless she qualifies for and quickly obtains social security benefits.

Similarly, if a compensation claim is initially accepted and temporary disability benefits paid, but subsequently those benefits are terminated and a dispute arises, it is appropriate to apply for state temporary disability benefits. This situation arose in *Brinkerhoff v. CNA Insurance Company*, 263 N.J. Super 1 (App. Div. 1993), where CNA appealed two decisions of the Appeal Tribunal of the Division of Unemployment & Disability Insurance, Department of Labor. These decisions allowed two workers' compensation claimants to collect state temporary disability benefits while their compensation claims were pending. The Appellate Division noted:

> If their compensation claims are successful, the temporary disability carrier is statutorily subrogated under the Workers' Compensation Act to petitioners' rights to collect the benefits during the period that payments were received under the Temporary Disability Benefits Law. *N.J.S.A.* 34:15-57.1. The reciprocal section in the Temporary Disability Benefits Law, *N.J.S.A.* 43:21-30, also provides for subrogation to the extent of disability payments made when a claimant is entitled to workers' compensation benefits. [*Id.* at 3.]

The Court also rejected CNA's argument that the petitioners' remedy was to apply for unemployment pursuant to *N.J.S.A.* 42:21-4(f)(1), which allows for the payment of unemployment benefits to sick or injured workers ineligible to receive workers' compensation benefits. This argument, however, grounded in contested opinions of treating doctors alleged to have issued return-to-work orders too soon, begged the

question of workers' compensation eligibility. The Appellate Division stated that both individuals were ineligible to receive unemployment because their accidents were compensable under the workers' compensation law and because such benefits will not be paid "[f]or any period of disability commencing while such individual is a covered individual,' as defined in ... the 'Temporary Disability Benefits Law'...." *Id.* at 5, quoting *N.J.S.A.* 43:21-4(f)(1)(F).

If it is later established that the disability is work-related, the provider of temporary disability benefits is entitled to reimbursement pursuant to N.J.S.A. 34:15-57.1 and 34:21-30. In 2000, N.J.S.A. 43:21-30 was amended to allow a worker who receives a lump sum settlement under N.J.S.A. 34:15-20 to also receive state or private temporary disability benefits, though these benefits must be reduced by the amount of the Section 20 settlement. Now if the amount received under Section 20 is less than the total amount of state or private temporary disability, the worker will not be liable for the difference.

Under the old law, if a worker received $5,000.00 in temporary disability payments and subsequently settled a related compensation claim for a Section 20 lump sum of less than $5,000.00, he would be personally liable for the difference. And if he settled under Section 20 prior to applying for state or private temporary disability, he would be precluded from receiving any benefits. *Sperling v. Board of Review*, 301 N.J. Super 1, 5 (App. Div. 1997), aff'd 156 N.J. 466 (1998) held that receipt of state temporary disability benefits and Section 20 workers' compensation benefits is a double recovery, which is prohibited. Under the law as now applied, if a worker receives $5,000.00 in temporary disability benefits and subsequently settles under Section 20 for $2,500.00, there is no liability for the difference. Of course, there is an incentive to settle for more under Section 20 so that the worker gets to keep something. The same worker would also be eligible for temporary disability benefits after a lump-sum settlement. However, under *Sperling*, a credit must be given to the state or private plan for the amount paid pursuant to the Section 20 settlement.

In the Matter of Charles D. Scott, 321 N.J. Super 60 (App. Div. 1999), aff'd 162 N.J. 571, held that a part-time employee collecting temporary disability benefits for injury at his part-time job is eligible for full time state temporary benefits due to inability to perform his full-time job. Scott's full-time employer argued that state or private disability plans are not payable for a compensable injury under the workers' compensation law. But the Appellate Division reasoned that the legislature did not wish to deny TDB benefits to an employee, who paid for them via deductions in his wages, simply because he was injured at a part-time job. Otherwise the employee would end up worse off because the accident occurred at his part-time job rather than at his full-time job, where he would likely collect at a higher temporary benefit rate. *Id.* at 65-66.

In *Scott*, the issue of whether the private TDB carrier would be entitled to an offset was raised but left undecided. Nevertheless, the Appellate Division, quoting Justice O'Hern in *Sperling v. Board of Review,* 156 *N.J.* 466 (1998) anticipates the possibility that this may be a case of full recovery rather than double recovery: "Justice O'Hern

emphasized in his separate opinion in *Sperling, N.J.S.A.* 43:21-30 (entitled 'non-duplication of benefits,' not 'election of benefits') 'intends to avoid double recovery, not full recovery.'" *Id.* at 264. The reference to full recovery versus double recovery appears to mean simply that Mr. Scott would likely be getting full benefits from two sources at the applicable rate, both of which are a percentage of the gross weekly wage. As long as the two benefits combined do not exceed the combined gross weekly wages from the two jobs, there would be no double recovery.

H. Relationship to Permanent Disability

In dealing with temporary disability, it is extremely important to work closely with the treating doctor or your examining doctor. For the physician determines when a petitioner can return to work, or when permanent disability is present and fixed. When a treating doctor evaluates permanent disability, temporary disability ceases because the petitioner has been restored as far as the character of the injuries will permit.

I. Scheduling Permanent Disability Examinations

If your client is receiving temporary disability there is no reason to schedule a permanent disability evaluation until temporary disability ceases. As soon as the treating doctor is able to render an opinion that temporary disability has terminated, you should obtain an opinion on permanency and possibly schedule an independent examination for permanent disability evaluation. Preferably, you should know about when the treating doctor anticipates that temporary disability will cease, so an examination for permanent disability can be scheduled in very close proximity to the cutoff.

Once a permanency report is obtained, the worker's attorney should move the case as quickly as possible because a stale report may lose effectiveness. In *Prata v. Banner Pharmacaps, Inc.*, 355 N.J. Super. 155 (App. Div. 2002) an award of 7-1/2% of total for a low back strain was reversed because the petitioner's expert report was too old. The petitioner received the award for occupational back strain after 17 years of employment with the respondent, ending in April 1997. Her duties included the lifting of packages weighing up to 30 pounds. In July 1997, she applied for a new position and represented to her new employer that she had no physical limitations. At trial, she relied on the examination and report of Dr. Haberman, which found in December 1997 a lumbar curve flattening and hardness in the lumbar region.

The respondent presented a more recent report from Dr. Gross, a forensic examiner who in February 1999 found no indication of permanent orthopedic disability. Furthermore, and of more consequence to the court, an independent UMDNJ physician in July 2000, a few months before the trial, found full strength and range of motion in the lumbar spine, with no apparent impairment.

The Appellate Division found that "any back injury she may have suffered apparently resolved between the February 1997 examination by Dr. Haberman and the July 2000 examination at UMDNJ." *Id.* at 158. Citing *Allen v. Ebon Services Int'l, Inc.,*

237 *N.J. Super.* (App.Div.1989), the court noted that a report prepared less than three months after an accident was insufficient to prove permanent disability three years later. In *Prata*, the forensic report was deemed stale, especially in light of a far more recent report by an independent physician.

J. Unemployment Benefits

Subsequent to a period of temporary disability, the worker may be capable of performing some work but unable to return to his previous job due to medical restrictions or unavailability of the position. If less than two years has elapsed between the date of compensable disability and the date the worker "becomes able to resume work" the worker qualifies for unemployment benefits under the alternative benefit year calculation. N.J.S.A. 43:21-19(c)(3). See also *Gilliland v. Board of Review*, 298 N.J. Super. 349 (App. Div. 1997); *Bodnarchuk v. Board of Review*, 309 N.J. Super. 399 (App. Div. 1998); *Dipasquale v. Board of Review*, 286 N.J. Super. 341 (App. Div. 1996). An application for benefits should be filed as soon as the period of disability ends.

Ordinarily a base year for purposes of calculating unemployment benefits consists of "four of the last five completed calendar quarters immediately preceding" the benefit year. N.J.S.A. 43:21-19(c). Under N.J.S.A. 43:21-19(d), the benefit year is "the 364 days beginning with the day on, or as of, which [the applicant] first files a valid claim for benefits." Because a disabled worker's benefit year inevitably includes time during which no money was earned, this calculation results in substantial reduction or complete elimination of benefits. N.J.S.A. 43:21-19(c)(3) ameliorates this harsh result by allowing an alternative calculation in which the base year is defined as "the first four of the last five completed calendar quarters immediately preceding" the period of disability, and thus avoids penalizing a worker for being temporarily totally disabled.

In *Gilliland*, *supra*, the Board took the position that failure to file an application within 30 days after the period of disability precludes a right to benefits. The court, however, deemed this position arbitrary and capricious because the petitioner offered valid reasons for a five-month delay, such as an expectation that he would soon be re-employed. In *Bodnarchuk*, *supra*, the filing of an unemployment petition more than two years after disability commenced did not automatically disqualify the petitioner: the statute focuses not on the date the claim is filed but on the time disability ends.

V. Permanent Partial Disability

A. Permanent Partial Disability Defined

According to N.J.S.A. 34:15-36:

> "Disability permanent in quality and partial in character" means a permanent impairment caused by a compensable accident or compensable occupational disease, based upon demonstrable objective medical evidence, which restricts the function of the body or of its members or organs; included in the criteria which shall be considered shall be whether there has been a lessening to a material degree of an employee's working ability. Subject to the above provisions, nothing in this definition shall be construed to preclude benefits to a worker who returns to work following a compensable accident even if there be no reduction in earnings. Injuries such as minor lacerations, minor contusions, minor sprains, and scars which do not constitute significant permanent disfigurement, and occupational disease of a minor nature such as mild dermatitis and mild bronchitis shall not constitute permanent disability within the meaning of this definition.

These benefits are based upon a percentage of certain "scheduled" losses (*e.g.* a loss involving arms, hands, or legs) and "unscheduled" losses (e.g. a loss involving the back, lungs or heart).

In *Perez v. Pantasote, Inc.*, 95 N.J. 105 (1984), the Supreme Court established a two-prong test in determining whether or not a petitioner is entitled to a permanent partial disability award. First, the petitioner must make a "satisfactory showing of demonstrable objective medical evidence of a functional restriction of the body, its members or organs." *Id.* at 116. Second, a petitioner also "must establish either that he has suffered a lessening to a material degree of his working ability or that his disability is otherwise significant and not simply the result of a minor injury." *Id.* at 118. The second prong is not an overall view of the employee's abilities in life, but instead a specific look at the capability to perform specific work duties. In other words, is there "an appreciable impairment of the employee's ability to work." *Id.* at 117

For a good discussion of this statute, read *Perez v. Pantasote, Inc.*, 95 N.J. 105, 111 (1984) and *Saunderlin v. E.I. duPont Co.*, 199 N.J. Super. 145 (App. Div. 1985), *aff'd.*, 102 N.J. 402 (1986). See also *Colon v. Coordinated Transport, Inc.*, 141 N.J. 1 (1995). In *Saunderlin*, the court held that although the statutory requirement of (objective medical evidence) applies to both psychiatric and physical permanent partial disability claims, objective medical evidence of psychiatric disability is not coterminous with, and need not be, objective medical evidence of physical disability. The distinction between objective and subjective medical evidence is independent professional analysis and not the bare statement of the patient.

Permanent partial disability as defined in 34:15-36 was amended on January 1, 1980 to include only a permanent impairment caused by a compensable accident or compensable occupational disease, *based upon demonstrable objective medical evidence*, which restricts the function of the body or of its members or organs. It should be noted that the requirement that permanent partial disability be shown by "demonstrable objective medical evidence" does not apply retroactively. Symptoms that are subjective in nature are compensable under prior law when attributable to occupational disease exposures that occurred prior to January 1, 1980. See *Rybski v. Johns-Manville Products Corp.*, 185 N.J. Super. 433 (App. Div. 1982).

B. Objective Evidence Requirements

Objective evidence is required to establish a claim for partial permanent disability. N.J.S.A. 34:15-36 defines partial permanent disability as a permanent impairment caused by accident or occupational disease "based upon demonstrable objective medical evidence" indicating a restriction in bodily function. Subjective evidence alone is not sufficient to sustain a claim. The phrase "objective evidence" takes on different meanings depending upon the given context. A medical opinion derived from a professional evaluation of a patient's state of mind may be deemed objective in a psychiatric claim but subjective in a claim for physical disability. Furthermore, certain occupational claims require objective evidence of causation in addition to objective evidence to establish permanent partial disability.

Where a worker's physical condition is in dispute, MRI or X-ray results will satisfy the objective evidence requirement. There must be a level of professional analysis beyond the mere subjective complaints of the petitioner. *Colon v. Coordinated Transport, Inc.*, 41 N.J. 1,10 (1995). And if the alleged disability or impairment is close to being a "minor injury," the professional analysis must be more extensive. *Id.* Range-of-motion tests registering restrictions in a worker's ability to move ordinarily will be insufficient: "Most range-of motion test results are subjective responses of the patient, especially when there is no physical manifestation that is observable physical manifestation that is observable by a medical expert." *Id.*

Professional analysis in psychiatric claims, as opposed to physical claims, depends upon "analysis of the subjective statement of the patient." *Saunderlin v. E.I. duPont Company*, 102 N.J. 402, 412 (1986). Though subjective evidence requires analysis beyond mere subjective statements and will not be present when the physician simply "parrots" the patient's complaints, objective evidence of a physical manifestation is not required in psychiatric claims. *Id.* at 412, 416. The distinction between objective and subjective "is not between physical and mental (or body and mind) but between independent professional analysis and the bare statement of the patient." Interposition of a professional judgment between a subjective statement and an award of disability does not involve exclusion of the subjective statement: any medical examination "must begin with the [patient's] subjective statement." In physical disability claims, medical analysis often goes beyond subjective statements by virtue of clinical and laboratory tests. But in psychiatric claims, diagnostic criteria include descriptions of states of mind "discoverable only through" the subjective

statement. *Id.* at 412-414. Reasoned analysis of the subjective statement of a psychiatric patient is objective within the meaning of N.J.S.A. 34:15-36. *Id.* at 313-314. But where petitioners saw their psychiatrists only once upon recommendation of their attorneys and the psychiatric reports merely dressed the complaints in "psychiatric nomenclature," the claims for psychiatric disability were dismissed. *Id.* at 418-419.

C. Medical Examinations

The process of determining permanent partial disability starts with medical examinations. Before setting up examinations, however, the petitioner's attorney must make sure that no further treatment is necessary, and that all records of the workers' medical treatment are sent to the examining physician for review. Otherwise the examining physician may reach conclusions without considering relevant evidence. Such conclusions may understate a worker's permanent disability or render less credible a favorable estimate. A medical report on permanency must include an assessment of the petitioner's disability based on a percentage assigned by the doctor as well as a statement of causal connection between the accident or occupational exposure and the petitioner's job. There should be a separate estimate of disability for each part of the body affected. The accident or disease in question should if possible be apportioned from any prior and/or subsequent accidents or diseases.

Medical examinations to determine permanent disability may not be undertaken until 6 months (26 weeks) after the employee's authorized medical treatment ends, or 6 months from the date the employee returns to work, whichever is earlier. N.J.S.A. 34:15-16 This delay is built into the system to insure that the employee's condition remains permanent and stationary before final determinations of permanent disability are made. After examinations are finished, the parties meet in court for a pretrial, which typically includes a discussion and negotiation session between the attorneys in the judge's chambers. The worker's attorney should know if the defense is ready to discuss settlement, in which case the worker will be asked to appear in court to approve or reject the settlement offer. If an agreement is reached, the worker will take the witness stand to indicate he understands and approves of the settlement. Cases that cannot settle are set for trial.

If the worker's skills are limited and the job imposes significant physical demands, the worker's attorney should advise the examining physician to evaluate the worker in light of these circumstances. A floor tile installer has to use his legs more to perform his job than a programmer who sits in a chair for most of the day. And if the tile installer's injury prevents him from performing manual labor in the future, he will find it more difficult to get an office job than the computer programmer or some other college-educated worker. Of course, if the programmer injures a hand or wrist, or is afflicted by carpal tunnel syndrome, her ability to earn a living may be affected in a way comparable to a floor tile installer with an identical injury. Unless instructed otherwise, petitioners' examining doctors often fail to note factors such as the nature of the petitioner's job and the petitioner's level of skill, which are relevant to ability to earn a living in other fields if a petitioner is totally disabled in a given occupation. A workers limited education, training, and experience must be

considered in a determination of permanent partial disability. *Perez v. Capital Ornamental Concrete Specialties*, 288 N.J. Super 359, 370 (App. Div. 1996).

Certain board-certified medical experts in New Jersey perform workers' compensation permanency exams and generate reports with little or no money required up front. For example Sall/Myers Medical Associates, with offices in North and Central New Jersey, is a group of forensic experts that accept court-ordered fees. Fees are set by the Judge of Compensation at the end of a case. Usually one half is paid by the petitioner and the other half by the respondent unless the claim is settled pursuant to N.J.S.A. 34:15-20, in which case the petitioner is usually ordered to pay the full examination fee. Pursuant to N.J.S.A. 34:15-64, an examining physician may be awarded a fee of not more than $400 for a medical exam and a fee of not more than $400 to appear in court. If testimony is needed, many of these forensic doctors accept court-ordered payment after the case is resolved.

Treating physicians are entitled to a greater fee under N.J.S.A. 34:15-64: $450 for a report, up to and including $2500 for court testimony (at not more than $300 per hour), and up to and including $1500 for deposition testimony (at not more than $300 per hour). Despite a recent increase (as reflected above) in the fees allowed for both examining and treating physicians, some treating physicians, especially those not authorized to treat by the compensation carrier, may be reluctant to appear at workers' compensation trials.

The numbers used by examining doctors refer to charts published yearly by the New Jersey Division of Workers' Compensation. These charts assign dollar values to percentages of disability ranging form 1% to 100%. In the example just used, if the accident occurred in the year 2000, 5% of partial/total translates in dollars to $4,530.00, and 45% of partial/total disability translates to $92,000. (These figures assume that the worker is earning a certain minimum weekly wage, which if not reached would lower the amount of recovery.) Different rates apply to different categories of injuries. A back injury is classified as "partial/total." This classification mandates a greater figure in dollars for any given percentage of disability than, for example, an injury to an arm or a leg. Whereas an award of 20% of partial/total is worth $19,536.00, an award of 20% partial disability for a leg is worth $9,513.00; 20% for a hand is worth $7,399.00; and for an ear, $1,812.00.

D. Rate of Payment Depends on Body Part Injured

As previously stated, two new rate schedules have been provided in the amendment to 34:15-12 concerning permanent partial disability. The SAWW formula is naturally superior to the old fixed rates from an employee's perspective as it allows for a settlement responsive to the annual inflation rate, albeit two years behind. The legislature failed to exercise its option and enact the second schedule, completely based upon SAWW, before January 1, 1982. Counsel fees under the statute thus remain at 20% of the award.

The present rate schedule for permanent partial disability provides that weekly compensation shall be based upon 70% of the worker's weekly wages at the time of the injury, subject to a maximum compensation of 75% of the SAWW and a minimum of $35 per week.

If an employee works less then the customary number of hours in an industry, then the wage must be reconstructed. Take the hourly rate of the employee and multiply it with the customary number of hours to determine a salary. Then take 70% of that product to establish the rate. Note that if an employee's position normally calls for fewer hours, such as a school bus driver, the wage is not reconstructed. Typically, however, the rate usually begins at the base rate of 20% of SAWW and builds from there, since most salaries will command at least that rate.

Under the old law, the maximum rate of compensation for permanent partial disability was $40 per week and the minimum was $10 per week. The present schedule further provides that the amount of awards up to and including 180 weeks was to remain at the figures listed in the "Disability Wage and Compensation Schedule" provided in the amendment of 34:15-12 until January 1, 1982 when the second schedule took effect. The charts published by New Jersey Manufactures Insurance Company summarize the statute as far as the number of weeks paid for different disabilities and the percentage of disabilities. This chart, therefore, should not automatically be relied on, and the investment in a pocket calculator would be a wise decision for the compensation lawyer. The following is a reprint of N.J.S.A. 34:15-12(c) and a discussion of the statute. A discussion of how to utilize the New Jersey Manufacturers Insurance Company charts appears in the next section.

N.J.S.A. 34:15-12(c) is reprinted below with the author's notes as follows:

> For disability partial in character and permanent in quality, weekly compensation shall be paid based upon 70% of the weekly wages received at the time of the injury, subject to a maximum compensation per week of 75% of the Statewide average weekly wages (SAWW) earned by all employees covered by the "unemployment compensation law" (R.S. 43:21-1 et seq.) and paid in accordance with the following "Disability Wage and Compensation Schedule" and a minimum of $35.00 per week. The amount of awards for up to and including 180 weeks shall remain at the amounts listed in the "Disability Wage and Compensation Schedule" until January 1, 1982. On January 1, 1982, the dollar amounts listed for the first 180 weeks in the "Disability Wage and Compensation Schedule" shall be replaced by the following percentages of the Statewide average weekly wage:
>
> $47-20% of the Statewide average weekly wages, hereinafter referred to as "SAWW"
> $49-21% SAWW
> $51-22% SAWW
> $54-23% SAWW
> $56-24% SAWW
> $59-25% SAWW
> $61-26% SAWW
> $63-27% SAWW
> $66-28% SAWW
> $68-29% SAWW
> $70-30% SAWW
> $73-31% SAWW
> $75-32% SAWW
> $77-33% SAWW
> $80-34% SAWW
> $82-35% SAWW

AUTHOR'S NOTE: The above percentages of SAWW correspond to a dollar value. When you see the dollar value listed in the Disability Wage and Compensation Schedule on the next page, you must replace the dollar value with the above percentage of SAWW. For example, the first 90 weeks of compensation is not worth $47, but 20% of SAWW. In 1999 SAWW is $719.15, 20% of this is $144. Thus in 1999, the first 90 weeks are worth $144 per week.

In the event that the 20% limitation for attorney fees as set forth in R.S. 34:15-64 is reduced to a maximum of 10% before January 1, 1982, the above schedule shall be effective within 60 days of such reduction in attorney fees. All amounts in the "Disability Wage and Compensation Schedule" shall be rounded out to the nearest dollar. When a claim petition alleges more than one disability, the number of weeks in the award shall be determined and entered separately for each such disability and the number of weeks for each disability shall not be cumulative when entering an award.

DISABILITY WAGE AND COMPENSATION SCHEDULE

Weeks of Allowable Compensation	Maximum Weekly Compensation Applicable
First 90 weeks	$47
91 through 96 weeks	$49
97 through 102 weeks	$49 for the first 96 weeks then $51 for each remaining week
103 through 108 weeks	$49 for the first 96 weeks then $51 for the next 6 weeks then $54 for each remaining week
109-114 weeks	$49 for the first 96 weeks then $51 for the next 6 weeks then $54 for the next 6 weeks then $56 for each remaining week
115-120 weeks	$49 for the first 96 weeks then $51 for the next 6 weeks then $54 for the next 6 weeks then $56 for the next 6 weeks then $59 for each remaining week
121-126 weeks	$49 for the first 96 weeks then $51 for the next 6 weeks then $54 for the next 6 weeks then $56 for the next 6 weeks then $59 for the next 6 weeks then $61 for each remaining week
127-132 weeks	$49 for the first 96 weeks then $51 for the next 6 weeks

then $54 for the next 6 weeks
then $56 for the next 6 weeks
then $59 for the next 6 weeks
then $61 for the next 6 weeks
then $63 for each remaining week

133-138 weeks ... $49 for the first 96 weeks
then $51 for the next 6 weeks
then $54 for the next 6 weeks
then $56 for the next 6 weeks
then $59 for the next 6 weeks
then $61 for the next 6 weeks
then $63 for the next 6 weeks
then $66 for each remaining week

139-144 weeks ... $49 for the first 96 weeks
then $51 for the next 6 weeks
then $54 for the next 6 weeks
then $56 for the next 6 weeks
then $59 for the next 6 weeks
then $61 for the next 6 weeks
then $63 for the next 6 weeks
then $66 for the next 6 weeks
then $68 for each remaining week

145-150 weeks ... $49 for the first 96 weeks
then $51 for the next 6 weeks
then $54 for the next 6 weeks
then $56 for the next 6 weeks
then $59 for the next 6 weeks
then $61 for the next 6 weeks
then $63 for the next 6 weeks
then $66 for the next 6 weeks
then $68 for the next 6 weeks
then $70 for each remaining week

151-156 weeks ... $49 for the first 96 weeks
then $51 for the next 6 weeks
then $54 for the next 6 weeks
then $56 for the next 6 weeks
then $59 for the next 6 weeks
then $61 for the next 6 weeks
then $63 for the next 6 weeks
then $66 for the next 6 weeks
then $68 for the next 6 weeks
then $70 for the next 6 weeks
then $73 for each remaining week

157-162 weeks ... $49 for the first 96 weeks
then $51 for the next 6 weeks
then $54 for the next 6 weeks

then $56 for the next 6 weeks
then $59 for the next 6 weeks
then $61 for the next 6 weeks
then $63 for the next 6 weeks
then $66 for the next 6 weeks
then $68 for the next 6 weeks
then $70 for the next 6 weeks
then $73 for the next 6 weeks
then $75 for each remaining week

163-168 weeks ... $49 for the first 96 weeks
then $51 for the next 6 weeks
then $54 for the next 6 weeks
then $56 for the next 6 weeks
then $59 for the next 6 weeks
then $61 for the next 6 weeks
then $63 for the next 6 weeks
then $66 for the next 6 weeks
then $68 for the next 6 weeks
then $70 for the next 6 weeks
then $73 for the next 6 weeks
then $75 for the next 6 weeks
then $77 for each remaining week

169-174 weeks ... $49 for the first 96 weeks
then $51 for the next 6 weeks
then $54 for the next 6 weeks
then $56 for the next 6 weeks
then $59 for the next 6 weeks
then $61 for the next 6 weeks
then $63 for the next 6 weeks
then $66 for the next 6 weeks
then $68 for the next 6 weeks
then $70 for the next 6 weeks
then $73 for the next 6 weeks
then $75 for the next 6 weeks
then $77 for the next 6 weeks
then $80 for each remaining week

175-180 weeks ... $49 for the first 96 weeks
then $51 for the next 6 weeks
then $54 for the next 6 weeks
then $56 for the next 6 weeks
then $59 for the next 6 weeks
then $61 for the next 6 weeks
then $63 for the next 6 weeks
then $66 for the next 6 weeks
then $68 for the next 6 weeks
then $70 for the next 6 weeks

then $73 for the next 6 weeks
then $75 for the next 6 weeks
then $77 for the next 6 weeks
then $80 for the next 6 weeks
then $82 for each remaining week

181-210 weeks ... 35% of the Statewide average weekly wages, hereinafter referred to as "SAWW"
211-240 weeks ... 40% of SAWW
241-270 weeks ... 45% of SAWW
271-300 weeks ... 50% of SAWW
301-330 weeks ... 55% of SAWW
331-360 weeks ... 60% of SAWW
361-390 weeks ... 65% of SAWW
391-420 weeks ... 70% of SAWW
421-600 weeks ... 75% of SAWW

AUTHOR'S NOTE: Twenty-three parts of the body, such as the hand, arm, leg, foot, etc., are contained on a schedule in subsection c of N.J.S.A. 34:15-12, below, detailing the weeks of compensation to be paid for the loss of such parts. Where multiple parts of the body are involved, or there is an injury to a part of the body which is not enumerated in any of the statutory categories, then Section 22 of N.J.S.A. 34:15-12 provides that the compensation is to be based on the percent of disability determined in relation to 600 weeks. In other words, if a worker suffers a lumbar strain, there is no member lost or specific statutory provision in the schedule for that injury. Therefore, if the judge determines a 10% lumbar strain of a permanent partial nature, you take 10% of 600 weeks, and come up with 60 weeks times the $144 rate (as provided by the January 1, 1999, Schedule, 20% of SAWW) for a total of $8,640 permanent partial disability.

Said compensation shall be expressly subject to the provisions of R.S. 34:15-37, and shall be paid to the employee for the period named in the following schedule (paragraphs 1 to 23 inclusive):

Lost Member	Number of Weeks' Compensation
1. Thumb	75
2. First finger (commonly called index finger)	50
3. Second finger	40
4. Third finger	30
5. Fourth finger (commonly called little finger)	20
6. Great toe	40
7. Toe, other than a great toe	15
8. Hand, or thumb and first and second fingers (on one hand) or four fingers (on one hand)	245
9. Arm	330
10. Foot	230
11. Leg	315

AUTHOR'S NOTE: As reprinted above, in the statute the first member lost that appears is the thumb, for which there is awarded 75 weeks compensation. If the doctor estimates that the worker has 10% residual disability in the thumb, the worker gets 10% of 75 weeks, or 7.5 weeks times $144 for a total of $1,080. Similarly, all the fingers are listed, and each represents a certain number of weeks. If the whole finger is lost, you get the full amount of weeks. On the other hand, if there is a percentage of disability in the finger, you take that percent times the weeks, and then multiply it by the compensation rate.

> 12. The loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of 1/2 of such thumb or finger, and the compensation shall be for 1/2 of the periods of time above specified. The loss of any portion of the thumb or any finger between the terminal joint and the end thereof shall be compensated for a like proportion of the period of time prescribed for the loss of the first phalange of such member.

AUTHOR'S NOTE: Section 12 indicates what is considered loss of a finger or a thumb. That section provides the loss of the first phalange (the space from the tip of the finger to the first joint) shall be considered loss of one-half of the thumb or finger, and compensation shall be for 50% of the finger or thumb. That section further provides that the loss of any portion of the thumb or finger between the terminal joint and the end thereof shall be compensated for a like portion of the period of time prescribed for the loss of the first phalange. What this simply means is that if you lose half your phalange, you get one-quarter of the finger. In other words, the first finger, commonly called the index finger is worth 50 weeks. If you lose it between the tip and the first phalange (joint), you get 12½ weeks of compensation. If you lose it to the first phalange, you would get 25 weeks of compensation. Section 13, reprinted below, covers loss of any portion of the second phalange; you get compensation for the entire finger, i.e., 50 weeks. The same principles are applicable in Sections 14 and 15, for the loss of toes.

> 13. The loss of the first phalange and any portion of the second shall be considered as the loss of the entire finger or thumb, but in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

> 14. The loss of the first phalange of any toe shall be considered to be equal to the loss of 1/2 of such toe, and compensation shall be for 1/2 of the period of time above specified.

> 15. The loss of the first phalange and any portion of the second shall be considered as the loss of the entire toe.

> 16. For the loss of vision of an eye, 200 weeks.

AUTHOR'S NOTE: Section 16 deals with loss of vision of the eye, and each eye is compensated by 200 weeks. Let me give you a hypothetical question: Assume a man gets

allergic dermatitis in his eye, which annoys him and prevents him from coming to work whenever the condition arises. His eyes redden, itch, and water; however, his vision is perfect. Is he entitled to any compensation assuming the dermatitis is work connected? The answer is that in New Jersey he is certainly entitled to compensation, but it would be based on Section 22 as a part of permanent partial disability. The best rule for dealing with section 22 is that if the injury does not appear in any of the other 22 sections, then it is probably subject to a percentage of 600 weeks. Of course, he would also be entitled to temporary disability compensation for the time his condition causes wage loss. Section 22 is reprinted below.

> 17. For the enucleation of an eye, 25 weeks, in addition to such compensation, if any, as may be allowable under paragraph 16 of this subsection.

AUTHOR'S NOTE: Under Section 17, if the eye is enucleated or taken out of the socket, then an additional 25 weeks over and above the 200 weeks for loss of an eye is awarded.

> 18. For the loss of a natural tooth, four weeks for each tooth lost.

> 19. For the total loss of hearing in one ear, 60 weeks. For the total loss of hearing in both ears by one accident, 200 weeks.

> 20. The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof as the result of any one accident, shall constitute total and permanent disability to be compensated according to the provisions of subsection b. of this section.

> 21. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand and amputation at the elbow shall be considered equivalent to the loss of the arm. Amputation between the knee and ankle shall be considered as the equivalent of the loss of a foot, and amputation at the knee shall be considered equivalent to the loss of the leg. An additional amount of 30% of the amputation award shall be added to that award to compute the total award made in amputations of body members, provided, however, that this additional amount shall not be subject to legal fees.

AUTHOR'S NOTE: The amputation enhancement in the statutes for amputation of a body member does not include fingers. *Trinter v. Esna Division,* 186 N.J. Super. 316 (App. Div. 1982). Also note, where an employee has both feet amputated in an industrial accident, he is entitled to a thirty percent amputation bonus in addition to an award of 100 percent of total. *Kitt v. Foster Canning Co. Inc.*, 198 N.J. Super. 388 (App. Div. 1985).

> 22. In all lesser or other cases involving permanent loss, or where the usefulness of a member of any physical function is permanently impaired, the duration of compensation shall bear such relation to the specific periods

> of time stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule. In cases in which the disability is determined as a percentage of total and permanent disability, the duration of the compensation shall be a corresponding portion of 600 weeks. Should the employer and employee be unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, either party may appeal to the Division of Workers' Compensation for a settlement of the controversy.

Hearing Loss and Tinnitus. Workers' compensation law distinguishes among occupational hearing loss, traumatic hearing loss, and tinnitus (a ringing in the ears).

The Occupational Hearing Loss Act (OHLA), N.J.S.A. 34:15-35-10 to 35-22, enacted in 1979, restricted the definition of occupational hearing loss to damage to "the nerve of hearing in the inner ear" (otherwise known as sensorineural hearing loss) but not the outer and middle ear. *Id.* at 34:15-35-11. To qualify as occupational, the hearing loss or deafness must not be caused by sudden or brief exposures, such as an explosion. *Id.*. The loss must be permanent, bilateral, and "due to prolonged, habitual, exposure to hazardous noise in employment." *Id.* Such loss is characterized by a gradual progression over a period of years, affecting both ears in an equal or near-equal manner. *Id.* Habitual exposure involves exposure beyond "the allowable daily dose for at least three days per week over at least 40 weeks per year. *Id.* Noise becomes hazardous when it exceeds the permissible daily exposure set forth in the statute: 90 dBA for eight hours, 95 dBS for four hours, 100 dBS for two hours, etc. Hearing loss is measured by audiometric testing using instruments meeting criteria set forth in *N.J.S.A.* 34:15-35.16 and performed by persons qualified under the requirements set forth in *N.J.S.A.* 34:15-35.17. The effect of these stringent requirements, as intended by the statute, is to exclude claims of minimal hearing loss while, at the same time, to provide increased compensation for more substantial claims.

N.J.S.A. 34:15-35.12 delineates a formula that governs the degree of binaural hearing loss awarded in occupational claims. From an "average hearing threshold" is subtracted 30 dB from each ear. The decibel amount is multiplied by 1.5% per ear. The smaller percentage, the one from the better ear, is multiplied by 5. To this product is added the larger number of the poorer ear. The resulting number is then divided by 6, which yields the degree of binaural (bilateral) hearing disability. If the better ear has a hearing loss of 30 dB or less, measured by an audiometer calibrated by the American National Standards Institute (ANSI) standards, the hearing loss is not compensable.

Evidence of decibel levels alleged responsible for hearing loss need not be introduced by an employee attempting to prove occupational hearing loss. *Bronico v. Baker Chemical Company*, 209 N.J. Super. 220 (App. Div. 1986) found that such a requirement is unreasonable "in view of the difficulty, if not impossibility, of an employee conducting the necessary tests and surveys in the workplace." *Id.* at 225. However, the employer may avoid liability by proving that noise in the workplace did not go beyond the statutory limits. Such proof would have to adhere to the procedures set

forth in See N.J.A.C. 7:29B-1.1 *et seq*. If the employer satisfies this burden, it will be acquitted of liability even if the noise caused the hearing loss alleged.

Hearing loss caused by a sudden exposure such as explosion is governed by the general workers' compensation act provisions dealing with accidental injuries. N.J.S.A. 34:15-35-11(a).

Permanent disability in both occupational and traumatic hearing loss is limited to a 200-week maximum benefit schedule, though occupational claims are processed through the OHLA formula. Under the 200-week schedule, occupational and traumatic hearing loss receive proportionally one third of the rate available under the partial total category applicable to injuries not specified in the charts, such as back, neck hip, shoulder, and psychiatric injuries. Tinnitus, however, is compensated as partial total disability because rather than hearing loss, it is a "phantom" or "self-generated" noise that interferes with the hearing function. *Schorpp-Replogle v. New Jersey Manufacturers Insurance Company*, 2007 W.L. 2162164 (App. Div. 2007).

In *Schorpp-Replogle*, the claimant was exposed to at least 13 months of loud construction noise at her office, where her job involved speaking on the phone with customers. As a result, she sustained some hearing loss, though below the requisite amount required under N.J.S.A. 34:15-35.12. Nevertheless she developed tinnitus, confirmed by audiogram and a tone-matching test. The tinnitus distracted her and made it difficult for her to speak on the phone. Because tinnitus does not fit within the strict terms of the OHLA, the court reasoned, it is not sensorineural hearing loss. Considering the annoyance, interference, and distraction caused by the noise, the Appellate Division upheld an award of 5% of total.

E. New Jersey Manufacturers Insurance Company Charts

New Jersey Manufacturers Insurance Company produces charts to assist in the calculation of awards. Every year they publish new charts to reflect any changes in the statute and in SAWW. The current chart is reprinted each year in the *New Jersey Lawyers Diary and Manual*. If you contact New Jersey Manufacturers they will provide you with the series of charts dating back to the 1970s. A complete set of charts is included in the Appendices.

The "front of the chart" entitled *Schedule of Disabilities and Maximum Benefits Exclusive of Amputation and Enucleation* is an illustration of N.J.S.A. 34:15-12. It calculates the value of the scheduled losses. The losses are based on the statutory value set for the various parts of the body. Across the top of the chart lists the hand, arm, thumb, first through fourth finger, leg, foot, great toe, other toe, eye, one ear, two ears and the second to last column is partial total that includes all other losses, such as an injury to the back.

Excerpt from the "Front of the Chart" for 1999

PERCENT	**HAND** **245 WEEKS**
1	2.4500 352.80
1 ½	3.6750 529.20
2	4.9000 705.60
2 ½	6.1250 882.00

The percent column on the left is also printed on the last column of the complete chart. (Note that the above is only an excerpt from the complete chart.) The percent represents the percentage of disability. The other columns on the chart show the percentage in terms of weeks and total benefits. The top figure in each box represents weeks, and the lower figure is the dollar benefits.

For example a 2 percent disability of the hand in 1999 is worth 4.9 weeks at $705.60. In the above excerpt, it is underlined. The chart does the calculation for you. Without the chart, it would have to be calculated as follows. A disability to the hand is valued at 245 weeks. That is also indicated in the box entitled "HAND." So, 2 percent is multiplied by 245 weeks (.02 * 245 weeks = 4.9 weeks). 4.9 weeks is calculated at a rate of 20% of SAWW or $144. $144 multiplied by 4.9 weeks produces an award of $705.60. Thus, the chart gives you the amount of weeks and the total award without having to manually calculate it.

Thus, if the percentage appears in the chart for the member injured or for the partial total, you can simply use the "front of the chart."

Excerpt from the "Back of the Chart" for 1999

WEEKS	90	90	**97**	103	109	115	121
		96	**102**	108	114	120	126
MAX. DOLLAR AMT.	12,960	14,496	**15,444**	16,434	17,472	18,552	19,647
90 20% OF SAWW	144						
91 TO 96 21% OF SAWW	144	151					
97 TO 102 22% OF SAWW	151	151	158				
103 TO 108 23% OF SAWW	151	151	158	**165**			
109 TO 114 24% OF SAWW	151	151	158	165	173		
115 TO 120 25% OF SAWW	151	151	158	165	173	180	
121 TO 126 26% OF SAWW	151	151	158	165	173	180	187

Using this portion of the "back of the chart," note how 105 weeks are calculated. Find the column at the top of the chart indicating weeks 97 - 102. It has been bolded. The first 102 weeks are worth $15,444.00 (as totaled for you in the third row). But, three more weeks must be added in order to reach the total of 105 weeks.

Go to the next column entitled 103. Follow that column down to where it meets the 103-108 coming from the left. This has been bolded too. The number is $165. Multiply this number by the three additional weeks for a product of $495 ($165 * 3 weeks = $495 per week). Add $495 to $15,444 (totaled for you in the prior column) to get an award of $15,939. This is paid out over 105 weeks at $151.80 per week ($15,939 / 105 weeks = $151.80 per week).

This method of calculation works for any amount of weeks between 91 to 180. Remember that 90 weeks or less, and 181 weeks or more are simply calculated with one rate. For example, refer to the excerpt of the "back of the chart" again, and note the first 90 weeks are calculated at 20% of SAWW or $144 per week for 1999.

If over 180 weeks, the loss is calculated as follows:

Number of weeks	% of SAWW	1999 Weekly Maximum Dollar Amount*
181 to 210	35%	$252
211 to 240	40%	$288
241 to 270	45%	$324
271 to 300	50%	$360
301 to 330	55%	$396
331 to 360	60%	$431
361 to 390	65%	$467
391 to 420	70%	$503
421 to 600	75%	$539

*SAWW for 1999 equals $719.15. Also note that 600 weeks is the maximum amount of weeks awarded.

The statute provides that the first 180 weeks of award are compensated on an increasing sliding scale, and that an award from 181 to 210 weeks would be compensated at thirty-five percent of the state average weekly wage, requires that an award of 200 weeks be compensated at thirty-five percent of state average weekly wage for the entire 200 week period. *Heaton v. Jersey Central Power and Light Co.*, 97 N.J. 128 (1984).

F. Stacking Multiple Injuries

Pursuant to the Workers' Compensation Amendment of 34:15-12 when a claimant alleges more than one disability, the number of weeks in the award is determined and entered separately. Because each injury must be determined individually it appears that New Jersey no longer recognizes the "whole man theory" approach to workers' compensation.

An interesting interpretation of the statute involved a provision of N.J.S.A. 34:15-12(c), which provided "where a claim petition alleges more than one disability, the number of weeks in the award shall be determined and entered separately for each such disability and the number of weeks for each disability shall not be cumulative when entering an award." This language gave rise to the "stacking" dispute which resulted in the New Jersey Supreme Court decision in *Poswiatowski v. Standard Chlorine Chemical Co.*, 96 N.J. 321 (1984), where the Court held that multiple separate injuries arising out of the same accident were to be compensated cumulatively, not separately, under the revised schedule of payments that increased weekly awards as percentage of disability increased.

Though *Poswiatowski* holds that multiple separate injuries arising from the same accident may be stacked, it also cautions that the individual injured worker should be treated as a whole and that unreasonable results are to be avoided:

> Compensation judges must make findings that reflect an evaluation of the multiple injuries in determining whether there is a compensable disability; they must treat the individual as a whole in determining the statutory disability. The method is familiar: "It is not to be solved by adding up the fractional parts, but upon the basis of the percentage of total and permanent disability reasonably found to be produced by the several injuries considered collectively and with due regard to their cumulative effect." *Orlando v. F. Ferguson & Son*, 90 *N.J.L.* 553, 557-58, 102 *A.* 155 (E. & A.1917) (evaluating loss of two or more major members). [. . .]
>
> We need not be concerned that a series of niggling injuries will enable a worker to obtain an unwarranted award. The breakoff point never escalates dramatically until the 30% plateau is reached. We are confident that compensation judges can evaluate the total disability and give proper weight to the multiple injuries when fashioning an award; they will not allow the random presence of stray weeks attributable, let us say, to an extra lost tooth (4 weeks), artificially to push a case over the top. They are as aware as counsel of the sharp break in benefits after 180 weeks. Employers need not fear aberrational results because of our holding that stacking is required. [*Id.* at 330, 333-334.]

In *Ventre v. CPC International Inc.*, 285 N.J. Super. 567 (App. Div. 1995), the Appellate Division criticized the compensation judge for failing to "make a careful finding as to the combined disabling effect of the several injuries, large and small, rather than merely adding them together to produce a cumulative total which vaulted Ventre into a higher range of recovery." *Id.* at 573. Ventre's sizable award amounted to over 50% of total. The Appellate Division, however, looked at him as a whole and found that his combined injuries did not add up to such a significant level of disability. Hence it reversed and remanded the findings of the compensation judge. The Appellate Division's reasoning, set forth in part below, shows that stacking, a powerful tool for petitioners, is subject to practical limits under certain circumstances:

> CPC contends that there was insufficient weighing of the true cumulative effect of Ventre's injuries from the accident. Ventre is sixty-four and working full time at his old job, albeit with assistance when heavy carrying is required. He has some observable facial scarring, described by the judge; some degree of high frequency hearing loss requiring the volume of his television set to be turned higher; clicking of his jaw consistent with a TMJ problem (but no other TMJ-type problems); and possible tinnitus (the objective basis for this finding is not apparent to us). One hand is weaker than before, so that Ventre says he cannot do carpentry around the home, although he remains employed as a carpenter at CPC. He complains of

some pain. The lost teeth have been restored. The fractured mandible has presumably healed, as his jaw and mouth look and function normally.

While we do not presume to substitute our judgment for the recognized expertise of the judge of compensation, we are unable to ascertain any basis for the 303-1/4 weeks awarded by the judge, other than a simple arithmetic accumulation of the separate awards. The opinion does not "make a judgment about the extent of impairment resulting from the combined injuries without being limited by the statutory schedules," as required by *Poswiatowski.* Were a very high degree of permanent disability (more than fifty percent of total) readily apparent to us in the record presented, we might simply view this as a harmless omission. However, while Ventre's injuries were unquestionably of sufficient moment to merit a substantial compensation award, it is not so readily apparent to us that the separate disabilities found by the judge, even if supported by adequate objective medical proofs, have cumulatively produced total permanent disability exceeding fifty percent of total, i.e., a "severe loss of functional ability."

By way of illustration that this concern is well founded, we note that when the statutory award of four weeks for Ventre's loss of his now-restored two teeth was routinely added to the other awards, it brought the cumulative total over the 301-week line set by *N.J.S.A.* 35:15-12c for receipt of fifty-five percent of the SAWW. This alone produces a $13,000 annual difference in compensation. The *Poswiatowski* Court's confidence, quoted above, that the random presence of stray weeks occasioned by its identical tooth example would not be allowed artificially to escalate disability awards, can only be justified by careful adherence to the requirement of focusing award findings upon the true cumulative loss of functional and working ability objectively supported by the record. [*Id.* at 573-574, citations omitted.]

The following example illustrates the net effect of stacking. In 1999, a petitioner was hurt in one accident, receiving three injuries as follows: 12½% partial total for an injury to the back, 12½% hand and 2½% leg.

Injury	Maximum number of weeks allowed per statute	Percent of injury * Maximum number of weeks	Value Calculated at $144 per week
12½% partial total	600 weeks	75 weeks	$10,800
12½% hand	245 weeks	30.625 weeks	$4,410
2½% leg	315 weeks	7.875 weeks	$1,134
TOTALS		113.50	$16,344

$16,344 would be the value of the overall disability if the injuries were **not** stacked. Each injury is calculated separately at the lowest rate. However, since *Poswiatowski,* the disabilities are cumulative, thus the award is calculated off of the total amount of weeks for each injury added together. The total number of weeks in this example is 113.50 which yields the greater award of $17,385.50. (Looking at the back of the 1999 chart, the first 108 weeks yields an award of $16,434 and the remaining 5.5 weeks (113.5 - 108) is multiplied by $173 which yields $951.50; thus the total award is $16,434 + $951.50 = $17,385.50.)

In the previous example, there was a difference of $1,041.50 between the stacked and non-stacked award. Under different circumstances, stacking of multiple injuries can produce a much greater difference. Using the 2001 chart, assume that a worker with a rate of compensation exceeding $394.00 per week gets an award of 40% of the leg plus 15% of partial/total for the right shoulder, plus 10% of partial/total for a psychiatric disability. Without stacking, the individual awards are $21,500.00 (126 weeks) for the leg, $14,220.00 (90 weeks) for the shoulder, and $9,480.00 (60 weeks) for the psychiatric disability. If simply added up in terms the dollars indicated on the front of the chart, the total award is $45,200.00. But if stacked, the award is calculated in terms of 276 weeks (126 plus 90 plus 60). As indicated, *supra*, after 180 weeks, awards are no longer calculated on an increasing sliding scale. Such awards are calculated using the full rate across-the-board as indicated in the applicable column on the reverse side of the chart, which in this example would be $394 per week, the rate applicable to awards ranging from 271 to 300 weeks. 276 weeks times $394.00 equals $108,744.00. This is $63,544.00 more than the award calculated without stacking.

Occupational claims are valued individually and not stacked unless the different occupational diseases manifest themselves at the same time. Then they are treated like a single accident affecting several body parts, in which case the award is stacked. *Kaneh v. Sunshine Bisquits*, 321 N.J. Super. 507 (App. Div. 1999).

1. *Kaneh*: Stacking Of Multiple Related Occupational Injuries And The Date Of Manifestation

In *Kaneh v. Sunshine Biscuits*, 321 N.J. Super 507 (App. Div. 1999), the compensation judge awarded the petitioner, an assembly line worker, permanent partial disability benefits for occupational repetitive stress injuries to his right shoulder, neck, and left shoulder, plus psychiatric disability for anxiety disorder and depression related to the orthopedic injuries. The orthopedic injuries were diagnosed at different times: first the neck; the right shoulder two months later; then the left shoulder 15 months after that. Nevertheless the judge staked the award so that the petitioner received $99,540 instead of the $38,649 he would have received had the injuries been compensated separately. In upholding the decision of the compensation judge, the Appellate Division points out that the date an injury is diagnosed does not necessarily determine the manifestation date "for compensation rate-setting purposes." On the contrary, manifestation can be determined in three ways: (1) medical examination; (2) manifest loss of physical function; or (3) incapacity to work. *Id.* at 503-504.

The date of manifestation was a central issue in *Kaneh* because the employer argued that under N.J.S.A. 34:15-12(c), when more than one disability is alleged in a claim petition, the number of weeks in the award must be entered separately for each disability and cannot be stacked. Furthermore, according to the employer, Mr. Kaneh's injuries were separate because they were diagnosed at different times.

Through reasoning somewhat unclear, the Appellate Division concluded that Mr. Kaneh's orthopedic injuries, though separately identifiable and diagnosed at different times, "manifested on the same date." *Id.* at 517. The lack of clarity in the court's rationale appears related to an overriding policy consideration, the policy which became effective with the revised workers' compensation statute in 1980: to "put more money into the hands of the more seriously injured workers." *Id.* at 504, quoting *Poswiatowski v. Standard Chlorine Chem. Co.*, 96 N.J. 321, 329 (1984). Hence the court emphasizes that if "separate injuries, although diagnosed at different times, are all related to the occupational hazard that caused the worker to leave the employment on a given date, it is logical to conclude that those injuries result in one disability for compensation purposes, just as separate injuries resulting from one traumatic event are treated as one disability, regardless of whether the injuries for which compensation is owed were diagnosed on a date later than the date of the traumatic event." *Kaneh* at 517, referencing *Poswiatowski* at 326-328. In a related observation, the court commented that the medical testimony "overwhelmingly demonstrates the interrelationship of the neck and shoulder injuries and, indeed, the problem of overlapping disabilities." *Kaneh* at 506-507.

Where multiple, cumulative, and interrelated injuries affect working ability, the disabilities should be evaluated as a whole, "with due regard to their cumulative effect," rather than "by adding up the fractional parts." *Id.* at 515. This may mean a lesser overall percentage of disability where the worker is assessed as a unit. As noted by the Appellate Division, Kaneh's medical expert found a disability of 90% when the parts were added; however his assessment of the working unit was 65% of total. Even with such a reduction, though, the petitioner comes out better than if the parts are aggregated without the benefit of stacking.

G. Schedule of Payment

Awards are paid in terms of both dollars and weeks. N.J.S.A. 34:15-12(c) refers to the payment of permanent partial disability as "weekly compensation." This is relevant to petitioners because not every one gets the full permanency award in lump sum. Assume a worker with a compensation rate of $350.00 per week who injures his back injury on January 1, 1998 and settles for 20% of partial total: $17,796.00 payable over 120 weeks at $148.30 per week. The worker will receive a lump sum only if 120 weeks have elapsed between the time of the award and the latter of either the accident or last payment of temporary disability. If the order approving settlement is signed on July 1, 1999 and the worker received 15 weeks of temporary disability, she has accumulated the right to a lump-sum payment of $9342.90: 63 weeks times $148.30 (78 weeks from January 1, 1998 to July 1, 1999 minus 15 weeks of temporary disability). The remaining $8453.10 will be paid weekly over the course of 57 weeks beginning on July 1, 1999.

H. Delays

Delays can occur at all stages of a workers' compensation case. One issue to be addressed with clients is the delay in obtaining permanent disability awards. As explained, *supra*, N.J.S.A. 34:15-16 precludes a permanency determination until 6 months (26 weeks) after the employee's authorized medical treatment ends, or 6 months from the date the employee returns to work, whichever is earlier. Clients should be informed that this delay is intended to protect workers from settling before the full extent of injuries is known. Other delays may be caused by the large caseloads of defense attorneys, insurance adjusters, defense doctors, and courts; and still others result from stalling tactics. Workers' attorneys should do everything possible to prevent unnecessary delays. At minimum, they should promptly set up examinations when the worker becomes eligible pursuant to N.J.S.A. 34:15-16, demand that the defense do the same, and attempt to settle the case when the medical evaluations are in. If the defense fails to promptly obtain a permanency examination, the worker's attorney, after one or two friendly reminders, should ask the court to intervene.

One unfortunate effect of delays is that some workers get worn down by the process and, especially those suffering financial hardship, may become willing to settle for less than their case might be worth. A good workers' compensation attorney will not only prevent delays whenever possible but also help clients understand the nature of the process from the start so that delays will be less baffling and, perhaps, more tolerable. Finally, a good attorney will avoid taking on too many cases so that sufficient time can be devoted to existing clients.

If a respondent fails to file a timely answer, a motion to enter default may be filed, and if a respondent fails to conduct timely permanency examinations, a motion to move the case to trial may be filed. Sample notices of motion certifications can be found in the Index of Forms. A generic Notice of Motion form is also available in the Index of Forms.

I. Hernia Cases

Very often hernia cases involve no award of permanent disability and merely involve obtaining the necessary authorization to surgically repair the hernia. The statutory provision of N.J.S.A. 34:15-12(c)(23) provides that, in the case of a traumatic hernia, compensation will be allowed if notice "is given by the claimant to the employer within 48 hours after the occurrence of the hernia, but any Saturday, Sunday, or holiday shall be excluded from this 48-hour period." Each case construing the notice requirement revolves on its own peculiar facts and, if involved in a notice-hernia problem, carefully review the case law.

In a hernia case, if the petitioner wants surgical repair, and the respondent refuses on the grounds that the hernia is not compensable, then an attorney's duty is clear. A claim petition must be filed and a motion must be made for medical treatment. The motion for medical treatment should be supported with appropriate medical testimony or an attempt to

have the matter disposed of on the motion day by permitting the Judge to review the medical reports should be made. If the respondent is convinced that the hernia is compensable, or if the Judge rules that the hernia is compensable and that surgical treatment should be furnished, the petitioner is only entitled to temporary disability and the cost of medical treatment to repair the hernia. Of course, the period of convalescence from the hernia operation is a period of temporary disability. If the surgical result is normal, there may be no award for permanent disability.

If a petitioner does not want surgery, he or she will usually be awarded approximately 5% permanent partial disability for the hernia condition. This should not be considered to be an unalterable evaluation. Certainly, a hernia could produce considerably more than 5% disability. However, in the normal situation where a petitioner has a typical hernia, and refuses surgery, an award of 5% permanent partial disability will be rendered. Although a petitioner has a duty to cooperate by receiving medical treatment to effect a cure, surgical procedures or other medical procedures that present a real danger to life, or involve considerable risk of injury or can produce great pain will not be compelled. Thus, merely because a petitioner refuses to have surgery for a hernia or to have a myelogram to a back condition, will not affect in any way the right to compensation. On the other hard, the refusal of a petitioner to submit to a simple medical examination or simple medical treatment is entirely different.

Some hernia surgeries, however, do not restore the worker to full functional capacity. A worker left with diminished capacity after hernia surgery is entitled to permanent disability benefits. In *Schmitt v. Mayfair Supermarkets*, 272 N.J. Super. 408 (App. Div. 1994), the worker testified that despite two hernia surgeries, she still experienced regular pain and discomfort limiting her working ability, earning capacity, and pursuit of everyday tasks. In addition, her medical expert testified that she had a 25% permanent internal medical disability. Without credible evidence challenging petitioner's proofs, there was sufficient reason to find that permanent disability existed pursuant to *Perez v. Pantasote, Inc.* 95 N.J. 105 (1984). *Schmitt* at 313-314.

J. Setting Up Permanency Examinations

A worker becomes eligible for permanent disability benefits 26 weeks after he reaches maximal medical improvement or 26 weeks after he returns to work—whichever occurs earlier. The petitioner must demonstrate by objective medical evidence that he suffered a loss of functional capacity to work pursuant to *Perez v. Pantasote*, Inc. 95 N.J. 105 (1984). As the period of eligibility approaches, the petitioner's attorney should schedule a permanency examination with an expert qualified to give a medical opinion in the areas of disability asserted. It is a good practice when setting up an exam to prepare a letter summarizing the medical evidence and the petitioner's complaints, and stating exactly what is needed. Only a limited number of doctors in New Jersey conduct workers' compensation examinations. These doctors have a high-volume practice, and it helps to let them know what is important. The following is an example of a letter sent to a doctor in a relatively simple case involving a shoulder injury:

Doctor's Office
Attention: Mary
1 Elm Street, Suite 1
City, New Jersey 08889

Re: Petitioner v. Respondent
CP No.: 2002-027071
Date of Accident: 2-5-02

Dear Mary:

Please schedule orthopedic and neurological examinations for Peter Petitioner in New Brunswick. The purpose of these examinations is to determine permanent disability and causation with respect to the matter captioned above.

Petitioner alleges that on February 5, 2002, Mr. Petitioner, a parts consultant, was lifting a 70-pound box of auto parts that shifted in his hands. He tried to grab it and felt a pain in his left shoulder. He sought treatment with his private physician, Dr. Jones, who gave him a shoulder injection that provided no significant relief. On February 19, he was seen by Dr. Kleinbart, who diagnosed (1) left shoulder Stage IIB impingement and (2) partial rotator cuff tear. Mr. Petitioner underwent a course of physical therapy. In mid May, Dr. Kleinbart performed a left shoulder arthroscopy with subacromial decompression and extensive debridement with a pain flare. Another course of physical therapy was then undertaken. On August 12, 2002, he was given an injection of Lidocaine and Kenalog into the subacromial space. On August 15, Dr. Kleinbart noted that Mr. Petitioner had sick scapular syndrome and shifted his physical therapy to a scapular-based stabilizing and strengthening program.

Mr. Petitioner complained of night pain, lateral arm pain, and pain with overhead activities. Despite physical therapy, his complaints continued into September. A second MRI taken in September revealed degenerative changes at the anterior/inferior labrum and bursitis but no structural damage or rotator cuff tear. His physical therapy program was changed again, this time to emphasize closed chain kinematics and periscapular stabilizers. He was given a functional capacity analysis that reflected a 39% left vertical lift deficit and an 11% dynamic lift deficit. Physical therapy was discontinued in October and Mr. Petitioner was returned to regular duty. He continued to have pain and a catching sensation with overhead lifting. On November 6, 2002, Dr. Kleinbart put him on a home exercise program. A second surgery to "lysis any adhesions" was considered an option if his symptoms continue. At this time, though Mr. Petitioner's limitations and symptoms continue, he wishes not to have further surgery.

The following records from Mr. Petitioner's treatment are attached for your review:

1. Claim Petition;

2. MRI reports (3-6-02 and 9-17-02);
3. Records of Dr. Kleinbart;
4. Records of Dr. Jones;
5. Kinematic Functional Capacity Evaluation; and
6. Health South Physical Therapy records;

Thank you for your attention and cooperation in this matter. Please feel free to call if you have any questions about this case, and please fax to my office confirmation of the examinations.

Very truly yours,

John D. Kovac
Enclosure

In all cases, but especially where causation is contested, this letter should be drafted in a neutral tone, and all evidence that goes against you're the petitioner should be described and included in documents enclosed along with the letter. When the medical report comes back, check to see if the expert addresses the negative evidence, because the respondent's counsel surely will at the pretrial and on cross-examination if the case goes to trial.

The information gathered in writing this letter can be used subsequently to prepare for pretrial. Prior to writing the letter, the attorney should speak with the petitioner and ask about current complaints, which should be included in the letter to the forensic doctors. A copy should be sent to the petitioner to review so that petitioner can inform him/her attorney and doctors of missing or incorrect information. In addition, a separate letter should be sent to the petitioner informing him/her of the examination and of the importance of telling the doctors about all symptoms and complaints:

Re: Petitioner v. Respondent
CP No.: 2002-027071
Date of Accident: 2-5-02

Dear Mr. Petitioner:

I have scheduled a medical exam for you at Dr. Smith Medical Group on Friday June 20, 2003, 12:30 PM in New Brunswick at 57 Brunswick Avenue. In the (hopefully unlikely) event that you cannot appear for this exam, you should notify Dr. Smith Medical Group at least 24 hours beforehand by calling 1-800-555-5555. Please call Dr. Smith a few days before the examination to confirm your appointment and get directions if necessary.

Remember to describe in detail all of your symptoms and complaints at the time of the examinations so that all of your injuries will be medically assessed. You may lose your right to compensation for symptoms and complaints not mentioned.

Do not hesitate to call if you have any questions.

Very truly yours,

John D. Kovac

VI. Permanent Total Disability

A. Permanent Total Disability Defined

According to N.J.S.A. 34:15-36:

> "Disability permanent in quality and total in character" means a physical or neuropsychiatric total permanent impairment caused by a compensable accident or compensable occupational disease, where no fundamental or marked improvement in such condition can be reasonably expected.
>
> Factors other than physical and neuropsychiatric impairments may be considered in the determination of permanent total disability, where such physical and neuropsychiatric impairments constitute at least 75% or higher of total disability.

The determination of total disability is almost always mixed question of law and factual determination, made by the Judge of Compensation, based on the medical situation of the petitioner as well as established principles of law. See *Zanchi v. S & K Const. Co.*, 124 N.J. Super. 405 (L. 1973).

Permanent total disability may be awarded when the petitioner has a medical disability which constitutes 100 percent disability or when the petitioner qualifies for total permanent disability by statutory provision. More specifically, N.J.S.A. 34:15-12(c)(20) provides that the loss of both hands, both arms, both feet, or both legs, or both eyes, or any two thereof as a result of any one accident, shall constitute total and permanent disability.

After the occurrence of a compensable injury, a worker is sometimes faced with a subsequent injury. If the injury is one classified as an "innocent aggravation," the employer is responsible for the end result of the additional injury. See *Kelly v. Federal Shipbuilding and Dry Dock Co.*, 1 N.J. Super. 245 (App. Div. 1949).

B. Pre-Existing Conditions

If the worker has a pre-existing disability upon which a compensable disability is superimposed and the combination of the pre-existing disability and the superimposed disability caused permanent total disability, the petitioner would be entitled to benefits from the Second Injury Fund pursuant to N.J.S.A. 34:15-94 and 95. However, if only one eye is lost in an accident and the second eye was previously industrially blind, but correctable with lenses, total disability does not exist. *Solymosi v. Hough Fuel Co.*, 159 N.J. Super. 586 (App. Div. 1978).

In the Workers' Compensation Reform Act of 1980, N.J.S.A. 34:15-95 was amended to provide that if a pre-existing disability is aggravated, the employer pays for only that degree of disability which flows from the last compensable accident and the Second

Injury Fund pays for the balance of total disability. See the case of *Zabita v. Chatham Shop Rite, Inc.*, 208 N.J. Super. 215 (App. Div. 1986).

For a more in depth analysis of the Second Injury Fund, see the next chapter.

C. Odd Lot Doctrine

Another method of receiving total permanent disability is the "Odd Lot Doctrine." This doctrine is used in a situation in which the petitioner's disability is less than 100 percent of permanent total medically, but the petitioner has a sociological disability, which when combined with the medical disability, renders the petitioner unable to obtain employment. Qualification for the Odd Lot Doctrine was seriously restricted with the amendment of the compensation law. N.J.S.A. 34:15-36 now provides "[f]actors other than physical and neuropsychiatric impairments may be considered in the determination of permanent total disability, where such physical and neuropsychiatric impairments constitute at least 75 percent or higher of total disability." Thus, where an employee is less than 100 percent total medically and has only a fifth grade education, difficulty in reading and writing, and a work history of heavy manual labor, he was entitled to total permanent disability under the Odd Lot Doctrine on the basis of non-medical factors since he was rendered unemployable. *Barbato v. Alsan Masonry & Concrete, Inc.*, 64 N.J. 514 (1974). See also *Bradley v. Henry Townsend Moving and Storage Co.*, 78 N.J. 532 (1979).

The provision adds that factors other than physical and neuropsychiatric impairment may be considered in the determination of permanent total disability only where such physical and psychiatric impairments constitute at least 75% or higher of total disability. Known as the "odd lot" doctrine, this concept had allowed findings of permanent total disability in cases where a physiological impairment, coupled with petitioner's age, deficiency in English or lack of special skills rendered the worker unable to secure employment in a relatively stable job market. The courts had used "odd lot" quite liberally, finding total permanent disability in instances where the physical injury comprised only 25% or less of the disabling factor. See *Barbato v. Alsan Masonry and Concrete Inc.*, 64 N.J. 514 (1974). However, under N.J.S.A. 34:15-36 as amended by the Reform Act of 1980, "odd lot" recoveries have been greatly restricted and the generous case law precedent reversed by the legislature. No longer can factors such as educational or cultural background, petitioner's age, prior physical condition or mentality, or the ability to speak English be taken into account where a worker loses an arm or leg, unless he/she is 75% or more disabled under the statute.

Thus, if a workers' compensation judge determines that an employee's physical and psychiatric injury total less than 75% of total injury, then the "odd lot" doctrine does not become applicable. See *Darmetko v. Electron Technology*, 243 N.J. Super. 536, 580 (A.D. 1990). Odd Lot Doctrine cases are rarely seen in the Division of Workers' compensation nowadays.

D. Schedule of Payment

Provisions for the total disability schedule of payment are contained in N.J.S.A. 34:15-12(b). The totally disabled are entitled to the compensation rates applicable for temporary disability -- 70% of the worker's weekly wage received at the time of the injury subject to a maximum of 75% of Statewide Average Weekly Wages (SAWW) and a minimum of 20% of SAWW. These payments continue for 450 weeks. Payments will cease after the 450 week period, unless the employee submits to an examination by the Division of Vocational Rehabilitation. If total disability continues after the 450 weeks due to a single occupational accident or illness, the payments may continue for the balance of the employee's life. If the worker cannot be trained into some type of work, then compensation continues beyond the 450-week period.

If the worker can be re-trained, and is working, then at the end of the 450 weeks, weekly compensation is diminished by whatever wages or earnings the worker is receiving. If the wages or earnings equal or exceed the wages received at the time of the accident, then the worker receives compensation of $5.00 per week. Thus, in computing the compensation for an extension beyond 450 weeks, the minimum provision of 20% of SAWW does not apply.

The compensation rate due an injured part-time employee is calculated on the basis of the employee's actual part-time weekly wage as statutorily defined without first translating the actual wage into a full-time weekly wage. Once a compensation rate is calculated, that rate must be compared with statutory minimum and maximum disability. *Russell v. Saddle Brook Restaurant Corp.*, 199 N.J. Super. 186 (App. Div. 1985).

VII. SECTION 20 ("LUMP SUM") SETTLEMENTS

Section 20 Settlements resolve cases by way of an Order Approving Settlement with Dismissal pursuant to N.J.S.A. 34:15-20. This option is appropriate when there is a dispute as to jurisdiction, liability, causal relationship, or dependency. In exchange for dismissal of the case with prejudice, the respondent pays the petitioner a lump sum. The petitioner forever gives up rights to benefits that the petitioner would otherwise be entitled to if jurisdiction, liability, causation, and dependency were established by agreement or trial. These rights include the ability to reopen a case if work-related injuries become worse, in which case the petitioner may be entitled to additional medical treatment, temporary disability benefits, and an increase in permanent disability benefits.

When a Section 20 settlement is put on record, the petitioner's attorney must prove to the Court that the petitioner understands the nature of the rights given up. Typically a record is established by a series of questions such as the following addressed to the petitioner:

1. The insurance company for your employer is offering $____ in settlement of your claim against _____. This is being offered as a full and final settlement. Once you accept this offer, you may not reopen this case under any circumstances. You may not reopen the case if the injuries you have asserted to be work-related become worse or require additional medical treatment. No matter what happens in the future, you may not reopen this case and ask for more money, temporary disability benefits, permanent disability benefits, or medical treatment. Do you understand this?

2. By accepting this settlement, you are giving up your right to a trial. Were you to choose to go to trial, you could end up with more money, less money, approximately the same amount of money, or money at all. You could also obtain the right to have medical treatment paid for. Do you willingly give up your right to trial?

3. Do you understand that attorney fees and costs of medical examinations ordered by your attorney will be taken from your settlement?

4. Do you want to accept this settlement?

5. Do you want the court to approve the settlement?

In negotiating a Section 20 Settlement, petitioners' attorneys should keep in mind that insurance companies generally want lump sum agreements because they preclude the possibility or likelihood of future obligations. Furthermore attorney fees and costs of litigation are paid completely by the petitioner, rather than split between petitioner and respondent as usually happens if the case is settled with the right to reopen.

Pursuant to *Kibble v. Weeks Dredging & Construction Co.*, 161 N.J. 178 (1999), where parties contemplate a lump sum Section 20 settlement that involves the waiver of dependency claims (of spouse or minor children in the event of the worker's death), the spouse or other dependent must make a knowing, intelligent, and voluntary waiver of the claim. Some Section 20 settlements do not include such a waiver (where the petitioner is unlikely to die from injuries). When filling out the Order Approving Settlement with Dismissal, the parties must specify if dependency rights are waived; if yes, the dependents must be brought in to make the waiver on record, and they should be represented by independent counsel.

A. Medicare and Section 20 Settlements

1. The Problem

Workers over 65 years old and disabled individuals under 65 who receive social security disability insurance (SSDI) for two years qualify for Medicare. Currently Medicare benefits include payment for hospitalizations, surgeries, doctor's visits, and diagnostic tests but not prescription medication, dentures, glasses, and hearing aids.

Medicare becomes an issue in worker's compensation if the federal government believes it has paid or will be asked to pay benefits that are the obligation of the workers' compensation carrier. This is not a problem if the respondent accepts responsibility for medical treatment arising from a work-related accident or occupational disease. But Section 20 settlements cut off the carrier's obligation to pay for medical treatment. Until recently the Federal Government did not exercise its right under 42 CFR 411.46 to withhold payment of bills for services that should be covered by workers' compensation. It is now asserting this right, however, and in the process creating concern in workers' compensation systems nationwide.

2. Obligations of Settling Parties; Risks for Failure to Comply

Pursuant to 42 CFR 411.46, Medicare benefits may be denied "until medical expenses related to the injury or disease equal the amount of the lump-sum payment." The Center for Medicare and Medicare Services ("CMS") is empowered by the Medicare as a Secondary Payor Statute, 42 U.S.C. 1395y(b)(2)(B)(I)(ii)(iii), to enforce its provisions. CMS asserts that all current Medicare recipients "must always consider Medicare's interests prior to settling their Workers' Compensation claim. . . . That is, ALL WORKERS' COMPENSATION PAYMENTS regardless of amount must be considered for current Medicare beneficiaries." Memo from Deputy Director Parshar B. Patel to Associate Regional Medicare Administrators ("Patel Memo"), July 23, 2001.

The Patel Memo imposes obligations as well on individuals who are not yet Medicare beneficiaries but who may reasonably expect to become enrolled in Medicare within 30 months of the settlement. If the "anticipated total settlement amount for future medical expenses and disability/lost wages over the life or duration of the settlement agreement is expected to be greater than $250,000," such individuals must also "consider

Medicare's interests" when putting together a settlement. A more recent memo from Director Thomas L. Grissom ("Grissom Memo"), dated April 21, 2003 includes but does not limit this group to the following individuals who have a reasonable expectation of future Medicare enrollment:

1. Those who have applied for Social Security Disability Benefits

2. Those denied Social Security Disability Benefits but anticipate appealing that decision;

3. Those in the process of appealing and/or refilling for Social Security Disability Benefits

4. Those who are 62 years and 6 months old and thereby may be eligible for Medicare based upon their age within 30 months; and

5. Those in End Stage Renal Disease who have not yet qualified for Medicare

Medicare is a secondary payor under 42 U.S.C. 1395y(b)(2), which states that workers' compensation plans are primarily responsible for work-related injuries and occupational disease. When Medicare pays for treatment of an occupational injury or disease, 42 U.S.C. 1395y(b)(2) considers such payment "conditional" and gives CMS the authority to "collect double damages" against "any entity (including a physician or provider) that has received a Medicare payment." In *United States v. Sosnowski*, 822 F. Supp. 570 (W.D. Wis. 1993), the government successfully used 42 U.S.C. 1395y(b)(2)(B)(ii) to collect from a personal injury plaintiff and his attorney who had settled a case without reimbursing Medicare. Though New Jersey workers' compensation attorneys do not actually "receive" the workers' compensation benefits of their clients (the insurance company pays workers directly), it is conceivable that a worker's attorney in New Jersey may nevertheless be sued for indirect involvement.

Petitioners' attorneys must consider more than just the risk of suit by the federal government. They may also be liable for malpractice if the worker is not advised that Medicare can refuse to pay for future treatment because a Section 20 settlement fails to set aside money for future care or reimburse for past Medicare expenses. CMS will "exhaust the entire settlement," even though part of it is attributable to lost wages and diminished earning capacity. Grissom Memo, Answer 14. This means Medicare will deny payment until the full amount of the settlement is used up or exhausted on Medicare-eligible treatment.

CMS may also sue a worker for failure to reimburse, prompting a malpractice claim against the worker's attorney because Medicare is reclaiming money distributed in the Section 20 settlement. Petitioners must be made aware of these issues. If a client insists on a Section 20 settlement without consideration of Medicare, the lawyer should consider refusing to proceed. At minimum, the petitioner's attorney should have the client

acknowledge the risks in writing and on the record, and obtain a hold harmless and indemnification agreement (though even this may not protect the attorney from action by CMS!)

Employees and their attorneys are not the only ones at risk. Workers' compensation carriers and employers may also be subject to claims by CMS for double damages. Insurance companies are entities responsible for payment under 42 U.S.C. 1395y(b)(2)(B)(ii). CMS may assert a direct right of recovery as well as subrogation rights with respect to third-party payments against a "beneficiary, provider, supplier, physician, attorney, state agency, or private insurer that has received any portion of a third-party payment directly or indirectly." Grissom Memo, Answer 13, citing 42 CFR 411.24(b), (e), and (g) and 42 CFR 411.26. The risks to all parties involved could have a chilling effect on settlements. This new and unresolved area of law is fraught with ambiguities.

3. Pre-approval of Settlements

A safe choice for parties contemplating a lump-sum settlement is to obtain pre-approval by calling the CMS Coordination of Benefits Contractor at 1-800-999-1118 and the CMS Regional Office for New Jersey at (404) 562-7500. The Regional Office can be contacted by mail at Centers for Medicare & Medicaid Services (CMS), Region IV, Atlanta Federal Center, 61 Forsyth Street, S.W., Suite 4T20, Atlanta, GA 30303-8908. They also have a web site at www.cms.hhs.gov/about/regions/pros4asp. "Once CMS agrees to a Medicare set-aside amount, the individual can be certain that Medicare's interests have been appropriately considered." *Id.* at Answer 1. If the petitioner is a Medicare beneficiary, pre-approval is mandatory. If the petitioner falls into the second category (reasonably expects to be enrolled in 30 months and settlement totals $250,000 or more), pre-approval is advisable. *Id.* at Answer 23.

A response to a pre-approval proposal should take 45 to 60 days from the time all necessary documentation is submitted. *Id.* at Answer 6. However there is no formal appeals process for rejected proposals. Additional information or new proposals may be submitted, but an appeal through Medicare's regular administrative process may only be made after a claim for future benefits is denied. *Id.* at Answer 14.

4. Set Aside Arrangements

A settlement "may be accepted" if it allocates "a portion of the payment for medical expenses and also gives reasonable recognition to the income replacement element." 42 CFR 411.47. Parties and Judges of Compensation will now have to consider placing allocation language into Section 20 orders and giving reasons in the order and on record for the allocation. Many petitioners will have reached maximum medical improvement by the time the Section 20 order has been prepared. If there is little or no expectation of future medical treatment, the allocation may be weighted heavily in favor of lost income. All past Medicare payments, however, must be reimbursed. *Id.* at Answers 16 and 20.

An allocation or set aside arrangement will be unnecessary if all of the following are true:

1. The facts of the case demonstrate that the injured individual is only being compensated for past medical expenses (i.e., for services furnished prior to the settlement);

2. There is no evidence that the individual is attempting to maximize the other aspects of the settlement (e.g., the lost wages and disability portions of the settlement) to Medicare's detriment; and

3. The individual's treating physicians conclude (in writing) that to a reasonable degree of medical certainty the individual will no longer require any Medicare-covered treatments related to the WC injury. [*Id.* at Answer 20]

The Patel Memo describes two types of set aside arrangements that may be used to protect settling parties: (1) lump sum set-aside arrangements and (2) structured set aside arrangements. The lump sum set aside arrangement is funded from the settlement proceeds "all at once." The lump sum set aside present(s) less of a problem to monitor than structured arrangements. Medicare would not make any payments for individuals that possess lump sum arrangements until all of the funds within the arrangement have been depleted. For example, if a set-aside arrangement were established for $90,000 Medicare would not make any payments until the entire $90,000 (plus interest if applicable) were exhausted on the individual's medical care (for Medicare covered services only). [Patel Memo, Answer 4.]

A structured set aside arrangement apportions settlement monies over a fixed period of time as in the following example:

A structured arrangement may be designed to disburse $20,000 per year over the next ten years for an individual's medical care (for Medicare-covered services only). If the $20,000 allocated on January 1 for Year One were fully exhausted on August 31, Medicare may make payments for the services performed after August 31 once the contractor responsible for monitoring the individual's case can verify that the entire $20,000 (plus interest, if applicable) is exhausted. However when the structured arrangement allocates money for the start of Year Two Medicare would not make any payments for services performed until Year Two's allocation was completely exhausted. [*Id.*]

"If funds are not exhausted during a given period then the excess funds must be carried forward to the next period." Grissom Memo, Answer 10.

Under both arrangements, set-aside funds must not be used to pay for medical expenses incurred before the worker became entitled to Medicare. Patel Memo, Answer 4. Set aside arrangements must first be approved by the judge and then submitted to CMS for approval.

The petitioner's attorney must also be aware of the Social Security Administration's right to deduct social security benefits by converting Section 20 settlements into a stream of periodic workers' compensation benefits. See discussion of Section 20 settlements and *Rodlin v. Secretary of Health and Human Services*, 750 F. Supp. 146 (DNJ 1990).

5. Medicare Procedures

Developments concerning procedures related to Medicare liens and CMS are set forth in three memos issued by Judge Calderone on January 10, 2005, October 5, 2006, and August 29, 2006. These memos, attached below, should be reviewed by attorneys dealing with this issue.

State of New Jersey
Department of Labor & Workforce Development
Division of Workers' Compensation

MEMORANDUM

To: All Judges of Workers' Compensation
From: Peter J. Calderone, Director/Chief Judge of Workers' Compensation
Date: January 10, 2005
Subject: **Medicare Secondary Payer Statute (MSPS) Issues and Information**

The Medicare Secondary Payer Statute (MSPS) has become one of the most difficult and controversial issues affecting workers' compensation programs throughout the country. While there are efforts to amend the federal law, at this time we must implement the statute and regulations as currently in effect. Accordingly, we have had presentations addressing key Medicare issues at our judicial seminars. The recent Workers' Compensation Bench-Bar Conference also devoted a large portion of the program to MSPS-related topics.

Based upon recent discussions with officials from the Centers for Medicare and Medicaid Services (CMS) and the report submitted by the NJ Workers' Compensation Lien Task Force, this memorandum is intended to provide you with key information arranged in an easy to read "question and answer" format. We believe you will find it a useful summary of practices to consider when handling New Jersey workers' compensation cases where the MSPS must be addressed in order to resolve the case. Since the MSPS is an evolving area of law, there may be updates to this memorandum in the future.

It is noted that the literature, regulations, and various correspondence use terms such as Medicare entitled, Medicare eligible, and Medicare beneficiary. For the purposes of this memorandum, the term Medicare entitled will be used to include individuals who are eligible for Medicare benefits whether or not they are currently utilizing Medicare for medical coverage.

1. **When must Medicare's interest be considered?**

Medicare's interest must always be considered whenever:

(A) Medicare has paid for treatment for a disability/injury alleged in the claim petition; and/or
(B) In the closure of a workers' compensation case the petitioner is Medicare entitled and future medicals for a disability/injury maintained in the claim petition are being foreclosed.

2. When is a petitioner considered Medicare entitled?

A petitioner is Medicare entitled if he or she is:
(a) 65 years or older (assuming sufficient work quarters); or
(b) On Social Security Disability (SSD) for 24 months or longer; or
(c) Suffering from End Stage Renal Disease (ESRD).

3. What does the CMS/Medicare review and approval process entail?

CMS has emphasized that there are two separate and distinct tracks or processes involved in MSPS cases (the "Past Payment" track and the "Future Consideration" track). Both tracks must be considered and appropriately managed when applicable to adequately deal with Medicare's interests.

4. What is the "Past Payment" track?

This track involves repayment (or obtaining a waiver) for any conditional payments made by Medicare on behalf of the petitioner for injuries or disabilities alleged in the claim petition pending the closure of the workers' compensation case. To initiate this "past payment" process, one should first call the "MSP Claims Investigation Project" at 1-800-999-1118 with the file and case information. CMS will take the necessary information, provide a bar code number, and send the necessary consent form. Further case information can be mailed to the "MSP Claims Investigations Project" address at CMS/COBC, P.O. Box 5041, NY, NY 10274. (Note: This address is not used for submission of set-aside proposals under question #5 below.)

Once the claim is reported, a fiscal intermediary is assigned by CMS, and one will then need to deal directly with the fiscal intermediary for resolution of any past payment issues.

Medicare providers have up to eighteen (18) months to file for Medicare payment when Medicare is being utilized. Counsel should therefore advise a petitioner who is Medicare entitled not to utilize Medicare for disabilities or injuries alleged in the claim petition. Additionally, it would be prudent for petitioner's counsel to obtain information on all medical treatment petitioner received in the two years prior to the anticipated case closure to avoid medicare paid bills after the case is closed. An appropriate Motion for Medical Treatment is the proper mechanism to resolve treatment issues arising from alleged work-connected injuries or medical conditions.

5. What is the "Future Consideration" track?

According to CMS, a Workers' Compensation Medicare Set-aside Arrangement (WCMSA) is appropriate whenever future medical benefits are foreclosed in the resolution of a workers' compensation case. Specifically, a CMS/Medicare approved

WCMSA is required whenever future medicals are being foreclosed (e.g. all Section 20 settlements) and:

(A) Petitioner is Medicare entitled (regardless of the settlement amount); or
(B) Petitioner has a reasonable expectation of becoming a Medicare beneficiary within 30 months of the settlement date **and** the settlement totals more than $250,000.00.

Note: Since very few workers' compensation settlements in New Jersey are over $250,000, situations under this section would not be a common occurrence. A "reasonable expectation of becoming a Medicare beneficiary within 30 months of the settlement date" would likely include those situations where the petitioner: (1) has applied for Social Security Disability (SSD); (2) has been denied SSD, but is appealing or anticipates appealing the denial; (3) is 62 years and 6 month old (and thus would be eligible for Medicare within 30 months); or (4) has End Stage Renal Disease but does not yet qualify for Medicare based upon ESRD.

This track involves obtaining CMS/Medicare review and approval of any WCMSA whenever liability for future medical benefits is being foreclosed for an injury or disability maintained in the claim petition. (Situations where no monies need to be withheld are referred to as "$0.00 WCMSA" situations.) Review and/or approval of such proposals can be initiated by submitting the proposal to "WCMSA Proposals" at CMS/COBC, P.O. Box 660, NY, NY 10274. The WCMSA proposal information will then be relayed to the WC Review Center (WCRC) for review. Upon completion of the review, the WCRC will forward a recommendation to a CMS regional office for final notification of CMS' review results. The CMS Atlanta Regional Office will send final notification for petitioners whose state of venue is New Jersey. An acknowledgement letter, sent upon entry into the WC Case Control system, will provide contact information and a control number that must be referenced on inquiries and subsequent document submission.

Note: The parties to the workers' compensation case must agree on how this two-track process will be handled and how the costs involved will be allocated. Options for obtaining Medicare approval may include: Petitioner's attorney doing the work; Respondent's attorney doing the work; or hiring specialized legal counsel or a vendor to do the work.

6. **Is repaying Medicare for conditional payments (or obtaining a waiver), as previously discussed in Question 4 of this memo, always required when the petitioner has received Medicare benefits?**

Yes. CMS recommends that the process outlined under Question 4 of this memo be initiated as soon as possible for petitioners who have received Medicare benefits. To ensure that a record of any Medicare benefits be established, this process must be initiated in all cases when the petitioner is a Medicare beneficiary. One should also keep

in mind that repaying CMS for past /conditional payments Medicare made on behalf of the petitioner is required even when no set-aside allocation review is required.

Therefore, pleadings become very important in determining the extent to which past/conditional Medicare payment issues may play a role in resolving a claim. Petitioners who allege work injuries or disabilities that clearly cannot be sustained may be subjecting their cases to more extensive CMS/Medicare review and delay for alleged injuries or disabilities that will be found "non-compensable" later in the proceedings.

In summary, adequate consideration must be given to the issue of conditional payments in all cases involving a Medicare beneficiary at the time of settlement. This includes cases resolved by Orders Approving Settlement, Section 20 Settlements, Judgments, and Second Injury Fund Awards. As long as the petitioner is a Medicare beneficiary, this issue must be addressed.

7. **What types of case closures trigger the need for CMS/Medicare review and approval of a WCMSA proposal (as previously discussed in Question 5 of this memo) because future medicals are being foreclosed? Which types of case closures do not require such review and approval?**

Workers' compensation case closures to consider are:

a) Judgments - Where the judge issues a decision on the merits on all claims that is supported by the record, CMS/Medicare will accept the judge's findings and conclusions, and no set-aside allocation review is required addressing future treatment. This is because a WCMSA is not appropriate where future medicals are not being foreclosed.

b) Orders Approving Settlement - Where all the injuries or disabilities alleged in the claim
petition are covered by the settlement, no Medicare set-aside allocation review is required because, similar to judgments, there is a right to reopen for future medicals and, hence, no foreclosure on future medicals. Similarly, some injuries or disabilities alleged in the claim petition may be resolved by an Order Approving Settlement, and all others that cannot be settled can be resolved in a Judgment (as discussed in section "a" above), making CMS review and approval unnecessary.

c) Amended Claim Petitions with Orders Approving Settlement - Where a claim petition is amended to dismiss one or more injuries/disabilities with judicial review and consent based on the merits, and the remainder of the claim petition is settled by an Order Approving Settlement, then no set- aside allocation review is required since there is a right to reopen for future medicals on the compensable injuries or disabilities. **The judge in these situations must have conferenced the case and found good cause on the record to amend the claim petition.** This would include judicial review of the pleadings, medical records and reports, and, at the judge's discretion, any additional evidence and/or testimony that the judge deems necessary in order to rule on the merits of the amendments to the claim petition.

d) Dismissals - Since the petitioner receives no benefits from a dismissal, a WCMSA would not be appropriate. A dismissal cannot be utilized, however, to circumvent Medicare's interest. Hence, failure of a petitioner to prosecute a case could result in CMS seeking recovery against individuals involved in hindering Medicare's interest or recovery.

e) Orders Approving Settlement with Dismissals (Section 20s) – According to CMS, it is appropriate to include a WCMSA in all Section 20 settlements involving a petitioner who is Medicare entitled regardless of the settlement amount or a petitioner who meets the threshold listed above in Section 5 (B) of this memorandum. The WCMSA must be reviewed and approved by CMS/Medicare.

f) Second Injury Fund (SIF) Awards and Settlements – Where the SIF accepts injuries or disabilities alleged in the claim petition as pre-existing, judicial review and consent on the merits is required (similar to that discussed in section "c" above). The judge in these situations must find good cause, on the record, to designate the alleged condition(s) as "pre-existing" and, therefore, not subject to future authorized medical care. This may include review of the pleadings, medical records, reports, and, at the judge's discretion, any additional evidence and/or testimony necessary to properly rule on the merits of the case.

Note: The Lien Task Force has included a flowchart at the end of its report which outlines procedures attorneys can follow in regard to handling certain Medicare set-aside allocation reviews. This flowchart is available on the Division of Workers' Compensation web-site and should be consulted where necessary.

8. **How can cases filed by a Medicare entitled petitioner or a petitioner with a reasonable expectation of becoming a beneficiary within 30 months of the settlement date be expedited?**

It is essential to recognize, understand and utilize the interplay between the Medicare requirements and the New Jersey workers' compensation process as outlined in this memorandum. For example, a $5000.00 Section 20 settlement may be entered today involving a petitioner who has been on SSD for 22 months without any Medicare reviews or approvals. In this situation, the petitioner is not yet Medicare entitled and the settlement is less than $250,000.00.

All applicable issues involving a Medicare entitled petitioner or a petitioner with a reasonable expectation of becoming a beneficiary within 30 months of the settlement date should be presented at the first pre-trial conference. Doing so will help all parties to determine the most expeditious manner of resolving a case (i.e., without Medicare involvement where appropriate, or ensuring that Medicare's interest is considered where required). It should be made clear which party will be responsible for resolving Medicare issues, and a timetable for Medicare filings should be imposed. There should also be

periodic judicial review of the status of the case, Medicare filings, and Medicare inquiries.

Currently, many more cases are marked "MCARE" than the parties have actually submitted for CMS review. A judge should therefore verify that the case has been submitted by asking for and reviewing the paperwork sent to CMS. Hence, an "MCARE" designation cannot be used unless the judge has verified that CMS has been correctly contacted.

Section 20 settlement proposals that involve Medicare entitled petitioners are particularly problematic and require careful scrutiny. Hence, where an Order Approving Settlement is not possible, it may be in the best interest of all parties to try the case (rather than attempt a Section 20 settlement).

Where the case involves a mixture of disputed and undisputed issues (e.g., where the petitioner's back injury is accepted and it is agreed that it is compensable at 25% of total, but the petitioner's psychiatric claim is not accepted), a trial on the disputed issue(s) may resolve the case. This could result in a settlement with the right to reopen for future medicals on the undisputed issue(s) and a judgment on the disputed issue(s). This type of case resolution process might be particularly useful in Second Injury Fund cases.

9. How can I get more information or advice?

Due to the work of the Lien Task Force and a separate specialized group of attorneys and judges who have directly communicated with CMS/Medicare in coordination with this office, New Jersey is in the lead nationally in clarifying and setting guidelines for Medicare related issues involving workers' compensation cases.

Judges, but not parties to a claim petition, may contact Thomas Daly, Esq. (609-777-4924) of my staff on particular MSPS issues. We will use our best efforts to obtain necessary information for you.

State of New Jersey
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
PO BOX 381
TRENTON, NEW JERSEY 08625-0381

JON S. CORZINE
Governor

DAVID J. SOCOLOW
Commissioner

MEMORANDUM

August 29, 2006

To: All Judges and Attorneys

Re: Orders Approving Settlement and Judgments Where Petitioner Is a Medicare Beneficiary and CMS Conditional Payment Review Is Pending

From: Peter J. Calderone, Director and Chief Judge

As you are aware, the Center for Medicare Services (CMS) has not been able directly or through its outside contractors to currently provide conditional payment information and/or case closure approvals. For this reason, Administrative Supervisory Judge Ricciardelli has been working with representatives of the Bar Association and the New Jersey Advisory Council on Safety and Health to develop procedures that can be implemented for Section 22 Orders Approving Settlement and Judgments to address this issue.

Enclosed please find those procedures with suggested language, Attachment A, to be included in Orders Approving Settlement where the petitioner has sought CMS conditional payment review and CMS has not concluded its process. For Judgments use Attachment B. In this manner, it is intended that the court retain jurisdiction for any future issues relating to an employer's or insurance carrier's responsibility for reimbursing payments made by Medicare. Such suggested language may, of course, be modified or expanded by the parties and the assigned judge in a particular case. The language is, therefore, not intended to be all encompassing for every case or situation.

Also, for Section 22 settlements without conditional payment closure there must be agreement by all parties to this process. However in the case of judgments, judges may include the applicable language without the need for party approval.

This information has been provided to CMS with notice that CMS should advise us of any concerns with this process. We intend to move forward with the procedures since we have not at this time received any objection from CMS on this matter.

While the suggested language would be part of the Order or Judgment, it is still necessary (as the attached procedures outline) to include on the record and in a decision that Medicare's interest has been considered and the delay in receiving CMS payment information and/or approval.

Of continuing concern is the neglect by counsel and judges to clearly determine whether petitioner is Medicare entitled at an early stage of the workers' compensation proceedings. Where appropriate, this would allow for a closure of cases prior to actual Medicare eligibility or for the immediate commencement of the Medicare conditional payment process. We recently had one case that was on the partial trial list for over two years with various witness testimony that was then settled by a Section 20 amount under the CMS set-aside review threshold. At no point during this process did anyone start the CMS conditional payment process. As a result, the settlement is now subject to further delay due to the CMS situation.

In addition, we have previously outlined procedures for amending claim petitions to delete alleged conditions and for entering judgments dismissing certain conditions in the claim petition allowing for Section 22 Orders Approving Settlement as to the compensable conditions. Such procedures, while recognizing Medicare's interest, can set parameters for CMS involvement. Furthermore, it is often to the advantage of the parties and the court to have a case decided by judgment on the merits since CMS recognizes a determination of workers' compensation disabilities based on judgments.

Cases that have been marked MCARE will be re-listed to allow the parties the opportunity to resolve matters under these procedures.

Attorneys who have a question concerning this memorandum and the attachments in a particular case should discuss the issue with the assigned judge. Judge Ricciardelli or I would be available to confer with judges on these issues.

Procedures for Orders Approving Settlement (Section 22) and Judgments Where Petitioner Is a Medicare Beneficiary and CMS Conditional Payment Review Pending

Since we are advised that the Center for Medicare Services (CMS) and its contractors currently are not fully able to process conditional payment reviews, the following procedures are to be followed:

1. Where conditional payment reviews are pending, Attachment "A" or similar language should be included in an Order Approving Settlement pursuant to N.J.S.A. 34:15-22 while Attachment "B" or similar language should be included in a Judgment Order.

2. On the record, the parties must verify that:

   a. Petitioner is a Medicare beneficiary and that the parties have considered Medicare's interest.

   b. Petitioner (or Respondent if applicable) is complying with CMS requirements for conditional payment review and has not received conditional payment information and/or approval from CMS or its contractors; and

   c. While Petitioner (or Respondent if applicable) has made diligent inquiry to ascertain the amount of conditional payments made by Medicare and/or resolve reimbursement sought by Medicare on behalf of the petitioner for medical treatment related to petitioner's workers' compensation claim(s), the Medicare conditional payment issue remains open.

3. The judge of compensation, after reviewing the information presented, must also concur and find that the parties have adequately considered Medicare's interest.

4. In Section 22 Orders Approving Settlement, the parties must also stipulate and agree that since the Medicare conditional payment issue remains unresolved, the workers' compensation court retains jurisdiction to determine the extent to which the respondent is liable for payment of medical treatment for which CMS seeks reimbursement should the parties not be able to amicably resolve the conditional payment issue with CMS. These procedures cannot be imposed by the court with respect to settlements. Party agreement is not required for Judgments.

The two (2) year statute of limitations to reopen an Order Approving Settlement or Judgment would not be applicable to this situation since the court retains jurisdiction only over the conditional payment issue. A party seeking a determination of respondent liability for medical treatment under this section must file a motion for court review.

Judges shall on the record direct the petitioner's attorney (or respondent's attorney if applicable) to immediately forward the settlement order or judgment order to CMS at the applicable

CMS address with copies to all parties and the court.

Note: CMS set-aside trust review and procedures when required and applicable would not be affected by these Procedures which only address the separate CMS conditional payment issue.

These procedures are not applicable to N.J.S.A. 34:15-20 settlements.

Dated: August 29, 2006

Attachment "A"

Petitioner is a Medicare beneficiary. CMS has been contacted for an itemization of monies paid for the compensable condition(s). As of this date, the CMS conditional payment review is pending.

All parties agree that should they not be able to amicably resolve the responsibility for reimbursement to CMS, this Court retains jurisdiction to determine the extent to which the respondent is liable for payment for medical treatment

All parties recognize that this Court has no jurisdiction to determine the total amount due CMS.

Petitioner understands that he/she may be held personally liable to reimburse CMS for treatment paid for by Medicare but held not to be the responsibility of the Respondent, possibly beyond the settlement amount.

Attachment "B"

Petitioner is a Medicare beneficiary. CMS has been contacted for an itemization of monies paid for the compensable condition(s). As of this date, the CMS conditional payment review is pending.

Should the parties not be able to amicably resolve the responsibility for reimbursement to CMS, this Court retains jurisdiction to determine the extent to which the respondent is liable for reimbursement to Medicare.

This Court has no jurisdiction to determine the total amount due CMS.

State of New Jersey
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
PO BOX 381
TRENTON, NEW JERSEY 08625-0381

JON S. CORZINE
Governor

DAVID J. SOCOLOW
Commissioner

MEMORANDUM

October 5, 2006

To: All Judges and Attorneys

From: Peter J. Calderone, Director and Chief Judge

Subject: New Medicare Conditional Payment Recovery Contractor

As previously advised, Riverbend, the Center for Medicare Services (CMS) recovery contractor that had handled New Jersey conditional payment reviews and approvals for CMS suspended operations this summer. CMS has announced that it has entered into a national contract for such services with Chickasaw Nation Industries, Inc. It appears that this new contractor will take new matters and most pending matters involving New Jersey workers' compensation cases where the petitioner is a Medicare beneficiary. The procedures for obtaining conditional payment reviews and approvals have not changed and are outlined in my January 10, 2005 memorandum which is contained in the Medicare Section of our website. The only change being implemented on October 2, 2006 is the new recovery contractor for CMS.

Specifically, in every workers' compensation case where the petitioner is a Medicare beneficiary, the petitioner must obtain conditional payment information and must repay or obtain a waiver for any conditional payments Medicare has made on behalf of the petitioner for injuries or disabilities alleged in the claim petition (this is referred to as the "past payment" track of the CMS process). To initiate this requirement, one must call the "MSP Claims Investigation Project" at 1-800-999-1118 with the file and case information. CMS will take the necessary information, provide a bar code number and send a consent form to be completed. The consent form and other required case information is sent to CMS/COBC, P.O. Box 5041, NY, NY 10274. When this preliminary procedure is completed, the CMS/COBC will send the file for conditional payment review, processing and further contacts to the CMS recovery contractor which is now the Chickasaw Nation Industries, Inc. The resolution of any conditional payment issues and conditional payment closure will be with the recovery contractor. Contact with the recovery contractor is by mail to MSPRC WC, PO Box 33831, Detroit, MI 48232-3831. Telephone access is available at 1-866-MSPRC-20 or 1-866-677-7220. For additional information on the change of recovery contractor, you may want to review the CSM website at http://www.cms.hhs.gov/MSPRGenInfo/

It should be noted that there has been no change in procedures for set-aside trusts when required by CMS.

VIII. Second Injury Fund

A. The Second Injury Fund Defined

In cases of total disability, very often the Second Injury Fund procedures become involved. These provisions, dealing with second injuries, are contained in N.J.S.A. 34:15-95. Generally speaking, if a person is totally disabled as a result of a subsequent permanent injury under conditions warranting compensation when the person has been previously permanently and partially disabled from some other cause, the person may be entitled to benefits from the Second Injury Fund. As stated in *Paul v. Baltimore Upholstering Co.*, 66 N.J. 111 (1974) at 124:

> By enacting the Fund statute the Legislature sought to encourage employers to hire handicapped or partially disabled people, secure in the knowledge that if total permanent disability occurred in employment because of the coincidental effect of the prior disability and the accidental disability in the employment the employer would not have to pay for the completely disparate disability which the workman originally brought with him to the job.

The classic example involves a man who has lost a leg in a non-compensable accident when he was a young boy. Now, the man is working and has an accident where he loses the other leg. This man is statutorily totally disabled, since he has lost two major members. Under the Workers' Compensation Law, the compensation carrier would normally tender the full statutory payments for the loss of a leg, and the Second Injury Fund would be brought into the case to pay compensation beyond the insurance carrier's exposure.

In other words, fund benefits are payable only when the worker is deemed totally and permanently disabled as a result of a combination of a previous partial permanent disability and a subsequent disability which entitles them to compensation. Fund benefits are precluded in cases of partial permanent disability or total disability under the Odd Lot Doctrine. *Padilla v. Concord Plastics, Inc.*, 221 N.J. Super. 301 (App. Div. 1987).

In *Walsh v. RCA/General Elec. Corp.*, 334 N.J. Super 1 (App. Div. 2000) the Appellate Division held that even tough the claimant was retired and therefore not in the work force at the time the compensable injury manifested itself, the claimant was nevertheless entitled to Fund benefits covering the amount of pre-existing disability.

B. Limitations of Second Injury Fund

The following would preclude recovery from the second injury fund: (a) if the disability resulting from the injury caused by the last compensable accident, in itself, irrespective of any previous condition, constitutes total and permanent disability; (b) if the disease or condition existing prior to the last compensable accident is not aggravated or accelerated, but is progressive and by reason of such progression subsequent to the last

compensable accident results in total disability; and (c) if the person who is rendered permanently partially disabled by the last compensable injury subsequently becomes permanently totally disabled by reason of progressive physical deterioration or pre-existing condition or disease.

Under the Workers' Compensation Reform Act of 1980, the second exception to the applicability of the Second Injury Fund was deleted; enabling a worker to take advantage of the fund despite the fact that the worker's second injury was aggravated or accelerated by his pre-existing or prior condition. In effect, this amendment has overruled the requirement of *Paul v. Baltimore Upholstering Co.* that the prior non-compensable injury and the later compensable event be "successive accident . . . , each of which, severally causes permanent partial disability, but which in conjunction result in permanent total disability. *Paul* at 126. As the court noted, `severally' in this regard means, distinctly, separately, apart from other." *Vogel v. Red Star Express Lines*, 73 N.J. Super. 534 (App. Div. 1962), *aff'd*, 40 N.J. 44 (1963). Thus, prior to 1980, the earlier and later conditions could not be "aggravative, activative or accelerative physiologically, one of the other," if the fund were to be implicated. *Paul* at 126. Under the current make-up of N.J.S.A. 34:15-95, the aggravated heart condition of the plaintiff in *Paul* would be covered by the Second Injury Fund.

This presents a problem as to how to apportion that amount of the disability which existed as a result of the previous non-compensable condition. Medical records and expert testimony to the effect that X% of disability existed before the second injury and that the compensable accident rendered the worker totally disabled appear to be the most likely method of apportioning. To comply with the generous intent of the legislature to compensate permanently disabled workers while protecting employers from liability for prior non-compensable injuries, the Supreme Court has avoided a strict requirement that the separate injuries be definitely "fixed, measurable and arrested." *Lewicki v. N.J. Arl Foundry*, 88 N.J. 75 (1981) at 86-87. That phrase, first appearing in *Brooks v. Bethlehem Steel Co.*, 66 N.J. Super. 135, 146 (App. Div. 1961), *certif. denied* 36 N.J. 29 (1961), was not intended as a dispositive test to qualify one for the Second Injury Fund. The court meant only to recognize that such apportionment is ordinarily difficult and must be conducted in a well-reasoned manner with proper medical proofs and testimony.

C. Schedule of Payment

The Second Injury Fund benefits are payable at the total and permanent disability rate for the year of the last compensable injury or disability. As stated before, the totally disabled are entitled to the compensation rates applicable for temporary disability □ 70% of the worker's weekly wage received at the time of the injury subject to a maximum of 75% of Statewide Average Weekly Wages (SAWW) and a minimum of 20% of SAWW.

The fund only covers total disability benefits. It does not cover medical benefits, attorney fees, costs or dependency benefits of workers who died of their compensable injury while receiving benefits from the fund.

The employer is responsible for disability payments to cover the subsequent injury, and the Fund is liable to the employee for the difference necessary to satisfy total and permanent disability. The Fund will seek reimbursement or credits out of any third party recoveries.

D. Bringing the Second Injury Fund Into the Case

The Second Injury Fund may be brought into the case by completing, serving, and filing a Second Injury Fund Petition, which can be found on the New Jersey Division of Workers' Compensation website. Once the petition is served and filed, it is assigned to a Second Injury Fund list, and a conference is scheduled with the assigned judge, the Fund Deputy from the Attorney General's Office, the petitioner's attorney, and the respondent's attorney.

E. Fund Involvement When the Preexisting Injury Is Part of An Active Compensable Claim

The Second Injury Fund can be brought into a case when a worker is alleged to be totally disabled due to a combination of accidents or occupational exposures against an employer or employers *currently part of the litigation*. For instance, the worker suffers a lumbar herniated disc and then, six months later, returns to work, for either the same or a different employer, and sustains a cervical injury requiring a fusion. The worker is totally disabled as a result of the two accidents combined, both of which are pending in the Division of Workers' Compensation. Assume there is no identifiable disability predating the existing claims. The Second Injury Fund is responsible for no share of these injuries and would pay nothing during the initial 450 week period of total disability. In total disability cases, after 450 weeks, the worker can be made to submit to an examination to see if she is capable of employment. If not, total disability payments continue. At this point, after the 450 week period of total disability ends, the Second Injury Fund commences life-long payments under N.J.S.A. 34:15-12(b), assuming the worker remains disabled.

This situation differs from that where the Fund pays a portion of the 450 weeks of total disability, as would occur if the back injury, described above, had occurred 10 years prior to the filing of the claim for the cervical injury. In this instance, assume the lumbar injury settled for 25% of total and the cervical injury is assessed at 75% of total. The employer liable for the cervical injury would pay 337.5 weeks of disability at the worker's applicable rate. The Fund would then pay the remaining 112.5 weeks, and continue to pay thereafter so long as the worker remains totally disabled. In the previous example, however, if we assume the same apportionment of disability, the Fund pays nothing on the initial 450 weeks. Instead the employer responsible for the back injury would pay 112.5 weeks, the one responsible for the cervical injury would pay the 337.5 weeks, and the Fund would pay thereafter so long as the worker remains disabled.

If the hypothetical facts are changed so that the preexisting back injury is not work related, whether it occurred six months prior to the neck injury or ten years prior, the

Fund would pay 112.5 weeks after the employer pays 337.5 weeks, and, assuming continued total disability, would continue to pay thereafter.

IX. EMPLOYER CREDITS FOR PRE-EXISTING INJURIES

A. Employer Credit Under the 1980 Reform Act

Prior to 1980, employers had maintained a considerable risk in hiring the partially disabled worker in those instances where the Second Injury Fund did not apply. It remains mandatory that for liability of the Fund to attach, the ultimate condition of the employee must be one of permanent and *total* disability; a partial permanent injury does not satisfy the statutory requirements. *Katz v. Howell Township*, 68 N.J. 125 (1975). No longer, though, must the employer take the employee as is, handicapped by physical impairments or underlying susceptibilities to injury and disease; in effect acting as the insurer of the worker's ill or defective health.

N.J.S.A. 34:15-12(d) was amended in 1980 to give the employer credit for the prior non-compensable injury which the employee had brought to the job. This alleviated the burden on innocent employers of paying oppressive settlements for injuries in which they had no role and removed the windfall employees were receiving on otherwise non-compensable injuries. *Belth v. Anthony Ferrante and Son, Inc.*, 47 N.J. 38 (1966), is particularly illustrative of the remedial nature of the amendment on behalf of the employer. The evidence in *Belth* had reasonably established that the petitioner's claim of 75% disability in his leg after an accident at work was comprised of a pre-existing injury, some 65% in scope, caused by a motorcycle accident. Under §15-12(d) as then written, credit was extended to employers only for prior compensable accidents. Instead of paying that portion attributable to the working accident, the 10% difference, the defendant employer unwittingly found himself underwriting the full extent of his employee's recreational mishap. Today the *Belth* employer would pay would pay the award of 75% of the leg with a credit for 65% of the leg. This makes a difference because an award of 75% (of the leg) with a credit of 65% amounts to much more than an award of 10% of the leg.

The 1980 amendment, extending the credit to non-compensable accidents, deprives the worker of no justified financial protection. Rather, it assures in the future an accounting by the employee for the cost of those injuries and/or diseases attributable to causes independent of the work place. By removing the undue risk to the employer of guaranteeing his employee's prior health, the new §15-12(d) better serves the public policy, as professed in *Paul*, to encourage hiring of the disabled.

Note, the Superior Court held in *Abdullah v. S.B. Thomas, Inc.*, 190 N.J. Super. 526 (App. Div. 1983), that the worker is to receive compensation equaling the full extent of the impairment despite a pre-existing injury. The employer, however, is entitled to be credited with the value of the previously existing injury. To determine the employer's credit, the pre-existing injury is given a present value as found in the SAWW schedule in effect for the time of the accident.

A significant development in the law resulted from an amendment to N.J.S.A. 34:15-12(d) where credit is granted to the employer for previous loss of function to the body, head, member or an organ. In interpreting this portion of the statute, the appellate

division, in *Abdullah v. S.B. Thomas Inc.*, 190 N.J. Super. 26 (App. Div. 1983), held that a previous loss of function to which the employer is entitled as a credit should be translated into a present value under the new schedule and applied as a credit against the present schedule of the overall injury for which the employer, by reason of a subsequent compensable accident, is liable.

In *Abdullah*, the worker was 50% disabled overall with a preexisting disability of 37.5% of total. As explained in *Abdullah* and reiterated in *Poswiatowski v. Standard Chlorine Chemical Co.*, 96 N.J. 321 [1984]:

> the worker is awarded 50% partial total (50% of SAWW for 300 weeks), not 12.5% partial total ($47 for 75 weeks). The employer is then entitled to a credit for 37.5% partial total (40% of SAWW for 225 weeks.) [*Poswiatowski* at 331.]

Using 2003 rates as an example, the worker in this situation, assuming entitlement to a rate of at least $425 per week, would be awarded $51,000 [300 weeks x $425 ($127,500) minus a credit for 225 weeks x $340 (76,500)]. This amounts to substantially more than $12,750, which is the award for 12.5% of partial total.

Therefore, a new injury of 10% partial total in 1999 calculated to be 60 weeks at $144.00 totalling $8,640.00 with a credit of 5% for a 1965 injury which awarded $1,100.00 now results in a dollar credit of 5% at 1999 rates or $4,320.00 which would leave a balance due to the employee of $4,320.00.

B. Calculating *Abdullah* Credits with the NJM Charts

A credit pursuant to *Abdullah v. S.B. Thomas, Inc.*, *supra*, is best calculated with the assistance of the New Jersey Manufacturers ("NJM") charts. The following examples will calculate permanent disability with a credit, first where the petitioner's rate is sufficient to produce the maximum amount, then with a rate of $168.00 per week. (A rate of $168 per week results from an average weekly wage of $240.00 per week, as the rate of compensation is 70% of the worker's weekly wages up to a yearly maximum rate, which in 1999 is $539.00.) First assume a petitioner earning $770.00 per week with a preexisting back condition. He injures his back and left ankle while working in 1999, giving rise to the maximum rate of compensation of $539.00 ($770.00 x .7). (If the petitioner earned $1500.00 per week, the rate of compensation for 1999 would remain at $539.00 because the maximum rate may not exceed 75% of the State Average Weekly Wage, which is $719.15 in 1999.) At pretrial, the parties settle the case for 40% of partial/total for the back, with a credit of 12½% of partial/total for the prior injury, plus 12½% of the leg for the ankle injury. This adds up to 268.75 weeks prior to the credit: 40% of partial/total yields 240 weeks plus 28.75 weeks for 12½% of the leg, which is 268.75 weeks, which can be approximated at 270 weeks or 45% of partial total disability. These numbers are taken from the front side of the New Jersey Manufacturers chart. $324.00 is the applicable rate specified on the reverse side of the chart for this initial calculation: the weekly rate for 241 to 270 weeks on the 1999 chart.

There are two ways that *Abdullah* credits are calculated in the Division of Workers' Compensation. Using our example of a 12½% of total deduction from 270 weeks, the first method simply deducts the 1999 dollar value of 12½%, which is $10,800.00, from the dollar value of 270 weeks times $324, or $87,480. This leaves the Petitioner with a net award of $76,275. The Order on page two would be written as follows: "270 weeks at $324 less $10,800 [Abdullah credit] equals (balance due) $76,680."

The second method makes the deduction in weeks rather than dollars. 12½% of partial/total is calculated in terms of weeks based upon the petitioner's rate of $324.00. The front side of the 1999 chart indicates that the full 1999 value of 12½% of partial/total is $10,800.00, which, when divided by 324 yields 33.34 weeks. These 33.34 weeks are then subtracted from the 270 weeks, leaving a total of 236.6 weeks to be used in the final calculation and to be written down on the second page of the Order Approving Settlement under the "Disability Awarded" section. This section will read: "235.25 weeks at $324.00 (less $0 paid) equals (balance due) $76,658.40."

Because there are more than 180 weeks involved in the calculation, it is performed at the single rate specified on the right-hand side of what is otherwise a blank row on the reverse side of the NJM chart. This differs from the calculation required when the weeks total between 91 and 180 (as noted on New Jersey Manufacturers Insurance Company Charts as well as the example at the end of the "Low Rates" section, *infra.*) The rate of $324.00 is derived from the initial stacked calculation of 268.75 weeks. If the rate were calculated based upon the weeks left after the set off (235.25 weeks), the rate would be $288.00 and would yield a total of $67,752.00, $8469.00 less than $76,221.00.

Note that the rate used to calculate a permanency award usually differs from the rate used to calculate temporary disability. On the first page of the Order Approving Settlement, there is a provision for two rates as indicated by a backslash: first is the temporary disability rate of compensation and second the rate used to calculate permanent disability. These rates are expressed as follows in our example: $539.00/$324.00. The $539 represents 70% of the petitioner's gross weekly wages and is the rate of temporary disability benefits paid while the petitioner was out of work and receiving active, curative medical treatment. The second is the permanent disability rate calculated using the NJM chart. This latter rate fluctuates depending on the severity of permanent disability or loss of functional capacity: the greater the disability, the higher the rate. However, as will be seen below, the permanent disability rate can be capped below the chart-specified rate if the petitioner's wages are low.

1. Low Rates

In the example above, the rate at which the worker was entitled to temporary disability exceeded $324.00, the rate used to calculate worker's settlement award. If the employee's rate of compensation, however, falls below the number on the chart ($324.00 in this case) used to calculate the award, the lower number is used to determine the amount of permanency. If the worker's weekly wage is $240.00, it will give rise to a rate of $168.00.

Taking another example: assume a worker with gross weekly wages of $263.00 and a rate of compensation of $184.00 who settles a case arising out of a 1998 injury for 25% of partial/total for the hip and 3% for the left arm. This adds up to 159.9 weeks (150 for 25% of partial/total and 9.9 for 3% of the arm). Will the worker's relatively low rate of compensation result in a reduced award? One quick way to answer this question is to go the partial/total column on the front side of the chart and look for the first entry with more than 159.9 weeks, which is 27.5% of partial/total or $26,865.00 at 165 weeks. $26,865.00 divided by 165 equals $162.82. Because $162.82 is lower than $184.00 (70% of the worker's average weekly wages), her permanency rate, which will fall just below $162.82, is sufficient to obtain the maximum award, which will be paid at a rate of $160.86.

To perform the exact calculation, on the reverse side of the 1998 chart, go to the bottom line of the horizontal weeks column to the bifurcated box with the most weeks short of 159.9. This would be the 151/156 column, which indicates a pay out of $24,864.00 for 156 weeks. The remaining 3.9 weeks are then tabulated at $220.00 per week, the amount indicated in the next column to the right in the 157-162 week box. Thus $858.00 is added to $24,864.00 for a total settlement of $25,722.00. The permanency rate is derived by dividing 159.9 into $25,722.00 for a quotient of $160.86. On the Order Approving Settlement, the permanency award should be written: "159.9 weeks at $160.86 equals $25,722.00 less $0 paid equals balance due $25,722.00."

State of New Jersey Department of Labor and Workforce Development DIVISION OF WORKERS' COMPENSATION WC(DO)-100 Interactive (r.6/15/2007)	**ORDER** ☐ JUDGMENT ☒ APPROVING SETTLEMENT	CASE NO'S.: VICINAGE: New Brunswick

PETITIONER

NAME: Peter Petitioner
DATE OF BIRTH: 12-12-70
ADDRESS: 220 Raritan Avenue, Highalnd Park, NJ 08904, Middlesex County

vs

RESPONDENT

NAME: Robert Respondent
ADDRESS: 325 Geroge Street, New Brusnwick, NJ 08901, Middlesex County

ATTORNEY FOR RESPONDENT

NAME: Burns and Kelly, LLC
ADDRESS: 100 Beardsley Avenue, Bloomfield, NJ 07110
TELEPHONE NUMBER (AREA CODE):
APPEARING: Laura Lawyer, Esq.

ATTORNEY FOR PETITIONER

☐ SSN ☐ FEDERAL EMPLOYER NUMBER ☐ NJ REG NUMBER
NAME: Law Office of John D. Kovac
ADDRESS: 142 Livingston Avenue, New Brusnwick, NJ 08901
TELEPHONE NUMBER (AREA CODE): (732) 247-9990
APPEARING: John D. Kovac, Esq.

INSURANCE CARRIER

NAME: Fireman's Fund ☐ SELF-INSURED ☐ TPA
ADDRESS: 538 Broad Hollow Raod, Melville, NJ 08054
CLAIM NUMBER: WC 123-11345-99

DATE OF ACCIDENT OR OCCUPATIONAL EXPOSURE: 12-12-99
DESCRIBE (Briefly): Petitioner fell and injured his back and left ankle.

Weekly Wages : $ 240 **Rate(s):** $ 539 / $ 324

IF RE-OPENED PETITION, INDICATE FOR LAST AWARD:

Date: _____ **Permanent Paid:** $ _____ **Temporary Paid:** $ _____

THIS MATTER HAVING COME BEFORE THE COURT ON THIS 8 **DAY OF** JUNE , _____

☐ **ORDER FOR JUDGMENT**

It appearing that the Petitioner suffered a compensable injury on the above mentioned date while in the employ of respondent; It is Ordered and Adjudged that Petitioner be awarded compensation benefits, payable as indicated on Page 2.

☒ **ORDER APPROVING SETTLEMENT**

The parties having settled the matter and a finding by the Court having been made that the terms of the settlement are fair and just; It is Ordered that this settlement be approved and the petitioner be paid as indicated on page 2.

PERMANENT DISABILITY (Describe Percentages below followed by the Nature and Extent of Injury and Members involved):

45 % of PARTIAL TOTAL

This approximates: 40 % of total for status L4-L5 and L5-S1 microdiscectomy with right lower extremity sciatic neuralgia, plus 12-1/2% for the right foot for a right ankle strain with residual synovitis.

Respondent is to receive an Abdullah credit for 12-1/2% of partial total for a prior back injury

State of New Jersey Department of Labor and Workforce Development DIVISION OF WORKERS' COMPENSATION WC(DO)-100 Interactive (r.6/15/2007)	**ORDER** ☐ **JUDGMENT** ☐ **APPROVING SETTLEMENT**	CASE NO'S.: VICINAGE: New Brunswick

DISABILITY AWARDED:

TEMPORARY: 40.3 weeks at $ 539 = $ 21,721.70 less $ 21,721.70 paid = Balance due $ 0

PERMANENT: 270 weeks at $ 324 = $ 87,480 less $ 10,800 paid = Balance due $ 76,680

☐ Voluntary Tender ☐ Reopener Credit ☐ N.J.S.A. 34:15-40

MEDICAL BILLS (Doctors and/or Institutions) AND/OR MISCELLANEOUS INFORMATION:

Adequate as paid.

☐ **ORDER FOR CHILD SUPPORT** ☐ **ADDENDUM ATTACHED**

ALLOWANCES	**REIMBURSE**	**TAX IDENTIFICATION NUMBER**	**TOTAL AMT. ALLOWED**	**PAYABLE BY PETITIONER**	**PAYABLE BY RESPONDENT**
MEDICAL FEE ALLOWED: *(report and/or testimony)* Dr. Shaw			300	150	150
Dr. Johnson			300	150	150
INTERPRETER:					
ATTORNEY(S) FEE: John D. Kovac			15,300	6120	9180
STENOGRAPHIC SERVICE John F. Trainor, Inc.			150		150
MISCELLANEOUS FEES: *(list below)*					

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE RECEIPT OF COPY:

PETITIONER'S ATTORNEY

PETITIONER (where applicable)

RESPONDENT'S ATTORNEY

JUDGE OF COMPENSATION DATE

JUDGE'S NAME

THE ORIGINAL OF THIS DOCUMENT, SIGNED BY THE JUDGE OF COMPENSATION, WILL BE MAINTAINED ON FILE IN THE DIVISION OF WORKERS' COMPENSATION, PURSUANT TO N.J.S.A. 34:15-121 et. seq.

State of New Jersey Department of Labor and Workforce Development DIVISION OF WORKERS' COMPENSATION WC-168 r. 2-21-07	**CASE EXHIBIT LISTING** **FOR:** ☐ **PETITIONER** ☐ **RESPONDENT**	CASE NO'S.: VICINAGE: New Brunswick

Judge: _____

Petitioner: Peter Petitioner **Respondent:** Robert Respondent

Petitioner Attorney: Law Office of John D. Kovac **Respondent Attorney:** Burns and Kelly, LLC

					Retained		
Hearing Date	*No.*	*ID*	*Ev.*	*Description*	*Court*	*Atty.*	*Reporter*
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X. Offsets to Workers' Compensation Benefits

In order to avoid a double recovery, any proceeds from third-party claims or additional benefits from pensions or social security will act as a credit to the respondent. For example, where the injury in question is caused by a third party, *i.e.*, a tort feasor, the statute provides, in N.J.S.A. 34:15-40, for an inter-relationship of the monies recovered by the worker so that there is not a double recovery. Similarly, the concept of avoiding double recovery is treated in other circumstances, for example, Social Security, N.J.S.A. 34:15-95.4 and 34:15-95.5. There may be a set-off where the employee is on a public employees' pension with the set-off running to the pension for workers' compensation benefits. A public employee may recover workers' compensation benefits even if the employee is receiving a retirement pension. If, however, the employee is on accidental disability retirement, there will be a set-off taken by the Division of Pension and Benefits. The division of workers' compensation has jurisdiction to set off disability pension benefits against both temporary and permanent disability compensation awards, but not against retirement pension benefits. *Young v. Western Electric Company, Inc.*, 96 N.J. 220 (1984).

A. Section 40 Liens: Third Party Claims

1. Introduction

Pursuant to N.J.S.A. 34:15-40, the worker's compensation carrier has a right of reimbursement from a worker who recovers in a related third-party action. The amount recoverable by the compensation carrier depends on three factors: (1) the amount of benefits paid by the compensation carrier; (2) the sum of the third-party recovery; and (3) the attorney fee agreement in the third-party case. Typically the attorney fee is one third but can be lower by agreement or if money recovered exceeds $500,000.00. Attorney fees (minus costs of up to $200.00) are deducted from the amount recoverable. Where the attorney fee is one-third, the compensation carrier can recovers up to two-thirds of the value of compensation benefits paid (minus $200.00), but no more than two thirds (minus $200.00) of the amount of the third-party recovery. Where the attorney fee is 30%, the compensation carrier recovers 70% of the value of compensation benefits paid, but no more than two thirds (minus $200.00) of the amount of the third-party recovery

The worker's third party attorney must protect this lien; failure to do so can result in personal liability. *Aetna Life & Casualty v. Engard*, 218 N.J. Super. 239 (Law. Div. 1986). The lien applies to medical treatment, temporary disability benefits, and permanent disability benefits. Section 40 prevents a "double recovery" by ensuring that the worker gets no more than the greater of either the total worker's compensation benefits provided or the total of the third-party recovery, but not both. N.J.S.A. 34:15-40(b) applies when the third-party recovery is greater than the liability of the employer; N.J.S.A. 34:15-40 (c) applies when the third-party recovery is less than the liability of the employer. Under subsections (b) and (c), the employer pays attorney fees up to one third plus $200 in costs as specified in subsection (e).

In a settlement pursuant to N.J.S.A. 34:15-20, the workers' compensation carrier is not entitled to a section 40 lien for the amount of the lump-sum unless the parties agree that the respondent may reserve section 40 rights and put this on record. However the respondent, as a matter of right, may recover medical expenses paid to the worker. *Id.* at 248, 250. As the court explained in *Aetna Life & Casualty*

> The evident wording of the final sentence of section 20 reveals a specific legislative intent to treat payments made under that section as a special category of payments, i.e., they are recognized as payments of workers' compensation benefits for insurance rating purposes only. Payments pursuant to a section 20 settlement are thus exempt from a carrier's general lien created in section 40.
>
> The Court is satisfied that this statutory construction effectuates the legislative intent which shines through the remainder of section 20. The statute expressly articulates a policy of finality and conclusiveness, notwithstanding any other provisions of this chapter. From the claimant's perspective, a section 20 settlement means dismissal of the claim petition and a surrender of any rights to future compensation benefits. From the perspective of the employer or his insurance carrier, all payments are deemed to be compensation payments for insurance purposes only. [*Id.* at 250; see also *Bello v. Commissioner of Department of Labor & Industry*, 56 N.J. 41 (1970).]

2. Third-Party Award Exceeds Compensation Liability

For an application of N.J.S.A. 34:15-40(b), assume the third-party award is $300,000.00 with an attorney fee of $100,000.00 (this is an approximation - the actual amount of the third-party attorney fee would be lower given that costs would be deducted from the gross settlement amount prior calculating the fee); the total compensation liability is $120,000.00 with $20,000.00 in medical expenses, $20,000.00 in temporary disability, and $80,000.00 in permanent disability. If the third party case is unresolved when the workers' compensation matter is settled, the full lien will be satisfied from the third-party settlement, and no deductions will be made from the workers' compensation settlement. From the worker's $300,000.00 settlement, $80,000.00 minus $200.00 ($79,800.00) is deducted and paid to the compensation carrier, leaving the worker with $120,200.00 from the third-party case after deduction of the attorney fee and lien. Add to this $100,000.00 in combined temporary and permanent disability benefits and the worker ends up with $220,200.00 prior to subtraction of the attorney fee in the compensation case. The worker's share of attorney fees would likely be $6,400.00 or 8% of the permanency award of $80,000.00.

If the third-party litigation settles prior to the permanency award but after all medical and temporary disability benefits have been paid, two thirds of the medical and temporary disability lien minus $200.00 ($26,466.40) will be deducted from the settlement. This leaves the petitioner with $173,533.60 of the third-party settlement after attorney fees are taken out. There must also be a deduction, however, from the permanency award when the workers' compensation case is resolved. The employer is entitled to a total deduction of $79,800.00, from which $26,466.00 has already been collected, leaving a difference of

$53,334.00 to be deducted from the permanency award of $80,000.00. Thus, on the date of the workers' compensation settlement, the worker is left with $26,666.00. (Note that from this amount, the court would likely order the worker to pay an attorney fee of $2,133.28.) Add to this $20,000 in temporary disability benefits and $173,553.60 from the third-party settlement and the worker has been awarded a total of $220,219.60 prior to the deduction of worker's compensation attorney fee, roughly the same amount as in the prior example where the third party case settles last.

The petitioner must be advised, however, that after a settlement, if the compensation case is reopened or if additional medical treatment related to the case is required, the carrier retains its right to offset the value of additional benefits. In the example above, the total potential amount recoverable by the carrier is $199,800 (two thirds of $300,000 minus $200). Immediately after the workers' compensation settlement, the carrier recovered $79,800. At that point, the carrier has been compensated pursuant to its rights under section 40. However the carrier may in the future withhold an additional $120,000 ($199,800 - $79,800)--two thirds of additional benefits owed—and pay future benefits at one third of actual value until the lien is completely satisfied.

Assume that the petitioner needs $100,000 in additional medical treatment related to the compensation case, $40,000 in additional temporary disability benefits, and $40,000 in additional permanent disability benefits—a total of $180,000 in additional benefits. If there were no section 40 lien, petitioner would be fully entitled to these benefits. But given the respondent's rights under section 40, the respondent only has to pay $60,000 (one third of $180,000.) Beyond that, additional benefits must be paid in full because the total value of the lien becomes exhausted after deduction of $199,800.

3. Compensation Liability Exceeds Third-Party Award

For an application of N.J.S.A. 34:15-40(c) where the third-party award is less than the compensation liability, assume the third party award is $90,000.00 with an attorney fee of $30,000.00; the total compensation liability is $120,000.00 with $20,000.00 in medical expenses, $20,000.00 in temporary disability, and $80,000.00 in permanent disability. Again, if the third party case is unresolved when the workers' compensation matter is settled, the lien will be satisfied from the third-party settlement, and no deductions will be made from the workers' compensation settlement. From the $90,000.00 third-party settlement, $60,000.00 minus $200.00 ($59,800.00) is deducted and paid to the compensation carrier, leaving the worker with nothing from the third-party case after deduction of the attorney fee and lien.

If the third-party litigation settles prior to the permanency award but after medical and temporary disability benefits have been paid, two thirds of the medical and temporary disability lien minus $200.00 ($26,466.40) will be deducted from the settlement. This leaves the petitioner with $33,533.60 of the third-party settlement after attorney fees are taken out. There must also be a deduction, however, from the permanency award when the workers' compensation case is resolved. The permanency award in this instance is $80,000.00. The $40,000.00 med/temp lien has already been satisfied by the deduction of

$26,466.40 from the third-party settlement. What remains is a lien of $50,000.00 (the difference between $90,000.00 and 40,000.00) on the permanency award, for which the respondent gets a credit of two thirds or $33,333.33, which gets taken out of the $80,000.00 permanency award, leaving petitioner a permanency award of $46,666.67.

4. Negotiating Section 40 Liens

The workers' compensation attorney who also handles the third-party case should keep in mind that the amount of the compensation carriers' lien can be negotiated, especially when questions of liability exist, which is more likely when the third-party claim is objectively valued at less than the total compensation claim. The compensation carrier may be willing to reduce its lien so that a third-party case can settle rather than risk a no-cause or other unfavorable outcome at trial.

5. Section 40 Liens Apply To Civil Suits Against The Worker's Own Employer

Section 40 liens apply to the employer as a "third party" defendant in a civil case. In *Calalpa v. Dae Ryung Co., Inc.*, 357 N.J. Super. 220 (App. Div. 2003), the plaintiff settled a civil claim for damages against his employer for the loss of three fingers due to wrongful conduct in violation of the exclusivity bar. The compensation carrier moved in Superior Court to recover its lien pursuant to Section 40 and was awarded full reimbursement, which was upheld by the Appellate Division. The plaintiff on appeal argued that the employer is not a third party under the statute, that there was no double recovery because the settlement proceeds did not reflect his full damages, and that he should be entitled to an equitable offset if the court finds entitlement to a lien. The Appellate Division seemed somewhat sympathetic to these positions and gave them attention in the opinion. Nevertheless it held that the plaintiff's employer is a third party entitled to the full amount of the lien under Section 40:

> *Millison* has clearly permitted an employee to pursue both remedies, but recognized that the employer retains the right to a lien or offset for compensation benefits against monies obtained in the tort litigation. We are convinced this is a section 40 lien. [*Id.* at 230-231.]

6. Paying Petitioner's Share of Section 40 Liens

In *Owens v. C&R Waste Material*, 76 N.J. 584 (1978), the petitioner was found to be totally disabled due to a work-related condition. His employer's share of liability for the first 450 weeks was $64,647.23, and there was a third-party recovery of $71,000. The Compensation Judge ordered the employer to immediately pay the petitioner in a lump sum his full share of counsel fees, in the calculated amount of $19,596.12, plus $200 in costs and fees pursuant to N.J.S.A. 34:15-40.

Not wanting to pay the full amount up front, the employer appealed, claiming that the amount should be paid over the 450-week period. It further claimed that if its obligation were to be cut off (for instance by the death of the employee, leaving no

dependants, as set forth in 34:15-12[e]), it would not have to pay the full amount. Finally, the employer claimed that if it has to make a full and immediate lump-sum payment, the payment should be discounted to reflect present value. The Appellate Division affirmed the decision of the Compensation Court, and the Supreme Court affirmed the Appellate Decision in rejecting the employer's contentions.

The Supreme Court noted that a third-party recovery contemporaneously extinguishes a liability of the employer, which is a benefit rendered no less immediate and tangible because in some ways the eliminated liability is contingent. And because this benefit to the employer "coincides with the third-party recovery, it follows that the obligation to share legal expenses attributable to that recovery should be satisfied at the same time those expenses are borne by the employee." *Id.* at 588. Furthermore, because the attorney fee in the third party case is paid in one lump sum, it should not be distributed to the injured worker in the compensation case "in small amounts over a period of 450 weeks" by the employer, whose compensation liability has been extinguished by the same third-party recovery. *Id.* at 589. As the court pointed out, quoting *McDermott v. Standard Accident Ins. Co.*, 40 N.J. Super. 119, 129, 122 A.2d 371 (App. Div. 1956), "the employer's payment of its share of attorney fees is not compensation"; rather "it is the employer's (or carrier's) contribution toward the legal expenses incurred in the third-party action from which it benefited." *Owens* at 589. Finally the attorney fee award is not to be reduced to present value because N.J.S.A. 34:15-40 "makes no provision for the commutation or discounting of such compensation liability in determining the employer's pro rata share of attorney's fee." *Id.* at 589.

B. Offsets Involving Social Security

1. Introduction

Social Security offsets limit the worker's combined benefits, until the age of 62, to no more than either 80% of earnings before disability ("Average Current Earnings" known as "ACE") or the workers' compensation rate, whatever is greater. New Jersey is a "reverse offset" state because the Social Security Administration gets the offset where the worker is simultaneously entitled to social security disability benefits on one hand and temporary disability benefits and/or permanent partial disability benefits on the other hand. But where the worker is entitled to permanent total disability benefits, the compensation carrier, not the Social Security Administration, offsets the amount of social security payments until age 62. Calculation of the offset requires knowledge of the worker's initial SS entitlement rate, 80% ACE, and Workers' compensation rate.

If 80% ACE is greater than the rate of compensation, subtract the initial Social Security entitlement from the 80% ACE to determine the offset rate. Where 80% ACE falls below the rate of compensation, the worker is not deprived of the full compensation rate. In this case, the Social Security rate is subtracted from the compensation rate instead of the 80% ACE weekly rate. The employer loses the benefit of the offset rate once the worker turns 62 years old. After that the employer pays the full rate until the end of the worker's life, but the Social Security Administration has the right to offset the worker's social

security disability payments until the worker becomes 65 years old.

Here are some examples. 80% ACE (reduced to a weekly calculation) is $600; initial entitlement is $300 per week; and compensation rate is $400 per week. The offset rate paid by the compensation carrier until the worker is 62 will be $300 ($600 - $300). After that, the compensation carrier will pay $400 per week. But if 80% ACE is $400; the initial entitlement is $200; and the compensation rate is $500, the offset rate would be $300 ($500 - $200). Once the worker reaches 62, the carrier pays $500 per week. Finally, assume that 80% ACE is $1000 per week, the initial entitlement is $500 per week, and the worker's rate is $500 per week. Here there is no offset because the compensation rate plus the entitlement rate do not exceed 80% ACE ($500 + $500 = $1000). There is no excess over $1000 to be deducted from what the compensation carrier pays. Therefore the worker receives $1000 per week without any deductions.

2. Preparing a Long-Form Order with Social Security Offsets in a Second Injury Fund Case

Conceptualizing the principle of offsets is relatively simple, as illustrated above. Preparing a long-form Order Approving Settlement with a Social Security offset, however, is more complex. Attached is a sample order, obtained from the New Jersey Division of Workers' Compensation website, and prepared by The Law Office of John D. Kovac. These order forms, which are periodically updated but all relatively similar, are downloadable in an interactive format. The example includes an injury to the shoulder occurring on November 11, 2002 plus pulmonary injury stemming from occupational exposure to fumes that the petitioner, an auto mechanic, was exposed from 1986 to December 2002. The respondent was found responsible for 45% of total for right shoulder injuries plus chronic obstructive pulmonary disease and chronic occupational bronchitis, as set forth on page one. The shoulder injury stems from an accident that occurred on November 11, 2002. The Second Injury Fund is liable for the remaining 55% of preexisting disability, consisting of the injuries listed on page five: bilateral gloucoma, left shoulder internal derangement, and left knee sprain. Because the disabling accident occurred on November 11, 2002 (See page one, description of accident and exposure), calculations are performed using the 2002 charts.

Total disability is calculated on 450 weeks rather than 600 weeks, pursuant to N.J.S.A. 34:15-12 (b). On the 600-week scale, 45% of total amounts to 270 weeks. On the 450-week scale, however, there is a reduction to 75% of 600 weeks: 270 weeks are reduced to 202.5 weeks (270 x .75). 202.5 weeks times $441, the petitioner's compensation rate, yields a total of $89,302.50, listed on page two of the order, in the section entitled "Award without social Security Offsets." From this amount deductions must be made for social security offsets and for the petitioner's share of attorney fees and costs. The respondent's share of attorney fees and medical expenses must also be tabulated and assessed.

Further down on page two is a section entitled "Payments Due from Respondent with Social Security Offsets." Because total disability is calculated on 450 weeks, the

Second Injury Fund owes in weeks the difference between 450 and 202.5, which is 247.5 weeks, at the payable base weekly rate of $205.62, which is the social security offset rate.

The petitioner began receiving Social Security disability benefits in October 2003 in an initial amount of $235.38 per week ($1,020.00 per month) His 80% ACE rate, provided by the Social Security Administration, is $408.18 per week ($1768.80 per month). His initial entitlement of 235.38 per week, when subtracted from the Workers' Compensation rate of $441.00 per week, leaves $205.62 per week. Because $205.62 is greater than $172.89, the difference between the 80% ACE rate of $408.18 and the initial entitlement of $235.38, the offset rate is set at $205.62, as indicated on page two of the Order. Given that the petitioner has no auxiliaries (children) receiving social security benefits, the blanks for auxiliaries remain unfilled. If the petitioner had children receiving Social Security auxiliary benefits, additional calculations would have to be made: the petitioner's offset would be further reduced because the initial entitlement would be greater. As noted on the Order, the offset rate of $205.62 will be paid until the petitioner turns 62 years old on August 30, 2007. After that, he will receive benefits until his death at his full rate of $441 per week, so long as he remains totally disabled.

Section (d) on page two of the Order provides that payment by the Fund will begin on February 21, 2008, the date of the expiration of the last compensation award. This date is determined by counting 202.5 weeks from the date the petitioner is deemed to have become totally disabled, which, as indicated on page one, is April 4, 2004. The date of totally may be set when temporary disability benefits stop, which could be long before the case is settled and the order drafted. However to facilitate settlement of Second Injury Fund cases, the commencement date of permanent disability benefits is sometimes compromised and set later.

It is noted at the top of page three of the Order that the first 18.36 weeks are to be paid at the Petitioner's full rate of $441 to cover his attorney fees and costs, which are tabulated on page seven. The costs for the petitioner's share of medical reports, plus $53 in case expenses, plus $7144.2 (petitioner's share of attorney fees) equal $8097.20, which divided by $441 equals 18.36. Payment at the full rate benefits the petitioner, who, if fees and costs were paid at the lower offset rate, would have fewer weeks left to collect benefits that actually go into his pocket. On the right of the column on page seven listing the Petitioner's share of fees and costs sits the column containing the Respondent's share of fees and costs. On the left of the column containing petitioner's share of fees and costs, is a listing of the total fees and costs. The total attorney fee is $17,860.50, representing 20% of $89,302.50, the award against the respondent. Attorney fees are not assessed for amounts recovered against the Second Injury Fund. The columns indicate that of the total attorney fee, the respondent pays $10,716.30 or 60% out of its own pocket, and that the remaining $7144.20, or 40%, is borne by the petitioner. The rest of the respondent's fees and costs consist mainly of its share of the Petitioner's forensic examinations.

Additional specifics about the payments are set forth in an addendum:

> Respondent pays 18-2/7 weeks from 4-4-04 to 8-9-04 at $441 per week to allow for petitioner's share of counsel fees and costs amounting to $8097.20; 159-2/7 weeks from 8-10-04 to 8-29-07 at the offset rate of $205.62; and 25 weeks from 8-30-07 to 2-20-08 at petitioner's full rate of $441. The Second Injury Fund will then pay 247-1/2 weeks from 2-21-08 to 11-18-12, and 12b commences on 11-19-12.

In the example under discussion, there was also a temporary disability benefits lien against money paid by a private insurance company, Liberty Mutual, which the petitioner was obligated to reimburse. Hence $9694 was deducted from the petitioner's award at the offset rate of $205.62 times 47.11474 weeks.

State of New Jersey Department of Labor and Workforce Development DIVISION OF WORKERS' COMPENSATION WC-376(r.1-09-06)	**ORDER FOR TOTAL DISABILITY w/Second Injury Fund**	CASE NO'S.: 2002-39020 2004-34903 VICINAGE: New Brunswick

PETITIONER

SOCIAL SECURITY NUMBER: 000-00-0000

NAME: Samuel W. Smith | DOB: 8-30-45

GENDER: ☒ MALE ☐ FEMALE

ADDRESS (Including County):
PO Box 9876
South Brunswick, NJ 08824
Middlesex County

vs

RESPONDENT

NAME: Burns Rubber Tire Company

ADDRESS (Including County):
500 Ryders Lane
East Brunswick, NJ 08824
Middlesex County

ATTORNEY FOR RESPONDENT

NAME: Freeman Barton Huber & Sacks

ADDRESS:
20 Tanner Street (PO Box 10)
Haddonfield, NJ 08003

TELEPHONE NUMBER (AREA CODE):

APPEARING: Richard A. Barton, Esq.

APPEARING FOR SECOND INJURY FUND: Jane Lafferty, Esq.

ATTORNEY FOR PETITIONER

☒ SSN ☐ FEDERAL EMPLOYER NUMBER ☐ NJ REG NUMBER
000-00-0000

NAME: :Law Office of John D. Kovac

ADDRESS:
142 Livingston Avenue
New Brunswick, NJ 08904

TELEPHONE NUMBER (AREA CODE): (732) 247-9990

APPEARING: John D. Kovac, Esq.

INSURANCE CARRIER

NAME: Liberty Mutual ☐ SELF-INSURED ☐ TPA

CLAIM NUMBER:

DATE OF ACCIDENT OR OCCUPATIONAL EXPOSURE: 11-11-02

DESCRIBE (Briefly):
Petitioneer stood up and hit his right shoulder on a vise. Also occupational exposure from July 1986 to November 11, 2002.

FUND PETITION FILE DATE: 11-17-04

Upon the proofs presented and the stipulations made, I find and determine the following facts:

LAST COMPENSABLE ACCIDENT OR EXPOSURE

WAGES:	RATE:	Date of last payment of Permanent Compensation by Respondent:
$630.00	$441.00	2-20-08

In accordance with the provisions of the New Jersey Workers' Compensation Law (N.J.S.A. 34:15-1 et seq.), I find as follows:

Petitioner is totally and permanently disabled as of 4-4-04

Permanent Disability payable by Respondent (Describe Percentages, Nature and extent of Disability, and Members involved):

45% of total for right shoulder sprain and strain with suprascapular and auxiliary nerve impingement, status post acromiplasty and distal clavicle resection, and for chronic obstructive pulmonary disease and chronic occupational bronchitis.

State of New Jersey Department of Labor and Workforce Development DIVISION OF WORKERS' COMPENSATION WC-376(r.1-09-06)	**ORDER FOR TOTAL DISABILITY w/Second Injury Fund - Page 2**	CASE NO'S.: 2002-39020 2004-34903 VICINAGE: New Brunswick

AWARD WITHOUT SOCIAL SECURITY OFFSETS

TEMPORARY: _____ Weeks at $ _____ = $ _____ less $ _____ paid = Balance due $ 0

PERMANENT: 202.5 Weeks at $ 441 = $ 89,302.50 less $ _____ paid = Balance due $ 89,302.50

PAYMENTS DUE FROM RESPONDENT WITH SOCIAL SECURITY OFFSETS

Payments before offset begins	_____	weeks at $ _____			= $ _____	+
Payments w. auxiliaries	_____	weeks at $ _____	less $ _____		Paid = $ _____	+
After auxiliaries	_____	weeks at $ _____	less $ _____		Paid = $ _____	+
After offset completed	_____	weeks at $ _____	less $ _____		Paid = $ _____	
TOTAL PAYMENTS					$ _____	

The total and permanent disability is due to the combined effects of the petitioner's previous disabilities and the last compensable accident or occupational exposure and is clearly within the provisions of the above cited statute.

Accordingly, it is determined that the petitioner receive benefits from the Second Injury Fund as follows:

a. ☐ 247.5 weeks, being the difference between 450 weeks and the 202.5 weeks of permanent disability compensation previously received.
☐ 450 weeks has expired.

b. Payable base weekly rate is $205.62 . (If third party or other credits are involved, please explain below.

c. Awarded base weekly rate is $ 441 .

d. Payment to begin upon the expiration of payment of compensation from the last compensation award, but, in any event, not sooner than the date of filing of the petition for benefits from the Second Injury Fund. Commencement date for Fund benefits is 2-21-08 .

e. On 11-18-12 , which is the expiration of the 450 week period, benefits to continue in accordance with the provision of N.J.S.A. 34:15-12(b) as amended.

MEDICAL BILLS (Doctors and/or Institutions):

☒ Petitioner is in receipt of Social Security Benefits and the initial date of entitlement was 11-1-03 .

Petitioner's ACE is $408.18 and petitioner's initial entitlement was $ 235.38 including $ 0 for auxiliary beneficiaries. Therefore respondent and the Second Injury Fund are entitled to an offset resulting in a rate of $ 205.62 until petitioner's last auxiliary graduates from high school or turns 18 years of age, whichever is later. The rate payable after offset with auxiliaries is $_____. Thereafter, until the petitioner reaches 62 years of age on 8-30-07 the offset rate shall be $ 205.62 .

Name of Auxiliary	Date of Birth

State of New Jersey Department of Labor and Workforce Development DIVISION OF WORKERS' COMPENSATION WC-376(r.1-09-06)	**ORDER FOR TOTAL DISABILITY w/Second Injury Fund - Page 3**	CASE NO'S.: 2002-39020 2004-34903 VICINAGE: New Brunswick

The first 18.758 weeks of permanent disability are to be paid at the full rate of $ 441.00 reflecting Petitioner's share of counsel fee and costs.

☐ An Application for Social Security Disability Benefits and / or Government Ordinary Disability Pension ☐ is pending ☐ is on appeal ☐ has not been filed. Should Petitioner be awarded Social Security Disability Benefits and / or Government Ordinary Disability Pension, Petitioner shall immediately notify the Respondent and the Second Injury Fund of this award. The Petitioner shall reimburse the Respondent and the Second Injury Fund for any workers' compensation benefits paid to Petitioner in excess of the offset rate during the period of time Petitioner has received Social Security Disability benefits or Government Ordinary Disability Pension.

In the event there is a change in the number or status of the auxiliary beneficiaries while Petitioner is receiving Workers' Compensation benefits, Petitioner shall immediately notify the Respondent.

I further Order that Respondent furnish the Petitioner such medical attention, prosthesis, and medical supplies as the condition of the Petitioner may require. Should any emergency arise, necessitating immediate medical attention for the Petitioner, notice and request to Respondent shall not be necessary.

☒ Respondent authorizes_____ as treating physician.

The date of Petitioner's Permanent Total disability is 4-4-04.

On 11-18-12, which is the expiration of the 450 week period, benefits to continue in accordance with the provision of N.J.S.A. 34:15-12(b) as amended.

Pursuant to N.J.S.A. 34:15-12(b), petitioner will be referred to the Division of Vocational Rehabilitation Services for evaluation and services prior to the expiration of 450 weeks from the date of Total Permanent Disability.

PETITIONER DATA

Date of Last Employment: 11-11-02	Occupation: Auto Mechanic	Gross Weekly Wages: $630.00

PRE-EXISTING COMPENSABLE DISABILITIES

Date of Injury: 7-86 to 11-02	Claim Petition Number: 2004-39019
Employer Name: Goodyear Tire	
Permanent Disability Award: 22-1/2% of the right leg	
Description of Injury and Disability: occupational right knee injury	
Hearing Date: 3-16-06	

Date of Injury:	Claim Petition Number:
Employer Name:	
Permanent Disability Award:	
Description of Injury and Disability:	
Hearing Date:	

State of New Jersey Department of Labor and Workforce Development DIVISION OF WORKERS' COMPENSATION WC-376(r.1-09-06)	**ORDER FOR TOTAL DISABILITY w/Second Injury Fund - Page 4**	CASE NO'S.: **2002-39020 2004-34903** VICINAGE: **New Brunswick**

Date of Injury:	Claim Petition Number:
Employer Name:	
Permanent Disability Award:	
Description of Injury and Disability:	
Hearing Date:	

Date of Injury:	Claim Petition Number:
Employer Name:	
Permanent Disability Award:	
Description of Injury and Disability:	
Hearing Date:	

Date of Injury:	Claim Petition Number:
Employer Name:	
Permanent Disability Award:	
Description of Injury and Disability:	
Hearing Date:	

(Provide like data on additional sheets as required)

State of New Jersey Department of Labor and Workforce Development DIVISION OF WORKERS' COMPENSATION WC-376(r.1-09-06)	**ORDER FOR TOTAL DISABILITY w/Second Injury Fund - Page 5**	CASE NO'S.: **2002-39020 2004-34903** VICINAGE: New Brunswick

PRE-EXISTING NON-COMPENSABLE DISABILITIES

Date of Onset: 1997	Origin (if known): ☒ Congenital ☐ Accident / Injury
Description: Glaucoma and optic nerve disease of both eyes.	

Date of Onset: 6-2-97	Origin (if known): ☐ Congenital ☒ Accident / Injury
Description: Sprain and strain of the left shoulder with internal disruption.	

Date of Onset: .6-2-97	Origin (if known): ☐ Congenital ☒ Accident / Injury
Description: Left knee internal derangement.	

Date of Onset:	Origin (if known): ☐ Congenital ☐ Accident / Injury
Description:	

Date of Onset:	Origin (if known): ☐ Congenital ☐ Accident / Injury
Description:	

Date of Onset:	Origin (if known): ☐ Congenital ☐ Accident / Injury
Description:	

Date of Onset:	Origin (if known): ☐ Congenital ☐ Accident / Injury
Description:	

(Provide like data on additional sheets as required)

State of New Jersey Department of Labor and Workforce Development DIVISION OF WORKERS' COMPENSATION WC-376(r.1-09-06)	**ORDER FOR TOTAL DISABILITY w/Second Injury Fund - Page 6**	CASE NO'S.: **2002-39020 2004-34903** VICINAGE: New Brunswick

PETITIONER DATA

Education (highest level completed): 12th Grade

Special Occupational Skills:
None

Rehabilitation Potential:
Poor.

Third Party Actions:

If third party liability action is pending, provide the name and address of the attorney representing this petitioner if different than the workers' compensation attorney, the defense attorney(s), the case name and docket number. None

(Respondent and Second Injury Fund reserve their rights under N.J.S.A. 34:15-40)

☐ Child support order attached
☐ Addendum attached

REMARKS:
Respondent will pay $9694.45 to Liberty Life Assurance Company of Boston representing 47.1474 weeks at Petitioner's offset rate of $205.62 per week, covering the period from August 15, 2004 to July 11, 2005

State of New Jersey Department of Labor and Workforce Development DIVISION OF WORKERS' COMPENSATION WC-376(r.1-09-06)	**ORDER FOR TOTAL DISABILITY w/Second Injury Fund - Page 7**	CASE NO'S.: **2002-39020 2004-34903** VICINAGE: **New Brunswick**

	TAX IDENTIFICATION NUMBER	TOTAL AMOUNT ALLOWED	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
MEDICAL FEE ALLOWED*(expert and/or testimonial)* Sall/Myers--Dr. Johnson--2 reports		$600	$300	$300
Sall/Myers--Dr. Turner, Dr. Maio, and Dr. Friedman Reports		$1200	$600	$600
Dr. Klein ($50 to Petitioner as reimbursement; $150 to Dr. Klein)		$200	$0	$200
INTERPRETER:				
ATTORNEY(S) FEE: John D. Kovac, Esq.		$17,860.50	$7144.20	$10,716.30
STENOGRAPHIC SERVICE:		$125		$125
MISCELLANEOUS FEES: John D. Kovac, Esq., Costs of Suit		$53	$53	
Liberty Life Assurance Company of Boston (47.1474 weeks at Petitioner's offset rate of $205.62 from August 15, 2004 to July 11, 2005)		$9694.45	$9694.45	$0
Total		29,857.95	$17,791.65	$12,066.30

HONORABLE VIRGINIA M. DIETRICH, JUDGE OF COMPENSATION DATE

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE RECEIPT OF COPY:

PETITIONER'S ATTORNEY

RESPONDENT'S ATTORNEY

PETITIONER (where applicable)

DEPUTY ATTORNEY GENERAL

State of New Jersey Department of Labor and Workforce Development DIVISION OF WORKERS' COMPENSATION WC-377i (2-08-06)	**ADDENDUM TO ORDER FOR TOTAL DISABILITY**	CASE NO'S.: **2002-39020 2004-34903** VICINAGE: **New Brunswick**

Case Name: Samuel W. Smith v. Burns Rubber Tire	Petitioner's Social Security Number: 000-00-0000

☐ Petitioner is in receipt of a government ordinary disability retirement pension. The date of retirement was _____. The initial retirement benefit was $ _____ per month. The pension portion of the retirement benefit was $ _____ per month. The annuity portion of the retirement benefit was $_____ per month. The respondent and/or the Second Injury Fund is/are entitled to an offset for this benefit. Based upon the last compensable injury and the reasons for the ordinary disability retirement, the offset shall be _____ % of the pension portion of the retirement benefit, or $ _____ per week resulting in a weekly rate of $ _____.

☒ Other:

Payments are to be as follows: Respondent pays 18-2/7 weeks from 4-4-04 to 8-9-04 at $441 per week to allow for Petitioner's share of counsel fees and costs amounting to $8097.20; 159-2/7 weeks from 8-10-04 to 8-29-07 at the offset rate of $205.62; and 25 weeks from 8-30-07 to 2-20-08 at Petitioner's full rate of $441. The Second Injury Fund will then pay 247-1/2 weeks from 2-21-08 to 11-18-12, and 12b commences on 11-19-12.

Respondent will pay $9694.45 to Liberty Life Assurance Company of Boston representing 47.1474 weeks at Petitioner's offset rate of $205.62 per week, covering the period from August 15, 2004 to July 11, 2005

ENTER JUDGE'S NAME, JUDGE OF COMPENSATION DATE

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE RECEIPT OF COPY:

PETITIONER'S ATTORNEY

RESPONDENT'S ATTORNEY

PETITIONER (where applicable)

DEPUTY ATTORNEY GENERAL

3. Section 20 Settlements

Though N.J.S.A. 34:15-20 does not consider "payments made under this section" to be workers' compensation benefits, the Social Security Administration nevertheless may offset Section 20 settlements under the theory that they are compensation benefits subject to proration. See *Sciarotta v. Bowen*, 837 F. 2d. 135 (Third Circuit 1988); *Rodlin v. Secretary of Health and Human Services*, 750 F. Supp. 146 (DNJ 1990); and *Rivera v. Commissioner of Social Security*, 102 F. Supp. 2d 545 (DNJ 2000). Pursuant to 42 U.S.C. § 424a(a), a person collecting state workers' compensation benefits cannot receive from workers' compensation and Social Security combined more than 80% of pre-disability income.

a. *Rodlin* (Step 2 is Upheld)

In *Rodlin,* the petitioner injured his back on March 1, 1985. Respondent paid temporary disability benefits at $269 per week for approximately 15 months. In June 1986, the petitioner was told to return to work after his temporary disability benefits were terminated. He asserted that he could not work, moved to have his benefits restored, and applied for Social Security Disability. On April 20, 1987, the compensation claim was settled pursuant to N.J.S.A. 34:15-20 for a lump sum of $35,000 with $7,000 deducted for attorney fees. One month later, the petitioner received notice that he qualified for Social Security and that benefits would be paid at $550.35 per month ($123.58 per week). The Petitioner's 80% weekly ACE rate was $275.39.

The 80% ACE rate is not specified in the decision but can be calculated based on other information provided. After taking a deduction, the Social Security Administration paid Petitioner $27.70 per month, or $6.39 per week. This was on top of the $269.00 weekly they rate they had attributed to the Section 20 settlement. Because the Social Security Administration limits beneficiaries to 80% of earnings, the weekly ACE rate would be $269 + $6.39, or $275.39 per week.

Relying on instructions in its Program Operation Manual System, the Social Security Administration converted petitioner's "lump sum settlement into a theoretical stream of periodic worker's [sic] compensation benefits" by assigning to plaintiff the rate of $269 per week, the same rate for which he had previously received temporary disability benefits. The Manual provides three steps in the following order of priority for use in determining the amount of offset:

1. The rate specified in the lump-sum award;
2. The periodic rate paid prior to the lump-sum (if no rate is specified in the lump sum award;
3. If WC [workers' compensation], the State's WC maximum in effect in the year of injury. This figure can be used if no rate is specified in the award or there was no preceding periodic benefit. It can also be used pending post-adjudicative development of the rates specified in 1 or 2.

Employing Step 2, the Social Security Administration reduced benefits from $123.58 per week to $6.39 per week for 130 weeks to offset the Section 20 lump-sum payment. *Id.* at 148.

Because the Section 20 settlement did not specify a rate for proration purposes, the SSA bypassed Step 1 and applied Step 2 instead, which requires calculation of the offset based on the compensation rate paid prior to the settlement. The court found this to be reasonable and rejected plaintiff's argument that the rate should be calculated based on the estimated weeks of his remaining life expectancy.

Rodlin, however, fails to consider that in cases short of permanent total disability, the rate of temporary disability is almost always higher than the rate of permanent partial disability. A more reasonable alternative would have been to allow the $35,000 of Section 20 money to be converted to a weekly rate equivalent to what payments would have been if approximately $35,000 in partial total benefits had been awarded. (Or $28,000 could be the figure used because this is what petitioner received after attorney fees were deducted from the lump-sum settlement.) $35,000 at 1985 rates is approximately 40% of partial total or 240 weeks at $143 per week ($34,320). A proration rate of $143 per week rather than $269 per week would have eliminated the offset: $143 + 123 (the Social Security weekly entitlement rate) = $266.58, which is less than the 80% ACE weekly rate of $275.39.

Because *Rodln* allows the Social Security Administration to apply a temporary disability rate when no rate is specified in the Section 20 settlement, the worker's attorney, in conjunction with the court and respondent's attorney, should always insert a reasonable rate into the order. This would allow the worker to argue that the award should be upheld pursuant to Step 1 of the Social Security Administration's Manual. The parties should also consider attributing a portion of the lump-sum settlement to medical expenses. To facilitate this process, it would help to obtain an opinion on medical expenses from the permanency examiners. Though a petitioner on Social Security is entitled to Medicare after two years, there may be unpaid medical expenses prior to entitlement to Medicare or expenses not covered by Medicare, such as prescription medication and hearing aids.

b. *Rivera* (Medical Expenses)

In *Mario Rivera v. Commissioner of Social Security*, 102 F. Supp. 2d 545 (DNJ 2000), the full amount of the plaintiff's Section 20 settlement, minus attorney fees, was offset by the Social Security Administration. Mr. Rivera asserted that the settlement represented "past, present, and future medical expenses" and was therefore exempt from offset. 20 C.F.R. § 404.408 (d) permits exclusion of medical costs if they reflect a reasonable approximation of future expenses. But no estimate or breakdown of medical expenses was given to the court. Additionally pre-settlement weekly compensation benefits had been paid but ceased immediately after the settlement; this enabled the court to construe the settlement as a substitute for periodic benefits rather than compensation for medical expenses.

c. *Sciarotta* (Step 3 may not be Applied)

Sciarotta v. Bowen, 735 F. Supp. 148 (DNJ 1989), held that the third step in the Program Operation Manual System could not be used by the Social Security Administration because it is irrational and it unduly penalizes claimants. The third step, which attributes to the worker the maximum rate in effect during the year of injury, was to be used when no rate was specified in the lump-sum award and no periodic compensation benefits were paid prior to the lump-sum award. Where neither step one nor two applied, the court accepted the worker's argument that because the payment is the only workers' compensation benefit he will receive for the remainder of his life, it is irrational to prorate the award" over the shortest possible time (4.3 years in this case). *Id.* at 153.

The court further agreed that the Section 20 settlement was a compromise in which the worker opted "not to receive the full benefit to which he might otherwise have been entitled." Therefore, in the opinion of the court, it was an error to treat the award as the maximum allowable benefit. *Id.* Instead, the Social Security Administration could "use the maximum payment period, which currently is 450 weeks and is set by state statute. *Id.* at 154. In sum:

> [A]pplying the current proration methodology to state workers' compensation lump sum settlements operates as a virtual penalty on those disabled workers who wish to avoid the expense and stress of litigation by deciding to settle their state workers'[compensation claims. The proration method used in step 3 effectively penalizes disabled workers for accepting lump-sum settlements of their state worker's [sic] compensation claims by assuming that such settlements represent the maximum allowable benefit for the shortest period of time, and thus guaranteeing, in most cases, the application of the federal offset and subsequent reduction of federal benefits. [*Id.* at 154.]

d. Conclusion

Much of the reasoning quoted from *Sciarotta*, above, could apply as well to *Rodlin*. But the *Rodlin* offset was upheld pursuant to Step 2 partly due to the mere fact that temporary disability benefits were paid prior to the Section 20 settlement. The 1989 District of New Jersey *Sciarotta* opinion came before the court on remand from the Third Circuit's opinion in *Sciarotta v. Bowen*, 837 F. 2d. 135 (Third Circuit 1988), where the Social Security Administration's right to reduce combined disability benefits to 80% of pre-disability earnings was sustained. However because the record was insufficient to allow the Third Circuit to determine if the method of calculation possessed a rational basis, the case was remanded to the district court. *Id.* at 140. Though the Third Circuit rendered no final decision about the calculations, it found "extremely forceful" plaintiff's argument that the Section 20 settlement should have been prorated over his remaining life expectancy. *Id.* at 141. This too may be viewed as an implicit critique of *Rodlin* and Step 2 of the Social Security Administration's Manual.

4. Section 40 Liens

There is no social security offset for money received by a worker pursuant to N.J.S.A. 34:15-40. Money received after deduction of a Section 40 lien is considered a reimbursement for counsel fees, not workers' compensation benefits. *Owens v. C&R Waste Disposal*, 76 N.J. 584 (1978). Thus where the worker obtains a third-party recovery equal to or in excess of workers' compensation benefits, there will be no social security offset because all the money going to the worker in the compensation case represents attorney fees. *Fiore v. Trident Construction Company*, 251 N.J. Super 101 (App. Div. 1991).

Where there is a Section 40 lien on a third-party recovery, the compensation carrier pays the petitioner a lump sum minus the appropriate deduction (approximately two thirds in most cases). If the lien carries over to payments by the Second Injury Fund, the Fund pays weekly and likewise deducts for the lien. The Social Security offset rate takes effect only after the lien has been satisfied.

5. Social Security Offsets Terminate Upon Petitioner's Death

The reduction of workers' compensation benefits by Social Security Disability benefits terminates upon the death of a worker. In *Wood v. Jackson Township*, 383 N.J. Super. 250 (App. Div. 2006), the court held that a widow was entitled to benefits without reduction after the death of her husband, who had died at the age of fifty-four, prior to the date his Social Security Disability benefits would have terminated at sixty-two years of age had he continued to live. However his Social Security Disability benefits terminated upon his death. When his widow sought to modify the Order Approving Settlement to eliminate the offset, the respondent argued that *N.J.S.A.* 34:15-12e entitling her only to "the remaining payments" under the order. But the judge of compensation ruled that under *N.J.S.A.* 34:15-13, the widow is "entitled to the full compensation rate [her deceased husband] would have received if his Social Security Disability had been terminated." *Id.* at 252-253.

The Appellate Division, guided by a similar decision in Colorado, upheld the decision of the judge of compensation, reasoning, in significant part as follows:

> As in the Colorado legislation, the use of the words "remaining payments" in our statute is susceptible to more than one interpretation. Considering the intent of the offset legislation to preserve and protect a level of income while avoiding duplication and the remedial and beneficent purpose of the Act, we come to the same inescapable conclusion, as the Colorado Court of Appeals. Simply stated, neither our Legislature nor Congress intended the Social Security disability benefit offset to continue after a dependent spouse is no longer receiving the very benefit that gave rise to the offset in the first place. To do so would penalize a dependent spouse unfairly, contrary to the purpose of the Act. As a dependent spouse, petitioner's widow is entitled to the full measure of compensation petitioner would

have received had he not been receiving Social Security disability benefits. [Id. at 255-256.]

6. Social Security Offset Does Not Apply To Dependents

In *Wood v. Jackson Township*, 388 N.J. Super. 250 (App Div. 2006) the Appellate Division held that a widow receiving her deceased husband's workers' compensation benefits was not subject to the Social Security offset. Mr. Wood had suffered a compensable injury and was found to be totally disabled. He was collecting benefits with a Social Security offset in 2003, when he died, at 54 years old, from causes unrelated to his compensation claim. Upon his death, his Social Security Disability benefits were terminated. Consequently his widow moved to have the Order Approving Settlement modified to eliminate the offset because the stream of income which gave rise to the offset, the SSD benefits, was no longer available. The employer asserted that her "rights derive from *N.J.S.A.* 34:15-12e, entitling her [as a surviving dependent] to 'the remaining payments,' thereby limiting her to the amount she was getting under the . . . Order Approving Settlement." *Id.* at 252.

In rejecting the employer's contention, the Appellate Division looked to a Colorado case with similar facts. Like the Colorado Court of Appeals, our Appellate Division found that the offset is intended to preclude a double recovery, the possibility of which is eliminated once the SSD benefits stop. Hence the result advocated by the employer was rejected as "manifestly inequitable and contrary to the beneficent purposes of the Workers' Compensation Act." *Id.* at 255, quoting the Colorado Court of Appeals. This outcome is consistent with that which occurs when the worker reaches 62 years of age: SSD benefits cease and the full compensation rate is resumed.

C. Offsets Involving Pensions

New Jersey public employees have available to them two types of pensions. Accidental disability pensions, which pay approximately two thirds of base salary at the time of the accident, are comparatively more difficult to obtain but also pay more than ordinary disability pensions, which pay approximately 43% of salary. Accidental service-connected disability pensions pay permanent, total inability to perform regular assigned work duties, which results directly from a traumatic event in the course of regular or assigned employment. A traumatic event requires that the injury be due to neither normal work effort not to normal stress or strain; that the employee involuntarily met with the source of harm; and that the source of injury came from a rush of force or incontrollable power. See *Kane v. Board of Trustees*, 100 N.J. 651 (1985). An example is a police officer shot in the line of duty or involved a disabling vehicle accident while pursuing a criminal. Such events, being quite similar to workers' compensation accidents, are subject to dollar-for-dollar offsets against workers' compensation benefits received for the same injury. See *N.J.A.C.* 17:1-3.33 and 17:1-7.9. An example of an event not considered traumatic is an officer who injured his wrist upon pounding his open palm against handle of steel wrench while attempting to close a fire hydrant. *Kane* at 657.

Ordinary disability pensions are for non-"accidental" disabilities. They may (or may not) be based on conditions traceable to employment such as occupational exposures, which do not qualify as "traumatic events" under the law governing accidental disability pensions. Workers become eligible for accidental disability pensions their first day on the job, whereas ordinary disability pensions must become vested, which requires four years for police and fire employees (PFRS) and ten years for teachers and public employees (TPAF and PERS respectively).

In *Rosales v. State of New Jersey*, 373 N.J. Super 29 (App. Div. 2004), certif. denied, 182 N.J. 630 (2005), the Appellate Division held that workers' compensation benefits should be offset by ordinary disability retirement pension benefits based upon the same disability. Prior to *Rosales*, public employers in New Jersey did not seek offsets in workers' compensation benefits when the worker was already collecting an ordinary disability pension, despite the fact that case law and statutory interpretation suggested that this could have been done. In *Conklin v. City of East Orange*, 73 N.J. 198 (1977), the New Jersey Supreme Court noted that offsets apply to both accidental and ordinary disability retirements so as to avoid a double recovery in both instances. See also *Rosales* at 43. After *Conklin*, N.J.S.A. 34:15-29 was amended to explicitly grant workers' compensation judges the power to offset an award by a disability pension. In *Rosales*, the court observed that though this amendment literally provides that only disability pensions may be reduced, compensation awards are also subject to reduction (*Id.* at 44) in order to uphold the policy of enabling the employee to choose "the more advantageous of the respective benefits" while, at the same time, preventing a double recovery. *Id.* at 43.

The petitioner in *Rosales*, a clerk for Ocean County, received an award of 25% of total in 1995 for occupational bilateral carpal tunnel syndrome, de Quervain's syndrome, and ulnar nerve disability. In 1998, she received an award of 45% of total for continued occupational exposure resulting in a worsening of these conditions, with a credit for the previous award. In October 1999, she applied for an ordinary disability pension as well as for benefits under the Second Injury Fund. She stopped working in November 1999, after having accumulated the minimum of ten years necessary to qualify for the ordinary disability pension, which she was awarded retroactive to December 1, 1999. On January 2, 2002, Judge Moncher of the Division of Workers' Compensation found Petitioner to be totally disabled form her last compensable injury and likely eligible for benefits under the Second Injury Fund. During the course of a subsequent hearing, the Respondent argued that the petitioner's benefits should be canceled because she was receiving an ordinary disability pension. The compensation judge rejected this position, which rejection lead to the appeal.

As pointed out by Judge Hickey at the 2006 Bench-Bar Conference, ordinary disability pension awards do not break down the various contributing disabilities into percentages. Hence when there is overlapping compensation and pension disability, the parties, with assistance from the Court, should attempt to agree on the percentage of the compensation disability related to employment. The Petitioner's attorney should obtain from the Public Employees Retirement System (PERS) the application, determination, and medical records, all of which should be compared with the Claim Petition as part of the process of determining the offset. Another consideration in calculation of the offset is

that the annuity, that portion of the pension contributed by the employee during the period of employment, cannot be offset. The remaining, larger portion is subject to offset. Thus the offset calculation involves taking the full pension, deducting from it the annuity, and from that deducting the percentage of non-work-related disability. From this offset number is then deducted the appropriate number of weeks for petitioner's share of attorney fees and from the costs of suit.

Upon remand, Judge Hickey, who was assigned the Rosales case, made the calculations. The disability portion of Ms. Rosales' pension, after deduction of the annuity, was $137.21 per week, and her rate of compensation was $329.19 per week. The date of total disability was December 1, 1999, at which time the petitioner was receiving her ordinary disability pension. Petitioner's share of fees and costs, $6729.22 at 19-1/7 weeks, was deducted at her full compensation rate. Judge Hickey subtracted the disability portion of the pension from the compensation rate ($329.19 - $137.21) and obtained a pension offset rate of $191.98 per week, to commence after the fees and costs were paid. See 2005 WL 998380 (N.J. Admin.).

In addition to the above, Ms. Rosales' rate was subject to further reduction because she was receiving social security disability benefits, with a starting date of May 1, 2000. Because the social security offset rate ($93.69), which included an auxiliary payment for a child, was lower than the pension offset rate ($137.21), Judge Hickey reasoned, the Respondent was entitled to pay at the lower social security offset rate, with any applicable adjustment to be made at such time as the minor child reached 18 years old. It thus appears, generally speaking, that employers will be able to take the lower of the two offset rates: the social security offset rate if that is lower, the pension offset rate if that is lower. If an employer is paying at a lower social security offset rate, upon termination of social security benefits when the disabled employee reaches 62 years old, the higher pension offset rate will take effect. On the other hand, if the pension offset rate is lower, the social security offset rate will simply not apply.

The Second Injury Fund also may take advantage of the pension offset. Ms. Rosales' attorney argued that the Fund was not entitled to the pension offset because it is paying for a preexisting disability and not for the same ones as the Respondent. In *Bello v. Commissioner of the Department of Labor*, 56 N.J. 41 (1967), however, the court held that the Fund was entitled to a credit pursuant to N.J.S.A. 34:15-40 for the balance of a third-party recovery not already taken by the employer. This is because the Fund does not confer new or separate benefits but merely shifts the burden of paying from the employer to the Fund. Citing *Bello*, along with *Wright v. Port Authority*, 260 N.J. Super. 6 (Law Div. 1993), Judge Hickey held that the Second Injury Fund "stands in the shoes of the respondent for the purposes of any credit due whether it is a Section 40 of the statute or ordinary disability pension offset."

Judge Hickey further noted that any compensation award pursuant to N.J.S.A. 34:15-40 subsequent to a third-party settlement would not be subject to offsets, per *Firoe v. Trident Construction Co.*, 251 N.J. Super. 101 (App. Div 1991) and *Owens v. C&R Waste Material*, 76 N.J. 584 (1978), because this money represents reimbursement for fees and costs. But the pension offset will apply to "monies over and above the third-

party recovery since they would constitute periodic payments of workers' compensation."

With accidental disability pensions, the offset is taken by the Division of Pensions, as opposed to the compensation carrier, and does not include medical payments and payments pursuant to N.J.S.A. 34:15-20 (lump sum awards without the right to reopen the case). Because the Division of Pensions takes the offset in the case of accidental disability pensions, they must be notified promptly of workers' compensation awards arising out of the same injury. In a memo dated November 16, 2006, Director and Chief Judge Calderone requires that "the petitioner provide the New Jersey Division of Pension and Benefits with a copy of the order and judgment within five days of the entry of the order and judgment."

D. Child Support Liens

N.J.S.A. 2A:17-56.23b states that a docketed child support judgment is a lien against the net proceeds of, among other things, any workers compensation or civil settlement. The statute, which requires withholding the net proceeds until the lien has been satisfied, defines net proceeds as "any amount of money, in excess of $2000, payable to the prevailing party or beneficiary after [litigation costs]."

In *Simpkins v. Saiani*, 356 N.J. Super. 26 (App. Div. 2002), the court held that only the amount of personal injury proceeds over $2000 was subject to the lien, rather than the entire amount. The gross settlement amount was $7500. After subtracting litigation costs of $3353.92, the plaintiff was left with $4146.08. With a child support judgment of $92761.53, the Probation Department demanded the full sum. The court held, however, that it was only entitled to $2146.08 because the lien applies only to proceeds over $2000.

Before putting through any workers' compensation settlement, counsel for the parties must check the court computer for child support liens or ask the compensation judge to do the same, just as searches must be undertaken for state and private temporary disability liens.

XI. Compensation for Death

A. Death Benefits Defined

The same controlling principles for compensation which apply to disability also apply to death: if the accident or occupational disease arises out of and in the course of employment, and the accident or occupational disease accelerates or contributes to the cause of death, benefits are paid to dependents pursuant to N.J.S.A. 34:15-13.

If a petitioner dies during the pendency of a workers' compensation case, and has a dependent, the administrator of the deceased petitioner's estate can be substituted as a party petitioner, the case heard and an award entered.

In the event a petitioner has no dependents and dies, the administrator of the decedent's estate can still be substituted and an award entered for all benefits that accrued up until the date of decedent's death. In other words, the estate of a deceased petitioner has a vested interest in proving the disability of a deceased petitioner, in order to recover accrued benefits up to the date of death.

Just as all claim petitions must be filed within two years, so the dependency petition, predicated on death connected to an accident, must be filed within two years after the accident or after payment of compensation. N.J.S.A. 34:15-51.

B. Dependency

The entire concept of compensation for death under our Workers' Compensation Law is keyed into dependency. In fact, the schedule of benefits is based on the number of dependents, and a considerable amount of the case law centers around the problem of dependency.

N.J.S.A. 34:15-13(f) provides that dependency shall be conclusively presumed for decedent's spouse and natural children under 18 years of age who were actually a part of decedent's household at the time of death. If a wife is separated from a husband, whether she recovers as a total or partial dependent will depend upon whether she has clearly and unequivocally asserted complete independence.

The amount of the petitioner's wage determines the compensation rate. The number of dependents a petitioner has is also a variable used to compute the compensation rate. For one dependent, fifty percent of the wage is payable. The rate increases five percent as the number of dependents increases up to a maximum of seventy percent of the wage for five or more dependents. Payment to the surviving spouse is for a period of 450 weeks and it continues thereafter until remarriage or death of the surviving spouse. If the surviving spouse remarries, he or she is paid the balance of the compensation award or 100 times the weekly award received immediately before the remarriage, whichever is smaller. Upon a child reaching his or her eighteenth birthday, dependency benefits stop, unless the child is either physically or mentally deficient. However, if the child is enrolled in a school,

benefits continue until age twenty-three. N.J.S.A. 34:15-13. Thus a twenty-nine-year-old dependent son of a worker who died of a compensable accident was not entitled to workers' compensation benefits since he was over eighteen and under forty years of age. *Piscopo v. Lemi Excavating Co.*, 215 N.J. Super. 149 (App. Div. 1986).

The burden rests upon the employer to ascertain whether and to what amount benefits are payable after the expiration of the 450 weeks and benefits which it made beyond that, and which were not required, could not be recovered by the employer. *Ifka v. International Smelting & Refining Co.*, 188 N.J. Super. 586 (App. Div. 1983). Although *Ifka* has not been overruled, the court has distinguished subsequent cases in which benefits were paid to a claimant "based on the wrongful acts or omissions of that claimant." *Hajnas v. Engelhard Min. & Chem. Co.*, 231 N.J. Super. 353, 361 (App. Div. 1989). In such cases, where the employer is able to prove unjust enrichment, the employer will be entitled to full restitution of overpayments.

The statute has now been amended to provide that earnings by the surviving spouse are no longer used to offset dependency benefits after the 450 week period. A *de facto* marriage existed for workers' compensation purposes where the relationship has had a ceremonial marriage; the claimant has *bona fides*, is economically dependent upon the decedent, believed she was his wife, fulfilled that role and was treated as such by the decedent; the relationship lasted over a period of years; and no other person challenged her claim. *Dawson v. Hatfield Wire and Cable Co.*, 59 N.J. 190 (1971). A claimant who obtained a divorce and who subsequently, in good faith, resumed cohabitation with her divorced husband without the benefit of a civil marriage ceremony, after her priest refused to marry her to her former husband stating that they "were already married in the eyes of God," was a *de facto* spouse qualifying as a dependent for workers' compensation purposes. *Parkinson v. J. & S. Tool Co.*, 64 N.J. 159 (1974).

Provision for benefits in death cases is set forth in N.J.S.A. 34:15-13. Benefits are paid to a class of persons described as "dependents" as defined in the statute. A surviving spouse and children under the age of eighteen, actually part of the decedent's household at the time of death, are conclusively presumed to be dependents.

Under the Act, dependents are named as husband, wife, parents, step-parents, grandparents, children, step-children, grandchildren, children in *esse*, posthumous child, illegitimate children, brothers, sisters, half-brothers, half-sisters, nieces and nephews. Even though a person is dependent on the decedent, he cannot recover compensation unless he is in one of the categories named in the statute. Therefore, a dependent uncle cannot recover compensation.

The number and identity of the dependents is always determined as of the date of the accident. *Fitzsimmons v. Federal Shipbuilding and Dry Dock Co.*, 4 N.J. 110 (1950).

A very important section to keep in mind is N.J.S.A. 34:15-13(i), which provides that except for husband, wife, parents and step-parents, only those named dependents under 18 or over 40 years of age shall be included, and then only for that period in which they are

under 18 or over 40. In other words, if Joe Worker's brother, who is 38 years old, resides with him, and is actually dependent upon Joe Worker who is killed in a compensable accident, the brother would not be entitled to compensation as a dependent since he is between 18 and 40 and not a husband, wife, parent or step-parent. If, however, Joe Worker's brother were physically or mentally deficient, he would be entitled to the full compensation period of 450 weeks.

Suppose he is actually dependent, and he is 38 years old, and when he arrives at his 40th birthday, he files a petition to be included as a dependent since he is now over 40 years of age, and since only 104 weeks of compensation would have been paid, and there would still be a substantial number of weeks left of the 450 week period. Under these circumstances, is he entitled to compensation? The answer would be no, because, as previously pointed out, dependency is determined as of the date of the accident. However, again, if the brother were physically or mentally deficient, then he could be included as a dependent, no matter what his age.

C. Compensation Payments to Dependents

Compensation is paid to dependents at the same rate as temporary disability for a period of 450 weeks. However, in the case of a widow, if she remarries, compensation ceases, and she receives the remainder of the compensation due her had she not remarried, or 100 times her weekly award immediately prior to her remarriage, whichever sum is less. When dependents reach the age of 18, they are immediately cut off, even though the 450-week period may not have elapsed. After the 450-week period has run, payments are still made to the deceased's wife, if she remains a widow. Thus, if a young widow decides she is never going to remarry or return to work, she may receive worker's compensation for her entire life span, which could be as much as 50 or 60 years, in the case of a 25-year old widow.

N.J.S.A. 34: 15-13 sets forth the amount of wages dependents are entitled to, subject to the maximum paid for temporary benefits. This section was amended in January 2004 so that now death benefit rates are set at 70% for all surviving dependents, regardless of number. Under N.J.S.A. 34:15-13 as it previously existed, the rate was 50% for one surviving dependent plus an additional 5% for each surviving dependent, up to a maximum of 70%. Thus under the law prior to the amendment, the total benefits paid depended on the number of dependents. Benefits before the amendment were paid as follows:

(a) For one dependent, *50%* of wages;
(b) For two dependents, *55%* of wages;
(c) For three dependents, 60% of wages;
(d) For four dependents, *65%* of wages;
(e) For five dependents, 70% of wages.

Under 34:15-13 as now amended, the amount of benefits paid to the dependents will be 70% of the decedent's gross weekly wages, subject to the maximum rate. In

Updegrove v. Peerless Tube Co., 2006 WL 2244405, Judge Tuber of the Division of Workers' Compensation applied N.J.S.A. 34:15-13 retroactively to grant the petitioner's widower benefits at 70%. He relied upon the fact that the Senate bills, before passage in 2004, provided for 100% of wages but were specifically noted to apply prospectively. Because the version passed reduced the benefits to 70% but also removed the provision on prospective application, Judge Tuber inferred that the legislature intended the benefits to apply retroactively, regardless of the date of death or the date the petition is filed.

Insofar as medical and hospital expenses are concerned, they are paid as any claim would be paid, provided they relate to the condition produced by the compensable accident that occasioned death.

Funeral and burial expenses up to $3,500 are paid to the person who has paid the costs of burial, or to the undertaker or embalmer. If the burial costs are less than $3,500, the lesser amount is paid.

One of the best ways to learn to work with this statute is to consider a hypothetical question, and work it out. I suggest the following: Joe Worker maintains a house, and living with him are his mother, 70 years of age; his brother, a 35 year old mental defective; his wife; his child who is 15 years of age; and his sister-in-law who is paralyzed and is actually dependent upon Joe Worker. He is killed in a compensable work-connected accident, and his wages are $100 per week at the time of his death. Further assume that his daughter celebrated her 15th birthday on the day her father died. What is the total amount of money that will be paid over the 450 weeks? Dependency equals $27,780. Under N.J.S.A. 34:15-13 prior to its amendment in January 2004, there would be *$65* per week for the four dependents for 156 weeks. When the daughter becomes 18 years old, only 60% of wages would be paid at $60 per week for 294 weeks. The sister-in-law would not be covered. Under the law as amended, however, benefits would be paid at 70% of wages or $70 per week until such time as no beneficiary is entitled to them any longer. When the daughter becomes 18 years old, only 60% of wages would be paid. $60 per week for a 294 week period. The sister-in-law would not be covered.

D. Partial Dependency

The question of partial dependency can be very thorny. It is important to keep in mind that the 20% of SAWW does not apply to partial dependency. The statute provides that in the case of partial dependents, the compensation shall be "such proportion of the schedule percentage as the amounts actually contributed to them by the deceased for their support constituted of his total wages . . . ." Fortunately, the case of *Ricciardi v. Damar Products Co.*, 45 N.J. 54 (1965), provides a formula for partial dependency. The formula is contribution divided by wages times the scheduled percentage. For example, if a person is partially dependent ($10 per week) on his brother, who earns $200 a week and dies in 1973, the formula would be as follows:

$10%/$200 x 60% (the schedule percentage for three dependents) = $3.00 per week

Thus, if the deceased brother left his wife and child and partially dependent brother as dependents, 60% of wages would be $120, but the maximum that could be received for the 1973 death would be $108, the partially dependent brother would receive $3 based on the formula and the wife would receive $105 for herself and her child (computed at 55% for two dependents up to the maximum).

Now, what is the difference between a partial and a total dependent?

Under our case law, a total dependent receives from another all the ordinary necessities of life. Therefore, if one supplies only some or a portion of these necessities including food, clothes and shelter, such person supports a partial dependent. *Gladstone v. Trenton Lehigh Coal Co.*, 3 N.J. Misc. 27 (Dept. Labor 1924). Remember, however, that in the case of a surviving spouse and natural children under 18 years of age, who are actually a part of decedent's household at the time of death, total dependency is conclusively presumed.

E. Dismissal Procedures, Lump Sum Settlements and Their Effect Upon the Rights of Dependents

Lump sum settlements and dismissals are recognized in the January 1, 1980 amendment of 34:15-20 as long as they are approved by a judge of compensation, the petitioner is represented by an attorney, and the settlement is fair and just. This is often referred to a section 20 award for a dismissal with prejudice. The attorney for the petitioner, the attorney for the respondent and the petitioner must all sign and agree to the order approving settlement. Lump sum settlements have the effect of surrendering the rights of dependents and of completely overruling *Brown v. Gen Aniline and Film Corp.*, 127 N.J. Super. 93 (App. Div. 1974), *aff'd*, 65 N.J. 555 (1974). The pertinent language in the statute reads:

> Such settlement, when so approved . . . shall have the force and effect of a dismissal of the claim petition and shall be final and conclusive upon the employee and the employee's dependents, and shall be a complete surrender of any right of compensation or other benefits arising out of such claim under the statute.

A possible minority position is that although 34:15-20 intended to legislate away *Brown v. Analine*, a strict reading of the statute in no way prevents the wife from filing a claim for dependency; thus the statute does not change *Brown*. The statute does not say that if a "claim" petition for a heart attack case is dismissed it also dismisses an eventual "dependency" petition which may be filed out of the same accident. Arguably what the statute refers to is that once a worker settles his claim petition for a lump sum of money, his dependents cannot come back and say we did not get enough. The conclusion that a dependency petition will be dismissed is arguably not in the statute. In addition, because children are not represented in the proceeding, procedural due process demands that their rights not be bargained away. Even though the judge may approve the settlement, this new

provision appears to be a fertile ground for malpractice and as a consequence should be approached cautiously by the attorney.

In fact, the New Jersey Supreme Court in *Kibble v. Weeks Dredging & Construction Co.*, A-38-98, decided August 9, 1999, held that in a section 20 settlement, an injured worker cannot unilaterally waive his or her dependents' rights to future death benefits, but rather must have the informed consent of the spouse and other dependents or their duly authorized representatives to do so. This decision is being applied prospectively not retroactively. The Division drafted a second page of the standard form of Order Approving Settlement for Section 20 cases which must be used and made part of the final Order Approving Settlement in every case involving a Section 20 settlement. Appendix A contains a copy of this form. At the time of settlement, Section A should be checked if the settlement does not contemplate a surrender of rights by the petitioner's dependents, in which case the dependents will not have to appear in court. If the settlement contemplates a surrender of rights by dependents, they must sign the form and appear on record at the settlement proceedings where the court will explain the preclusive effect of the settlement on any potential dependency claims. The petitioner's attorney should also review on record the effect of the waiver on future rights and advise the dependent of his right to counsel if he wishes to consider the matter further or fails to understand the rights about to be waived.

XII. Overcoming The Exclusivity Rule: When An Employer May Also Face Civil Liability

A. *Millison* and *Laidlow*

N.J.S.A. 34:15-8 enumerates the "exclusivity rule" and its limited exception: a worker's remedy for a job-related injury is limited exclusively to the workers' compensation system "*except for intentional wrong*." In *Millison v. E.I. du Pont de Nemours & Co.*, 101 N.J. 161 (1985), our Supreme Court referenced factors to consider in determining if a worker may overcome the exclusivity rule and sue an employer in civil court. There must be a deliberate intent to injure, which requires substantial certainty that injury will result rather than mere knowledge and appreciation of a risk. *Id.* at 177-178. Also the context in which the injury occurs cannot be seen "as a fact of life of industrial employment . . . [it must be] beyond anything the legislature could have contemplated as entitling the employee to recover only under the compensation act." *Id.* at 179.

An injured worker able to overcome the exclusivity bar may proceed in both workers' compensation court and superior court. But, pursuant to N.J.S.A. 34:15-40, the workers' compensation carrier is entitled to reimbursement for payment of benefits from the proceeds of a civil recovery. *Id.* at 187.

The Plaintiffs in *Millison* alleged (1) that du Pont deliberately exposed them to asbestos and (2) that du Pont and its company doctors fraudulently concealed from them knowledge that they had already contracted diseases from asbestos exposure. With respect the first claim, the Court held that the allegations of deliberate exposure to asbestos were insufficient to overcome the exclusivity rule. This conclusion appears to be based primarily on the "context" factor, or public policy grounds, rather than on a detailed analysis of the meaning of substantial certainty:

> Although defendants' conduct in knowingly exposing plaintiffs to asbestos clearly amounts to deliberately taking risks with employees' health, as we have observed heretofore the mere knowledge and appreciation of a risk--even the strong probability of a risk--will come up short of the "substantial certainty" needed to fit an intentional wrong. [. . .] In the face of the legislature's awareness of occupational diseases as a fact of industrial employment, we are constrained to conclude that plaintiffs-employees' initial resulting occupational diseases must be considered the type of hazard of employment that the legislature anticipated would be compensable the terms of the Compensation Act and not actionable in an additional civil suit. [Id.]

The Court never explains why du Pont's conduct did not create a substantial certainty of injury. According to Justice Handler, who dissented in part, the deliberate exposure cause of action was summarily dismissed "without any focused attention to the details of plaintiffs' allegations or explication of the 'substantial certainty' standard." *Id.* at 195. The majority's analysis of substantial certainty is influenced by the belief that asbestos exposure is the type of risk contemplated by the legislature as a compensable injury under

the Workers' Compensation Act. There is concern that allowing claims like this to be litigated as an intentional tort would open the floodgates to far more civil cases than the legislature envisioned.

Though the deliberate exposure claim was dismissed, the Court allowed the plaintiffs' claim against du Pont for the alleged fraudulent conduct of its company doctors to proceed:

> There is a difference between, on the one hand, tolerating in the workplace conditions that will result in a certain number of injuries or illnesses, and, on the other, actively misleading the employees who have already fallen victim to those risks of the workplace. An employer's fraudulent concealment of the diseases already developed is not one of the risks an employee should have to assume. Such intentionally-deceitful action goes beyond the bargain struck by the Compensation Act.

The intentional wrong exception applies to employers and co-employees; where "the employer is a corporation, the employer can act only through its employees, so for practical purposes actions taken by certain corporate officers and supervisors are actions taken by the corporate employer." *Id.* at 185-186.

The Supreme Court revisited the exclusivity rule in *Laidlow v. Hariton Machinery Company, Inc.*, 170 N.J. 602 (2002) and made clear that *Millison* has two different prongs that each must favor the worker if the claim is to survive:

> *Millison* required courts to assess not only whether the employer acted with knowledge that injury was substantially certain to occur, but also whether the injury and the circumstances surrounding it were part and parcel of everyday industrial life or plainly outside of the legislative grant of immunity. In other words, under *Millison*, if only the conduct prong is satisfied, the employer's action will not constitute an intentional wrong within the meaning of N.J.S.A. 34:15-8. That standard will be met only if both prongs of *Millison* are proved. [*Id.* at 614-615.]

Though the facts and circumstances relevant to each prong may be similar, the conduct prong is for the jury to decide and the context prong is a question of law for the court. *Id.* at 623. *Laidlow* also addressed an ambiguity in *Millison* concerning intent: "an intentional wrong is not limited to actions taken with a subjective desire to harm, but also includes instances where an employer knows that the consequences of those acts are substantially certain to result in such harm." *Id.* at 613.

In *Laidlow*, the plaintiff's hand was caught in rolling mill. The machine had a safety latch that was disabled by the employer twelve or thirteen years before the accident. Despite two near misses, one involving the plaintiff, and several requests by plaintiff to restore the guard, the employer prohibited use of the guard. But when OSHA inspectors visited the site, the guard was temporarily reactivated to fool them. The fact that there was no prior accident did not preclude a finding of intentional wrong. Along with evidence of

prior close calls, evidence of prior accidents or lack of them are simply factors to be "considered in the substantial certainty analysis." *Id.* at 621-623. The Court stressed that a rolling mill is a "dangerous machine . . . requir[ing] an employee to feed material into a nip point." *Id.* at 620. The employer's action in disabling the guard and fooling OSHA inspectors were also factors in the decision, though the Court declined to institute a *per se* rule that an intentional wrong will be established whenever a guard is removed or an OSHA provision violated. *Id.* at 622-623.

The context prong was also satisfied in *Laidlow*:

> [I]f an employee is injured when an employer deliberately removes a safety device from a dangerous machine to enhance profit or production, with substantial certainty that is will result in death or injury to a worker, and also deliberately and systematically deceives OSHA into believing that the machine is guarded, we are convinced that the Legislature would never consider such actions or injury to constitute simple facts of industrial life. [*Id.* at 622.]

B. *Crippen*, *Mull*, and *Tomeo*

On May 22, 2003, the Supreme Court decided three cases in which injured workers attempted to overcome the exclusivity rule. *Crippen* and *Mull* involved uncorrected OSHA Violations; *Mull* and *Tomeo* involved alleged disengagement of or tampering with safety devices intended to protect workers.

In *Crippen v. Central Jersey Concrete Pipe Company*, 176 N.J. 397 (2003), the plaintiff's job required activation of a lever regulating the movement of sand and gravel into large "loading hoppers." The lever was on an unsecured ladder perched atop a narrow wooden plank. On the day of the accident, plaintiff fell from the ladder and suffocated in the sand. Previously OSHA cited this hazard as a serious safety violation, but the employer failed to make corrections.

In assessing the intent prong, the Court focused on three factors: (1) the safety manager's admission that he knew a worker could die in the confined space, (2) deliberate failure to correct the OSHA violations, and (3) expert testimony that the employer's purported attempts to remedy the violations misled OSHA. Evidence of attempts to deceive OSHA led the Court to conclude that the context prong was satisfied as well.

Justice Zazzali, in a concurring opinion, argued that the context prong should be eliminated:

> Pursuant to the context prong, a trial court may disregard evidence that an employer knowingly exposed an employee to a substantial certainty of harm simply because the trial court considers such exposure a "fact of life." Such actions by an employer invariably constitute a gross violation of the workers' compensation bargain. . . . Although tragic accidental deaths and injuries are a fact of life in the workplace,

> knowledge that death and serious injury are substantially certain to occur should never be a commonplace. [*Id.* at 415-416, citations omitted.]

He further argued that N.J.S.A. 34:15-8 categorically and without regard to context exempts all intentional wrongs from the exclusivity rule; thus no context requirement should be added by judicial fiat. *Id.* at 416.

Concurring from a more conservative point of view, Justice Verniero, joined by Justice LaVecchia, stated that this case is a close call that would have fallen short of overcoming the exclusivity rule were it not for the employer's attempts to deceive OSHA. *Id.* at 411-413.

Mull v. Zeta Consumer Products, 176 N.J. 385 (2003) likewise involved OSHA violations for failure to make an industrial machine safe, but here there was no alleged deceit. The plaintiff was operating a "winder" that jammed. She turned off the machine by pressing the red stop button and then attempted to correct the problem when the machine restarted causing loss of fingers. A few months before the accident, OSHA cited the employer for failing to have in place a lockout/tagout procedure to control the release of dangerous energy when a machine is being serviced. Plaintiff submitted an expert report stating that the defendant, among other things, removed safety switches to prevent operation of the machine when its access cover is open. In opposition to the summary judgment motion, plaintiff also proffered the certification of a co-employee, who said he had complained to management about the winder suddenly starting up without operator intervention.

Finding the facts "similar to those" in *Laidlow*," the Court allowed plaintiff's claim to go to a jury even though there were no allegations that the employer attempted to deceive OSHA. Justice Zazzali concurred but argued that evidence that an employer disables or knowingly tolerates the disabling of a safety device should create a rebuttable presumption that the employer knew injury will result. *Id.* at 393. In a separate concurring opinion, Justice Albin argued that the knowing disengagement or removal of a safety device should always be deemed an intentional wrong unless the removal or disengagement was temporarily done to make a repair.

Despite decisions upholding claims in *Crippen* and *Mull*, the plaintiff's claim to a civil remedy was denied *in Tomeo v. Thomas Whitesell Construction Company, Inc.*, 176 N.J. 366 (2003). *Tomeo* illustrates that there is no *per se* rule that an intentional wrong will be established every time a safety device is tampered with. Nevertheless certain characteristics of this case distinguish it from *Crippen*, *Mull*, and *Laidlow.*

In *Tomeo*, the petitioner was a sprinkler installer whose job incidentally, on snowy days, required him to assist with snow removal. On the day of the accident, his supervisor gave him a snow blower and provided brief instructions on how to use it. The snow blower came with a safety lever on the handlebars to deactivate the propellers when the operator's hands were removed from the handlebars. But this lever was taped down. Consequently when plaintiff let go of the handlebars because the chute was clogged with wet snow, the

propellers continued rotating. Twice he pushed wet snow through the chute. On the third time, the propeller caught his hand and injured his fingers. Both plaintiff and defendant denied taping down the safety lever. The machine contained visible warning labels, but plaintiff apparently did not see them; and they may have been obscured by snow.

Citing the Appellate Division's decision upholding the trial court's judgment notwithstanding the verdict, the Court noted, "there is no expert testimony or other evidence suggesting defendant know that disabling the safety device was substantially certain to harm plaintiff." *Id.* at 374. Though lack of expert testimony was a factor precluding the claim, the court also stressed that the snow blower was a consumer product rather than an industrial machine. Under the Products Liability Act, the user of a consumer product is presumed to know its dangerous characteristics. Plaintiff's own conduct, in light of what he should have known, broke the chain of causation: "the natural and continuous sequence of events was broken by an efficient intervening cause when plaintiff placed his hand into the chute two or three times knowing that the propellers were operating." *Id.* at 378.

Justice Zazzali and Justice Albin filed separate dissenting opinions. Justice Albin again recommended a clear-cut rule that disengagement of a safety device is intentional conduct. He argued that questions of intervening cause are for a jury to decide and that the safety lever was intended to prevent intervening causes from happening in the first place. *Id.* at 382. In addition, plaintiff's use of a snow blower pursuant to his employer's orders did not transform him into a consumer of the product:

> The majority ignores the reality of the workplace conditions of plaintiff, who with little training in a task not part of his customary duties had a dangerous machine stripped of its safety device, placed into his hands so that the employer could have his walkway cleared of snow. The majority imports into the analysis "consumer-use" expectations, N.J.S.A. 2A:58C-3a(2), as they apply in the New Jersey Products Liability Act, N.J.S.A. 2A:58C-1 to 11, in order to conclude that plaintiff acted with gross negligence in the face of an obvious danger. That analysis is misplaced in the context of the workplace and would turn the clock back on worker safety . . . [*Id.* at 382.]

C. Violent Acts

In *Fisher v. Sears, Roebuck, & Co.*, 363 N.J. Super. 457 (App. Div. 2003), the Appellate Division held that the exclusivity bar precluded the estate of a security guard, fatally shot in a nighttime robbery in a parking lot, from pursuing a civil claim against Sears. Sears had failed to comply with a company-wide policy prohibiting security guards from transporting money between buildings at night, and prohibiting such transfers by a single guard, alone, as the decedent was when accosted by two men who shot him while attempting to take the day's proceeds.

The court distinguished *Laidlow*, *Mull,* and *Crippen*: there were no prior violent incidents at the Hackensack store that would have created notice of a security problem;

there were no complaints about safety by security guards; and, though there was violation of corporate policy, there was no disregard of governmental mandate. Furthermore no attempt was made to conceal the violation of corporate policy, as there was in *Laidlow*. *Id.* at 472.

Assumption of risk and comparative negligence analysis were also brought into the discussion. The decedent, as a private security guard and a former law enforcement officer, "knew full well the dangers and risks inherent in the unarmed transportation of cash at night and alone, yet never complained of the practice." *Id.* at 473. In likening Mr. Fisher's situation to that of the injured worker in *Tomeo*, the court observed that the injury-producing events in both cases "occurred outside the industrial-manufacturing setting (contrary to *Mull* and *Crippen*), and that the employer "lacked the 'exclusive control' element inherent in the use of industrial machinery." *Id.* The opinion suggests that, as in *Tomeo*, products liability law concepts such as the conduct of the employee, obviousness of the danger, and comparative negligence may be considered, even though the robbery-murder in *Fisher* involved no interaction between an employee and a consumer product. The crime was viewed as "an intervening-superseding cause that affected both the substantial certainty and context prongs," just as the contributory negligence in *Tomeo* was seen as an intervening-superseding "illegal act of a third party over whom the employer had no real, much less exclusive, control." *Id.* at 471.

In *Kibler v. Roxbury Board of Education,* 392 N.J. Super. 45 (App Div. 2007), the Appellate Division upheld summary judgment against a teacher accidentally injured by a disruptive student. The teacher was inadvertently knocked down in the midst of a student-on-student altercation involving the troubled student, who had a history of criminal arrests and school misconduct. Given his background, the plaintiff argued, the school district acted intentionally and in a palpably unreasonable manner in failing to properly discipline or expel the student prior to incident giving rise to the suit. Though the Appellate Division noted that the student himself did not intentionally harm the plaintiff, it avoided addressing whether the conduct prong was met. Instead it rendered a decision solely on the basis of failure to surmount the context prong, reasoning that student-on-student altercations "are not outside the realm of conduct one may anticipate from children or adolescents." *Id.* at 55.

Unlike *Cremen v. Harrah's Marina Hotel Casino*, 650 F. Supp 150 (1988) and *Singer Shop-Rite, Inc. v. Rangel*, 174 N.J. Super 442 (App. Div. 1980), cert. denied 85 N.J. 148 (1980), the cases above do not address intentional violence by an employer or coworker in the workplace. *Cremen* allowed a civil claim to proceed against a former corporate employer for battery and intentional infliction of emotional distress where the plaintiff was sexually assaulted by a coworker. The United States District Court, citing *Millison*, held that the employer could be held liable for battery and intentional infliction of emotional distress. *Id.* at 156-157. Harrah's argument that intentional acts of co-employees are imputable to the employer only if "undertaken pursuant to an order from high management" or pursuant to corporate policy was specifically rejected. *Id.* at 156. In *Singer*, *supra*, decided before *Millison*, the Appellate Division held that an assault and battery is attributable to an employer when the accused perpetrator of violence is one to

whom corporate intent can be imputed. *Id.* at 447.

Under N.J.S.A. 34:15-8, the exclusivity rule applies to injury caused by a fellow employee, except for intentional injuries, which are subject to civil redress. Barone v. Harra, 77 N.J. 276, 279 (1978); *Basil v. Wolf*, 193 N.J. 38, 54 (2007).

D. Other Exceptions to the Exclusivity Rule

There are other instances where the employer can be held liable as a third party. These include injured children under 18 years of age, who may elect either a civil remedy or a remedy in the Division of Workers' Compensation (See N.J.S.A. 35:15-10); and federal employees, who are limited to remedies under the federal workers' compensation system.

Discrimination claims against an employer may also proceed in civil venues. As stated in *Schmidt v. Smith*, 294 N.J. Super. 569 (App. Div. 1996), aff'd 155 N.J. 44 (1998), a case involving allegations of sexual harassment under the New Jersey Law Against Discrimination:

> The LAD was specifically amended in 1990 to grant a plaintiff under the Act the right to a jury trial. *L.*1990 *c.*12. If the Legislature had intended workers compensation to be the exclusive remedy for victims of harassment and discrimination in the workplace it would not have provided for a jury trial as well as compensatory and punitive damages. [294 N.J. Super. 569, 586 (App Div. 1996), affirmed at 155 N.J. 44 (1998):
>
> > We also agree with the Appellate Division that workers' compensation is not the exclusive remedy for victims of sexual harassment. The employers' liability section of the Workers' Compensation policy was therefore a proper place for PAV to look for coverage. [*Id.* at 586.]

E. Conclusion

Laidlow, *Crippin*, and *Tomeo* expand the *Millison* doctrine allowing the employer to be sued civilly for conduct defined as willful and considered beyond the ordinary risks of industrial life. *Millison* allowed the employer to be sued when company doctors failed to advise employees of asbestos induced lung disease. But the decision still disallowed the plaintiffs' claim that they were exposed to asbestos despite company awareness that heath risks would lead to certain illness. This restrictive aspect of *Millison* is difficult to reconcile with *Laidlow*, *Crippin*, and *Mull.*

Despite the expansion of the *Millison* doctrine in *Laidlow*, *Crippin*, and *Mull*, *Tomeo* reminds us that the exclusivity rule can still, under specific circumstances, preclude a civil claim involving the disabling of a safety device. All claims remain subject to case-

by-case judicial evaluation, but the likelihood of success will be greater where the injury is not caused by a consumer product and where expert testimony is presented. Nevertheless Justice Albin--who views *Laidlow* as an expansion of *Millison (Tomeo* at 384)--and Justice Zazzali want to broaden the intentional wrong exception. By sustaining the civil cause of action even where there was no evidence of fraud or deceit, *Mull* took a small step in this direction. *Tomeo* establishes the current limit to exclusivity rule exceptions in the context of safety devices.

This area of law will continue to develop as the Court attempts to balance the compelling claims of workers with a fear that a line too broadly drawn will open up a hole in the workers' compensation system too large to stanch. With the exception of *Millison* and *Crippen*, all the Supreme Court exclusivity rule decisions involve safety devices. It is possible that *Millison* and its progeny will next be developed in its original context: occupational exposure to dangerous environmental substances. In this context, the second prong of the *Millison* test looms as a potential barrier to claims of intentional exposure.

F. Subsequent Developments—Van Dunk

In *Van Dunk v. Reckson Associates Realty Corporation*, 415 N.J. Super. 490 (App. Div. 2010), the Appellate Division stressed the importance of an OSHA finding of "willful violation" in holding that a construction worker injured in a trench collapse may bring a civil suit against his employer. Like the situation in *Mull*, there was no evidence of fraud or deceit. There was, however, plenty of evidence that the petitioner's supervisor knowingly sent him into a dangerous situation.

On the day of the accident, a sump (pumping device to control ground water) had to be relocated before an expected rain storm in order for the project to advance. Relocation of the sump required excavation and construction of a trench lined with fabric and inlaid with pipe, over which the fabric would then be folded. Van Dunk's supervisor Key and the work crew encountered difficulty stretching the fabric over the trench. Initially Van Dunk volunteered to enter the trench to "fix the fabric," but Key refused, fearing for Van Dunk's safety because the trench was 20 feet deep and subject to collapse given the unstable soil type and other dangerous conditions. As the crew continued its unsuccessful attempts to lay the cloth, Key noticed "'some cracking in the bank'" of the trench." Frustrated, Key finally sent Van Dunk into the trench to correct the problem, but the trench caved in causing serious injury to Van Dunk. *Id.* at 494-495.

By sending Van Dunk into the trench, Key, who had undergone OSHA training and had knowledge of trench safety procedures, violated a mandatory OSHA requirement prohibiting sending a worker into a trench that "had no protective system to make it more stable." Such procedures in this case would have included a "trench box" and "sloping." Consequently, after an investigation, OSHA cited and fined the employer for a "willful violation of its regulations." *Id.* at 458-460.

In holding in favor of Van Dunk, the Appellate Division noted that this is a "close case." There was, for instance, no removal of a safety device (though the failure to use a

trench box could be seen as analogous) and no deception of OSHA inspectors as in *Laidlow*. However the court found that Key had allowed Van Dunk to proceed unprotected into the trench under the conditions existing there. Consequently Key had knowledge that "this could lead to injury or death," especially given Key's initial refusal to allow Van Dunk into the trench. Moreover, as in *Laidlow*, *Crippen*, and *Mull*, safety was compromised to "increase defendant's profit and productivity" given the economic pressure to relocate the sump before the rain came. The court further emphasized that OSHA's finding that there was a willful failure to use a trench or sloping "informs the 'totality of the facts' and circumstances analysis under the conduct prong." Though this OSHA finding is "important in totality of circumstances analysis" it is not conclusive. *Id.* at 502-505.

The Appellate Division further found that despite the hazardous nature of construction sites, the circumstances in the case did not constitute a simple fact of industrial life—the second prong required to circumvent the exclusivity bar under *Millison* and *Laidlow*. "Though construction sites have a dangerous nature, that does not excuse the failure to use safety devices to alleviate the dangers and risks which were clearly known." *Id.* at 504-505.

XIII. Procedures

A. Initial Client Interview

1. Introduction

Initially, you must determine whether your client has had an accident; whether the accident arose out of and in the course of employment; and whether there are any valid defenses that may be asserted. You can gather a great deal of your information and leads to essential information by interviewing your client. Before discussing the initial interview, however, the next section discusses forms.

2. Form File

It is not the purpose of this book to be an office management manual for developing a complete set of workers' compensation forms. It must be assumed that each practicing attorney can exercise good common judgment in developing a set of forms which can save valuable time and energy. However, certain basic forms must be suggested, and the new practitioner should be encouraged to develop early a systems approach for the handling of any area of law which may grow in volume.

The workers' compensation practitioner should keep files of letters, forms, petitions, benefits schedules (NJM charts), and motions. For instance, a new client may not know the name of the employer's insurance carrier. Under these circumstances, a simple letter can be written to the New Jersey Compensation Rating and Inspection Bureau (NJCRIB), 60 Park Place, Newark, New Jersey, 07102. The letter need only state that the attorney represents the named employee, the accident date or occupational exposure period, and the name and address of employer. A stamped, self-addressed envelope should also be provided. NJCRIB may also be reached through the Internet at its web address: www.njcrib.com., where information about insurance coverage can also be obtained.

If, during your interview, a question of notice of knowledge arises, you should immediately mail to the employer the following:

"TO: (name of employer)

You are hereby notified that a personal injury was received by (name of employee injured), who was in your employ at (place) while engaged as (nature of employment), on or about the _____ day of _____, nineteen hundred and _____,
and that compensation will be claimed therefor.

Signed,
_____"

This form comes directly from N.J.S.A. 34:15-18 and along with the letter to the Compensation Rating and Inspection Bureau are examples of the forms which should be kept on file.

3. Initial Interview

First, it is a good idea to have your client execute authorizations, the format of which can be stored in a database:

A medical authorization pursuant to HIPAA (The Health Insurance Portability and Accountability Act of 1996):

MEDICAL RECORD RELEASE AUTHORIZATION FORM

Patient Name: DOB: SS Number:

1. I authorize the use and disclosure of my health information and records as described below.

2. The following individual or organization is authorized to make the disclosure:

3. I authorize disclosure of my entire record.

4. A copy of this authorization shall be just as valid and effective as an original.

5. I understand that the information in my health record may include information relating to the following: behavioral, psychiatric, and mental health services; treatment for alcohol or drug abuse; sexually transmitted disease; acquired immunodeficiency syndrome (AIDS) or human immunodeficiency virus (HIV).

6. This information may be disclosed to and used by the following individual or organization:

7. I understand that I have the right to revoke this authorization at any time. I understand if I revoke this authorization I must do so in writing and present my written revocation to the health information management department. I understand the revocation will not apply to information that has already been released in response to this authorization. I understand the revocation will not apply to my insurance company when the law provides my insurer with the right to contest a claim under my policy. Unless otherwise revoked, this authorization will expire six months after the date on which it is signed.

8. I understand that authorizing the disclosure of this health information is voluntary. I may refuse to sign this authorization. I need not sign this form in order to assure treatment. I understand that I may inspect or copy the information to be used or disclosed, as provided in CFR 164.524. I understand that any disclosure of information

carries with it the potential for an unauthorized re-disclosure and the information may not be protected by federal confidentiality rules.

_____

Date:

Authorizations for police accident reports, attendance and scholastic records, and wage and employment records can be obtained by use of the following form:

AUTHORIZATION

TO:

I hereby request and authorize you to furnish to _____ or its representatives, any and all information you may have concerning _____ from _____ with respect to

( ) Police Accident Report
( ) Attendance and scholastic records
( ) Wage and employment records

from _____

_____ (Seal)
Signature

_____
Address

Date _____

In obtaining medical reports from treating doctors, it is a successful practice to have a form which can be immediately sent to the treating doctor after you have interviewed your client. This form is entitled Preliminary Report and requests from the doctor information about the injury, treatment, and disability.

You may also ask the physician to complete a Final Report when he discharges the patient. Very often you can send the doctor both forms, asking him to complete the initial one, and to hold the physician's final report and bill until after discharge. This usually expedites obtaining reports from treating doctors, and very often reduces the cost involved.

a. How to Obtain a Record of Petitioner's Previous Loss of Function

You should be aware that N.J.S.A. 34.15-12(d) was amended January 1, 1980, to provide a credit for any previous loss of function to the body, head, member or an organ, regardless of whether or not the previous loss was compensable. In order to take advantage of this credit, the respondent must show that parts of the body affected by the two accidents are the same. In the case of compensable awards it is important to know that you can request information from the Division of Workers' Compensation by filing a Request for Records Inspection.

This request enables you to obtain copies of any previous judgments. Respondents will almost always know if any previous judgments have been entered in favor of the petitioner. Thus, you should request this information whenever a 34:15-12(d) credit is a possibility.

One method of determining whether or not there was a previous loss of function which was noncompensable would be to propound interrogatories upon the petitioner. Once a noncompensable previous loss of function is established, pertinent medical records can be obtained by sending a letter, similar to the one above, to the appropriate hospital.

b. Information to be Obtained at Initial Interview

It is also a good idea to use a blank petition during the interview. As you obtain the required information, you can complete the form and make side notes of other areas to explore.

The checklist which follows is by no means comprehensive. However, it is a good starting point. You may consider preparing a questionnaire containing some needed information for your client to complete while waiting to see you. In preparing the questionnaire remember that you should be able to review the form quickly before delving into the real legal problems.

The following information should be obtained from your client:

1. Name, address and telephone number.

2. Name, address and telephone number of employer.

3. Name, address and telephone number of any union the client is a member of, along with full details of any union benefits that may have been received, or to which the client has a right. (There may be a union benefit plan which provides the employee with payments for drugs and medical bills in addition to workers' compensation benefits.)

4. The job title the client held when injured, along with educational background and previous employments.

5. The nature of the employer's business.

6. The client's Social Security number.

7. The client's sex, age, and marital status at the time of the accident, along with the names and ages of all children. If your client is a minor, the suit must be brought by a guardian *ad litem*, guardian, or next friend (payment will be made to the guardian *ad litem*, guardian or next friend).

8. The name of the employer's insurance carrier or indication whether the employer is self-insured.

9. The exact details of how the client gave notice of the accident to the employer, or whether the facts and circumstances are such that the employer must have had knowledge.

10. The exact place where the accident occurred, and the date and time of the occurrence.

11. A full description, in your client's own handwriting, of how the accident occurred, or to the exposures if an occupational disease case. (The attorney should carefully investigate this version of the accident, and contemplate whether there may be a third-party action.)

12. Your client's wages or earnings, and whether on time or piece-work basis, the rate per hour, or the weekly wage.

13. The date when your client stopped work and the date of return to work.

14. In your client's own handwriting, a statement of past and present complaints, as well as a description of all body parts affected by the accident. Ask your client to explain any emotional complaints since the accident to investigate the question of neuro-psychiatric disability.

15. The compensation paid for temporary or permanent disability must be ascertained. Try and determine the period of time it has been paid and also the rate.

16. Full details as to medical aid required and whether it was requested from the employer. If the medical treatment was furnished by the employer, all dates of treatment should be inventoried. If the employer refused to furnish the treatment, ask your client to indicate in detail all requests made to the

employer for treatment, as well as obtaining the names and addresses of all doctors who furnished the treatment.

17. Be certain you have the names and addresses of all physicians and hospitals who rendered medical treatment since the accident, including but not limited to the injuries arising from the accident. Attempt to obtain the amount of all physicians' bills and prepare a file for paid and unpaid bills.

    If your client is receiving medical treatment from a doctor of his choice, or if the respondent has refused to render medical treatment, you must *immediately* give written notification to the employer and its insurance carrier of all the details concerning your client's injuries and accident, and the name and address of the doctor by whom he is being treated, or the name and address of the doctor who is going to be treating him. Clearly indicate in the letter that this is a formal request pursuant to Title 34 for the respondent to furnish medical treatment by the doctor chosen by the petitioner or, alternatively, that the respondent should immediately provide the name and address of a doctor that it wants to treat the petitioner. In Workers' Compensation, the respondent controls the choice of doctor.

18. Any Blue Cross or Blue Shield plans which cover the petitioner, as well as identification numbers, since it may be possible to obtain payment for medical bills from these plans, if the respondent refuses to make payment.

19. Full details of your client's Last Will and Testament. Your client may die from the injuries sustained, or from other causes, and you will have to substitute an executor or executrix.

20. A detailed history of all past accidents, whether occupational or not, along with the parts of the body involved, the treatment rendered, and any money recovered.

In a claim for dependency death benefits additional information is required. Do not forget that under the workers' compensation statute a husband may be totally or partially dependent on his wife. *Ricciardi v. Damar Products Co.*, 45 N.J. 54 (1965). The additional information is as follows:

21. Name and address of the petitioner, as well as name and address of the decedent.

22. Relationship of the petitioner to the decedent.

23. Names and dates of birth, as well as relationship to decedent of all persons claiming dependency.

24. Names and addresses of all persons who furnished bills for medical treatment in connection with the accident causing death, and the amounts due under the bills, as well as total amounts paid.

25. The actual funeral bill, and the amount of the bills to be obtained, as well as whether they are paid or unpaid.

26. The cause of death should be carefully documented by obtaining the long form death certificate from Trenton and there should be a complete investigation to determine whether there was a postmortem report. (In many cases the cause of death will be critical and an autopsy may be required. If the consent of the next of kin cannot be obtained then an order from the workers' compensation court will be necessary and a proper motion should be immediately made.)

27. You should obtain your client's marriage and birth certificates and birth certificates from the decedent's children.

B. The Claim Petition

On the initial interview of the Workers' Compensation claimant, the attorney should be certain to obtain the information required to adequately complete the Claim Petition for Compensation as prescribed.

The initial paper is called the Claim Petition which must be filed in duplicate in Trenton within two years after the date on which the accident occurred, or within two years of the last provision of compensation, which includes the furnishing of medical treatment. In the case of occupational illness, it is two years from the date the worker first became aware of the disability and its relationship to the employment. The statute requires that the petitioner state the respective addresses of the petitioner and the respondent, the facts relating to the employment at the time of injury, the injury and its extent and character, the amount of wages received at the time of the injuries, and the employer's knowledge of notice of the accident's occurrence. This petition must be verified over the affirmation of the petitioner.

Cases are usually assigned to the district office by either the county of the residence of the petitioner or if the petitioner lives out of state, the county where the employer is located.

The name of the insurance company, its address and claim number should be obtained, if possible. If the name and address of the insurance company is unknown, it may be obtained by writing to the New Jersey Compensation Rating and Inspection Bureau (NJCRIB), 60 Park Place, Newark, NJ 07102, or through the NJCRIB web site, located at www.njcrib.com. The name and address of the employer, as well as the date of the accident must be furnished and the Compensation Rating Bureau will furnish the name of the employer's insurance carrier on the day in question.

If treating medical reports are available they are to be attached to the Claim Petition. The Claim Petition should indicate whether medical aid was furnished by the employer, as well as the names and addresses of all treating physicians and hospitals.

Once the petition is filed, the claim is given a petition number, and at this point, you can file motions to resolve any immediate problems the petitioner may face. The Division of Workers' Compensation mails lists with sixty to eighty cases to the attorneys involved in each case. Cases are carried over in "cycles" or three week periods. Once a case is listed, it will not be listed again for at least another cycle. For example, a six cycle adjournment would be for eighteen weeks.

C. Dependency Claim Petition

In death cases a Dependency Claim Petition must be filed. In addition to the general information required for the caption, the decedent's Social Security number must be set forth.

Each dependent's name, age, date of birth and relationship to the decedent must be indicated. Thereafter, the decedent's sex and date of birth and date of the accident is required. In addition, the attorney must set forth the date on which the respondent obtained knowledge or received a report of injury. The date on which the employee stopped working and the date on which the employee returned to work should also be set forth. Next, the date of injury, how it occurred, where it occurred, and its nature is to be disclosed. Also, the date of death must be set forth. Any medical expenses should be disclosed, as well as the amount of burial expenses, and the name of the person who paid them. The gross wage of the employee must be set forth, as well as the rate of compensation. Any compensation which had been received by the employee for the injury must be disclosed. Also, disclosure must be made to determine whether either the employer or the employee elected not to be covered by the Workers' Compensation Act. If available, treating medical record should be filed along with a petition. The Dependency Claim Petition must be signed under oath by the dependent who is acting as the petitioner.

D. Application for Review

Another initial form is an Application for Review or Modification of Formal Award. This form is used where there has been a previous recovery of a formal award by a petitioner and there is application by either the petitioner or the respondent for modification of the award. In order to properly fill out this form, the attorney must have the Claim Petition number and the District Office where the case is to be heard. In addition, the attorney should list: the name, address and Social Security number of the petitioner; name and address of the respondent; the name, address and claim file number of insurance carrier. Also, the applicant's age, sex, marital status, date of injury, date of compensation paid and present employment status should be listed. If copies of the previous award, previous medical reports, and/or medical reports to be used as the basis for modification exist, they should be attached to the application. The applicant must also indicate whether there has

been any prior modifications of the original award. The document must be executed under oath.

The original Employee Claim Petition for Compensation, the Dependency Claim Petition and the Petition for Modification of Formal Award must all be filed in duplicate with the Division of Workers' Compensation in Trenton.

E. Answering the Claim Petition

The employer or its insurance carrier has thirty days after service of the petition to file an answer. A copy of the answer is served on the petitioner's attorney by first class mail or its equivalent. The answer may be prepared by the attorney for the respondent based upon knowledge, information or belief. The answer must contain the claimant's name, address, age, social security number, occupation, gross weekly wage and applicable rate; the respondent's name and address; and the carrier's name, address and claim file number.

The respondent is further required to indicate whether the information concerning employer and insurance carrier, supplied by the petitioner, has been corrected. Further, the respondent must indicate whether the petitioner was in its employ on the date stated, and if not, the correct date of the accident. Additionally, the respondent must either admit or deny that the alleged injury occurred out of and in the course of the employment. Also, it must be indicated whether the employment is covered by the Workers' Compensation Statute. Thereafter, the respondent must disclose how and where the injury occurred, as well as the nature of the injury and disability. The occupation and age of the petitioner are required, plus the date on which the respondent either had actual knowledge, or received notice of the injury. The respondent must indicate the date on which the petitioner stopped work and returned to work; gross weekly wage and rate of compensation. The amount of temporary total disability paid and the amount of permanent disability paid should also be indicated. If medical aid was rendered to the petitioner by respondent, the answer must indicate the name and address of each physician or institution rendering aid.

F. Answer the Dependency Claim Petition

Similarly, the Dependency Claim Petition requires an Answer to be filed by the respondent listing: the name, the Social Security number, and the address of the petitioner; the name and address of the employer; and the name, address and file number of the insurance carrier. An indication must be given as to whether the information supplied by the petitioner was accurate or had to be corrected. Next, the name, address and Social Security number of the decedent must be set forth, as well as the date of injury. The date that the employer had knowledge of the injury, the occupation of the employee and a description of how and where the injury took place must be set forth. The nature of the injury and the cause of death must be disclosed as well as any medical expenses or burial expenses paid by the respondent. The decedent's gross weekly wages and the rate of compensation is required to complete the Answer. The respondent must further indicate any monies paid for temporary total disability and the total amount of compensation paid. The respondent must also disclose whether it furnished medical aid and whether it either

received notice from the decedent or gave notice to the decedent that Article II of the Compensation Act would not apply. Execution of the Dependency Claim Petition Answer is similar to the Answer filed on a lifetime Claim.

G. Motions for Temporary Disability and/or Medical Treatment

Benefits payable for temporary disability are payable to the employee during the time that he or she is out of work and under active curative medical treatment. Should the respondent fail or neglect to make payment of temporary disability or furnish the injured employee with medical treatment, the petitioner can proceed by motion to procure same. N.J.A.C. 12:235-3.2 [formerly 12:235:5.2]. Motions for medical and temporary benefits are given the highest priority in the court system.

The original notice of motion shall be filed with a district office to which the case is assigned and must contain a detailed account of compensable time lost and any part thereof paid by the respondent. N.J.A.C. 12:235-3.2 (a) and (b) (1) [formerly 12:235-5.2 (a) and (b) (1)]. The motion is to be supported by an affidavit or certification by the petitioner, his or her attorney and the treating physician describing the medical diagnosis and the specific type of treatment for which payment is sought, and a report of the treating physician. N.J.A.C. 12:235-3.2 (b) (2) [formerly 12:235-5.2 (b) (2)].

The affidavits, certifications and medical reports in support of the motion shall state a *prima facie* case, and unless rebutted by reports, testimony, affidavits or certifications by the respondent, shall be sufficient basis for the issuance of an order compelling the respondent to provide the relief sought. N.J.A.C. 12:235-3.2 (e) [formerly 12:235-5.2 (e)].

The petitioner will need a medical report and/or testimony in support of the motion from either a treating physician or a forensic medical expert. Forensic medical experts generally require a minimum of $200.00 up front for an examination and report, but many agree to testify in court for money to be paid, pursuant to N.J.S.A. 34:15-64, after testimony is given and the motion is resolved.

Some judges, however, require the testimony of a treating physician. Treating physicians usually demand a large fee at or before a court appearance or deposition. A treating doctor can be subpoenaed and compelled to testify at trial as to facts. Whether or not a treating physician can be forced to testify at trial and give an opinion on causation is not fully clear. In *Stanton v. Rushmore*, 112 N.J.L. 115, 116 (1934), a physician attending a party observed bruises to a woman who was not his patient. The court held that the physician could be compelled to testify to his observations but not to give "a professional judgment as to the condition he found and its cause." *Id.* at 116. More recently, *Stigliano v. Connaught Laboratories, Inc.* 270 N.J. Super 373 (App. Div. 1994), held that treating physicians must give an opinion on causation to a defense attorney when call to do so at trial:

> [There is] no reason to distinguish the doctors' testimony on causation and their testimony as to diagnoses and prognoses. All arise out of and are inextricably linked to [the patient's] treatment. [*Id.* at 379.]

A doctor unwilling to cooperate with a petitioner's attorney should be apprised of the *Stigliano* case, as well as *Spaulding v. Haussain*, 229 N.J. Super 430 (App. Div. 1998). *Spaulding* held that a treating physician has a duty to assist in litigation and can be found liable for failure to render reasonably required litigation assistance. Though *dictum* in *Spaulding* observed that a physician may not have an unequivocal duty to testify in court if he "tells his patient from the outset that he will not testify," *Stigliano* holds such testimony can be compelled. And if, as in *Stigliano,* testimony form a treating physician can be compelled by the defense, then *afortiori* the patient's attorney should be able to compel the same testimony form a doctor duty-bound to cooperate in litigation.

Despite the above, if a treating doctor cannot be compelled to provide an opinion on the witness stand, the petitioner's attorney may ask if an opinion expressed in a doctor's report is true. For this to work though there first must be a report containing an opinion on causation and the need for treatment. The truth or falsity of an opinion contained within a treating physician's report is a question of fact.

Another option in dealing with treating physicians demanding large sums of money prior to testimony is to pay what is requested; but the majority of claimants cannot afford to, and most petitioners' attorneys do not advance such funds. If the doctor is paid up front, the attorney or client can only expect reimbursement of $300.00 per hour for testimony, up to a maximum of $2500.00. N.J.S.A. 34:15-64. Furthermore, payments that exceed the sums authorized by N.J.S.A. 34:15-64 are prohibited. Petitioners' attorneys should review such issues with their clients at the outset of representation and determine who will be responsible for out-of-pocket witness fees. All in all, the uncomfortable situation concerning the testimony of treating physicians arises more frequently than it should, and judges should attempt to avoid it. A judge who insists on the testimony of a treating physician should at least let it be known that he/she will advise the physician of his/her obligations and persuade a recalcitrant physician to render an opinion. On the other hand, a judge could simply accept the testimony by a forensic examining expert.

Should the respondent require one, an examination of petitioner shall be completed within thirty days after the receipt of the motion and shall not delay the hearing on the motion. The Division of Workers' Compensation is required to list such motion preemptorily within thirty days.

If the motion is heard, the judge of compensation may require trial briefs, to be submitted not later than fifteen days after the hearing, and the judge of compensation must render a decision within fifteen days thereafter.

Said notice of motion must contain the claim petition number and district office, along with the normal caption consisting of the social security number, name and address of the petitioner; name and address of the respondent; and name, address and claim file

number of the insurance carrier. The motion should be addressed to the attorney for the adverse party and should state clearly the nature of the release sought, as well as the applicable rule supporting the motion.

Pursuant to N.J.A.C. 12:235-3.2 (d) [formerly 12:235:5.2 (d)], the employer has 21 days to respond to the motion, or 30 days if the motion is filed along with the claim petition. A respondent found fully liable for medical and temporary disability benefits, though, may still have its share of permanent disability apportioned based upon non work-related pre-existing conditions, subsequently developed conditions, and other non work-related causes.

1. Changes to Administrative Code Sections Governing Med-Temp. Motions.

In October 2002, N.J.A.C. 12:235-5.2, which governed the filing of Med-Temp motions was rewritten as N.J.A.C. 12:235-3.2. The following new provision was added to N.J.A.C. 12:235-3.2 (a):

> Motions for temporary disability and/or medical benefits must evidence that petitioner is currently temporarily totally disabled and/or in need of current medical treatment. Where only past periods of temporary total disability and/or medical expenses are claimed by petitioner, such issues should be presented at pretrial for resolution or trial and not by motion under this section.

Med-Temp motions have priority on the court's calendar. Under the new provision, if a Med-Temp motion is filed after a worker returns to employment (at the same job or a lower paying job), the motion will likely not be considered even if the worker was out for more than six months and suffering financial hardship as a result. Similarly the motion will likely not be considered if past medical treatment was already paid for by the worker out of pocket.

A Med-Temp motion should be promptly filed if issues of medical treatment or temporary disability benefits cannot immediately be resolved with the adjuster or with respondent's counsel. A new client will usually raise the need for treatment and temporary disability benefits at the outset, but if not, the attorney must anticipate these issues and avoid losing the client's right to a quicker remedy. If the client obtains necessary medical treatment from another source, the need for a speedy medical remedy becomes moot. Financial hardship related to periods of disability or to payment of medical treatment, however, often engenders distress beyond the injury or occupational disease itself. "Since temporary disability benefits form a partial substitute for weekly pay checks, there is need for prompt payment." *Dunlevy v. Kemper Insurance Group*, 220 N.J. Super. 464, 468 (App. Div. 1987).

A medical opinion is required to prove the need for treatment and eligibility for temporary disability benefits based on inability to work. If there is insufficient time to obtain a medical opinion, or if the petitioner "cannot secure a report," the motion may

nevertheless be filed along with an explanation of why medical evidence is not included. See N.J.A.C. 12:235-3.2 (b) (3).

On December 10, 2002, the Task Force on Medical and Temporary Benefits, created by the Commissioner of Labor and chaired by Supervising Judge Granados, submitted its final report and recommendations. The Task Force emphasizes the desirability of devoting more resources to emergent situations involving prospective claims for treatment or benefits:

> The Task Force believes that [N.J.A.C. 12:235-3.2 (a)] will greatly enhance the response of the Division to emergent matters. Identifying which motions were emergent proved difficult under the former rule because it did not require any showing of urgency. The new rule goes far to address this. By requiring evidence that petitioner is temporarily totally disabled and/or in need of current medical treatment and by specifically relegating past periods of temporary benefits and medical expenses to the pretrial or trial stage, the court may remove less pressing motions from the medical and temporary category. More resources can then be dedicated to genuinely critical situations.

The Task Force identified the following questions for the Division to consider in determining if a motion is emergent:

1. What efforts has petitioner's attorney made to obtain authorization for treatment from the respondent?
2. Is the injury denied?
3. Is the petitioner working?
4. Is petitioner receiving any type of wage replacement?
5. Has petitioner received any medical treatment? If so, by whom? Was it authorized?
6. Was any treatment cut off? If so, by whom and why?
7. When was the last treatment?
8. What treatment is now recommended and by whom?
9. If diagnostic treatment is being recommended, to what end?
10. Do the circumstances dictate an immediate hearing?

In light of question one, above, a petitioner's attorney, upon discovering the need for prospective medical treatment or temporary disability benefits, should quickly forward a demand letter to the respondent's attorney or to the compensation carrier if counsel has not yet been retained. The demand letter should specify the benefits currently owed and benefits that will be owed in the future. For instance, a treating or examining doctor may state that a petitioner has been unable to work for the past four months due to a back injury, that the injury will require surgery, and that subsequent to the surgery six months of convalescence will be needed. Given these facts, the letter should demand four months of retrospective temporary disability benefits, continuing benefits until the time of surgery, and benefits for six months after the surgery at the applicable rate of compensation.

Furthermore demand that the surgery be paid for if it was not authorized. If the petitioner has access to an alternative payor, the respondent should be advised that the petitioner will undergo the necessary procedure and seek reimbursement. Ultimately, however, if the petitioner cannot establish causation, the respondent will be liable for neither temporary disability benefits nor unauthorized medical treatment.

Question one addresses whether or not the respondent received fair notice of what is demanded. Without sufficient notice, it would be unfair to hold an employer liable for attorney fees in a Med-Temp motion. Of course the motion itself may constitute notification of the claim. But if the respondent promptly agrees to provide benefits upon first being notified by motion, an attorney fee may be withheld.

The remaining questions provide a means of helping the Division determine whether, pursuant to N.J.A.C. 12:235-3.2 (a), only past periods of temporary total disability and/or medical expenses are being claimed. If the respondent received proper notice and prospective benefits are truly at issue, the court must hear the motion. The motion should be tried to completion even if during its course the issue of prospective temporary disability benefits becomes moot because the petitioner returns to work.

2. Emergent Motions for Medical Treatment

In 2009, the Administrative Code was amended to allow for emergent motions. N.J.A.C. 12:235-3.3 grants a petitioner the right to a quickly set and continuous or otherwise expeditious trial where it is established by a physician's statement that the petitioner needs emergent medical care and that delay will cause irreparable harm, the nature of which must be specified. The petitioner must attach medical records to motion and a copy of the claim petition and answer. If no answer has been filed, service must be made on the employer and insurance company (if known) by personal service, or by fax and one-day delivery service. The respondent must answer in 5 days and conduct a medical exam in 15 days. A conference with a compensation judge will be scheduled 5 days after the Answer is filed or should have been filed. Petitioner then has the right to a continuous trial or otherwise expedited trial, with a decision to be rendered within one business day of the last day of testimony.

H. Other Motions

Motions not dealing with temporary disability, medical treatment or dismissal for lack of prosecution are to be filed with the district office to which the case is assigned with copies served on all parties and shall include a factual and legal basis for the relief requested and a proposed form of order, at the foot of which shall be appended a checklist, to be completed by the judge of compensation indicating whether, and by what party, answering or replied papers have been filed.

If the motion or response relies on facts not of record, affidavits made on personal knowledge of the affiant must set forth facts admissible in evidence, to which the affiant is competent to testify. Should there be no response to papers filed within fourteen days of

service of the notice of motion, it shall be considered uncontested. Unless a judge of compensation directs oral argument, to be held within thirty days of the service of the last papers contemplated by the rule, the motion shall be decided on the papers.

Motions to dismiss for lack of prosecution must be listed for hearing. To be considered by the judge of compensation, such motion must strictly comply with the provisions of statutes. N.J.S.A. 34:15-54. Respondent must serve petitioner or his or her attorney with notice that unless the cause is moved for hearing within one month from the date of service, the claim will be considered abandoned and the petition dismissed. Even after such dismissal, the petitioner has the right to have the petition reinstated for good cause, upon application within one year after the dismissal.

As a matter of practice, the notice of motion is served on petitioner's attorney by certified mail return receipt requested, and on the return day, if the petitioner does not appear, the motion is moved *ex parte* and the return receipt is placed in evidence as proof of timely notice.

I. Certification

The petitioner's attorney shall submit a certification when filing a motion for an uninsured claim. The certification shall be specific, and shall contain the following information:

1. Date of hire.

2. Length of employment. Was it continuous? If not, list all dates of employment.

3. Copies of W-2 for all dates of employment.

4. Pay stubs for all salary received from the employer for the previous year.

5. Total wages received from the employer for twelve months preceding the accident.

6. The name, address, business and personal phone numbers of the employer and any officer or manager of the company.

7. All documents indicating the employer-employee relationship or lack thereof.

8. Complete and detailed facts which establish the employer-employee relationship.

9. Name, address and phone number of all persons with knowledge of the existence of an employer-employee relationship between the petitioner and the respondent.

10. Place where the injury occurred including the name of the owner of the property. State the reason why the employee was at the location where the injury occurred.

11. The name, address and phone number of all witnesses to the accident, and the location of the employer when the accident occurred.

12. The name, address and phone number of all persons with any knowledge of the accident.

13. How soon after the accident was the physician contacted?

14. The name and address of all treating physicians and the name and address of any hospitals, laboratories or other facilities where treatment was received.

15. Copies of all medical reports from the hospitals and treating physicians.

16. Medical insurance coverage for the employer and/or spouse, and if available, the name and address of the company and the policy number.

17. How medical expenses have been paid.

18. Approximate net worth of the employer and any other information that the director may deem necessary to complete the factual situation surrounding the accident. Failure to disclose current information will result in the certification being returned to the petitioner's attorney for resubmission and the case will not be listed for hearing until the certification is returned.

J. Discovery

Discovery is allowed in contested cases where there are issues in dispute in addition to the nature and extent of temporary or permanent disability. N.J.S.A. 12:235-5(a). All discovery must be concluded "within 180 days from the filing of respondent's answer or from petitioner's last authorized medical treatment, whichever date is later," though "a Judge of Compensation may extend or reopen discovery" on motion or application for good cause. N.J.A.C. 12:235-5(b). In occupational cases, a party may propound interrogatories only by a demand in the initial pleadings that the opposing party answer the standard form interrogatories as listed in N.J.A.C. 12:235-14.1. Standard form interrogatories can be downloaded from the New Jersey Division of Workers' Compensation web site, located at www.state.nj.us/labor.wc/forms. The occupational interrogatories include a respondent's form for psychiatric claim cases. Additional occupational interrogatories can only be obtained "on motion for good cause shown." N.J.A.C. 12:235-5(f). Answers to

occupational interrogatories must be served "by all parties within 90 days from the filing of respondent's answer to the claim petition." N.J.A.C. 12:235-5(f).

Interrogatories may also be propounded without motion in cases of review or modification of a prior award on grounds of increase or decrease in disability. The interrogatories are limited, however, to a request for "a chronology of the pertinent events from the date of the last award or judgment to the filing of the petition . . . . and the essential facts upon which the petition is grounded." N.J.A.C. 12:235-5(d).

Interrogatories without motion are allowed in fatal cases. N.J.A.C. 12:235-5(a). A petitioner may serve interrogatories without motion when the employer's doctors are providing treatment and medical information is not available. N.J.A.C. 12:235-5(b). The need for such interrogatories, however, should be unnecessary because 12:235-5(c) requires all parties to furnish medical records within 30 days of a demand. If a party fails to provide medical records within 30 days, that party "may be responsible to reimburse its adversary for the cost of procuring the same."

Interrogatories allowed without motion must be served by the petitioner no later than 30 days after service of the answer, and by the respondent no later than 15 days after service of the answer. For good cause shown upon motion a judge may extend the time allowed to answer. Otherwise answers are due within 45 days after service of the interrogatories. In all other cases, interrogatories can only be obtained via motion for good cause shown. N.J.A.C. 12:235-5(e) and (f).

N.J.A.C. 12:235-5(h) authorizes the deposition of witnesses for good cause. Though unusual in workers' compensation cases, a deposition may, for instance, be necessary if an important witness is terminally ill and unable to come to court. If the petitioner's physical condition is such that it is imperative to obtain her testimony so as to preserve his/her rights or the rights of his/her estate, a deposition may be ordered upon motion with a physician's report attached, or by consent of all parties. N.J.S.A. 12:235-5.7. Where a petitioner dies from causes unrelated to an occupational injury or accident, his/her dependents are entitled, pursuant to N.J.S.A. 34: 15-12(e), to the benefits he would have received had he lived. *Adams v. Woodbridge Sanitary Property Corp.*, 174, N.J. Super 284, 288 (App. Div. 1980).

Pursuant to an amendment to N.J.A.C. 12:235-5.10, in lieu of the general requirement that all testimony be elicited in open court, deposition and telephonic testimony of witnesses may be permitted for good cause and with the consent of the parties. Also, the court may permit video teleconferencing of an expert witness for good cause, with costs to be borne by the requesting party.

K. Penalties, Enforcement Orders, and Civil Claims against Compensation Carriers and Related Parties

Various provisions in Title 34 and the Administrative Code promote compliance with orders and the good faith conduct of parties. An unreasonable delay or refusal in

payment of temporary disability benefits, for instance, can bring about a penalty of 25% of the amount withheld plus the costs of legal fees incurred. If a respondent fails to pay a judgment within three months, the judge may order interest on each weekly payment pursuant to N.J.S.A. 34:15-28. Though N.J.S.A. 34:15-28 does not specifically mention attorney fees, N.J.A.C. 12:235-3.16 provides for the payment of attorney fees to an aggrieved party for unreasonable failure to comply with the written order of a Judge of Compensation. Other possible remedies under N.J.A.C. 12:235-3.16, which potentially applies to any written court order, including suppression of a defense or claim and exclusion of evidence. N.J.A.C. 12:235-3.16(e) requires a hearing on the appropriateness of "any compensatory levy or sanction" after the opposing party is given 14 days to file a response and explain why the order has not been followed. Noncompliance with a discovery demand can also be the subject of an enforcement action under N.J.A.C. 12:235-3.8(i), in addition to a motion to dismiss the claim petition or to suppress defenses. However if such motions are not filed prior to the first date of trial, such failure "shall be deemed a waiver of a discovery demand." N.J.A.C. 12:235-3.8(i).

Pursuant to N.J.A.C. 12:235-3.16(h): Upon a finding by a judge of noncompliance with a court order or the workers' compensation statute or rules, the judge, in addition to any other remedy provided by law, may take any or all of the following actions:

1. Impose costs and simple interest on any monies due.
    i. Impose an additional assessment not to exceed 25 percent on any moneys due if the judge finds the payment delay to be unreasonable;
2. Levy fines or other penalties on parties or case attorneys in an amount not to exceed $5,000 for unreasonable delay or continued noncompliance.
    i. A fine shall be imposed by the judge as a form of pecuniary punishment.
    ii. A penalty shall be imposed by the judge to reimburse the Division's administrative costs.
    iii. The proceeds under this paragraph shall be paid into the Second Injury Fund;
3. Close proofs, dismiss a claim or suppress a defense as to any party;
4. Exclude evidence or witnesses;
5. Take other appropriate case-related action to ensure compliance; and/or
6. Allow a reasonable counsel fee to a prevailing party, where supported by an affidavit of services.

N.J.A.C.12:235-3.16(i)-(k), as amended in 2009, gives the judge of compensation contempt powers:

> (i) Upon a finding of noncompliance by a party with a court order or the workers' compensation law or rules, the judge, in addition to any Rules of the Division of Workers' Compensation, or other remedy provided by law, may hold a separate hearing on the issue of contempt.
> (j) Following a hearing under (i) above and upon a finding by the judge of contempt, the successful party in the contempt hearing or the judge may file a

> motion with the Superior Court for contempt action.
> (k) Any fine, penalty, assessment or cost imposed by a judge under this section shall be paid by the entity or party found to be in noncompliance and shall not be included in the expense base of an insurance carrier for the purpose of determining rates or as a reimbursement or case expense.

N.J.S.A. 34:15-28.1 requires imposition of a 25% penalty against employers or carriers that unreasonably or negligently fail to pay temporary disability benefits. In addition, it establishes a presumption of unreasonableness if temporary disability benefits are delayed 30 days or more. The statute provides:

> If a self insured employer or employer's insurance carrier, having actual knowledge of the occurrence of the injury, or having received notice thereof such that temporary disability compensation is due pursuant to R.S. 34:15-17, unreasonably or negligently delays or refuses to pay temporary disability compensation, or unreasonably or negligently delays denial of a claim, it shall be liable to the petitioner for an additional amount of 25% of the amounts then due plus any reasonable legal fees incurred by the petitioner as a result of and in relation to such delays and refusals. A delay of 30 days or more shall give rise to a rebuttable presumption of unreasonable and negligent conduct on the part of a self-insured or uninsured employer or an employer's insurance carrier.

N.J.S.A. 34:15-28.1 was implemented to remedy "one of the most shocking situations which prevails in New Jersey's workmen's compensation system [which] is the delay [. . .] often encountered in the payment of an injured worker's ... compensation benefits for temporary disability." *Amorosa v. Jersey City Welding & Machine Works* 214 N.J. Super. 130, 138 (App. Div. 1986). As noted in *Amorosa*, the penalty is required because unreasonable delays cause "adverse economic impact to disabled workers." *Id.* "3 months without wages is enough to bankrupt most employees. Understandably, it is during the time when an employee is not receiving temporary benefits that he feels most neglected and resentful of his employer." *Id.*, quoting The Investigation Report of the Investigation of the Workmen's Compensation System by the New Jersey State Commission of Investigation (1974). The Report further notes:

> A system to ensure rapid and prompt delivery of temporary disability benefits in contested as well as uncontested cases is crucial to the well being of workers [. . .] [T]emporary disability checks should be given the same priority by an employer as he would in rendering the normal paychecks. Petitioners should not have to pry out temporary disability payments from employers or their insurance carriers. Abuses in this area must be ended. [*Amorosa* at 138.]

The respondent in *Amorosa* offered no explanation of its failure to pay benefits. Even though there may have been a question of medical causation, this alone was not enough to overcome the statutory presumption. *Id.* at 139.

The issues discussed in *Amorosa*_continue to afflict our workers' compensation system today. On December 10, 2002, the Task Force on Medical and Temporary Benefits released its final report, which succinctly summarizes the problem:

> A worker unable to work because of injury often has no income and, without medical treatment, no prospect of going back to work. No situation affects a petitioner and petitioner's family more dramatically. This is a real emergency. The most persistent complaint about the current system is its sluggishness in responding to these emergent situations. This is its chief weakness and the chief source of dissatisfaction among its workers.

Amorosa has been cited by workers' compensation judges imposing sanctions pursuant to N.J.S.A. 34:15-28.1. In *Giannotti v. Teledyne Farris Engineering*, 92 N.J.A.R. 2d (WCC) 70 (1992) Judge Moncher, relying on *Amarosa*, awarded sanctions pursuant to N.J.S.A. 34:15-28.1. He commented on the facts the case:

> While the insurer would have been justified in not making an immediate payment during the pendancy of a reasonable investigation of the facts, it never conducted such an investigation, and it never inquired of its selected and authorized physician [. . .] The insurance company by reason of its administration of the case was aware of the seriousness of the injury and was in possession of sufficient facts to charge it with full knowledge of the seriousness of petitioner's knee instability[. . .] Its authorized independent orthopedic physician had told it of the recent "buckling. . ."

Nordaby v. Cape May County Holiday Tours, 92 N.J.A.R. 2d (WCC) 76 (1992), also involved a knee injury, and an alleged related cervical injury that did not manifest itself until months after the accident. The treating orthopedic physician recommended physical therapy for both the knee and the neck, which the respondent would not authorize. Judge Lashman found respondent's failure to pay 47 and 3/7 weeks of temporary disability benefits "shock[ing to] the conscience of the court" and awarded a penalty pursuant to N.J.S.A. 34:15-28.1.

The remedy provided by N.J.S.A. 34:15-28.1 is intended by the legislature to be exclusive; an aggrieved worker lacks recourse against the employer or insurance company in Superior Court for bad faith or wrongful termination of benefits. *Dunlevy v. Kemper Insurance Group*, 220 N.J. Super. 464 (App. Div. 1987). In *Dunlevy*, the petitioner alleged that the compensation carrier's termination of temporary disability benefits in violation of court order constituted bad faith. A civil claim against the carrier was brought in Superior Court, but the Appellate Division held that N.J.S.A. 34:15-28.1 is the petitioner's exclusive remedy. *Millison v. E.I. du Pont de Nemours & Co.*, 101 N.J. 161, 174 (1985) was distinguished because it "dealt with an intentional tort of an employer in the workplace [not with] the intentional wrongful conduct of a compensation carrier. *Dunlevy* at 469-470.

If the civil cause of action precluded in *Dunlevy* were allowed to go to a jury, the employer or carrier would have been exposed to civil damages far in excess of that authorized by N.J.S.A. 34:15-28.1. This loss of civil remedy puts a worker denied

temporary disability benefits squarely within the bargain theory of compensation emphasized in *Lindquist v. City of Jersey City Fire Department*, 175 N.J. 244 (2003). The Workers' Compensation Act "involved a historic trade-off whereby employees relinquished their rights to pursue common-law remedies in exchange for automatic entitlement to certain, but reduced, benefits whenever they suffered injuries . . ." *Id.* at 257 quoting *Millison v. E.I. de Pont de Nemours & Co.*, 101 N.J. 161, 174 (1985). A failure to enforce this reduced statutory compensation remedy can be said to deprive employees of the bargain upon which the system is founded.

In *Flick v. PMA Ins. Co.*, 394 N.J. Super. 605 (App. Div. 2007), a workers' compensation petitioner sought access as a plaintiff to civil remedies in the law division after a third-party administrator allegedly ignored the treatment recommendations of its authorized doctors and flouted the orders of a compensation judge to provide medical treatment. Dismissal of the suit was affirmed by the Appellate Division, however, because the employee failed to exhaust administrative remedies. The complaint in superior court asserted that the actions of PMA Insurance Company were "willful, wanton, and done with malice," and caused "unnecessary pain and suffering" along with financial harm and "a worsening of [plaintiff's] medical condition." *Id.* at 609. Consequently, the plaintiff demanded compensatory damages, punitive damages, and a jury trial.

After noting the exclusive remedy limitation of N.J.S.A. 34:15-8, the court emphasized that legislative provisions in N.J.S.A. 34:15-28.1 and N.J.A.C. 12:235-3.14 [changed in 2009 to N.J.S.A. 34:15-28.2 and N.J.A.C. 12:235-3.16] set forth remedies which must be pursued within the Division of Workers' Compensation. In this instance, though, the plaintiff failed to exhaust his administrative remedies, alleging instead that "systemic failure" made exhaustion of remedies unnecessary." *Id.* at 614. The Appellate Division, however, stated that intervention by the Superior Court under such circumstances could lead to it becoming "unnecessarily embroiled in fact-sensitive and dynamic issues involving ongoing medical care for claimants." *Id.* at 613.

Nevertheless, the Appellate Division noted that where administrative remedies in the Division of Workers' Compensation are exhausted, and a party "continues to flout the orders of a judge of compensation," an aggrieved party may bring "an order to show cause in the Law Division for enforcement under R. 4:67-6." *Id.* Such a proceeding, however, is in the nature of a contempt action and would not likely provide the breadth of compensatory and punitive damages sought by Mr. Flick.

Flick v. PMA Ins. Co. evinces a judicial reluctance to allow workers' compensation matters to be litigated outside of the Division of Workers' Compensation under rules that could expose employers and their carriers to greater sanctions. In this instance, the court believes that the question of how aggrieved workers can be adequately made whole is best left to legislative reform. *Id.* at 614. This reluctance can further be seen in the court's belief that the facts of the case are more like *Dunlevy*, *supra*, than like *Rothfuss v. Bakers Mut. Ins. Co.* 107 N.J. Super.,189 (App. Div. 1969).

In *Rothfuss*, the plaintiff was injured while working for the defendant employer. The compensation carrier denied that the injury was work related. Nevertheless, it requested that the employee be admitted to a hospital for examination and treatment by a doctor directly employed by the compensation carrier. Three times this doctor recommended disc surgery, which was canceled each time because the carrier refused to authorize it. Consequently, the employee, who could not afford the surgery, languished 23 days in the hospital without effective medical care. Only later, after litigation in the Division of Workers' Compensation, was the needed surgery performed. *Id.* at 192-193.

With this set of facts, the Appellate Division in *Rothfuss* allowed the suit to proceed to Superior Court, reasoning as follows:

> There is nothing in the New Jersey Workmen's Compensation Act which would bar this kind of common law action. In fact, an analysis of Mager v. United Hospitals of Newark, 88 N.J. Super. 421, 212 A.2d 664 (App.Div.1965), aff'd 46 N.J. 398, 217 A.2d 325 (1966), supports this view. In Mager Judge Goldmann thoroughly analyzed the New Jersey Workmen's Compensation Act and concluded that a workmen's compensation carrier, maintaining its own medical clinic for treating injured employees, is liable for the negligent treatment of such employees, and that the act does not give it immunity as the employer's carrier. He classified the insurance carrier as a third person liable to an employee under N.J.S.A. 34:15-40 if its acts negligently caused harm to the employee which are alleged to have occurred in the course of an independent undertaking not under the insurance policy or the act.
>
> Nor is this action barred by the exception contained in the second paragraph of N.J.S.A. 34:15-8. The first paragraph of that statute limits an employee or his personal representatives to the awards of compensation provided for under the act. It represents a surrender of his or their rights to any other method, form or amount of compensation. The second paragraph of the statute provides:
>
> If an injury or death is compensable under this article, a person shall not be liable to anyone at common law or otherwise on account of such injury or death for any act or omission occurring while such person was in the same employ as the person injured or killed, except for intentional wrong.
>
> This exception does nothing more than give fellow employees immunity for their negligent acts committed on each other in the course of their employment, unless intentionally committed. Bryan v. Jeffers, 103 N.J. Super. 522, 248 A.2d 129 (App.Div.1968), certif. den. 53 N.J. 581, 252 A.2d 157 (1969).
>
> We make no comment or decision concerning the claim for punitive damages or the claim for loss of consortium. These issues will await future

developments. [*Id.* at 194-195.]

Two significant points are made here: (1) an "independent undertaking" by a carrier that involves direct provision of medical care transforms the carrier into a "third party," thereby removing it from the protection of the exclusivity rule; and (2) the carrier is not shielded by the co-employee doctrine.

The protection afforded co-employees by N.J.S.A. 34:15-8 did not apply in *Rothfuss* because the insurance company is a separate entity from the employer. This was clearly stated in *Mager*, *supra*:

> The definition of 'employer' in the Workmen's Compensation Act negatives the argument that the employer and his compensation carrier must be considered as one and the same. N.J.S.A. 34:15-36 declares 'employer' to be 'synonymous with master.' An employer's compensation carrier cannot be considered as the injured employee's master. [*Mager* at 426.]

In *Mager*, the decedent worker's estate sued the compensation carrier alleging that it negligently treated through its own clinic the employee after a foot injury, leading to amputation of the leg and death. The court rejected New Jersey Manufacturer's argument that N.J.S.A. 34:15:40 protects it from third party liability. On the contrary, "an injured employee's common-law right of action against a third party has been preserved in N.J.S.A. 34:15-40," which "nowhere enjoins an action against the employer's compensation carrier." *Id.* at 425-426.

Though the cause of action based on the independent undertaking of the carrier was allowed to proceed in *Rothfuss,* counts alleging that the carrier failed to provide prompt and adequate medical treatment were dismissed because "the remedy for such alleged wrongs lies within the provisions of the Workmen's Compensation Act, N.J.S.A. 34:15-15 and 34:15-15.1." *Rothfuss* at 193. These provisions state that an injured worker is entitled to medical treatment under the workers' compensation law and that if she can obtain treatment elsewhere, reimbursement may be sought from the employer.

In *Hinojo v. New Jersey Mfrs. Ins. Co.* 353 N.J. Super. 261 (App. Div. 2002), a compensation carrier was asked to and did in fact design a safety guard for its insured, the employer of the worker injured on the machine. Under these circumstances, the insurance company was held subject to a civil claim under the New Jersey Products Liability Act. Citing *Mager*, the court stated:

> For similar reasons, we reject NJM's argument that it cannot be held liable under the PLA because it simply provided safety advice as Durex's workers' compensation insurer. The insurer of an employer's liability under the Workers' Compensation Act, *N.J.S.A.* 34:15-1 to -128, cannot assert the employer's immunity from tort liability. As Judge Goldmann commented in *Mager v. United Hosps. of Newark*, 88 *N.J. Super.* 421,

> 426, (App.Div.1965), *aff'd o.b.*, 46 *N.J.* 398, 217 *A.*2d 325 (1966), the Legislature did not intend "to blend the jural personalities of employer and his compensation carrier so as to bar a common law action against the latter." Consequently, if an insurer undertakes to perform services that go beyond simply providing workers' compensation coverage to an employer, it becomes subject to the same tort liability as any other party who performs such services. *Id.* at 428-29, 212 *A.*2d 664. By providing detailed conceptual drawings, parts and assistance for Durex's use in constructing and installing safety guards on its punch presses, NJM performed a service that was indistinguishable from that of any other designer of a safety device for a machine, thereby subjecting itself to the same potential liability under the PLA. [*Hinojo* at 271.]

In *Flick*, the court distinguished *Rothfuss* because the insurance company in *Rothfuss* independently undertook to provide its own physician, an employee of the insurance company rather than an independent contractor hired to treat injured workers. By contrast, PMA "has not undertaken to provide its own physician." *Flick* at 615. Thus, the court reasoned that *Dunlevy* provides more useful guidance and that the penalty provisions of N.J.S.A. Title 34 and N.J.A.C. Title 12 are exclusive under the circumstances. *Id.* at. 615-617.

The issue of when a compensation insurer could be held liable under an action at law was addressed by the New Jersey Supreme Court in *Basil v. Wolf*, 193 N.J. 38 (2007). In *Basil*, the plaintiff injured his back, abdomen, and middle finger at work on September 27, 1996. One week later he noticed a painful knot in his rib cage. He saw his chiropractor on the day of the accident and treated with him five times, with his last visit in November 1996. These visits were paid for by the compensation carrier, TIC. Just over a year later, in December 1997, the plaintiff developed additional pain in his rib cage. He returned to his chiropractor, but the carrier refused to pay for chiropractic treatment. Instead, the claims adjuster sent him to Dr. Wolf, who had, since 1993, given up orthopedic surgery and let his malpractice insurance lapse. Dr. Wolf's practice consisted of performing medical examinations for insurance companies and attorneys.

The adjuster instructed Dr. Wolf in January 1998 to examine the plaintiff "for evaluation purposes only," to give a diagnosis, to provide an opinion on causation, and to state if additional treatment is needed. Dr. Wolf examined the plaintiff in January 1998 and opined, without performing diagnostic tests, that there was a "probable hematoma" in the lower rib cage. He recommended physical therapy and sent a prescription to the adjuster.

In early February 1998, the adjuster wrote to Dr. Wolf. She advised him that the plaintiff was referred for treatment due to work-related injuries and that "special services" or diagnostic tests must first be authorized. Dr. Wolf did not respond to this letter. Meanwhile, the plaintiff told the adjuster that he felt he should have an x-ray or MRI to rule out a muscle tear before undertaking physical therapy.

Subsequently a new adjuster was assigned to the case. The plaintiff's attorney wrote to TIC in April 1998 requesting active medical treatment. In May 2008, the new adjuster told the plaintiff's attorney that the plaintiff had not gone for physical therapy. The new adjuster then sent the plaintiff for another evaluation with Dr. Wolf, which occurred at the end of May. Dr. Wolf noted that the lower rib cage feels "like a golf ball rolling and tingling." He again diagnosed a probable hematoma but recommended x-rays and if necessary an MRI to confirm the diagnosis. Dr. Wolf further noted that the plaintiff wanted treatment closer to home and was therefore told that no physician-patient relationship had been established.

X-rays were authorized by TIC in September 1998, though it took another month to have Dr. Wolf issue a prescription. The x-ray technician reported to Dr. Wolf that the x-rays were negative and recommended an MRI. Four months later, in February 1999, Dr. Wolf reported this to the carrier and recommended that plaintiff be referred to an abdominal surgeon. He advised that one diagnostic possibility was a tumor and that therefore an MRI should be considered. In late March 1999, after a letter from plaintiff's attorney, plaintiff was referred by TIC to a surgeon. Ultimately, a huge malignant tumor was found resulting in plaintiff's death in September 2000. *Id.* at 45-54, 74-79.

Pursuing negligence claims at law, Basil's estate argued that TIC was a third party capable of being sued under N.J.S.A. 34:15-40 and *Mager*, *supra*. The estate claimed that N.J.S.A. 34:15-40 (g) includes in its definition of third person "corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals." Furthermore, the estate cited *Mager* as proof that such claims were allowed to proceed. The Supreme Court, however, disagreed, and distinguished *Mager* because:

> *Mager's* import lies in its recognition that when a compensation carrier goes beyond merely arranging for and underwriting the provision of medical services required of the employer by statute, the insurer can lose the protection of an employer's statutory immunity. In *Mager,* the insurer took it upon itself to perform directly and physically the services required under the Act by operating its own clinic. [*Basil* at 58-59, emphasis mine.]

The estate also sought to establish liability by finding exceptions to the general rule that a person or entity who engages an independent contractor cannot be held liable for the negligence of that contractor. A principal may found liable, however, if it "retains control of the manner and means of doing the work that is the subject of the contract" or if it retains an incompetent contractor. *Basil* at 62, citing *Majestic Realty Assocs., Inc. v. Toti Contracting Co.*, 30 N.J. 425, 430-32 (1959).

A principal may be found to control a contractor where it controls the equipment to be used, the "manner or method of doing the work, or direction of the employees of the independent contractor." *Basil* at 64, citing *Mavrikidis v. Petullo*, 153 N.J. 117 (1998). The majority in *Basil* framed the issue as follows: By asking Dr. Wolf to evaluate Basil and provide a report, by authorizing payment for diagnostic treatment and further

evaluations, and by requiring Dr. Wolf to preauthorize diagnostic tests, did the insurer control Dr. Basil's work so as to render it liable for Dr. Wolf's alleged negligence? Under the facts of the case, the answer is no because:

> When an insurer requests a contract physician to perform a physical examination and to report back the results of that exam, the insurer is not engaging in the sort of "control" anticipated by the description of that exception in *Majestic*. Rather, as the courts below held, TIC simply was requesting a given product--namely, Dr. Wolf's medical judgment on whether Basil's ills were work-related. The insurer did not instruct Dr. Wolf on how to conduct his medical exam, what sort of data to consider, or in what way he should come to his professional opinion. It merely contracted for a report and received it. It certainly did not compel any particular technique, methodology, or outcome from that examination. Further, in authorizing the issuance of prescriptions for physical therapy and, eventually, various diagnostic tests that Dr. Wolf independently had concluded were appropriate for Basil's approved course of treatment, the insurer did not direct Dr. Wolf, or indeed any of the other doctors who saw Basil on TIC's referral, on what care each could or should approve. The prescriptions actually issued by Dr. Wolf were simply the mechanism by which the insurer would authorize payment for specific, approved diagnostic techniques. In sum, the insurer did not suggest to the physicians how to exercise their independent medical judgments about what treatment to approve for Basil. On the contrary, the medical treatment decisions were the result of independent recommendations from the doctors. We are satisfied that the lower courts correctly determined on this record that the insurer did not "control" the IME doctor in the conduct of his examination and evaluation of Basil for treatment authorization purposes, certainly not to a degree sufficient to trigger the "control" exception. Nor was "control" triggered by the insurer's practice of insisting that, before a test or treatment is conducted for which the insurer would pay, insurer approval must first be obtained. [. . .]
>
> A distinction must be drawn between the insurer's act of preventing a doctor from giving treatment to a compensation claimant and its refusal to pay for that treatment absent prior consent. As a matter of basic cost control, insurance companies often require pre-authorization before agreeing to pay for certain medical care and diagnostic tests. To find that pre-authorization requirements constitute sufficient control to satisfy the *Majestic* exception would vastly extend vicarious liability for medical malpractice to insurance companies. No cogent reason has been advanced for such a sweeping extension of the control exception. Indeed, such an extension would result in the exception swallowing the rule against vicarious liability of an independent contractor in such a setting. [*Basil* at 65-66.]

Though finding against the plaintiff under the facts of the case, the Supreme Court's analysis suggests that a compensation carrier could open itself to liability by interfering with the medical judgment of doctors they hire to evaluate and, for the same reasons, doctors hired to treat. Potential liability could arise from telling a doctor how to conduct an exam, how to reach an opinion, what to consider, or even perhaps deliberately withholding relevant information tending to establish liability or severity of injury.

Basil's estate also argued that TIC can be held liable at law because Dr. Wolf was an incompetent contractor given that he lacked malpractice insurance. The rule governing such claims requires proof: (1) that the hired contractor was incompetent or lacked the necessary skill to perform the job; (2) that the consequent harm arose from that incompetence; and (3) that the principal either knew or should have known about the incompetence. *Basil* at 68. The court took note of N.J.S.A. 45:9-19.17, which took effect in March 1998. This statute requires physicians who care for patients in New Jersey and maintain a practice here to have malpractice insurance or a letter of credit if such insurance is not available. It also creates a duty in insurers hiring such physicians to inquire if they carry malpractice insurance. The court found, however, that the duty to inquire created by the statute did not apply to TIC because Basil was first seen by Dr. Wolf before the statute took effect. In the future though, insurers who fail to ascertain if their providers have malpractice insurance open themselves to liability if those providers commit malpractice.

Basel's estate further asserted that TIC misled Basil into thinking that Dr. Wolf was its agent or employee, thus imposing liability on TIC for Basil's alleged malpractice. This doctrine of apparent authority has been used to impose liability on hospitals for the negligence of independent contractor physicians. In such cases, it must be proved that the hospital "held out a particular physician as its agent and/or employee and that the patient has accepted treatment from that physician in the reasonable belief that it is being rendered on behalf of the hospital." *Basil* at 67, quoting *Hudson Coop. Loan Ass'n v. Horowytz*, 116 N.J.L. 605 (Sup Ct. 1936). The court stated that to prevail under this doctrine, Basil's estate must establish that TIC conveyed and intended to convey to Basil that Dr. Wolf was its treating physician, and that Basil "acted in reliance on such reasonable, but falsely created, impression to that effect." *Basil* at 67-68. Without discussion, the court noted that this argument, "novel and without precedent," was correctly rejected by the Appellate Division for lack of proof. *Id.* at 68.

In dissent, Justice Albin wrote that the case should have gone to a jury because, viewing the facts most favorable to the plaintiff, Dr. Wolf functioned as a treating physician subject to TIC's control:

> Issuing prescriptions, directing tests, and conducting examinations, as Dr. Wolf did, is consistent with the actions of a treating physician. From the totality of his interactions with Dr. Wolf, Basil had reason to believe that he was Dr. Wolf's patient, not just a claimant undergoing an independent medical examination for the carrier. [. . .]

Here, plaintiff's best evidence suggests that the carrier not only interfered with Basil's medical treatment, but delayed vital diagnostic testing that might have timely uncovered the metastasizing cancerous tumor that eventually killed Basil. As evidence of the control the carrier exercised, Dr. Wolf sent the physical therapy prescription to the carrier rather than the patient. Although Basil had "a lump in his rib area," the carrier would not authorize a simple x-ray but instead expected Basil to pursue a physical therapy regimen, which might have exacerbated his condition. Only after being hounded by Basil's attorney did the carrier move, and then at glacial speed, toward furnishing Basil the medical treatment to which he was entitled under the Workers Compensation Act, N.J.S.A. 34:15-1 to-142.

In May 1998, having detected a golf-ball-sized growth in Basil's rib area, Dr. Wolf wrote to the carrier that "[a] simple chest and rib x-ray series would be the logical first step." It took four months for the carrier to authorize the x-rays, and another month for it to direct Dr. Wolf to issue the x-ray prescription. Although the need for an MRI would have been obvious to a first-year medical student, Dr. Wolf only recommended that an MRI "be considered," and then awaited instructions from the carrier. Dr. Wolf seemingly abandoned his own professional independence and judgment and left to insurance company claims representatives the ultimate decision of whether Basil should receive timely, and potentially life-saving, diagnostic testing.

Although a principal may exercise broad supervisory power to ensure that the independent contractor is carrying out his responsibilities, the principal may not direct the means by which the contractor fulfils those responsibilities and still argue that it is not vicariously liable for the contractor's negligence. See *Majestic Realty*, supra, 30 N.J. at 431.

Here, viewing the evidence in the light most favorable to plaintiff, Transportation Insurance Company not only exercised control over the means by which Dr. Wolf discharged his medical duties, but Dr. Wolf surrendered his independent medical judgment to the authority of the carrier. The extent of the carrier's involvement in the treatment of Basil permits the inference that the carrier itself was practicing medicine. As noted earlier, Dr. Wolf sent the physical therapy prescription to the carrier. Instead of seeking approval from the carrier for the diagnostic tests that were necessary, Dr. Wolf consulted with the carrier as though he were seeking its input for medical decisions that fell within his exclusive province. So, for example, Dr. Wolf suggested that a chest x-ray "would be the logical first step"-he did not seek authorization for one. Consequently, months of foot-dragging passed before so simple but critical a test was performed. Additionally, instead of asking the carrier to authorize a medically necessary MRI after discovery of a golf-ball-sized

> growth in Basil's chest, Dr. Wolf obligingly asked the carrier to "consider" an MRI. The carrier's own imprudent micromanagement of and control over Basil's medical care does not permit it to hide behind the immunity shield that ordinarily would protect a principal from the negligent acts of its independent contractor. [*Basil* at 79-80, 84-85.]

Though noting that Dr. Wolf performed an independent medical evaluation, the majority does not emphasize this fact. In explaining the circumstances when a principal may be held liable for the conduct of a contractor, the majority focused on whether the insurance company controls the manner and means of the contractor's work. Thus its reasoning appears applicable to both independent medical evaluators and treating physicians. A decision of this nature is necessarily fact specific, and, as in this case, intelligent minds can disagree about where the line should be drawn. One policy factor guiding the majority is cost control. This goal, however, can conflict with the mandate of N.J.S.A. 34:15-15 requiring employers to furnish medical care to injured workers.

L. Pre-trial Conference

The Division of Workers' Compensation is required to direct the parties to appear at a conference before a judge of compensation at which time the parties must exchange medical reports, limit issues and execute a pre-trial memorandum. N.J.A.C. 12:235-5.9(a)(1). If possible, a case will be disposed of at the conference by judgment, order approving settlement, or order of dismissal. Should a pre-trial conference not be ready by the second listing due to a respondent's failure to obtain medical examinations, the case may be placed on trial list. If such failure is due to the petitioner's conduct, the foregoing does not apply and the petition is marked not moved. N.J.A.C. 12:235-5.9(b).

Should a petitioner fail to make an appearance on any case listed preemptively, and should it not be adjourned for good cause, it shall be marked not moved and administratively discontinued. A discontinued case is not dismissed, which can only occur as a result of the plenary trial or by a motion to dismiss for failure to prosecute.

If the petitioner is a New Jersey resident, the pre-trial conference is scheduled in the vicinage where the petitioner lives. If the petitioner is a non-resident, the conference is scheduled in the vicinage where the accident occurred, or where the respondent can be served. In the time between filing the claim petition and the pre-trial conference, the parties are expected to complete a pre-trial investigation. If the injured employee's medical treatment has been rendered by the employer or its insurance carrier, the petitioner's attorney can obtain copies of treating medical reports from the respondent's attorney by serving a demand for medical information. By utilizing this procedure, the petitioner's attorney can obtain treating medical reports free of charge. Hospital records are normally requested from the treating institutions, along with a signed medical authorization permitting release of the medical information. If, on the other hand, treatment was rendered by the injured employee's own physician, the insurance company may have declined to pay for that treatment as being unauthorized. In such case, the respondent would not have possession of a treating medical record and it would be incumbent upon petitioner's attorney to obtain it

directly from the treating physician. Unfortunately, this procedure is rather expensive and calls for an expending of funds to obtain this required medical information.

The insurance carrier's attorney has the right to demand medical information in those cases where treatment was rendered by the petitioner's private physician. Following this exchange of treating medical information, each side must evaluate the case to determine the nature of medical examinations to be performed and as may be appropriate; each side will order examinations by an orthopedist, neuropsychiatrist, internist, ophthalmologist, etc.

After completion of all medical examinations, the case is ready for pre-trial conference. If the case is one that may possibly be settled at pre-trial conference, the petitioner's attorney should have the client available in court. The respondent's attorney will hopefully have someone available at the insurance carrier with the authority to authorize settlement of the claim. At the pre-trial conference itself, counsel for the respective parties meet in conference with the judge of compensation in an attempt to resolve the issues involved. If the parties agree upon a quantum of disability to be paid, they can submit the matter to the judge of compensation on an order approving settlement pursuant to N.J.S.A. 34:15-22. The judge of compensation, after considering the sworn testimony of the petitioner and any other witnesses presented, along with the stipulation of the parties and the consent of the petitioner, may enter an order approving settlement. This order includes a finding that the terms of the settlement are fair and just and has the same effect as a judgment.

If the parties agree on all issues, except the quantum of disability, they may submit the matter to trial before the judge of compensation as a Trial on Reports. Under this practice, with consent of the parties, medical reports are offered into evidence, along with the testimony of the petitioner and a determination is made by the judge of compensation. This procedure has the salubrious effect of achieving an expeditious disposition of the claim.

Frequently, however, a case involves multiple issues and will require that the case be pre-tried. The pre-trial memorandum must be dated and indicate the district office. In addition, the memorandum must contain the names of the petitioner and the respondent; the social security number of the petitioner and the name of the insurance carrier and the claim petition number. The parties are required to stipulate, if possible, the date of the accident, wages and rates; any compensation paid for temporary disability and the dates paid and the rate; and, if permanent disability, the percentage paid and the rate. If they are at issue, the parties must check employment, wages, rate, accident, notice, exposure, knowledge, causal relationship, injuries, arise out of employment, in course of employment, nature and extent of temporary and permanent disability.

If there are any other issues, they must be set forth. Disclosure should be made as to outstanding medical bills and/or payment of temporary disability benefits.

Before attending a pretrial conference, it helps to compile a list of the following information that can quickly be accessed during the course of discussion with the judge or negotiation with the respondent's attorney:

1. Case Name;
2. Case Number;
3. Name of Insurance Company;
4. Name of Attorney;
5. Name of Adjuster;
6. Name of Judge;
7. Date of Accident or occupational exposure (provide brief description);
8. Petitioner's occupation and work history;
9. Petitioner's current employment status;
10. Petitioner's age;
11. Costs advanced by law office (or petitioner);
12. Unpaid medical bills;
13. Need for future medical treatment (if any);
14. Description of relevant prior and subsequent injuries;
15. Gross weekly wages and rate of compensation (note differences between petitioner's and respondent's calculations, if any);
16. Temporary disability benefits paid;
17. Time missed from work;
18. Temporary disability benefits owed (if any);
19. Summary of all permanency reports (including disability rating, diagnosis, opinion of causation, and significant findings);
20. Summary of medical treatment (usually found in the permanency reports; but the attorney should also review the actual treatment records and note anything that may be significant. All diagnostic test results—MRIs CT scans, EMGs, X-rays—should be written down);
21. Petitioner's complaints (note complaints in all permanency reports and interview petitioner to see if any additional complaints are present. The source of all complaints should be noted because sometimes respondents' reports do not include complaints found in petitioners' reports or in treatment records. Conversely, sometimes a petitioner's at the time of pretrial exceed those found in any of the permanency reports or treatment records.);
22. Petitioner's settlement demand;
23. History of settlement negotiations (if any) including offers by respondent.

M. Conduct of Formal Hearing

Only a New Jersey attorney shall act as attorney of record or prosecute or defend in a formal hearing. N.J.A.C. 12:235-5.10(b). Formal hearings must be conducted in open court, except if the matter is delicate, an *in camera* hearing may be held. Both bifurcation of trial and order of proof are discretionary with the judge of compensation. All matters must be stenographically recorded. Two or more formal proceedings involving a common

question of law or fact, arising out of the employment by the same employer or different employers, or as to the same accident or series of accidents or out of the same exposures or series of exposures to causes of occupational disease, pending in the division may, on motion or on the court's initiative, be consolidated into one hearing.

If trial briefs are submitted, they must be filed within fifteen days after the close of the hearing and a reply brief may thereafter be submitted within seven days.

Questions to expert witnesses may be in hypothetical form at the discretion of the judge of compensation. Exhibits must be marked with an identifying number, dated and bear the initials of the stenographer. Prior to testifying all witnesses must swear or affirm to tell the truth. A subpoena may be prepared by an attorney at law of New Jersey in the name of a judge of compensation to compel testimony and the production of books, papers and such other items as shall be subject to production.

Reserved decision shall be rendered by the judge of compensation within thirty days from the last day of the hearing or from the date of filing of briefs.

A judgment may be reopened within two years of the last payment of compensation. N.J.S.A. 34:15-27.

When the matter has been concluded by the judge of compensation, a form of Judgment is filled out in black ink consisting of an original and three carbon copies. The original is the office copy, which is retained by the judge of compensation in the file of the Division of Workers' Compensation. The first carbon copy is given to the respondent's attorney, the second, to the petitioner's attorney, and the third, to the petitioner. Thus, when the injured employee leaves the Workers' Compensation court, he or she leaves with a copy of the Judgment in hand. The Judgment form contains the Claim Petition number and the District Office where the case was heard. The form indicates that the Order is an Order of Judgment, Order Approving Settlement, Order of Dismissal, or Order of Discontinuance.

N. Evidentiary Procedures

As an administrative system, the workers' compensation system differs from the civil tort system in the way cases are processed and tried. Civil discovery and motions in personal injury cases are subject the Rules of Court; at trial, evidentiary matters are subject to the Evidence Code. On the other hand, Chapter 235, Title 12 of the Administrative Code (the Rules of the Division of Workers' Compensation) and N.J.S.A. Title 34 govern workers' compensation proceedings, where discovery is simplified and limited (N.J.A.C. 12:235-5.6), and informal evidentiary procedures apply at hearings (N.J.S.A. 34:15-56). Documents are presumed authentic unless questioned by the opposing party. Pursuant to N.J.S.A. 34:15-56, judges are not bound by the rules of evidence. Therefore a judge may admit hearsay evidence and accord it whatever weight is appropriate under the circumstances, as N.J.A.C. 1:1-15.5 allows in administrative hearings.

Though the rules governing workers' compensation proceedings are less stringent

than the Rules of Evidence, an opposing party nevertheless has the right to confront and cross-examine an expert witness and cannot be forced to let the written findings of an adverse doctor go unchallenged. In *Paco v. American Leather Mfg. Co.*, 213 N.J. Super. 90 (App.Div.1986), the compensation judge admitted into evidence the medical reports of the doctors who had examined the petitioner, and rendered a decision on the basis of the petitioner's testimony and the medical reports. This was done over objections by the respondent's attorney, who was barred from producing witnesses from the petitioner's workplace who would testify to his ability to currently perform his job. The respondent was thus precluded from cross-examining the petitioner's medical witnesses and from producing its own live medical testimony. Permanent partial disability was awarded solely on the petitioner's testimony and the medical reports. *Id.* at 92.

The Appellate Division found that the employer's due process rights were violated because due process, which involves a fundamental right to be heard, requires that parties be given both the right to cross-examine the adversary's witnesses and the right to present witnesses in rebuttal. Id. at 96.

Recognizing that the exercise of due process rights by employers may subject workers to the onerous financial cost of producing medical testimony, the Appellate Division suggested ways to ease this burden:

> [T]he financial burden of bringing medical experts in to testify need not be borne solely by a successful petitioner. N.J.S.A. 34:15-64 provides the compensation judge with the authority to allocate the medical experts' fees between the petitioner and respondent. *Pacifico v. Carpenter Steel Co.*, 134 *N.J.L.* 149, 46 *A.*2d 381 (Sup.Ct.1946) aff'd 135 *N.J.L.* 204, 50 *A.*2d 894 (E. & A.1947). Thus, the compensation judge in the present case might have allocated the cost of producing petitioner's medical experts partially or, even totally, to American. Such an allocation would provide a viable solution to the conflict between protecting the parties' fundamental rights to try the issues and providing the injured employee with a forum in which to receive adequate compensation. [*Id.* at 97-97.]

As a matter of practice in the Division of Workers' Compensation, however, it is rare for judges to allocate the full fee for a testifying physician to an employer when the issue at trial is permanency, though this is more often done in med-temp trials.

In *Waters v. Island Transportation Corp.*, 229 N.J. Super. 541 (App.Div.1989), the compensation judge forced an associate, not sufficiently familiar with the case, to proceed with cross examination of the employer's expert in a cardiovascular claim. The employer had not disclosed the doctor's report and opinion to the petitioner in a timely fashion. Under these circumstances, the worker's procedural due process was violated because the worker's attorney was not given sufficient time to prepare for cross examination. See also N.J.A.C. 12:235-3.9, requiring that all medical reports be exchanged at the pretrial conference.

1. Videotaped Evidence

N.J.A.C. 12:235-3.9(a) requires disclosure of surveillance material at the pre-trial conference:

i. Any party that intends to utilize videos or other electronic media including surveillance tapes, must indicate that such media will be utilized at trial and identify the witness who will authenticate and testify concerning the materials to be presented in the "Other Witness" section of the pre-trial memorandum. A party is not required to provide or exhibit electronic information including surveillance tapes, to another party prior to the other party's testimony under oath.
ii. A party may move to amend the pre-trial memorandum to include any necessary changes including the introduction of electronic materials obtained subsequent to the pre-trial.

In *Gross v. Borough of Neptune City*, 378 N.J. Super. 155 (App. Div. 2005), the court held that an employer may not, barring special justification, avoid its obligation of notification by conducting video surveillance after the trial has begun and offer it just before the testimony of its last medical expert. After Gross testified and his medical experts were called, Neptune videotaped him but failed to confront Gross' experts with the evidence. Only on what was to be the last day of the trial, just before calling its last medical expert, did Neptune offer the tapes into evidence and propose to have their expert comment on them.

Neptune attempted to justify its delay by stating that only after Gross testified did it realize she was exaggerating her injuries, thus bringing her under the New Jersey Workers' Compensation Fraud Act, N.J.S.A. 34:15-57.4. Noting, however, that Neptune's expert prepared a report long before trial stating that Gross overstated her injuries, the compensation judge refused to admit the videotapes, and, after reviewing them in relation to the fraud claim, rejected that claim on the merits.

The Appellate Division explained its reasoning as follows:

> Although the Division's rules expressly addresses discovery of pre-trial surveillance tapes, we think it implicit that surveillance tapes made after trial has begun would be inadmissible in the proceedings unless the employer can show that it was unaware, and could not have been aware, of the circumstances warranting surveillance before the hearing. As the judge noted in refusing to admit the videotapes, one of the problems caused by allowing the course pursued by Neptune in this case is that the employee would probably have to recall her medical experts. That would be financially burdensome and would unduly delay conclusion of the case.
>
> Over half a century ago, in a workers' compensation cases, we noted that surveillance films can give "deceptive impression[s]." *Ferraro v.*

> *Zurcher*, 12 N.J. Super. 231 (App. Div. 1951). The Division's rule was adopted, in part, to insure that employees have a fair opportunity to meet what can appear to be devastating evidence against them. To countenance what occurred here, withholding surveillance until after the trial has begun, would not only cause undue expense and delay—it would be inconsistent with the purposes of the rule and with decent respect for the notice requirement that is central to our concepts of due process and fundamental fairness. [*Id.* at 158-159.]

O. Order Approving Settlement

The form of Judgment contains the caption setting forth the name, address, age and social security number of the petitioner; the name and address of the respondent; the name and address of the respondent's attorney; the name and address of the petitioner's attorney and his or her employer's identification number. The name and address of the insurance carrier, the date of the accident or occupational exposure and a brief description of the nature of the accident is also contained on the form of Judgment. All of the foregoing information is set forth on sheet one of this two-sheet Judgment form. Sheet one also requires the determination of the gross weekly wage and the rate for temporary and permanent disability. The date of the Judgment is to be set forth and an indication that this is one of the four Orders, *i.e.*, Judgment, Approving Settlement, Dismissal or Discontinuance. If it is an Order for Dismissal, it must indicate whether the dismissal is being entered for either lack of prosecution or on its merits. If it is an Order of Discontinuance, the reason for entering the discontinuance must be set forth. The name and signature of the judge of compensation is set forth on page one, along with the date of the Order and all further information is set forth on page two of the award sheet. The second page consists of an original and three carbon copies as does page one. The claim petition number and district office must be repeated, as well as an indication of which of the four types of orders is being entered. If this is an Order for Judgment or an Order Approving Settlement, the permanent disability must be set forth describing the percentage and nature of the extent of disability and member involved. Temporary disability must set forth the number of weeks awarded, rate per week and aggregate award. The aggregate award is reduced by the amount previously paid and the balance due is set forth. For permanent disability the number of weeks must be set forth along with the weekly rate, resulting in an aggregate award. Again, the aggregate award is reduced by any disability paid. The balance due is also stated.

Any medical bills due to doctors and/or institutions must be set forth with direction to the respondent to pay same. Thereafter, allowances are set forth for medical fees with allocations between the petitioner and the respondent. Stenographic service is allocated, usually payable by the respondent. Page two requires the signatures of the attorneys for both sides. An Order Approving Settlement also requires the signature of the petitioner. Thereafter, the hearing official signs the document and dates it.

After the judge receives the Order that he or she, the attorneys, and the petitioner will sign, the petitioner is called to testify and should answer the following questions:

1. Do you understand that the insurance carrier for your employer [or former employer] has offered you a gross sum of_____ to settle your claim? [Explain that the award is to be paid in weeks if Petitioner will not receive all in a lump sum.]

2. Do you understand that your share of attorney fees in the amount of will be deducted from the gross amount of the settlement?

3. Do you understand that fees for your examining doctors in the amount of_____ will be deducted from your claim? [If applicable, have the Petitioner acknowledge deduction for costs of suit (transcript fees, medical records obtained and paid for by counsel, etc.), payment of State Temporary Disability lien, payment of unauthorized medical bills, payment of child support lien, etc.]

4. You may request additional necessary medical treatment related to the injuries arising from your claim, and temporary disability benefits if you cannot work during the course of future treatment. But your right to additional medical treatment must be asserted within two years of your last receipt of benefits or it will be forever lost. When I say two years of your last receipt of benefits, I mean two years from either the last date of payment of money or two years from the last date of authorized medical treatment. Do you understand this?

5. If you need additional treatment, you must have it authorized. This means you cannot just go on your own to any doctor you choose. You must either contact the workers' compensation insurance company directly or have your attorney contact them for you. The insurance company has the right to send you to a doctor of their choice. However if a valid request for treatment is denied, you may, within the two year period, ask the Court to order necessary treatment. Do you understand this?

6. Furthermore you may reopen your case and ask for more money if your medical condition becomes worse. But this right also will be lost forever after two years unless it is asserted before then by filing a Petition with the Court. Do you understand this?

7. By accepting this settlement, you are giving up your right to a trial. Were you to choose to go to trial, you could end up with more money, less money, approximately the same amount of money, or possibly no money at all. Do you willingly give up your right to trial?

8. Do you wish the Court to approve this settlement?

9. Please tell the Judge about your complaints. How often do you feel each of your symptoms? How do these symptoms affect your ability to work? How do your injuries affect your capacity to do things outside of work—in your home and in your social life? Do you take medication for pain? How often? Are you affected by changes in

weather?

P. Order Approving Settlement with the Dismissal: N.J.S.A. 34:15-20.

For dispositions provided for by N.J.S.A. 34:15-20, a section 20 award for dismissal, the order states "this is lump sum settlement between the parties in the amount of $_____."

Pursuant to N.J.S.A. 34:15-20, which has the effect of a dismissal with prejudice, being final as to all rights and benefits of the petitioner and the petitioner's dependents and is a complete and absolute surrender and release of all their rights arising out of this/these claim(s). The payment hereunder shall be recognized as payments of Workers' Compensation benefits for insurance rating purposes only.

The Order approving settlement with dismissal under section twenty has to be signed by the attorney for petitioner, attorney for respondent and by the petitioner personally. It is then dated and signed by the judge of compensation.

If the parties contemplate a surrender of dependency rights, all possible future dependents must appear and accept.

Q. Second Injury Fund Cases

Claimants rendered totally and permanently disabled by reason of a compensable permanent partial disability being superimposed upon a prior permanent partial disability are qualified to receive benefits from the second injury fund. N.J.S.A. 34:15-95. A verified petition for these benefits filed before the commencement of a hearing for workers' compensation benefits shall have one settlement conference before a judge of compensation where the representative of the employee, employer and the fund are noticed to attend. If the settlement conference is not fruitful, the case may go forward against the employer and the claimant be adjudicated totally disabled before a hearing against the second injury fund for benefits occurs. The fund hearing shall be upon transcripts of the hearing against the employer supplemented by oral and documentary evidence and by cross-examination as may be required in the discretion of the judge of compensation. Pending determination of the second injury fund hearings the employer shall continue to make payments at the rate for permanent total disability as set forth in the interim order.

If the claimant is found qualified to receive benefits from the second injury fund, the judge of compensation shall enter an appropriate order for payment thereof by the second injury fund. A verified petition for such benefits must state:

1. The name and address of the petitioner.

2. Social Security number of the petitioner.

3. Age and date of birth of the petitioner.

4. Marital status and educational background.

5. Summary of employment history.

6. A description of preexisting disabilities and the date of the onset of each.

7. The last compensable injury, indicating the date and description of the occurrence; a description of the medical treatment; a description of the permanent injury; the name and address of the employer; the name and address of the insurance carrier; the petitioner's wage and compensation rate and a listing of all compensation paid to date for this injury.

8. An indication as to third party tort claims, if any.

9. Copies of all proposed experts' reports.

10. Description of all wage replacement being received by petitioner.

11. Any prior awards in Workers' Compensation.

Below is a list of information that a Petitioner's attorney should have at a Second Injury Fund conference:

Second Injury Fund Conference Prep Sheet

Case Name CP Nos.

Wage Rate:

DOB Last day of Work

Date of Accident

Injuries to

Date of Exposure

Injuries to

Temp paid From to

Check all that apply
VT amount
Medicare entitled
Conditional payment info requested

SS recipient YES
Date of Entitlement 80% ACE
Initial entitlement
Auxiliaries
Third Party Action Recovery
Public Pension Type

List treating doctors and hospitals (Include Pre-existing):

Pre-existing disabilities and comp awards:

Petitioner's evaluating doctors and estimates:

Respondent's evaluating doctors and estimates:

Below is a list of questions to be asked at a settled Second Injury Fund case. Any inapplicable questions should be omitted:

QUESTIONS FOR SECOND INJURY FUND ORDER

1. Do you understand that the insurance carrier for your former employer has offered you a settlement of ____ percent of total disability to settle your claim against them for injuries to your _____ occurring on _____ [or occurring occupationally from ___ to ____]?

2. Do you understand also that the Second Injury Fund was made a party to your claim, and that the Fund and the insurance company for your former employer have agreed that you are permanently and totally disabled due to the injuries just mentioned combined with preexisting injuries to your _____. Therefore after you receive benefits for your _____ injuries from your former employer, you will receive ongoing permanent and total disability benefits from the Second Injury Fund for the rest of your life as long as you remain disabled.

3. Do you understand that _____ percent of total disability, paid as part of a permanent and total disability package, entitles you to _____ weeks of benefits at the applicable rate, minus fees, costs, offsets, and liens, which we have already discussed and which I will again review with you.

4. Do you understand that your share of attorney fees in the amount of $_____ will be deducted from the gross amount of the settlement?

5. Do you understand that fees for your examining doctors in the amount of $_____ will be deducted from your award: [State amount for each applicable doctor]

6. Do you understand that cost of suit to reimburse me for expenses I paid out of pocket in the amount of $____ will be deducted from your claim?

7. If you were not receiving Social Security disability benefits, all of your award would be paid at your full workers' compensation weekly rate of $____ per week. However, because you are receiving Social Security disability benefits, the workers' compensation carrier is allowed to offset your benefits, until you turn 62 years old, based on a formula. You are entitled to receive the greater of either your workers' compensation rate minus your initial Social Security disability entitlement, or your 80% ACE rate minus your initial Social Security disability entitlement. In your case, your initial monthly entitlement converted to a weekly amount is $ per week. Your 80% ACE Rate is $ per week. And your workers' compensation rate is $____ per week. Under the offset formula, you will be paid, until you are 62 years old, $_____ per week. This is the difference between your comp. rate [or 80% ACE rate] of $___ and your initial entitlement weekly rate. Do you understand this?

8. However, when paying your share of my fees, doctor fees, and costs of suit, payment will be made by the compensation carrier at your full workers' compensation rate of $_____ per week.

9. Do you understand also that you have been receiving disability benefits under a private insurance policy with _____? This company is entitled to reimbursement for benefits paid if become entitled to, as is the case here, permanent workers' compensation disability benefits. Do you understand that they are to be paid $_____ from your settlement?

10. Do you understand that with these offsets and deductions we have discussed here, you will receive an initial sum of approximately $_____ for benefits already accrued after all deductions and offsets are taken?

11. Do you further understand that you will continue to receive benefits in the future? You will be paid $_____ per week until you turn 62 years old on _____. After that you will receive for the rest of your life, as long as you remain totally disabled, $_____ per week.

12. Do you understand that between the ages of 62 years old and 65 years old, Social Security may be entitled to offset your benefits; therefore you must inform the Social Security Administration of this award and find out from them how much they claim the right to offset.

13. Do you understand that you are also entitled to medical treatment for [insert body parts the respondent takes responsibility under the Order]? You may request additional necessary medical treatment related to these injuries arising from your claim, if you need additional treatment, you must have it authorized. This means you cannot just go on your own to any doctor you choose. You must either contact the workers' compensation insurance company directly or have your attorney contact

them for you. The insurance company has the right to send you to a doctor of their choice. However if a valid request for treatment is denied, you may ask the Court to order necessary treatment. Do you understand this? Do you further understand that you may not bill Medicare for treatment related the injuries for which you are being compensated here. All treatment for injuries related to your case must be obtained through the workers' compensation insurance company. The doctor who has been assigned to your care under this Order is Dr. _____. You still, however, must make sure the compensation insurance company knows about and approves any visits to him before you go there.

14. Address any relevant or pending Medicare Matters if applicable.

15. By accepting this settlement, you are giving up your right to a trial. Were you to choose to go to trial, you would not likely do better than this and you could end up with less money and fewer benefits. Do you willingly give up your right to go to trial?

16. Do you wish the Court to approve this settlement?

17. Please tell the Judge about your complaints. How often do you feel each of your symptoms? How do these symptoms affect your ability to work? How do your injuries affect your capacity to do things outside of work—in your home and in your social life? Do you take medication for pain? How often? Are you affected by changes in weather?

R. Commutations

N.J.S.A. 34:15-25 Commutations reads as follows:

> Compensation may be commuted by the Judge of Compensation at its present value, when discounted at five per centum (5%) simple interest, upon application of either party, with due notice to the other, if it appears that such commutation will be in the best interest of the employees or the dependents of the deceased employee, or that it will avoid undue expense or undue hardship to either party, or that the employee or dependent has removed or is about to remove from the United States, or that the employer has sold or otherwise disposed of the greater part of his business or assets.
>
> Unless so approved, no compensation payments shall be commuted.
>
> In determining whether commutation will be in the best interest of the employee or the dependents of the deceased employee, or that it will avoid undue expense or undue hardship to either party, the Judge of Compensation will regard the intention of this chapter that compensation payments are in lieu of wages, and are to be received by the injured employee or his dependents in the same manner in which wages are ordinarily paid.

> Commutation is to be allowed only when it clearly appears that an unusual circumstance warrants a departure from the normal manner of payment and not to enable the injured employee or dependents of a deceased employee to satisfy a debt, or to make payment to physicians, lawyers or others.

In such cases, a commutation of an award may be ordered. N.J.S.A. 34:15-25. The application may only be made after entry of an award. Such application must include:

1. The applicant's name, address and social security number.

2. Name and address of employer.

3. Name, address and file number of the insurance company.

4. Date of award.

5. Name of the judge of compensation who entered the award and the place where it was entered.

6. The amount of the award.

7. The amount of the balance due on the award.

8. The amount requested to be commuted; applicant's marital, employment and economic status.

9. Such other information as prescribed by the director.

10. It must be verified and have attached all documents on which the applicant will rely.

S. Informal Hearing

In cases involving fingers or toes, or injuries to hands or feet, where the amount of recovery is expected to be minimal, the case must be submitted to an Informal Hearing. A specific form is available called an Application for Informal Hearing. This form requires that the social security number, name, address and date of birth of the petitioner be provided, as well as the name and address of the employer and its insurance company. Further the date of accident must be stated and the type of injury must be described. The attorney must also indicate who is requesting the Hearing. At an Informal Hearing a counsel fee of ten percent is allowed, all of which is payable by the employee. When an agreement between the parties is reached, the "Statement of Award" is entered and signed by the claimant, the employer's representative and the judge of compensation. If the respondent declines the settlement, a Formal Claim Petition should be filed.

A *caveat* is made to advise that the filing of an informal claim does not toll the statute of limitation.

T. Answer the Application for Review

A form of Answer exists on Applications for Review or Modification of Formal Awards. The information needed to complete this Answer includes: the petitioner's address and social security number; the respondent's name and address; and the insurance carrier's name, address and claim number. Full disclosure of the amount and dates of payment of temporary disability is required, as well as the amount and dates of payment of permanent disability. A clear indication must be made of the last date that compensation was paid. In addition, the respondent must set forth any factual, legal or medical information for denying the Application for Review or Modification. Execution of the answer to this pleading is made in the same manner as in answering the Employee Claim Petition.

U. The Trial

Unlike civil cases, which are tried by juries day after day until finished, workers' compensation trials are tried by judges in three-week cycles. If tried to completion, a workers' compensation trial can take four months or longer. This is because witnesses are usually taken one per session.

Prior to proceeding, the judge usually asks the respondent's attorney to make stipulations on matters such as the worker's gross weekly wages and compensation rate, the date and compensability of the accident, and the extent of reasonable and necessary treatment. If the extent of permanency is the sole issue to be tried, the petitioner's attorney should move quickly into questions about the petitioner's present complaints, loss of function, and ability to work. Matters stipulated to before the commencement of trial should not be reexamined unless they bear directly on unresolved issues.

At the trial of the case, the contents of the Pre-Trial Memorandum will bind the parties. Trials begin with the petitioner's testimony. Three weeks later, if the petitioner's examining or treating doctor is available, the doctor will testify; if not, the parties wait another three weeks. Then the respondent presents its case, which will probably include at least one doctor and possibly lay witnesses as well. One reason for the three-week cycle system is that respondents' attorneys handle case lists in different courtrooms on different days of the week. Keeping a respondent's attorneys in one location for several days would cause a back up of literally hundreds of cases in other courtrooms. Such delays did in fact occur when an unsuccessful attempt was made in the past to alter the system. Clients promptly made aware of how the system works will be far less likely to blame their attorney when delays arise.

Attorneys trying workers' compensation cases should remember that there is no jury. Workers' compensation judges frown upon theatrics and long, dramatic cross-examinations. Opening statements are unnecessary and should be avoided. The same judge follows the case from the outset and will be familiar with the basic issues when the trial

starts. On examination of witnesses, get to the point quickly. Closing statements are usually not needed unless the case is exceedingly complex.

In support of the trial procedure, subpoena power is available. Rules of evidence apply only if the Judge allows it. Every decision musty be decided by competent evidence. The issue of competent evidence is an appealable issue. Parties have 45 days to file an appeal with the Appellate Division.

A Trial on Reports ("TOR") is an option if the only issue is the nature and extent of permanent disability benefits. A petitioner may testify and may be cross-examined when there is a TOR. This procedure eliminates the need to have doctors come in and testify and is useful in relatively small cases where the respondent admits there is some permanency but disputes the extent of permanent damages. In lager cases where more is at stake, it is better to have the doctors testify if the parties cannot agree to a compromise. All of the parties must consent to a TOR including the judge. Petitioner may testify and is subject to cross-examination. The parties should submit medical reports into evidence.

When the matter has been concluded by the judge of compensation, a form of Judgment is filled out in black ink consisting of an original and three carbon copies. The original is the office copy, which is retained by the judge of compensation in the file of the Division of Workers' Compensation. The first carbon copy is given to the respondent's attorney, the second, to the petitioner's attorney, and the third, to the petitioner. Thus, when the injured employee leaves the Workers' Compensation court, he or she leaves with a copy of the Judgment in hand. The Judgment form contains the Claim Petition number and the District Office where the case was heard. It indicates that the Order is an Order of Judgment, an Order Approving Settlement, an Order of Dismissal, or an Order of Discontinuance.

Before any settlement is put through, all petitioners must be certified that child support arrears do not exist. If the petitioner is in arrears, the probation department will prepare a Notice to Payor of Income Withholding and send it to the Workers' Compensation court, the petitioner and the respondent. Awards will be withheld to satisfy these support responsibilities. If the net proceeds from the award exceed $2,000.00, the award is subject to the child support lien. Net proceeds is defined as the award after payment of attorney's fees, witness fees, costs, fees for health care providers, reimbursement to the employer or employer's carrier, reimbursement to the Second Injury Fund, reimbursement to Temporary Disability Insurance, or reimbursement to the employer or employer's carrier of its liens under N.J.S.A. 35:15-40.

After a judge executes an order, it usually takes six to eight weeks to receive the initial payments. An insurance carrier has three months in which to process the payment and any delay may entitle the petitioner to simple interest on the delayed payments.

V. Settlements

If a settlement is reached out of court, it is only effective if a workers' compensation judge approves the settlement on the record. The petitioner cannot appear *pro se* and must consent to knowingly giving up all further rights. The Order Proving Settlement acts as a general release of petitioner's rights against the respondent.

W. Attorney Fees

1. Introduction

Fees to a worker's attorney are awarded by court order pursuant to N.J.S.A. 34:15-64(a), which allows for a reasonable fee up to a 20% maximum. Judges have great discretion in awarding fees. In cases not involving liens, the award is usually 20% unless a judge finds fault with an attorney's conduct. Failures to appear for pretrials or other hearings, late appearances, or disrespect for the court and its orders may result in a reduced fee. As a matter of custom, fees are usually apportioned between the petitioner and respondent so that the petitioner pays roughly 40% of the 20% and the respondent pays 60% of the 20%, unless the case is settled pursuant to N.J.S.A. 34:15-20, in which case the petitioner pays the full fee. For example if a case is resolved for 20% of partial/total at $20,280.00 under the 2001 rates, the total attorney fee would be $4,056.00 (20%). The respondent would pay $2,433.60 (60% of the attorney fee and 12% of the total award) and the petitioner would pay $1,622.40 (40% of the attorney fee but only 8% of the total award). If instead the case settles for $20,280.00 pursuant to Section 20, the petitioner would generally be ordered to pay the full fee of $4,056.00.

Judge Calderone, Director and Chief Judge of the NJ Division of Workers' Compensation, issued a memorandum on December 1, 2008, which addresses attorney fees in excess of $40,000. The memorandum reads:

> Pursuant to N.J.S.A. 34:15-64, judges of compensation have the discretion to award a reasonable counsel fee not to exceed 20% of the award entered. The judge should in all matters determine a reasonable fee based on the circumstances of the case and the value of the services performed.
>
> In the 2005 Final Report of the Counsel Fee Review Committee, which report is available on the Division of Workers' Compensation website, the Committee recommended a $35,000.00 counsel fee threshold concept for calendar year 2006. Further, the Committee found that the threshold should be adjusted each year thereafter by the percentage increase or decrease in the state average wage rounded up or down to the nearest $1,000.00. This is consistent from a percentage standpoint with the process for annual changes to the workers' compensation charts. The Committee Report was accepted by this office for implementation. The applicable percentage change in the state average wage is an increase of

> approximately 4.2% for 2009 calculations. This results in a $2,000.00 counsel fee threshold increase for 2009.
>
> Based on the Committee Report and acceptance and effective January 5, 2009, in those cases where a counsel fee allowance is greater than $40,000.00, judges of compensation are required, in addition to whatever other procedures a judge may set, to include in the record an affidavit of services, testimony and/or other information on which the judge's counsel fee allowance is based. It should be recognized that the $40,000.00 figure is not intended as a cap or a maximum counsel fee allowance. In those cases where the benefits received by the petitioner allow for a counsel fee greater than $40,000.00, a judge of compensation has the discretion following the procedure outlined above to award a fee greater than $40,000.00.

This procedure allows a judge the discretion to simply put on the record a statement of why a petitioner's attorney deserves a fee greater than the threshold amount, without having the attorney go through the more cumbersome process of preparing an affidavit of services. Attorney fees can be substantial in certain workers' compensation cases, when the disability is severe and there is also a contested med-temp motion that gets tried to completion. In such a situation, the attorney may request and obtain a fee not only on permanent disability benefits but also on the costs of medical treatment and temporary disability benefits.

2. Med/Temp Motions

Motions for medical treatment and/or temporary disability are often resolved before the total cost of treatment and benefits are ascertainable. Hence the court may reserve the fee award for a later time. Some judges, on the theory that a worker should not have to pay for benefits granted by law, will make the employer pay the full fee on a med/temp motion. Others will split the fee as is customarily done with permanent disability.

3. Section 40 Liens

The wide discretion given judges by N.J.S.A. 34:15-64 was affirmed in *Maskell v. Mid-State Filigree System*, 322 N.J. Super 68 (App. Div. 1999). *Maskell* involves a Section 40 lien where the petitioner's attorney was the same in both the workers' compensation and third-party matters. After a work-connected accident, the employer's carrier paid $6,631.52 in temporary disability benefits and $11,889.16 in medical treatment, for a total med/temp lien of $18,520.68. A claim against the third-party defendant settled for $20,000. The compensation carrier compromised its then-existing lien to $6,666.66 and reached an agreement to obtain "a credit up to an amount equaling petitioner's actual share of the settlement, $6,666.66, against any award of permanent partial disability benefits petitioner might receive in the still-pending workers' compensation action." *Id.* at 69. Note that the employer's insurance company had a right to assert a lien of up to two thirds of $20,000.00 minus $200.00, or $13,133.33, on the third-party proceeds, but apparently saw fit to reduce

its lien in order to facilitate settlement, knowing it could still recover something from the permanency award. In third-party cases where liability is questionable, the compensation carrier may wish to reduce its lien to enable a settlement rather than risking no recovery at all. After trial, the Judge of Compensation found petitioner 15% disabled and awarded him (pursuant to 1991 rates) $9,270.00. From this amount, a net credit of $6,180.00 (two thirds of $9,720.00) was given to the carrier, leaving petitioner with $3,090.00.

The Judge of Compensation predicated the fee on what the worker received, $3,090.00, rather than on the amount of the full award, $9720.00. The same attorney representing the injured worker in both cases should not get a fee windfall, the judge felt, especially when both Rule 1:21-7(c) and N.J.S.A. 34:15-40(b) and (c) require fees to be "calculated on the amount to moneys "received" by the plaintiff/petitioner." *Id.* at 72. Though the Appellate Division upheld the fee award, it noted that such an award was not necessarily mandated "in all cases in which the same attorneys have represented the petitioner/plaintiff in both the workers' compensation matter and the related civil action." *Id.* at 73.

Judges award attorney fees pursuant to their individual preferences in cases involving Section 40 liens. Some require the respondent to pay a fee on the full amount of recovery subject to the lien, which in the example above would be $9720.00. The respondent's share of such a fee would typically be 12% or $1,166.40. Other judges, following *Maskell*, would order the respondent to pay 12% of $3,090.00 ($370.80). Most judges require petitioners to pay a fee based only upon the actual recovery, which would be $3,090.00 in our example. The petitioner's share of such a fee would typically be 8% or $247.20. If in our example, however, the worker had recovered $15,000.00 over and above the maximum allowable credit, a judge would likely award the full 20% attorney fee on that amount, in addition to whatever the award is on the amount subject to the lien. Also remember that there will be no credit or fee deduction applied to a workers' compensation award if the compensation case settles before a pending third-party suit, though a credit will be applied later to the third-party settlement or award if there is one.

4. Voluntary Tenders

Attorney fees may be limited if the respondent makes a good faith, unconditional offer to pay benefits within specified time limits before a hearing at which the parties are ready to present medical proofs. As amended in 1979, Section 34:15-64 of the Workers' Compensation Act states:

> When, however, at a reasonable time, prior to any hearing compensation has been offered and the amount then due has been tendered in good faith or paid within 26 weeks from the date of the notification to the employer of an accident or an occupational disease or the employee's final active medical treatment or with 26 weeks after the employee's return to work whichever is less or within 26 weeks after employer's notification of the employee's death, the reasonable allowance for attorney fee shall be based upon only that part of the judgment or award in excess of the amount of

> compensation, theretofore offered, tendered in good faith or paid. When the amount of the judgment, or when that part of the judgment or award in excess of compensation, offered, tendered in good faith or paid as aforesaid, is less than $200, an attorney fee may be allowed not in excess of $50.

The Appellate Division in *Alvarado ex rel. v. J&J Snack Foods Corp.*, 397 N.J. S 418, 435-436 (2008) summarized various principles to be considered by compensation judges in limiting an attorney fee pursuant to N.J.S.A. 34:15-64. These include the following:

- The section, which must be followed literally, requires the employer "to make an unconditional and unqualified offer to pay compensation and to express it in terms that leave no room for misunderstanding."
- " The offer must be made (a) at a reasonable time after notice of injury and extent of disability, (b) prior to any hearing and (c) prior to the expiration of the applicable twenty-six-week period."
- The twenty-six week period constitutes a "cut-off"; less time may be considered unreasonable depending on the circumstances.
- A "hearing" is a scheduled court appearance when "the parties have assembled their medical proofs on the extent of petitioner's disability and are in a position to proceed to trial, whether or not they actually proceed," as opposed to the adjournment of a listed case because the parties are not yet ready to proceed with their medical proofs.
- The twenty-six-week limit cannot be extended in the event of a compensable death, though it "may be extended where medical treatment for a nonfatal injury restarts after the cutoff."
- Even if the reduced-fee exception applies, "unreasonable and unjustified delay in admitting liability may be considered on the allocation of an attorney fee between the petitioner and respondent."

Alvarado involved competing dependency claims. One was made by the guardian of two daughters no longer living with the decedent worker. The other was made by the third and youngest daughter who, along with her mother, was living with and supported by the decedent at that time of the work-related accident causing his death. Twenty-five weeks after the death, the respondent distributed dependency benefits in equal shares of one third to each daughter. Nevertheless, counsel for the youngest daughter claimed that this daughter was entitled to a greater share. About one year later, counsel obtained an order awarding to this daughter one-half of the dependency benefits, with the remaining half to be split equally between the two older daughters.

The judge of compensation agreed with the respondent that counsel was only entitled to a fee of $50 because the respondent had offered to pay full dependency benefits before expiration of the 26 weeks. The Appellate Division, however, reversed the order denying attorney fees and remanded the case because the judge failed to consider (1) if payment of benefits occurred prior to any hearing and (2) if the respondent

acted in good faith in assessing the merit of the youngest daughter's claim for benefits. In light of those considerations, the Appellate Division determined that the compensation judge must consider awarding a fee on the 16.5% difference between what was offered to the youngest daughter and what was ultimately awarded to her, and, in addition, an allowance for a fee for making the appeal.

The issue of fee reduction in the context of a voluntary tender of a partial disability award arose in *Menichetti v. Palermo Supply Company*, 396 N.J. Super. 118 (App.Div.2007). Before conducting a disability examination, the respondent in *Menichetti* made a timely offer of 15% of the leg for a knee injury, which tender was rejected by the petitioner. Subsequently the respondent's examiner assessed a permanent disability of 7-1/2% of the leg, and the case ultimately resolved for 22-1/2% of the leg. The compensation judge found that the voluntary tender was not made in good faith because there was no medical basis for an offer of 15%, but only for the 7-1/2% later assessed by the respondent's forensic expert. In reversing the compensation judge and ordering that the respondent be given a credit for its tender, the Appellate Division found that indeed the full amount of the offer was made in good faith and that there was no claim of unreasonable delay. Furthermore, the employer should not be penalized for too-generous offers, and, in some cases, petitioners' counsel will be deprived of a fee for work performed.

APPENDIX A

FORMS

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Employee's Claim Petition

State of New Jersey Department of Labor Division of Workers' Compensation PO Box 381 Trenton, New Jersey 08625-0381	**EMPLOYEE'S CLAIM PETITION**	(DO NOT FILL IN) CASE No. _____ D.O. _____

PETITIONER

SOCIAL SECURITY NUMBER

NAME

ADDRESS (Including County)

ZIP CODE

ATTORNEY FOR PETITIONER

☐ NEW JERSEY REGISTRATION NUMBER ☐ SSN ☐ FEDERAL EMPLOYER ID NUMBER

NAME

ADDRESS

TELEPHONE (Area Code)

VS

RESPONDENT

NAME

ADDRESS (Including County)

ZIP CODE

INSURANCE CARRIER

NAME (Indicate if Not Covered or self-insured)

ADDRESS

ZIP CODE

CARRIER'S CLAIM FILE NUMBER

TO THE DIVISION OF WORKERS' COMPENSATION:

Petitioner, alleging that Petitioner sustained an injury by an accident arising out of and in the course of petitioner's employment with Respondent, compensable under R.S. 34:15-7 et seq., supplements and amendments, respectfully states:

Date of Accident ☐ Occupational Exposure Dates of Exposure			Where	
How Injury Occurred				
Occupation			Date Stopped Work	Date Returned to Work
Sex	Date of Birth	Marital Status	Date Injury Reported To Employer and To Whom	
Gross Weekly Wages $	Rate of Compensation $		Temporary Disability Paid $	Permanent Disability Paid $

DESCRIBE EXTENT AND CHARACTER OF INJURY: If there has been amputation or disability to any member or impairment of any physical function, explain fully _____

Medical aid (WAS) (WAS NOT) furnished by Petitioner's employer.
Give names and addresses of physicians and hospitals:

☐ Demand is hereby made for answers to standard occupational disease interrogatories.

☐ Demand is hereby made for all records of medical treatment, examinations and diagnostic studies.

WERE YOU ELIGIBLE FOR MEDICAID BENEFITS AT THE TIME OF THE ACCIDENT? ☐ YES ☐ NO
DID YOU BECOME ELIGIBLE FOR MEDICAID BENEFITS AFTER THE ACCIDENT? ☐ YES ☐ NO
YOU ARE ADVISED THAT MEDICAID PAYMENTS RELATED TO THE ACCIDENT ARE TO BE REPAID IN ACCORDANCE WITH N.J.S.A. 30:4D-1, ET SEQ.

WC-385 (R-5-02)

What other facts are there that you believe important?

In occupational disease claims, list claims against other employers filed or to be filed for the same or similar occupational diseases.

NAME & ADDRESS OF EMPLOYER	DATES OF EMPLOYMENT

Your Petitioner therefore requests that the Division of Workers' Compensation determine the amount of compensation due your Petitioner from said Respondent, under Revised Statutes of New Jersey, Title 34, Chapter 15, and the Acts supplemental thereto and amendatory thereof, and that your Petitioner may be awarded Petitioner's costs in this proceeding, and such other or further relief as may be proper.

_____
(Petitioner)

STATE OF NEW JERSEY
COUNTY OF

Subscribed and sworn or affirmed
to before me this day of
, 20

_____

Please be advised that information collected from the filing of this claim petition may be used by the Division of Workers' Compensation for record keeping, record access/distribution, and case scheduling purposes. Petitions filed with the Division are public documents and may be inspected and copied except where prohibited by Section 34:15-128 of the Workers' Compensation statute.

The foregoing Claim Petition has been presented by the Petitioner to the Division of Workers' Compensation for hearing and determination. Unless an Answer is filed within 30 days of the date of service of the Claim Petition upon you, with the assignment clerk at the office to which the claim is assigned as indicated on the reverse side, and a copy served upon the Petitioner's attorney, THE PETITIONER WILL PROCEED WITH PROOF OF CLAIM ACCORDING TO LAW AND MAY OBTAIN JUDGMENT AGAINST YOU.

The Privacy Act, 5 U.S.C. § 552a, the Social Security Act, 42 U.S.C. § 405, and *N.J.S.A.* 34:15-1 *et seq.* authorize the Division of Workers' Compensation to request that the Petitioner supply the Division with his or her Social Security number for record keeping purposes and cross-matches with the Social Security Administration, Workforce New Jersey, Temporary Disability Insurance and any other proper public purpose.

DIVISION OF WORKERS' COMPENSATION

WC-365.1 (3-97) State of New Jersey Department of Labor DIVISION OF WORKERS' COMPENSATION CN 381 Trenton, New Jersey 08625-0381	**EMPLOYEE'S CLAIM PETITION SUPPLEMENTAL PAGE**	(DO NOT FILL IN) CASE NO. _____ D.O. _____

Date of Accident or Dates of Occupational Exposure:	If Respondent Known By Different Name, Please Indicate Below:

INSURANCE CARRIER

NAME (Indicate if Not Covered or self-insured)
NJ REG. OR FEIN

ADDRESS

CARRIER'S CLAIM FILE NUMBER

PERIOD OF COVERAGE
FROM TO

INSURANCE CARRIER

NAME (Indicate if Not Covered or self-insured)
NJ REG. OR FEIN

ADDRESS

CARRIER'S CLAIM FILE NUMBER

PERIOD OF COVERAGE
FROM TO

INSURANCE CARRIER

NAME (Indicate if Not Covered or self-insured)
NJ REG. OR FEIN

ADDRESS

CARRIER'S CLAIM FILE NUMBER

PERIOD OF COVERAGE
FROM TO

INSURANCE CARRIER

NAME (Indicate if Not Covered or self-insured)
NJ REG. OR FEIN

ADDRESS

CARRIER'S CLAIM FILE NUMBER

PERIOD OF COVERAGE
FROM TO

INSURANCE CARRIER

NAME (Indicate if Not Covered or self-insured)
NJ REG. OR FEIN

ADDRESS

CARRIER'S CLAIM FILE NUMBER

PERIOD OF COVERAGE
FROM TO

INSURANCE CARRIER

NAME (Indicate if Not Covered or self-insured)
NJ REG. OR FEIN

ADDRESS

CARRIER'S CLAIM FILE NUMBER

PERIOD OF COVERAGE
FROM TO

INSURANCE CARRIER

NAME (Indicate if Not Covered or self-insured)
NJ REG. OR FEIN

ADDRESS

CARRIER'S CLAIM FILE NUMBER

PERIOD OF COVERAGE
FROM TO

INSURANCE CARRIER

NAME (Indicate if Not Covered or self-insured)
NJ REG. OR FEIN

ADDRESS

CARRIER'S CLAIM FILE NUMBER

PERIOD OF COVERAGE
FROM TO

Dependency Claim Petition

State of New Jersey
Department of Labor
Division of Workers' Compensation
PO Box 381
Trenton, New Jersey 08625-0381

DEPENDENCY CLAIM PETITION

(Do Not Fill In)
CASE No. _____
D.O. _____

PETITIONER
SOCIAL SECURITY NUMBER
NAME
ADDRESS (Including County)

ATTORNEY FOR PETITIONER
☐ NEW JERSEY REGISTRATION NUMBER ☐ SSN ☐ FEDERAL EMPLOYER ID NUMBER
NAME
ADDRESS
TELEPHONE (Area Code)

VS

RESPONDENT
NAME
ADDRESS (Including County)

INSURANCE CARRIER
NAME (Indicate if Not Covered or self-insured)
ADDRESS
CARRIER'S CLAIM FILE NUMBER

TO THE DIVISION OF WORKERS' COMPENSATION:

Petitioner, alleging that Decedent hereinafter named sustained personal injury by an accident or occupational disease arising out of and in the course of employment with Respondent, resulting in death, respectfully states:

DECEDENT
SOCIAL SECURITY NUMBER
NAME
ADDRESS (Including County)

DEPENDENTS (At time of death)

1. Name:	Age	Date of Birth	Relationship
2.			
3.			
4.			

USE SEPARATE SHEET IF REQUIRED

Sex	Date of Birth	Date Injury Occurred	Date Employer Had Knowledge of Injury	Date Injury Reported	Date Stopped Work	Date Returned to Work	Date of Death

Occupation and Type of Work

How Injury Occurred (If Occupational Disease Give Periods of Exposure)

Occupational Disease ☐ Yes ☐ No

Where

Nature of Injury		Cause of Death	
Medical Expenses $	Burial Expenses $	Payable to	
Gross Weekly Wages $	Rate of Compensation $	Compensation Received for Injury $	Total Dependency Benefits Paid $

Employer Furnished Medical Aid ☐ Yes ☐ No

☐ Demand is hereby made for answers to standard occupational disease interrogatories.

☐ Demand is hereby made for all records of medical treatment, examinations and diagnostic studies.

NC-366 (R-5-02)

What other facts are there that you believe important?

In occupational disease claims, list claims against other employers filed or to be filed for the same or similar occupational diseases.

NAME & ADDRESS OF EMPLOYER	DATES OF EMPLOYMENT

Your Petitioner therefore requests that the Division of Workers' Compensation determine the amount of compensation due your Petitioner from said Respondent, under Revised Statutes of New Jersey, Title 34, Chapter 15, and the Acts supplemental thereto and amendatory thereof, and that your Petitioner may be awarded Petitioner's costs in this proceeding, and such other or further relief as may be proper.

_____
(Petitioner)

STATE OF NEW JERSEY
COUNTY OF

Subscribed and sworn or affirmed to before me this day of , 20

_____

The foregoing Claim Petition has been presented by the Petitioner to the Division of Workers' Compensation for hearing and determination. Unless an Answer is filed within 30 days of the date of service of the Claim Petition upon you, with the assignment clerk at the office to which the claim is assigned as indicated on the reverse side, and a copy served upon the Petitioner's attorney, THE PETITIONER WILL PROCEED WITH PROOF OF CLAIM ACCORDING TO LAW AND MAY OBTAIN JUDGMENT AGAINST YOU.

The Privacy Act, 5 U.S.C. § 552a, the Social Security Act, 42 U.S.C. § 405, and *N.J.S.A.* 34:15-1 *et seq.* authorize the Division of Workers' Compensation to request that the Petitioner supply the Division with his or her Social Security number for record keeping purposes and cross-matches with the Social Security Administration, Workforce New Jersey, Temporary Disability Insurance and any other proper public purpose.

DIVISION OF WORKERS' COMPENSATION

Application for Review or Modification of Formal Award

State of New Jersey Department of Labor Division of Workers' Compensation PO Box 381 Trenton, New Jersey 08625-0381	**APPLICATION FOR REVIEW OR MODIFICATION OF FORMAL AWARD**	CASE No. _____ D.O. _____

PETITIONER

SOCIAL SECURITY NUMBER

NAME

ADDRESS (Including County)

VS

RESPONDENT

NAME

ADDRESS (Including County)

ATTORNEY FOR RESPONDENT

☐ NEW JERSEY REGISTRATION NUMBER ☐ SSN ☐ FEDERAL EMPLOYER ID NUMBER

NAME

ADDRESS

TELEPHONE (Area Code)

INSURANCE CARRIER

NAME (Indicate if Not Covered or self-insured)

ADDRESS

CARRIER'S CLAIM FILE NUMBER

TO THE DIVISION OF WORKERS' COMPENSATION: (Applicant) _____

Hereby makes application to the Division of Workers' Compensation to review the Order entered on _____, _____

by _____ and respectfully states:

The following is an accurate, succinct description of the Factual, Medical, and Legal reasons for the relief sought in the Application: (Use additional sheets if necessary)

As To Claimant	Age	Sex	Marital Status	Date of Injury	Date of Last Compensation Paid	Present Employment Status

Copy of previous award and medical reports submitted are attached. ☐ Yes ☐ No

This is the _____ application for Review or Modification of this award.
(Number)

APPLICANT'S ADDRESS:

What other facts are there that you believe important?

In occupational disease claims, list claims against other employers filed or to be filed for the same or similar occupational diseases.

NAME & ADDRESS OF EMPLOYER	DATES OF EMPLOYMENT

Your Applicant therefore requests that the Division of Workers' Compensation determine the amount of compensation due your Petitioner from said Respondent, under Revised Statutes of New Jersey, Title 34, Chapter 15, and the Acts supplemental thereto and amendatory thereof, and that your Petitioner may be awarded Petitioner's costs in this proceeding, and such other or further relief as may be proper.

_____
(Applicant)

STATE OF NEW JERSEY
COUNTY OF

Subscribed and sworn or affirmed
to before me this day of
. 20

_____

Please be advised that information collected from the filing of this Applicationfor Review or Modification of Formal Award may be used by the Division of Workers' Compensation for record keeping, record access/ distribution, and case scheduling purposes. Petitions filed with the Division are public documents and may be inspected and copied by the general public except where prohibited by Section 34:15-128 of the Workers' Compensation statute.

The foregoing Applicationfor Review or Modification of Formal Award has been presented by the Petitioner to the Division of Workers' Compensation for hearing and determination. Unless an Answer is filed within 30 days of the date of service of the Claim Petition upon you, with the assignment clerk at the office to which the claim is assigned as indicated on the reverse side, and a copy served upon the Petitioner's attorney, THE PETITIONER WILL PROCEED WITH PROOF OF CLAIM ACCORDING TO LAW AND MAY OBTAIN JUDGMENT AGAINST YOU.

The Privacy Act, 5 U.S.C. § 552a, the Social Security Act, 42 U.S.C.§ 405, and *N.J.S.A.* 34:15-1 *et seq.* authorize the Division of Workers' Compensation to request that the Petitioner supply the Division with his or her Social Security number for record keeping purposes and cross-matches with the Social Security Administration, Workforce New Jersey, Temporary Disability Insurance and any other proper public purpose.

DIVISION OF WORKERS' COMPENSATION

Notice of Motion for Temporary and/or Medical Disability Benefits

State of New Jersey Department of Labor DIVISION OF WORKERS' COMPENSATION	WC-101 (R-9-99) NOTICE OF MOTION FOR TEMPORARY AND/OR MEDICAL BENEFITS (N.J.A.C. 12:235-5.2)	C.P. NO. _____ D.O. _____

PETITIONER

SOCIAL SECURITY NUMBER:
NAME:
COUNTY OF RESIDENCE: ADDRESS:

ATTORNEY FOR PETITIONER

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER: (If none, insert Social Security No.)
NAME:
ADDRESS:
TELEPHONE (Area Code)

VS

RESPONDENT

NAME:
COUNTY OF RESIDENCE: ADDRESS:

INSURANCE CARRIER

NAME: (Indicate If Not Covered or Self-Insured):
CLAIM FILE NO.: ADDRESS:

TO: _____
(Respondent's Attorney)

_____
(ADDRESS)

PLEASE TAKE NOTICE that the undersigned, Attorney for the Petitioner, will apply before the Presiding Judge of Compensation, at the District Office of the Division of Workers' Compensation referred to above, on the date to be fixed by the Division, for an Order pursuant to N.J.A.C. 12:235.2 compelling the Respondent or Respondent's insurance carrier to:

☐ 1. Pay to the Petitioner temporary disability benefits, from _____

to _____ or, _____ weeks at $ _____ per week, of which the Respondent has paid Petitioner for the following period:

from _____ to _____, or _____ weeks

at $ _____ per week.

☐ 2. Provide medical treatment for the Petitioner, and payment of the same, as the Petitioner (WAS) (IS) in urgent need of medical treatment. A copy of the Bill for services and report of Petitioner's treating physicians and/or institutions are attached hereto. The names of Petitioner's physicians and/or institutions are:

The Privacy Act, 5 U.S.C. § 552a, the Social Security Act, 42 U.S.C. § 405, and *N.J.S.A* 34:15-1 *et seq.* authorize the Division of Workers' Compensation to request that the Petitioner supply the Division with his or her Social Security number for record keeping purposes and cross-matches with the Social Security Administration, Workforce New Jersey, Temporary Disability Insurance and any other proper public purpose.

Dated: _____

_____
ATTORNEY FOR PETITIONER

Respondent's Answer to Claim Petition

State of New Jersey
Department of Labor
Division of Workers' Compensation
PO Box 381
Trenton, New Jersey 08625-0381

WC(F)-367 (R-5-02)

RESPONDENT'S ANSWER TO CLAIM PETITION

CASE No. _____

D.O. _____

PETITIONER

SOCIAL SECURITY NUMBER

NAME

ADDRESS (Including County)

ATTORNEY FOR RESPONDENT

☐ NEW JERSEY REGISTRATION NUMBER ☐ SSN ☐ FEDERAL EMPLOYER ID NUMBER

NAME

ADDRESS

TELEPHONE (Area Code)

VS

RESPONDENT

NAME

ADDRESS (Including County)

INSURANCE CARRIER

NAME (Indicate if Not Covered or self-insured)

ADDRESS

CARRIER'S CLAIM FILE NUMBER

IN ANSWER TO CLAIM PETITION IN THIS CAUSE RESPONDENT STATES:

Correct name of Respondent if incorrect	Petitioner was in employment on date alleged in petition	Date of accident	Arose out of and in the course of employment	Employment was covered by Article 2 R.S. 34:15
1.	2. ☐ Yes ☐ No	3.	4. ☐ Yes ☐ No	5. ☐ Yes ☐ No

6. How injury occurred

7. Where injury occurred

8. Nature of injury or disease

9. Petitioner's occupation

11. Date respondent had knowledge and notice of injury	12. Date petitioner stopped work	13. Date returned to work	14. Gross weekly wage	15 Rate of compensation	16. Temporary Disability paid

17. Permanent disability paid ☐ or being paid ☐ _____ %of _____ @ _____ weeks totaling _____

18. Respondent rendered aid to the petitioner by the following individuals and/or institutions:

Other pertinent information: (Use reverse side if necessary)

The Respondent reserves the right to cross examine all physicians upon whom the petitioner will rely in proof of the claim.

☐ Demand is hereby made for answers to standard occupational disease interrogatories.

☐ Demand is hereby made for all records of medical treatment, examinations and diagnostic studies.

I certify that the foregoing statements made by me are true to the best of my knowledge, information and belief.

_____ _____

Attorney for the Respondent or Respondent's Insurance Carrier — Date

Respondent's Answer to Dependency Claim Petition

State of New Jersey
Department of Labor
Division of Workers' Compensation
PO Box 381
Trenton, New Jersey 08625-0381

WC-171 (R-5-02)

RESPONDENT'S ANSWER TO DEPENDENCY CLAIM PETITION

CASE No. _____

D.O. _____

PETITIONER

SOCIAL SECURITY NUMBER

NAME

ADDRESS (Including County)

ATTORNEY FOR RESPONDENT

☐ NEW JERSEY REGISTRATION NUMBER ☐ SSN ☐ FEDERAL EMPLOYER ID NUMBER

NAME

ADDRESS

TELEPHONE (Area Code)

VS

RESPONDENT

NAME

ADDRESS (including County)

INSURANCE CARRIER

NAME (Indicate if Not Covered or self-Insured)
NJ Reg. or FEIN

ADDRESS

CARRIER'S CLAIM FILE NUMBER

IN ANSWER TO THE DEPENDENCY CLAIM PETITION FILED IN THIS CAUSE RESPONDENT STATES:

DECEDENT

SOCIAL SECURITY NUMBER	ADDRESS (Including County)
NAME	

Date Injury Occurred	Date Employer Had Knowledge of Injury	Date Injury Reported	Date Stopped Work	Date Returned to Work	Date of Death

How Injury Occurred (If Occupational Disease Give Periods of Exposure)

Where

Nature of Injury

Occupation and Type of Work		Cause of Death	
Medical Expenses $	Burial Expenses $	PAID BY RESPONDENT ☐ Yes ☐ No	
Gross Weekly Wages $	Rate of Compensation $	Compensation Received for Injury $	Total Compensation From Employer $

Employer Furnished Medical Aid	Decedent Gave Written Notice of Article 2 Exemption	Decedent Received Written Notice of Article 2 Exemption
☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No

Respondent agrees with information concerning Dependents named in the Dependency Claim Petition ☐ Yes ☐ No
If no, explain.

Respondent submits the following additional information (Enter none, if appropriate. Use additional sheets, if required).

☐ Demand is hereby made for answers to standard occupational disease interrogatories.

☐ Demand is hereby made for all records of medical treatment, examinations and diagnostic studies.

I certify that the foregoing statements are true to the best of my knowledge, information and belief.

_____ _____

Attorney for Respondent or Respondents Insurance Carrier — Date

Answer to Application for Review or Modification of Formal Award

State of New Jersey Department of Labor DIVISION OF WORKERS' COMPENSATION PO BOX 381 Trenton, New Jersey 08625-0381	**ANSWER TO APPLICATION FOR REVIEW OR MODIFICATION OF FORMAL AWARD**	C.P. NO. _____ D.O. _____

PETITIONER

SOCIAL SECURITY NUMBER

NAME

ADDRESS (Including County)

VS

RESPONDENT

NAME

ADDRESS (Including County)

ATTORNEY FOR RESPONDENT

☐ NEW JERSEY REGISTRATION NUMBER ☐ SSN ☐ FEDERAL EMPLOYER ID NUMBER

NAME

ADDRESS

TELEPHONE (Area Code)

INSURANCE CARRIER

NAME (Indicate if Not Covered or self-insured)
NJ REG. OR FEIN

ADDRESS

CARRIER'S CLAIM FILE NUMBER

TO THE DIVISION OF WORKERS' COMPENSATION: _____

in answer to the Application for Review or Modification respondent respectfully states:

TEMPORARY DISABILITY WAS PAID FROM _____ TO _____

for a total of _____ weeks, _____ day's at $ _____ per week, totaling $ _____

PERMANENT DISABILITY WAS PAID FROM _____ TO _____

for a total of _____ weeks, at $_____ per week, totaling $ _____

The date of the last compensation payment was _____ . The date of the last authorized treatment was _____

The factual, legal and medical reasons for denying the application are as follows:

☐ Demand is hereby made for answers to standard occupational disease interrogatories.

☐ Demand is hereby made for all records of medical treatment, examinations and diagnostic studies.

I certify that the foregoing statements made by me are true to the best of my knowledge, information and belief.

_____ _____

Attorney for Respondent *Date*

WC-369 (R-5-02)

Answering Statement to Motion for Temporary and Medical Benefits

State of New Jersey Department of Labor DIVISION OF WORKERS' COMPENSATION	WC-102 (10-94) **ANSWERING STATEMENT TO MOTION FOR TEMPORARY AND MEDICAL BENEFITS (N.J.A.C. 12:235-5.2(e))**	C.P. NO _____ D.O. _____

PETITIONER

SOCIAL SECURITY NUMBER:

NAME:

COUNTY OF RESIDENCE:
ADDRESS:

ATTORNEY FOR RESPONDENT

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER:
(If none, insert Social Security No.)

NAME:

ADDRESS:

TELEPHONE (Area Code)

VS

RESPONDENT

NAME:

COUNTY OF RESIDENCE:
ADDRESS:

INSURANCE CARRIER

NAME: (Indicate If Not Covered or Self-Insured):

CLAIM FILE NO.:
ADDRESS:

RESPONDENT, in answer to Petitioner's Notice of Motion for Temporary and Medical Benefits, respectfully states:

☐ That Petitioner is entitled to no Temporary Disability Benefits. (State medical, factual and legal reasons):

☐ That Petitioner is only entitled to Temporary Disability Benefits for the following period:

_____ to _____, or _____ weeks at

$ _____ per week, (paid) (unpaid)

(State medical, factual and legal reasons):

☐ That Petitioner is not entitled to the medical treatment and payment thereof. (State medical, factual and legal reasons and attach pertinent reports, affidavits or certifications):

Dated: _____

_____
ATTORNEY FOR RESPONDENT

Standard Respondent's Interrogatories: Occupational Diseases

NEW JERSEY DEPARTMENT OF LABOR
DIVISION OF WORKERS' COMPENSATION
CLAIM PETITION NUMBER:

SS#:)

)

Petitioner,)

vs.)

)

Respondent.)

)

OCCUPATIONAL
INTERROGATORIES

SIR:

As per Rule 12:235-5.6(e), respondent demands that petitioner answer the within Interrogatories within forty-five(45) days after service.

ATTORNEYS FOR RESPONDENT

BY:_____

A MEMBER OF THE FIRM

DATED:

PLEASE TAKE NOTICE that the respondent demands answers, under oath, of the petitioner to the following interrogatories within the time prescribed by the rules of the Division of Workers' Compensation.

1. Set forth in detail the specific occupational disease or condition which petitioner claims was caused, aggravated or contributed to by employment with the respondent.

2. Set forth the period of employment and the dates of the alleged exposure.

3. Set forth the nature of the exposure that allegedly caused the occupational injury in question.

4. If exposure to fumes is alleged, set forth quantitative evidence of the level and duration of the alleged exposure, the component elements of same and how said exposure is in excess of that ordinarily encountered in everyday living.

5. If the occupational injury claimed resulted from repetitive motion, set forth in detail the nature of the activity, the parts of the body affected and the duration said activity was performed on a daily basis.

6. If the claimed occupational disease resulted from repetitive bending and lifting, set forth in detail on a daily basis the matter lifted, its weight; whether the object was carried; the amount of time engaged in such activity on a daily basis and whether such activity exceeded that normally experienced in everyday living.

7. If an occupational hearing loss is alleged, please describe the duration of any exposure to noise on a daily basis and identify the machinery or equipment from which it emanated.

8. If an occupational cardiovascular or cerebrovascular condition is alleged, state in detail the intensity and duration of the work effort that allegedly precipitated the condition and the manner in which same was qualitatively more intense than the physical activity to which petitioner was accustomed to outside of work.

a. Please state the time interval between the alleged precipitating work effort and the evidence of dysfunction.

b. Provide a description of the activity engaged in by petitioner outside of work.

9. If an occupational psychiatric condition is alleged, please state in detail the nature and duration of any stressful working condition, the source, and how said condition(s) were unreasonable and peculiar to the work place.

10. Set forth the date and circumstances under which the petitioner became aware that the claimed injuries resulted from his employment.

11. Set forth the specific machinery, equipment, condition, or circumstances which caused or contributed to the claimed occupational diseases.

a. State in detail the medical basis for concluding that the occupational disease(s) are causally related to the alleged exposure.

12. Set forth the date and circumstances under which respondent had actual notice and knowledge of petitioner's occupational injury, and the names and titles of respondent's personnel having such knowledge.

a. If petitioner alleges that such knowledge resulted from environmental testing, set forth the identity of the person or institution performing the test, the date, the nature of same, and attach copies of their report(s).

13. Set forth chronologically the names and addresses of all medical providers and institutions, the dates, the nature of such treatment and the diagnosis; annexing copies of treating records for the conditions alleged.

a. State whether any of the medical treatment was authorized by the respondent; the identity of the person providing said authorization and the date and nature of same.

b. If the petitioner is claiming that respondent is liable for the payment of any medical bills incurred, please list same and provide copies.

14. If temporary total disability benefits are being claimed in connection with any of the alleged occupational disease(s), please identify the specific period of time lost, and the medical justification for remaining out of work - annexing copies of any supporting medical reports.

15. Identify all subsequent employers by name and address; the nature of said employment; the duration of said employment; the specific activity performed by petitioner; a specific description of the work environment.

a. If any subsequent employers identified required a pre-employment medical examination, set forth the date of such examination and the name and address of the physician performing same.

16. If it is alleged that the occupational diseases claimed resulted from exposure to asbestos or asbestos-containing material, please state in detail chronologically each and every employment, including the names and addresses of the employer, the type of product manufactured, the period of employment and the nature of the work performed by petitioner.

a. Set forth chronologically the names and addresses of any and all persons or institutions and the dates that petitioner underwent a chest X-ray.

17. If an occupational pulmonary condition is alleged, set forth in detail petitioner's complete smoking history, specifying the form of tobacco smoked, the quantity per day and the duration of tobacco consumption.

18. State in detail whether petitioner has ever received any money for any injuries in the past or whether petitioner is currently prosecuting a civil action or any other workers' compensation claim at the present time, for injuries or conditions alleged in this matter. If so, please state the names of the defendants or respondents; the Court in which the matter was or is pending; the identity of the attorney pursuing said matter on behalf of the petitioner; the amount of any settlements or awards; the date of the accident or injury; and the nature of the injuries claimed.

19. If it is alleged that the occupational exposures aggravated, accelerated, or exacerbated a pre-existing medical condition, identify the nature of said condition with specificity, the dates and nature of any and all medical treatment provided; the identity of any and all providers by name and address, and the medical diagnoses.

CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment for contempt of court.

_____

Standard Petitioner's Interrogatories: Occupational Diseases

SS#

NEW JERSEY DEPARTMENT OF LABOR
DIVISION OF WORKERS' COMPENSATION
CLAIM PETITION NUMBER

OCCUPATIONAL INTERROGATORIES

Petitioner,

vs.

Respondent.

TO:

As per Rule 12:235-5.6(e), petitioner demands that respondent answer the within Interrogatories within forty-five (45) days after service.

Attorneys for Petitioner

BY:_____

A Member of the Firm

DATED:

PLEASE TAKE NOTICE that the petitioner demands answers, under oath, of the respondent to the following Interrogatories within the time prescribed by the Rules of the Division of Workers' Compensation.

1. Set forth the date on which the petitioner started working for the respondent, and the date on which the petitioner last worked for the respondent.

2. What was the chemical composition of the various liquids, powders, gases, fumes, mists, dust and all other substances and materials which the petitioner used or was exposed to in his/her work or which in the course of his/her employment were handled by petitioner, or which were in anyway used or processed in the vicinity in which the petitioner worked; list these substances both by common or trade name and by chemical name and composition.

3. In the area where the petitioner worked, was there any oven or machinery which in the operation or use thereof generated heat? If the answer is in the affirmative, then specify in particular, the type of oven, machinery and contrivance used and to what degree of temperature of heat such contrivance generated and the purpose for which they were used and the manner in which they were used.

(a) Were smoke, fumes, or dusts emitted from the aforesaid oven, machinery or contrivance while in operation?

(b) Describe the type of smoke, fumes, or dusts.

(c) During what period of time was petitioner exposed to such smoke, fumes, or dusts?

4. Describe the room or rooms in which petitioner performed his/her work. Also set forth the size of said room or rooms by length, width and height.

5. Did the rooms in which petitioner did his/her work contain any ventilating or blower systems, and, if so, describe such systems in detail, indicating the location of the intakes and exhausts of such systems and the details of the capacity of such system.

6. If natural ventilation was relied on, state the location and size of all openings.

7. State name and address of all treating physicians who have examined and/or treated the petitioner on behalf of the respondent prior, during and since the time of his/her employment, and give the complete medical findings and diagnosis including other laboratory data of each such physician, and describe in detail the nature of the treatments and dates of treatment.

8. State the interpretation made of any X-rays taken of the petitioner by any physician on behalf of the respondent, naming the particular physician in each instance, and the date of each such X-ray and interpretation made of said X-ray.

9. Did the respondent prior, during, and subsequent to the period of petitioner's employment, cause to be made any air sampling tests to determine the presence and nature of any gases, smoke, fumes, mists and dusts in the environment in which petitioner worked? If the answer to the foregoing is in the affirmative, give in detail the results of said tests, setting forth the dates on which they were performed and by whom made.

10. Set forth the specific work classifications assigned to the petitioner during his/her employment with the respondent and include the following information:

a. The dates of the period covering the various classifications.

b. The exact nature of the work performed in such classification and the methods of operations by which such work was performed.

11. Set forth by trade name and chemical composition all substances and materials used in composing molds used in metal pouring.

12. Set forth by trade name and give the chemical composition of all oils, greases, parting compounds, lining compounds or dusting compounds used in lining molds and cores.

13. Kindly provide the names of all individuals who worked in the immediate vicinity of the petitioner.

14. Please list the names of the immediate supervisors under whom the petitioner worked.

15. State whether during the petitioner's employment with respondent, petitioner came into contact with or used asbestos or asbestos products. If the answer to this question is yes, state with particularity the nature of the asbestos or asbestos product, the name of the company who supplied the asbestos, as well as the manufacturer of the asbestos or asbestos product.

16. Attach hereto and make a part of these interrogatories the complete medical file of the petitioner.

CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment for contempt of court.

_____

Pre-Trial Memorandum

DIVISION OF WORKERS' COMPENSATION
NEW JERSEY DEPARTMENT OF LABOR

_____ District **PRE-TRIAL MEMORANDUM** Date _____

PETITIONER _____ RESPONDENT _____

SOCIAL SECURITY NO. _____ CARRIER _____ CASE NO. _____

STIPULATIONS: *(FILL IN)*

Date of Accident _____ Wages _____ Rate _____

Compensation Paid:

Temporary Disability from _____ to _____ Rate _____

Permanent Disability percentage _____ Member _____ Rate _____

CHECK IF AT ISSUE:

Employment _____ Wages _____ Rate _____ Accident _____ Notice _____ Exposure _____

Knowledge _____ Causal Relationship _____ Injuries _____ Arise out of Employment _____

In course of employment _____ Nature and extent of Temporary _____ and Permanent _____ Injury

OTHER ISSUES:

_____

Medical Bills outstanding _____

_____

T. D. B. Paid _____ Liens _____

TREATING DOCTORS - Reported Findings DR. _____

_____

Reported X-ray findings DR. _____

_____

FURTHER STIPULATIONS: _____

☐ New Jersey Reg. No.
or
☐ Federal Employer Identification No. _____

☐ New Jersey Reg No.
or
☐ Federal Employer Identification No. _____

WITNESSES:	DOCTOR'S NAME	DOCTOR'S ID# (FEIN NJ REG OR SSN)	EST	TESTIMONY REQUIRED
Pet. ☐ Resp. ☐				
Pet. ☐ Resp. ☐				
Pet. ☐ Resp. ☐				
Pet. ☐ Resp. ☐				
Pet. ☐ Resp. ☐				
Pet. ☐ Resp. ☐				
Pet. ☐ Resp. ☐				

OTHER WITNESSES: _____ Pet. _____ Resp. _____

Trial time of petitioner _____ Trial time of respondent _____

_____ _____

Attorney for Petitioner *Attorney for Respondent*

_____ _____

Judge of Compensation *Recommendation*

Generic Notice of Motion

CAPTION

TO: Wilson International, Inc.
Attention: Legal Department
1302 Conti Street
Houston, TX 77002

PLEASE TAKE NOTICE that the undersigned, Attorney for Petitioner, will apply before the presiding Judge of Compensation, at the Middlesex County District Office for the Division of Workers' Compensation, on a date to be fixed by the Division, for an Order [DESCRIBE THE ORDER SOUGHT]. The motion will be supported by the certification of John D. Kovac, Esq. and exhibits attached thereto.

_____

John D. Kovac, Esq.

Attorney for Petitioner

Dated:

Certification of Attorney in Support of Motion to Enter Default

THE LAW OFFICE OF JOHN D. KOVAC
142 LIVINGSTON AVENUE
NEW BRUNSWICK, NJ 08901
(732) 247-9990 FAX: (732) 247-9919

SS No. 132-45-6789 JIMI HENDRIX, Petitioner, vs. ELVIS INTERNATIONAL INC, Respondent	NEW JERSEY DEPARTMENT OF LABOR AND INDUSTRY DIVISION OF WORKERS' COMPENSATION CP NO. 2006-9999999 DISTRICT OFFICE: NEW BRUNSWICK CERTIFICATION OF JOHN D. KOVAC IN SUPPORT OF MOTION TO ENTER DEFAULT

John D. Kovac, of full age, being duly sworn upon his oath according to law, deposes and says:

1. I am the attorney of record with regard to the above captioned matter and I am fully familiar with the facts and circumstances surrounding the claim.
2. I filed a Claim Petition in the matter captioned above for Mr. Hendrix on August 27, 2006. Notice was mailed out by the Department of Labor on September 14, 2006. See Exhibits A and B respectively.
3. This case was on for pretrial on October 26, 2006, and I have sent Mr. Hendrix for permanency exams. To my knowledge, Respondent has taken no action on this case. No Answer has been filed despite the fact that the Claim Petition was filed and Respondent was given notice of filing over six months ago.
4. I have reached by phone Elvis International Inc.'s corporate headquarters in Memphis, Tennessee, and have been directed by an operator to several individuals in Elvis' legal department with whom I have left voice messages and received no response. I mailed a letter dated March 14, 2007 to this corporate headquarters via Certified U.S. Mail, again requesting information for Elvis' compensation carrier and advising that if I received no response within a period of seven days that a Motion to Enter Default would be filed. Fifteen days have passed, and I have received no response. See Exhibit C.
5. Petitioner hereby asks that a default be entered against Respondent and that a hearing to prove damages be set.
6. N.J.S.A. 34:15-52 requires that an Answer be filed "within 30 days after service of the notice, unless the Division for good cause shall grant further time. . . ." There presently appears to be no good cause as to why a default should not be granted.

I hereby certify that the foregoing statements by me are true to the best of my knowledge. If any of the foregoing statements are willfully false, I understand that I am subject to punishment.

_____

John D. Kovac March 30, 2007

Certification of Attorney in Support to Set Trial Date

THE LAW OFFICE OF JOHN D. KOVAC
142 LIVINGSTON AVENUE
NEW BRUNSWICK, NJ 08901
PHONE: (732) 249-9990 FAX: (732) 247-9991

SS NO. 123-45-6789 JIMMY PAGE, Petitioner, vs. JACK WHITE INCORPORATED, Respondent	NEW JERSEY DEPARTMENT OF LABOR AND INDUSTRY DIVISION OF WORKERS' COMPENSATION CP NOS. 2005-0001, 002, 003, and 004 DISTRICT OFFICE: NEW BRUNSWICK **CERTIFICATION OF JOHN D. KOVAC, ESQ. IN SUPPORT OF MOTION TO SET TRIAL DATE**

John D. Kovac, of full age, being duly sworn upon her oath according to law, deposes and says:

1. I am the attorney of record with regard to the above captioned matter and I am fully familiar with the facts and circumstances surrounding the claims listed above.
2. This case involves various psychiatric claims against the Respondent. On October 3, 2005, I provided the Respondent with interrogatory answers and all medical records in my file, and I asked in writing counsel for Respondent, Mick Taylor, Esq., to schedule permanency examinations for Mr. Page. Mr. Taylor then requested medical authorizations, which were provided on January 5, 2006.
3. Petitioner was examined by Dr. Johnson on October 21, 2005, and a report dated December 5, 2005 was provided to me by Dr. Johnson. Petitioner was seen again on July 7, 2006 by Dr. Wong because Dr. Johnson had left Sall/Myers Medical Group. Dr. Wong provided me with a report dated September 5, 2006, which found "major depressive disorder with psychotic symptoms with occupational exposure aggravating underlying condition with permanent psychiatric impairment estimated at 66 2/3% of total."
4. I communicated with Mr. Taylor on at least three occasions this year and on these occasions I or my legal assistant asked him to schedule permanency examinations for

Mr. Page. As of the date of this Certification, however, Respondent has not set up permanency examinations.

5. I respectfully ask this Court to set a firm trial date. This would enable the case to move forward and allow the Respondent, if it wishes, to obtain permanency examinations and make a good faith effort to either settle the case or prepare for trial.

I hereby certify that the foregoing statements by me are true to the best of my knowledge. If any of the foregoing statements are willfully false, I understand that I am subject to punishment.

_____

John D. Kovac, Esq.

Dated: 9-20-06

Order

State of New Jersey
Department of Labor
DIVISION OF WORKERS' COMPENSATION

ORDER
☐ JUDGMENT ☐ DISCONTINUANCE
☐ APPROVING SETTLEMENT ☐
☐ DISMISSAL

CASE NO.'S _____
District Office: _____

PETITIONER
SOCIAL SECURITY NUMBER
NAME | AGE
ADDRESS (Including County)

ATTORNEY FOR PETITIONER
FEDERAL EMPLOYER'S IDENTIFICATION NUMBER
NAME
ADDRESS
APPEARING

VS

RESPONDENT
NAME
ADDRESS (Including County)

ATTORNEY FOR RESPONDENT
NAME
ADDRESS (Including County)
APPEARING

INSURANCE CARRIER
NAME (Indicate if Not Covered or If Self-Insured)

DATE OF ACCIDENT:
OR
OCCUPATIONAL EXPOSURE:
DESCRIBE (Briefly)

Weekly Wages _____ Rate(s) _____ / _____

IF RE-OPENED PETITION, INDICATE FOR LAST AWARD: DATE: _____ PERMANENT: $ _____ TEMP: $ _____

This matter having come on before the Court on this _____ day of _____, 19____:

☐ **ORDER FOR JUDGMENT:**
It appearing that the Petitioner suffered a compensable injury on the above mentioned date while in the employ of respondent; it is Ordered and Adjudged that petitioner be awarded compensation benefits, payable as indicated on Page 2.

☐ **ORDER APPROVING SETTLEMENT:**
The parties having settled the matter and a finding by the Court having been made that the terms of the settlement are fair and just; it is Ordered that this settlement be approved and the petitioner be paid as indicated on Page 2.

☐ **ORDER FOR DISMISSAL**
This matter having come on for hearing upon the respondent's motion for Dismissal which was made and duly served and there being good cause shown, the claim petition herein is hereby dismissed for
☐ 1. Lack of Prosecution
☐ 2.

☐ **ORDER FOR DISCONTINUANCE**
This matter having come on before the Court and the Court having received evidence that this matter should be discontinued and for good cause shown. It is ORDERED AND ADJUDGED that this matter be discontinued for the following reasons:

☐ **It is FURTHER ORDERED that the payment indicated on Page 2 be made a part of the Order for Discontinuance for petitioner's disability. (Percentages and members involved.)**

☐

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE RECEIPT OF A COPY. (Sign if applicable)

STENO FEE _____ BY _____

_____
(PETITIONER'S ATTORNEY)

_____
PETITIONER *(Where Applicable)*

_____
(RESPONDENT'S ATTORNEY)

_____
(JUDGE OF COMPENSATION) (DATE)

_____
NAME (PRINT OR TYPE)

State of New Jersey
Department of Labor
DIVISION OF WORKERS' COMPENSATION

(CONTINUATION)
ORDER
- ☐ JUDGMENT
- ☐ APPROVING SETTLEMENT
- ☐ DISMISSAL
- ☐ DISCONTINUANCE
- ☐ OTHER

CASE NO.'S _____

_____

_____

D.O.

Permanent Disability *(Describe Percentages. Nature and extent of Disability, and Members Involved)*

DISABILITY AWARDED

TEMPORARY: _____ Weeks at $ _____ = $ _____ less $ _____ paid = Balance due $ _____

PERMANENT: _____ Weeks at $ _____ = $ _____ less $ _____ paid = Balance due $ _____

Medical Bills *(Doctors and/or Institutions)*

☐ ORDER FOR DISTRIBUTION ATTACHED

☐ ADDENDUM ATTACHED

MEDICAL FEE ALLOWED *(Expert and/or Testimonial)*	TAX IDENTIFICATION NUMBER	TOTAL AMT. ALLOWED	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT

INTERPRETER	TOTAL	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
ATTORNEY (S) FEE	TOTAL	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
STENOGRAPHIC SERVICE	TOTAL	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
MISCELLANEOUS FEES	TOTAL	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT

WE HEREBY CONSENT TO THE ENTRY AND
FORM OF THIS ORDER AND ACKNOWLEDGE A COPY.

_____
(JUDGE OF COMPENSATION) (DATE)

_____
(PETITIONER'S ATTORNEY)

_____
(RESPONDENT'S ATTORNEY)

_____
PETITIONER *(Where Applicable)*

WC(DO)-100.1 (R-11-02)

Order Approving Settlement with Dismissal

State of New Jersey Department of Labor Division of Workers' Compensation PO Box 381 Trenton, New Jersey 08625-0381	**ORDER APPROVING SETTLEMENT WITH DISMISSAL N.J.S.A. 34:15-20**	CASE No. _____ D.O. _____

PETITIONER

SOCIAL SECURITY NUMBER

NAME

ADDRESS (Including County)

VS

RESPONDENT

NAME

ADDRESS (including County)

☐ FEDERAL EMPLOYER'S IDENTIFICATION NUMBER

OR

☐ NEW JERSEY REGISTRATION NUMBER

ATTORNEY FOR PETITIONER

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER (If none insert Social Security No.)

NAME

ADDRESS

TELEPHONE (Area Code)

ATTORNEY FOR RESPONDENT

INSURANCE CARRIER NAME (Indicate if Self-Insured or if Not Covered)

NAME

ADDRESS

TELEPHONE (Area Code)

This is a lump sum settlement between the parties in the amount of $ _____

(dollars)

pursuant to N.J.S.A. 34:15-20 which has the effect of a dismissal with prejudice, being final as to all rights and benefits of the petitioner and is a complete and absolute surrender and release of all rights arising out of this/these claim petition(s). The payment hereunder shall be recognized as payments of workers' compensation benefits for insurance rating purposes only.

☐ The parties agree that this settlement does not contemplate a complete and absolute surrender and release of any and all rights by the petitioner's dependents as defined by N.J.S.A. 34:15-13 arising out of this/these claim petition(s).

☐ Order For Distribution Attached

ALLOWANCES

MEDICAL FEES & COSTS	TOTAL ALLOWED	BY PETITIONER	BY RESPONDENT
ATTORNEY FEES			
STENO FEES			

STENOGRAPHIC SERVICE _____

REASON FOR SEC. 20 _____

We hereby consent to the entry of this Order and acknowledge receipt of it:

ATTORNEY FOR PETITIONER _____

ATTORNEY FOR RESPONDENT _____

PETITIONER _____

After considering all the circumstances, I find this settlement fair and just.

DATE _____ By _____

JUDGE OF COMPENSATION

OTHERS, WHERE APPLICABLE: _____

_____

WC(DO)-370 (R-3-01)

OFFICE COPY

State of New Jersey Department of Labor Division of Workers' Compensation PO Box 381 Trenton, New Jersey 08625-0381	**ORDER APPROVING SETTLEMENT WITH DISMISSAL** **N.J.S.A. 34:15-20** **Page 2**	Case No. D.O.

☐ The parties agree that this settlement does contemplate a complete and absolute surrender and release of any and all rights by the petitioner's dependents as defined by N.J.S.A. 34:15-13 arising out of this/these claim petition(s).

As the spouse or other person who may be defined as a dependent under N.J.S.A. 34:15-13 or the guardian or representative of such a person, I (we) consent to the entry of this order and recognize that this agreement is a complete and absolute surrender of any rights that I (we) may have pursuant to N.J.S.A. 34:15-13, should petitioner die as a result of the injuries, conditions, or exposures alleged in this/these claim petition(s).

Name	Date	Name	Date
Name	Date	Name	Date
Name	Date	Name	Date

I certify that the above is (are) the only individual(s) who is (are) dependent(s) as defined in N.J.S.A. 34:15-13 at the present time.

Petitioner Date

Petitioner's Attorney

Petitioner	Judge of Compensation
Respondent's Attorney	Name (Print or type)

WC(DO)-S70.1 (11-99)

OFFICE COPY

No Insurance Case

WC(DO)-339 (R-10-97)
STATE OF NEW JERSEY
DEPARTMENT OF LABOR
DIVISION OF WORKERS' COMPENSATION

NO INSURANCE CASE

PETITIONER				
CLAIM PETITION NO.	SOCIAL SECURITY NO.	DATE OF ACCIDENT		
NAME:				
ADDRESS:	CITY	ZIP	COUNTY	
ATTORNEY:				

RESPONDENT			
NAME:		☐ INDIVIDUAL ☐ PARTNERSHIP ☐ CORPORATION	
ADDRESS:	CITY	ZIP	COUNTY
OWNERSHIP: *(TRADE NAME)*		STATE OF INCORPORATION:	
NAME *(PARTNERS)* · *(CORP. OFFICERS)*	TITLE	ADDRESS	
NAME	TITLE	ADDRESS	
NAME	TITLE	ADDRESS	
NATURE OF BUSINESS		NUMBER OF EMPLOYEES	
ATTORNEY			

I find from the evidence presented to me that the respondent did not carry Workers' Compensation Insurance, nor did he qualify as a self-insurer pursuant to R.S. 34:15-7, et seq., and that this failure persisted from at least _____ to _____.

On the _____, the New Jersey Compensation Rating and Inspection Bureau, 60 Park Place, Newark, New Jersey confirmed that according to their records the respondent failed to carry Workers' Compensation insurance or qualify as a self-insurer pursuant to R.S. 34:15-7 et seq. for the period aforementioned.

I, having found respondent liable for compensation as set forth in this judgment, and that said respondent has failed to secure the payment of compensation with respect thereto in accordance with Section 34:15-71 or Section 34:15-72, an assessment of $150.00 and an additional assessment of $_____ representing 15% of the award hereunder is made against the respondent. Said monies to be paid into the Fund for uninsured respondents created hereunder in accordance with section 34:15-120.1 et seq.

The above assessments are hereby entered against the respondent individually and if a corporation against said corporation and its officers individually, jointly and severally.

AWARD:

Temporary: _____ Permanent: _____

_____
(Signature) Judge of Compensation Date

Original - Director
Copy - District Office File

Bench Referral from Division of Workers' Compensation to New Jersey Division of Vocational Rehabilitation Services

BENCH REFERRAL
FROM DIVISION OF WORKERS' COMPENSATION
TO NEW JERSEY DIVISION OF VOCATIONAL REHABILITATION SERVICES

CP Number_____

Social Security Number _____

Petitioner's Name	Date of Birth
Address	
Employer's Name	
Address	

INSURANCE CARRIER

Name *(Indicate if NOT covered or if Self-Insured)*
Date of Accident or Occupational Exposure
Describe *(Briefly)*

Has Award Been Made ❑ Yes ❑ No

Source of Income WC ❑ SSDI ❑ SSI ❑ VA ❑

Other (Be Specific) _____

_____

Employment Status _____

❑ Unemployed

❑ Employment at Substantially Less Skill

❑ Employment at Substantially Less Salary

❑ Present Employment May Aggravate Disability

Other Significant Date _____

_____

A report is to be sent to me with respect to the decision of the Division of Vocational Rehabilitation Services as to whether the petitioner is a candidate for rehabilitation, and if so, the recommended program.

_____
Judge of Compensation

Please refer to one of our statewide local Vocational Rehabilitation Offices.

cc: Department of Labor Vocational Rehabilitation Services

WC(DO)-37 (R-10-97)

Application for Informal Hearing

APPLICATION FOR INFORMAL HEARING

COMPLETE AND RETURN TO

NEW JERSEY DEPARTMENT OF LABOR
DIVISION OF WORKERS' COMPENSATION
PO BOX 381
TRENTON, NEW JERSEY 08625-0381

PLEAE PRINT
OR TYPE

Social Security No. _____
(Must be 9 Digits)

Employee _____ Phone No. _____ Birth Date _____

Address _____ City _____ Zip Code _____ County _____

Employer _____

Address _____ City _____ Zip Code _____ County _____

Insurance Company _____ Date of Accident _____

Address _____ City _____ Zip Code _____

Name of the Insurance Company can be obtained either from the Employer or by writing to the
Compensation Rating and Inspection Bureau
60 Park Place, Newark, New Jersey 07102
(BE SURE TO INCLUDE SELF-ADDRESSED STAMPED ENVELOPE)

Type of Injury _____

Hearing Requested by _____

COMPLETE ONE:
NEW JERSEY EMPLOYER REGISTRATION NUMBER _____ OR FEDERAL EMPLOYER IDENTIFICATION NUMBER _____

WERE YOU ELIGIBLE FOR MEDICAID BENEFITS AT THE TIME OF THE ACCIDENT? ☐ YES ☐ NO
DID YOU BECOME ELIGIBLE FOR MEDICAID BENEFITS AFTER THE ACCIDENT? ☐ YES ☐ NO
YOU ARE ADVISED THAT MEDICAID PAYMENTS RELATED TO THE ACCIDENT ARE TO BE REPAID IN ACCORDANCE WITH N.J.S.A. 30:40-1, et seq.

IMPORTANT: "This proceeding will not prevent the Statute of Limitations from expiring FAILURE TO FILE A FORMAL PETITION within two years of the date of accident or the last payment and/or authorized medical treatment by the employer's insurance carrier, can bar any action on a claim filed after that time."

TO INSURE IMMEDIATE PROCESSING,
PLEASE COMPLETE THIS FORM IN FULL OR IT WILL BE RETURNED

_____
Signature *Date*

The Privacy Act, 5 U.S.C. § 552a, the Social Security Act, 42 U.S.C. § 405, and *N.J.S.A.* 34:15-1 *et seq.* authorize the Division of Workers' Compensation to request that the Petitioner supply the Division with his or her Social Security number for record keeping purposes and cross-matches with the Social Security Administration, Workforce New Jersey, Temporary Disability Insurance and any other proper public purpose.

WCICF)-66 (R-8-98)

Central Office Record of Informal Proceedings

WC(CF)-11 (8-92)

STATE OF NEW JERSEY
DEPARTMENT OF LABOR
DIVISION OF WORKERS' COMPENSATION

RECORD OF INFORMAL HEARING

1. EMPLOYEE'S NAME and ADDRESS COUNTY	2. SOCIAL SECURITY NUMBER 3. DATE OF ACCIDENT 4. DATE OF BIRTH
5. EMPLOYER'S NAME and ADDRESS	6. DISTRICT OFFICE PHONE NO. 7. HEARING REQUESTED BY: EMPLOYEE'S ATTORNEY:
8. CARRIER'S NAME and ADDRESS	
9. NATURE OF DISABILITY	10. DATE OF FILING

HEARING DATE	JUDGE	APPEARANCES	RESULTS
		❑ PETITIONER ❑ ATTY. ❑ RESPONDENT	
HEARING DATE	JUDGE	APPEARANCES ❑ PETITIONER ❑ PET. ATTY ❑ RESPONDENT	
HEARING DATE	JUDGE	APPEARANCES ❑ PETITIONER ❑ PET. ATTY. ❑ RESPONDENT	
HEARING DATE	JUDGE	APPEARANCES ❑ PETITIONER ❑ PET ATTY. ❑ RESPONDENT	

Permanent Disability (Describe Percentage, ... extent of Disability, ...)

❑ PETITIONER ADVISED RE: STATUTE OF LIMITATIONS

DISABILITY AWARDED

TEMPORARY: _____ Weeks at $ _____ = $ _____ less $ _____ paid = Balance due $ _____

PERMANENT: _____ Weeks at $ _____ = $ _____ less $ _____ paid = Balance due $ _____

MEDICAL BILLS ALLOWED (Expert and/or Testimonial)	TOTAL AMT. ALLOWED	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
ATTORNEY FEE	TOTAL	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT

❑ DISCONTINUED ❑ CLAIMANT REFUSED ❑ CLAIMANT FAILED TO APPEAR ❑ OTHER

❑ DISMISSED ❑ PREVIOUS PAYMENT ADEQUATE ❑ NO COMPENSABLE ACCIDENT ❑ NO JURISDICTION ❑ NO DISABILITY ❑ OTHER

❑ EMPLOYER ❑ EMPLOYEE ❑ JUDGE

CENTRAL OFFICE

Second Injury Fund Verified Petition

State of New Jersey Department of Labor DIVISION OF WORKERS' COMPENSATION Office of Special Compensation Funds	SECOND INJURY FUND VERIFIED PETITION SCF-161 (R 10-03)	C.P. No(s): D.O.:

PETITIONER	Social Security Number: Name: Address (including county):	PETITIONER ATTY	Federal Employer Identification Number: Name Address: Phone:
RESPONDENT	Name: Address (Including county):	INSURANCE CARRIER	Name (Indicate If Not Covered Or Self-Insured): Address:

TO THE COMMISSIONER OF LABOR OF THE STATE OF NEW JERSEY:

Petitioner hereby alleges eligibility for benefits from the Second Injury Fund pursuant to N.J.S.A. 34:15-95 et seq., and respectfully states the following:

Date of Birth:	Age:	Sex:	Marital Status:	Number of Dependents: *(If one or more, see Page 3)*
Educational Background:			Special Skills:	
Employment History: (List all former employers, dates of employment and job descriptions; use additional sheets as required.				
Pre-Existing Medical Conditions: (List physical and/or psychiatric conditions which pre-existed your last compensable accident of exposure or dates of onset)				

Description of Last Compensable Accident or Occupational Disease Exposure:

Brief Description of Treatment Received For Last Compensable Injury or Disease:

Current Medical Conditions: (List physical and/or psychiatric conditions which have been caused, aggravated or accelerated by the last compensable accident or exposure or dates of onset

If you have initiated an action at law against a third party for all or any portion of the injury or disease you sustained as a result of your last compensable injury or disease, please provide the name and address of such third party, the status of your action, and, if concluded, the gross settlement amount of such action.

Provide below your current monthly income from the following sources:		
Social Security Retirement:	$	If receiving Social Security retirement benefits, provide the date of your entitlement:
Social Security Disability:	$	If receiving Social Security Disability benefits, provide the date of your entitlement:
Auxiliary Social Security:	$	If receiving Auxiliary Social Security, provide the date of your entitlement:
Black Lung Benefits:	$	If receiving Black Lung benefits, provide the date of your entitlement:
Retirement Pension Benefits:	$	If receiving Retirement Pension, provide the date you began receiving same:
Disability Retirement Benefits:	$	If receiving Disability Retirement Benefits, provide the date you began receiving same:
Veterans Administration Benefits:	$	If receiving Veterans Administration Benefits, provide the date you began receiving same:
Temporary Disability Benefits:	$	If receiving Temporary Disability Benefits, provide the dates of such benefits:

Please provide the names and dates of birth of all dependents cited on Page 1.

Prior Compensation Awards: (Please list all claim petition numbers, dates of injury or last exposure, percentages of disability and body parts and attach any copies of Judgments in your possession:

I believe that I am totally and permanently disabled as the result of a combination of my pre-existing physical and/or psychiatric conditions and my last compensable injury or disease. Further, I believe that the exclusionary provisions of N.J.S.A. 34:15-95 do not apply to my case. Accordingly, I hereby petition for Second Injury Fund benefits under the provisions of N.J.S.A. 34:15-95, *et seq*. Further, I authorize the release of information concerning benefits and/or wages by the Social Security Administration, insurance carriers, employers and/or union organizations to the Office of Special Compensation Funds for investigation of matters related to this petition and any resulting benefits that I may receive. Therefore I hereby, on my oath, affirm that I have read the foregoing and am familiar with the contents thereof and that the matters set forth are true to the best of my knowledge and belief.

_____ _____

(Petitioner Signature) *(Date)*

STATE OF NEW JERSEY

COUNTY OF _____ **SS:**

Subscribed and sworn before me on this _____ **day of**

_____, _____.

_____

The Privacy Act, 5 U.S.C. §522a, the Social Security Act, 42 U.S.C. § 405, and N.J.S.A. 34:15-1 *et seq*. authorize the Division of Workers' Compensation to request that the Petitioner supply the Division with his or her Social Security number for record keeping purposes and cross-matches with the Social Security Administration, Workforce New Jersey, Temporary Disability Insurance and any other proper public purpose.

NOTE: Attach copies of all treating physicians' reports in your possession and proposed expert witnesses' reports. Pursuant to Division Rules, do not attach hospital records, except excerpts.

Decision of Eligibility

State of New Jersey Division of Workers' Compensation Office of Special Compensation Funds	SCF-8 (01-95) **DECISION OF ELIGIBILITY** – Second Injury Fund Application –

01. Petitioner Social Security Number:		06. Petitioner Attorney F.E.I.N.:	
02. Petitioner Name:	03. Age:	07. Petitioner Attorney:	
04. Petitioner Address:		08. Petitioner Attorney Address:	
05. D.A.G. Appearing for Second Injury Fund:		09. Appearing for Petitioner:	
10. Fund Application Filed (date):		13. Vicinage:	
11. Claim Petition Number:		14. Date of Hearing:	
12. Consolidated with:		15. Judge of Compensation:	

Upon the proofs presented and the stipulations made, I find and determine the following facts:

LAST COMPENSABLE ACCIDENT OR EXPOSURE

16. Claim Petition Number:		19. Employer Name:	
17. Date of Accident/Exposure:		20. Employer Address:	
18. Weekly Gross Wages:			
21. Temporary Disability Award:			
22. Permanent Disability Award:			
23. Date of Totality:		24. Date of last payment of compensation:	
25. Description of injury and disability:			

PRE-EXISTING COMPENSABLE DISABILITIES

1.	a. Date of Injury:	b. Claim Petition Number:
	c. Employer name and address:	
	d. Temporary Disability Award:	
	e. Permanent Disability Award:	
	f. Description of Injury and Disability:	
	g. Hearing Date:	h. Hearing Official:

2.	a. Date of Injury:	b. Claim Petition Number:
	c. Employer name and address:	
	d. Temporary Disability Award:	
	e. Permanent Disability Award:	
	f. Description of Injury and Disability:	
	g. Hearing Date:	h. Hearing Official:

3.	a. Date of Injury:	b. Claim Petition Number:
	c. Employer name and address:	
	d. Temporary Disability Award:	
	e. Permanent Disability Award:	
	f. Description of Injury and Disability:	
	g. Hearing Date:	h. Hearing Official:

(Provide like data on additional sheets as required)

PRE-EXISTING NON-COMPENSABLE DISABILITIES

1.	a. Date of Onset:	b. Origin (if known): ☐ Congenital ☐ Accident/Injury
	c. Description:	
2.	a. Date of Onset:	b. Origin (if known): ☐ Congenital ☐ Accident/Injury
	c. Description:	
3.	a. Date of Onset:	b. Origin (if known): ☐ Congenital ☐ Accident/Injury
	c. Description:	
4.	a. Date of Onset:	b. Origin (if known): ☐ Congenital ☐ Accident/Injury
	c. Description:	
5.	a. Date of Onset:	b. Origin (if known): ☐ Congenital ☐ Accident/Injury
	c. Description:	
6.	a. Date of Onset:	b. Origin (if known): ☐ Congenital ☐ Accident/Injury
	c. Description:	

(Provide like data on additional sheets as required)

PETITIONER PERSONAL DATA

1. Date of Birth:	2. Sex: ☐ Male ☐ Female

3. Date of last employment:	4. Occupation:	5. Wages:

6. Employer name and address:

7. Education: (check one)	8. Special occupational skills:
☐ Some grade/junior high school ☐ Completed junior high school ☐ Some high school ☐ Completed high school ☐ Some college ☐ Associate Degree ☐ Bachelors Degree ☐ Graduate School ☐ Graduate Degree	

9. Rehabilitation potential:

10. Social Security status:

Benefits Commenced: ___/___/___ Current Monthly Rate: $_____ Reverse Offset? ☐ Yes ☐ No

(If Reverse Offset taken under N.J.S.A. 34:15-95.5, attach completed Form SCF-16)
(Second Injury Fund reserves right to offsets as prescribed under N.J.S.A. 34:15-95.5 where Social Security is payable to Petitioner. Petitioner shall promptly notify the Fund where such benefits are awarded.)

11. Third Pary Action:

If third party liability suit is pending, provide the name and address of the attorney representing this petitioner, if different than workers' compensation attorney.

_____

_____

_____

(Respondent and Second Injury Fund reserve their rights to credits under N.J.S.A. 34:15-40.)

12. Remarks:

DECISION

In accordance with the provision of the New Jersey Workers' Compensation Law (N.J.S.A. 34:15-1 et seq.), I find as follows:

1. Petitioner is totally and permanently disabled.

2. The total and permanent disability is not due solely to the petitioner's last compensable accident or occupation disease, but is due to the combined effects of the petitioner's previous disabilities and the last compensable accident or occupational disease and is clearly within the provisions of the above cited statute.

3. Accordingly, it is determined that the petitioner receive benefits from the Second Injury Fund as follows:

   a. _____ weeks, being the difference between 450 weeks and the _____ weeks of permanent disability compensation previously received.

   b. Awarded base weekly rate is $_____.

   c. Payable weekly base rate is $_____. (If third-party or other credits are involved, please explain below.)

   d. Payment to begin upon the expiration of payment of compensation from the last compensation award, but in any event, not sooner than the date of filing of the petition for benefits from said Fund.

      Commencement date for said payments is _____.

   e. Upon the expiration of the 450-week period, benefits to continue in accordance with the provisions of N.J.S.A. 34:15-12(b) as amended.

_____
Judge of Compensation

_____
Date

Explanation of #3.c., above if required:

(Attach additional sheets as needed)

Application for Commutation

WC(1)-60 (R-7-94) State of New Jersey Department of Labor **DIVISION OF WORKERS' COMPENSATION**	**APPLICATION FOR COMMUTATION** (WC-S-7)	C.P. NO. _____ DATE FILED: _____

APPLICANT

SOCIAL SECURITY NUMBER:
NAME:
ADDRESS (Including County)
TELEPHONE NO.

ATTORNEY FOR APPLICANT

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER:
NAME:
ADDRESS:

EMPLOYER

NAME:
ADDRESS (Including County)

INSURANCE CARRIER

NAME: (Indicate If Not Covered or If Self-Insured):
ADDRESS
CLAIM NO.

TYPE OF HEARING	PLACE OF HEARING	HEARING OFFICIAL	DATE OF JUDGMENT	DATE OF ACCIDENT
☐ Formal ☐ Informal				

SEX	AGE	MARITAL STATUS	CITIZEN
			☐ Yes ☐ No

DEPENDENTS NAMES	AGES	SEX

REGULAR OCCUPATION	PRESENT OCCUPATION	LOCATION OF PRESENT EMPLOYMENT
WEEKLY WAGE	**TOTAL FAMILY INCOME**	**FIXED FAMILY NON-DEFERABLE EXPENSES**
$	$	$

Period of Temporary: _____ to _____ or _____ weeks, or $ _____

Period of Permanency Paid: _____ % of _____ or _____ weeks, or $ _____

Balance Due on Award: _____ Amount Requested for Commutation: _____

REASON FOR REQUEST FOR COMMUTATION: (Use additional sheets if necessary)
PLEASE SUBMIT ANY COMMITMENTS TO SUBSTANTIATE YOUR REQUEST.

_____
Signature of Applicant

(FOR DIVISION OF WORKERS' COMPENSATION USE ONLY)

Report of Investigation or Remarks (Attach Rider, if necessary)

(FOR DEPARTMENT OF LABOR USE ONLY)

☐ APPROVED

☐ DISAPPROVED_____ Date: _____

JUDGE

Decision of Dismissal

STATE OF NEW JERSEY DEPARTMENT OF LABOR DIVISION OF WORKERS' COMPENSATION	DECISION OF DISMISSAL	SECOND INJURY FUND APPLICATION District Office _____

Petitioner

SOCIAL SECURITY NUMBER

NAME | AGE

ADDRESS

Attorney for Petitioner

FEDERAL EMPLOYER'S IDENTIFICATION NO.

NAME

ADDRESS

APPEARING

DEPUTY ATTORNEY GENERAL APPEARING FOR SECOND INJURY FUND

SECOND INJURY FUND APPLICATION FILED (date):

CONSOLIDATED WITH:

(LIST ALL C.P. NUMBERS)

After the conclusion of the hearing of this Second Injury Fund Application, I found that: (check appropriate block)

a. ( ) Petitioner is totally disabled as a consequence of the last compensable injury.

b. ( ) Petitioner is not totally and permanently disabled.

c. ( ) Petitioner has accepted a Section (N.J.S.A. 34:15-20) 20 settlement.

d. ( ) Petitioner has failed to prosecute this case.

e. ( )

My findings and conclusions are more fully set forth in my oral opinion and it is ORDERED that this Second Injury Fund Application be dismissed with prejudice.

_____
Judge of Compensation (dated)

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE RECEIPT OF A COPY. (Sign if applicable)

_____
(Petitioner's Attorney)

_____
Petitioner (where applicable)

_____
(Deputy Attorney General)

Discrimination Complaint



State of New Jersey
Department of Labor
Office of Special Compensation Funds
P O Box 399
Trenton, New Jersey 08625-0399

COMPLAINT OF DISCRIMINATION
N.J.S.A. 34:15-39.1 et seq.

The New Jersey Workers' Compensation Law (N.J.S.A. 34:15-1 et seq.) provides that it shall be unlawful for an employer to discharge or otherwise discriminate against an employee because that employee has filed or has attempted to file a claim for workers' compensation benefits or has testified or has planned to testify in any proceeding before the Division of Workers' Compensation. This complaint is to be completed by an employee who alleges such discrimination.

01. Your Name: (Last) (First) (Middle)	02. Your Social Security Number:
03. Your complete home address: (Street Number - No PO Boxes) (City) (County) (State) (Zip Code)	
04. Your Home Telephone Number:	05. If Employed, your Daytime Telephone Number:

06. Nature of Complaint *(Check One)*:

a. ☐ I feel that I was discriminated against because of my filing or attempting to file a workers' compensation claim.

b. ☐ I feel that I was discriminated against because of my testimony or plans to testify in a workers' compensation proceeding.

07. Name of Employer:	08. New Jersey Employer Identification Number (if known):
09. Complete Employer Address: (Street Number - No PO Boxes) (City) (County) (State) (Zip Code)	
10. Employer Agent Name:	11. Employer Agent Telephone:

COMPLETE ITEMS #12 THROUGH #20 ONLY IF YOU HAVE CHECKED BOX "a" IN ITEM #06. ABOVE

12. Name of Employer's Workers' Compensation Insurance Carrier:	13. Have you filed a claim with this carrier? ☐ No ☐ Yes. Claim #:_____
14. Have you filed a Claim with the NJ Div. of Workers' Compensation? ☐ No ☐ Yes. Claim Petition #:_____	15. Date of Accident/Illness:
16. Your Occupation at Time of Accident/Illness:	17. Nature of Your Disability:
18. Your Gross Weekly Wages at Time of Accident/Illness: $_____ Per Week	
19. Your Job Duties at Time of Accident/Illness:	20. Are You Currently Able to Perform These Duties? *(Check One)* ☐ Yes ☐ No

(CONTINUED ON BACK)

SCF-4 (R 7-98)

(CONTINUED FROM FRONT)

COMPLETE ITEMS # 21 THROUGH #26 ONLY IF YOU HAVE CHECKED BOX "b" IN ITEM #6	
21. Full Name of Petitioner in Workers' Compensation Case:	22. Claim Petition Number:
23. Did You Testify in this Case? *(Check One)* ☐ No ☐ Yes *(If Yes, Complete Item #24)*	24. Date and Location of Testimony:
25. Are You Scheduled to Testify in this Case? *(Check One)* ☐ No ☐ Yes *(If Yes, Complete Item #26)*	26. Scheduled Date and Location of Testimony:

27. Date of Termination or Other Personnel Action:	29. If Currently Employed, Employer's Name and Address
28. Reason Give by Employer for Action:	30. If Employed, Your Current Weekly Gross Wages: $_____ Per Week

31. State here and/or on attached sheets, the reason(s) for your alleging discrimination:

State of New Jersey, County of _____

_____, of full age, being duly sworn according to law, on his/her oath deposes and says: That he/she is the complainant named in the foregoing complaint; that he/she has read the same; and that the matters and thing therein set forth are true according to the best of his/her knowledge and belief.

_____
(Complainant Signature)

_____

Subscribed and sworn before me this _____ day of _____, _____.

Employer's First Report of Accidental Injury of Occupational Illness

STATE OF NEW JERSEY
EMPLOYER'S FIRST REPORT OF ACCIDENTAL INJURY OR OCCUPATIONAL ILLNESS

1. CARRIER NAME, ADDRESS	1A. POLICY NUMBER	1B. EFFECTIVE DATE	EXPIRATION DATE
	2. DATE OF INJURY OR ILLNESS	TIME OF DAY ____ a.m. ____ p.m.	SEND REPORT IMMEDIATELY AFTER INJURY DO NOT WAIT FOR DOCTOR'S REPORT
	MAIL DUPLICATE (YELLOW) TO		
	O.S.H.A. CASE NUMBER		

THIS FORM (IN QUADRUPLICATE) MUST BE COMPLETED IN THE FOLLOWING CASES ONLY:
(1) FOR EVERY ACCIDENTAL INJURY OF ILLNESS WHICH SHALL CAUSE A LOSS OF TIME FROM REGULAR DUTIES BEYOND THE WORKING DAY OR SHIFT INCLUDING SUNDAY OR ANY DAY ON WHICH EMPLOYEE WOULD USUALLY WORK, OR
(2) WHICH SHALL REQUIRE MEDICAL TREATMENT BEYOND ORDINARY FIRST AID, OR
(3) FOR THE OCCURRENCE OF AN OCCUPATIONAL ILLNESS WHETHER OR NOT TIME IS LOST.
COMPLETE THIS FORM IN ACCORDANCE WITH THE INSTRUCTIONS ON BACK OF THIS WHITE SHEET. MAIL IT PROMPTLY AS POSSIBLE. IN ALL CASES NO LATER THAN THE START OF THE SECOND (2nd) WORK DAY AFTER INJURY OCCURRED, IN CASE OF A FATAL OR SERIOUS INJURY (one that requires hospitalization) COMPLETE AND MAIL THIS IMMEDIATELY.

PLEASE PRINT OR TYPE
SEE DETAILED INSTRUCTIONS ON REVERSE SIDE (White Sheet)

☐ New Jersey Registration No. or ☐ Federal Employer Identification No.

EMPLOYER

3. FIRM NAME	4.	5. S.I.C. NO.	6. NO. of EMPLOYEES
7. MAILING ADDRESS (Please include City, Zip)	8. TELEPHONE NO. (Area Code)	9. NATURE OF BUSINESS	
	LOCATION, IF DIFFERENT FROM MAIL ADDRESS		

EMPLOYEE

10. NAME: LAST NAME - FIRST NAME - MIDDLE NAME	11. SOCIAL SECURITY NO.	12. Date of Birth Mo. Da. Yr.	13. AGE	14. SEX ☐ Male ☐ Female
15. HOME ADDRESS (Number and Street, City, Zip, County)	16. OCCUPATION (Regular Job Title)	17. DEPARTMENT WHERE EMPLOYED?		
18. TELEPHONE NO. (Area Code) / 19. WAGES Weekly $____ Hourly $____	20. NO. of HRS. (Regular work day)			

INJURY OR ILLNESS

21. WHERE DID ACCIDENT OR EXPOSURE OCCUR? (Address, City, County)

22. WHAT WAS EMPLOYEE DOING WHEN INJURED? (Be specific) (Please use separate sheet if necessary)

23. OBJECT OR SUBSTANCE, MACHINE OR TOOL THAT DIRECTLY INJURED EMPLOYEE

24. NATURE OF INJURY OR ILLNESS AND PART OF BODY AFFECTED (Formal Diagnosis Not Required)

25. DID EMPLOYEE DIE? ☐ Yes, date ____ ☐ No	26. WAS EMPLOYEE UNABLE TO WORK ON ANY DAY AFTER INJURY? ☐ Yes, date last worked ____ ☐ No	27. HAS EMPLOYEE RETURNED TO WORK? ☐ Yes, date ____ ☐ No
28. NAME OF TREATING DOCTOR, IF ANY	29. DOCTOR'S ADDRESS: (Number and Street, City, Zip)	
30. IF HOSPITALIZED, Name of Hospital	31. ADDRESS OF HOSPITAL (Number and Street, City, Zip)	

IMPORTANT NOTICE OF SPECIAL FILING RIGHTS FOR UNEMPLOYMENT INSURANCE BENEFITS

The New Jersey Unemployment Compensation Law provides special filing rights for workers upon recovery from a work-related injury or illness.

Eligibility for unemployment insurance benefits may be based upon wages earned prior to your disability.

NOTE: THESE BENEFITS ARE POTENTIAL UNEMPLOYMENT INSURANCE BENEFITS. YOU SHOULD CONTACT THE DIVISION OF PROGRAMS - UNEMPLOYMENT AND DISABILITY INSURANCE FOR ADDITIONAL INFORMATION. DO NOT CONTACT THE DIVISION OF WORKERS' COMPENSATION.

COMPLETED BY: (Print or Type)	TITLE:
SIGNATURE:	DATE:

NEW JERSEY DEPARTMENT OF LABOR
DIVISION OF WORKERS' COMPENSATION
CN 381
TRENTON, NEW JERSEY 08625-0381

MAIL ORIGINAL (White) TO

BLUE COPY RETAINED BY EMPLOYEE.
PINK COPY FOR PERSONNEL RECORDS.

FILING OF THIS REPORT IS NOT AN ADMISSION OF LIABILITY

L & I-1 (R-8-82)

INSTRUCTIONS

1. **CARRIER NAME, ADDRESS:** Indicate the name and address of the firm's Workers' Compensation carrier. If self-insured, indicate "self-insured".

1A. **POLICY NUMBER:** Indicate the firm's Workers' Compensation Insurance policy number.

1B. **EFFECTIVE DATE:** Indicate the date when the present policy started.

EXPIRATION DATE: Indicate the date when the present policy expires.

2. **DATE OF INJURY OR ILLNESS:** Indicate the date when the injury occurred or in case of illness, when first detected.

TIME OF DAY: Indicate the time of injury or illness (i.e. 9:30 a.m. or 7:00 p.m.)

O.S.H.A. CASE NUMBER: (Leave Blank)

3. **FIRM NAME:** Indicate the full name of individual, partnership, corporation or trade name of the employer.

4. **NEW JERSEY REGISTRATION NUMBER OR FEDERAL EMPLOYER IDENTIFICATION NUMBER:** Indicate either your company's New Jersey Registration Number or your company's Federal Employer Identification Number. This number can be obtained from your copy of Quarterly Report of Wages (Form U.C. 27B). The account number is on the fifth line of the address.

5. **S.I.C. Number:** Indicate the S.I.C. Number of your firm. This number can be obtained from your copy of Quarterly Report of Wages (Form U.C. 27B). The S.I.C. is the four digit number in the lower right hand corner of the address under the account number.

6. **NO. OF EMPLOYEES:** The number of employees employed by the firm.

7. **MAILING ADDRESS:** The address of the employer.

8. **TELEPHONE NO. (AREA CODE):** The business telephone of the employer.

9. **NATURE OF BUSINESS:** Describe the kind of business of the employer, i.e. manufacture shoes, wholesale food, retail clothing, construction, transportation, communication, utilities, government, etc.

LOCATION, IF DIFFERENT FROM MAILING ADDRESS: If the location where the injury or illness occurred is different from the mailing address of the employer in question #3.

10. **NAME:** Indicate the full name of the employee as carried on payroll records.

11. **SOCIAL SECURITY NO.:** Indicate the Social Security number of the employee.

12. **DATE OF BIRTH:** 13. **AGE:** 14. **SEX:** (Self-explanatory)

15. **HOME ADDRESS:** The address of the employee.

16. **OCCUPATION:** The job classification of employee, i.e., carpenter, electrician, driver, lathe operator, salesperson, etc.

17. **DEPARTMENT WHERE EMPLOYED:** Indicate under which agency within the firm that the employee worked.

18. **TELEPHONE NO.:** The home telephone of employee.

19. **WAGES:** If employee is paid weekly salary indicate gross weekly amount. If employee is paid hourly indicate hourly rate. (exclude overtime)

20. **NO. OF HOURS:** Indicate the total regular number of hours employee works per day. (exclude overtime)

21. **WHERE DID ACCIDENT OR EXPOSURE OCCUR?** If the location of accident or exposure is different from the address shown on line 7, give sufficient information to pinpoint location by giving address, city, county, route or job location.

22. **WHAT WAS EMPLOYEE DOING WHEN INJURED?** Examples: walking down stairs, climbing ladder, operating table saw, changing wheel on grinder, sitting at desk, opening file drawer, etc.

23. **OBJECT OR SUBSTANCE, MACHINE OR TOOL THAT DIRECTLY INJURED EMPLOYEE** **Examples:** stairs and handrail, floor, saw blade, dust, vapors, chips, chisel, hammer, chain, acid (name), steam, fire, hot sluge, electric current, the item employee was lifting, pushing or pulling, etc.

24. **NATURE OF INJURY OR ILLNESS AND PART OF BODY AFFECTED** **Examples:** amputation of right index finger, fracture of ribs, burn of left hand, contusions of both legs, laceration of upper right arm, etc.

Examples of occupational disease: dermatitis of neck, silicosis, etc.

25. **DID EMPLOYEE DIE?** Was the injury or illness the cause of death?

26. **WAS EMPLOYEE UNABLE TO WORK ON ANY DAY AFTER INJURY?** (Self-explanatory).

27. **HAS EMPLOYEE RETURNED TO WORK?** (Self-explanatory).

28, 29, 30, 31 (Self-explanatory)

Employer's First Report to Division of Workers' Compensation of Accidental Injury or Occupational Disease

FORM WC-1 (R-3-88)

STATE OF NEW JERSEY

EMPLOYER'S REPORT TO DIV. OF WORKERS' COMPENSATION OF ACCIDENTAL INJURY OR OCCUPATIONAL DISEASE

THIS FORM MUST BE FILED FOR EVERY ACCIDENT OR OCCUPATIONAL DISEASE AS SOON AS IT IS KNOWN THAT DISABILITY BEYOND SEVEN (7) DAYS OR PERMANENT INJURY RESULTS. —

MAIL ORIGINAL (WHITE) TO: ⇨ DEPARTMENT OF LABOR
Division of Workers' Compensation
CN 381
Trenton, N.J. 08625-0381

AND

IF YOU ARE NOT SELF-INSURED RETAIN BLUE COPY OF THIS FORM WC-1 FOR YOUR RECORDS — MAIL BALANCE OF SET INTACT TO YOUR CARRIER. ⇨

DATE L & I-1 PREPARED

FOR INS. CO. USE ONLY

PLEASE PRINT OR TYPE

1. Employee (Full Name and Address)

2. Occupation or Job Title | 3 Age | 4 Sex

8. Employer (Full Company Name and Address)

5. Single | Married | Widowed | Divorced | 6. Social Security No. | 7 NO DEPENDENTS

9. Date of Accident or Disease — Mo | Day | Yr | Time | AM | PM

10. Did Employee Die? If "Yes" Give Date and File Form WC-3A. — Mo | Day | Yr

☐ New Jersey Reg. No
or
☐ Federal Employer Identification No

11. Did Employee Return to Work? YES NO

12. If Already Returned to Work Give Date — Mo. | Day | Yr

13. If Not Able to Resume Work, Give Probable Date of Return — Mo | Day | Yr

BASIS OF PAY	14. Output? Give average earnings	15. By Day? Give wages per day.	16. By hour? Give hourly rate.	17. Were board & lodging furnished? YES NO	18. No. of hrs. in reg. work day
Fill in 14, or 15, or 16	$	$	$		

19. No. days in reg. work wk.	20. Amount of weekly wages
	$

DATE WC-1 MADE _____ BY _____ TITLE _____
SIGNATURE OF PERSON PREPARING FORM

W.C. DIVISION COPY

Insurer's Initial Notice of Accident and Insurer's and Self-Insurer's Statement of Wages and Agreement to Care for Case

FORM WC-2 (R-3-88)

STATE OF NEW JERSEY

INSURER'S INITIAL NOTICE OF ACCIDENT, AND INSURER'S AND SELF-INSURER'S STATEMENT OF WAGES AND AGREEMENT TO CARE FOR CASE

FILE THIS FORM WITHIN TWENTY-ONE (21) DAYS AFTER THE HAPPENING OF ACCIDENT OR OBTAINING KNOWLEDGE OF OCCUPATIONAL DISEASE.

MAIL ORIGINAL (WHITE) TO:

RETAIN GREEN COPY

DEPARTMENT OF LABOR
Division of Workers' Compensation
CN 381
Trenton, N.J. 08625-0381

TYPE OR PRINT NAME AND DISTRICT OFFICE ADDRESS OF CARRIER OR SELF-INSURER.

DATE L & I-1 PREPARED

FOR INS. CO. USE ONLY

THE NAMED EMPLOYER REPORTS AN INDUSTRIAL ACCIDENT OR OCCUPATIONAL DISEASE AS FOLLOWS, WHICH THIS CARRIER OR SELF-INSURER WILL PROCESS IN ACCORDANCE WITH APPLICABLE WORKMEN'S COMPENSATION LAWS

PLEASE PRINT OR TYPE

1. Employee (Full Name and Address)

2. Occupation or Job Title | 3. Age | 4. Sex

8. Employer (Full Company Name and Address)

5. Single | Married | Widowed | Divorced | 6. Social Security No | 7. No. DEPENDENTS

9. Date of Accident or Disease — Mo | Day | Yr. | Time AM PM

10. Did Employee Die? If "Yes" Give Date and File Form WC-3A — Mo | Day | Yr

☐ New Jersey Reg. No
or
☐ Federal Employer Identification No.:

11. Did Employee Return to Work? YES NO

12. If Already Returned to Work Give Date — Mo. | Day | Yr.

13. If Not Able to Resume Work, Give Probable Date of Return — Mo | Day | Yr

BASIS OF PAY	14. Output? Give average earnings	15. By Day? Give wages per day	16. By hour? Give hourly rate	17. Were board & lodging furnished? YES NO	18. No. of hrs. in reg work day
Fill in 14, or 15, or 16	$	$	$		

19. No. days in reg. work wk.	20. Amount of weekly wages
	$

DATE WC-1 MADE _____ BY _____ TITLE _____
SIGNATURE OF PERSON PREPARING FORM

DATE WC-2 MADE _____ BY _____ TITLE _____
SIGNATURE OF PERSON PREPARING FORM

EMPLOYEE _____ ☐ MARK WITNESS _____
SIGNATURE OF EMPLOYEE (SEE REVERSE SIDE) — IF EMPLOYEE "SIGNS" WITH MARK, SAME MUST BE WITNESSED

— NOTE —

☐ IF NO COMPENSATION WAS OR IS TO BE PAID THE INJURED OR IF NATURE OF INJURY OR YOUR KNOWLEDGE OF ANY FACTS VARIES FROM THOSE REPORTED ON FORM WC-1, "X" THIS BLOCK AND EXPLAIN ON REVERSE SIDE.

The undersigned hereby affirms the correctness of the statements given and guarantees the paying of compensation, according to law, for temporary disability and for permanent injury, if any.

_____
AUTHORIZED SIGNATURE

W.C. DIVISION COPY

See instructions on reverse side

Report of Death

IF DEATH RESULTS, COMPLETE WC-3A IN addition TO WC-3. IF DEATH RESULTS SUBSEQUENT TO FILING WC-3, AN AMENDED WC-3 MUST BE FILED AND WC-3A COMPLETED. WC-3A MUST BE FILED WITH THE DIVISION OF WORKERS' COMPENSATION WITHIN ONE MONTH AFTER THE DEATH OF THE INJURED.

FORM WC-3A (R-4-83)

REPORT OF DEATH

Number of Month | Day of Month | Year

(Name of Employer)

Date of Accident

☐ New Jersey Reg. No.
or
☐ Federal Employer Identification No.

(Name of Deceased Employee)

(Social Security No. of Deceased Employee)

(Name of Principal Dependent)

(Street and Residence)

(City or Town)

40. Give date of preparing this blank _____

41. State the COST by you or your insurance carrier, $ _____.

42. Name each dependent and date of birth, giving year, month and day. State relationship of each to deceased.

_____

_____

_____

_____

_____

43. State amount of compensation paid PRIOR to death _____

44. If any dependent is physicialy or mentally deficient, specify which one.

_____

The undersigned does hereby affirm the correctness of the foregoing statements and agrees to accept compensation as herein set forth.

(Signature of Principal Dependent)
If signed by mark, name must be witnessed

(His Mark) ☐

_____
(Signature of Witness, Parent or Guardian)

45. State the WEEKLY compensation to be paid the dependents at the various rates:

Rate	Weeks	Amount
$ _____	_____	$ _____
$ _____	_____	$ _____
$ _____	_____	$ _____
$ _____	_____	$ _____
$ _____	_____	$ _____

3A

46. State the TOTAL compensation paid and to be paid the dependents only _____

47. State the cost of BURIAL paid by you or your insurance carrier _____

The undersigned hereby affirms the correctness of the above statements, and agrees to pay to the dependents named, compensation as stated herein, in the same manner and at the same periods that the deceased received his wages.

_____
(Signature of Employer or Insurance Carrier)

Questions 20(a) & 21:

If the treating physician recommends, because of the adverse effect that knowledge of the answers may have on the employee, that the general x-ray findings or general medical diagnosis not be given to the employee, these questions may be answered by "see above". The answer "see above" constitutes your certification that the treating physician has made such a recommendation to you in writing.

Questions 27, 28:

If the answer to question 27 is "undetermined", insert the reason in the space following question 28 or attach an explanation to this form. Within a week after its expiration, if the 26 week waiting period (R. S. 34:15-16) is invoked, either an amended answer or form must be filed answering "Yes" or "No" to question 27, and completing question 28.

Signature of Employee:

A reasonable effort must be made to have the employee sign this form. It shall suffice to ask the employee to come into the office for this purpose, and if the employee does not come into the office on the next working day or shift or refuses to sign, the words "failed to appear" or "referred to sign" may be inserted in lieu of the employee's signature.

Final Report of Accident (WC Division Copy)

WC-3 (R-9-94)

FINAL REPORT OF ACCIDENT

THIS FORM MUST BE FILED AT THE CLOSE OF THE TEMPORARY DISABILITY PERIOD OR AS SOON THEREAFTER AS THE EXTENT OF THE PERMANENT INJURY CAN BE DETERMINED, WHICHEVER IS LATER.

NEW JERSEY DIVISION OF WORKERS' COMPENSATION
CN 381
TRENTON, NEW JERSEY 08625-0381

MAIL FORMS WC-3, WC-4, WC-5 TO

Retain WC-6 for your records

THE NAMED EMPLOYER REPORTS AN INDUSTRIAL ACCIDENT AS FOLLOWS WHICH THIS CARRIER OR SELF-INSURER WILL PROCESS IN ACCORDANCE WITH APPLICABLE WORKERS COMPENSATION LAWS.

DATE WC-2 PREPARED

1. INJURED WORKER'S NAME AND HOME ADDRESS

SELF-INSURER OR CARRIER (GIVE DISTRICT OFFICE ADDRESS)

FOR INS. CO. USE ONLY

2. AGE

3. DATE OF ACCIDENT

3a. SOCIAL SECURITY NO.

DIVISION USE ONLY

☐ Formal C.P. Filed

☐ Informal Hearing Needed

4. PROBABLE DATE OF RECOVERY

5. DID INJURY CAUSE DEATH? ☐ YES ☐ NO ➡ IF "YES" IS CHECKED, THEN FORM WC-3A ON REVERSE SIDES *MUST* BE FILED ALSO.

6. EMPLOYER AND EMPLOYER'S ADDRESS INCLUDING COUNTY

☐ New Jersey Reg. No.
or
☐ Federal Employer Identification No.

7. *The undersigned hereby affirms the correctness of the statements given and guarantees the paying of compensation, according to law for temporary disability and for permanent injury, if any.*

X
AUTHORIZED SIGNATURE

8. DID INJURY REQUIRE MEDICAL AID? ☐ YES ☐ NO

9. MEDICAL AID TO BE PAID ☐ EMPLOYER ☐ CARRIER

9a. COST OF MEDICAL AID RENDERED BY CARRIER OR EMPLOYER $

BASIS OF PAY FILL IN 10 OR 11 OR 12

10. OUTPUT EARNINGS? GIVE AVERAGE DAILY $

11. BY DAY? GIVE WAGES PER DAY

12. BY HOUR? GIVE HOURLY RATE $

13. NO. HOURS IN REG. WORKDAY

14. NO. OF DAYS IN REG. WORK WEEK

15. AMOUNT OF WEEKLY WAGES

16. WERE BOARD AND LODGING FURNISHED? ☐ BOARD ☐ LODGING

17. NAME OF PHYSICIAN ADDRESS DATE FORM WC-3 PREPARED

18. DETAILED X-RAY FINDINGS (IF SPACE INADEQUATE ATTACH X-RAY REPORT)

19. DETAILED DIAGNOSIS OF PHYSICIAN (GIVE DETAILS AS TO NATURE & EXTENT OF INJURIES (IF SPACE INADEQUATE ATTACH PHYSICIAN'S REPORT)

20. (a) GENERAL X-RAY FINDINGS *(SEE REVERSE)*

20. (b) TOTAL NO. OF TREATMENTS

20. (c) DATE OF DISCHARGE

21. GENERAL DIAGNOSIS *(SEE REVERSE)*

22. IS WORKER CAPABLE OF DOING SAME WORK AS BEFORE INJURY? ☐ YES ☐ NO

23. DATE DISABILITY BEGAN

24. DATE PAYMENTS BEGAN

25. DATE INJURED RESUMED WORK

26. TOTAL TIME UNABLE TO WORK WEEKS MONTHS

27. DID ANY PERMANENT INJURY RESULT FROM THIS ACCIDENT? ☐ YES ☐ NO ☐ UNDETERMINED *(SEE REVERSE)*

28. IF YES DESCRIBE FULLY, GIVING PERCENTAGE OF MEMBER INVOLVED, IF UNDETERMINED *(SEE REVERSE)*

29. *AMOUNT OF WEEKLY COMPENSATION* $

30. *NO. OF WEEKS AND AMOUNT PAID FOR TEMPORARY DISABILITY* WEEKS $

31. NO. WEEKS TO BE PAID FOR AMPUTATION

32. NO. WEEKS TO BE PAID FOR OTHER PERMANENT INJURY

33. TOTAL AMOUNT OF COMPENATION FOR PERMANENT INJURY $

3

➡ 34. IF THERE HAS BEEN AN INFORMAL HEARING ON THIS CLAIM CHECK HERE ☐

(SEE REVERSE SIDE) SIGNATURE OF EMPLOYEE

☐ MARK

WITNESS SIGN HERE (IF EMPLOYEE SIGNS WITH MARK)

IF SIGNED WITH MARK, SAME MUST BE WITNESSED

W.C. DIVISION COPY

Final Report of Accident (Employer Copy)

WC-4 (R-9-94)

FINAL REPORT OF ACCIDENT
STATE OF NEW JERSEY
DEPARTMENT OF LABOR
DIVISION OF WORKERS' COMPENSATION
CN 381 - TRENTON, N. J. 08625-0381

THE NAMED EMPLOYER REPORTS AN INDUSTRIAL ACCIDENT AS FOLLOWS WHICH THIS CARRIER OR SELF-INSURER WILL PROCESS IN ACCORDANCE WITH APPLICABLE WORKERS COMPENSATION LAWS.

DATE WC-2 PREPARED

1. INJURED WORKER'S NAME AND HOME ADDRESS

SELF-INSURER OR CARRIER (GIVE DISTRICT OFFICE ADDRESS)

FOR INS. CO. USE ONLY

2. AGE

3. DATE OF ACCIDENT

3a. SOCIAL SECURITY NO.

STATE USE ONLY

4. PROBABLE DATE OF RECOVERY

5. DID INJURY CAUSE DEATH? ☐ YES ☐ NO ➡ IF "YES" IS CHECKED, THEN FORM WC-3A ON REVERSE SIDES *MUST* BE FILED ALSO.

6. EMPLOYER AND EMPLOYER'S ADDRESS INCLUDING COUNTY

☐ New Jersey Reg. No.
or
☐ Federal Employer Identification No.

7. *The undersigned hereby affirms the correctness of the statements given and guarantees the paying of compensation, according to law for temporary disability and for permanent injury, if any.*

X
AUTHORIZED SIGNATURE

8. DID INJURY REQUIRE MEDICAL AID? ☐ YES ☐ NO

9. MEDICAL AID TO BE PAID ☐ EMPLOYER ☐ CARRIER

9a. COST OF MEDICAL AID RENDERED BY CARRIER OR EMPLOYER $

BASIS OF PAY FILL IN 10 OR 11 OR 12

10. OUTPUT EARNINGS? GIVE AVERAGE DAILY $

11. BY DAY? GIVE WAGES PER DAY

12. BY HOUR? GIVE HOURLY RATE $

13. NO. HOURS IN REG. WORKDAY

14. NO. OF DAYS IN REG. WORK WEEK

15. AMOUNT OF WEEKLY WAGES

16. WERE BOARD AND LODGING FURNISHED? ☐ BOARD ☐ LODGING

17. NAME OF PHYSICIAN ADDRESS DATE FORM WC-3 PREPARED

18. DETAILED X-RAY FINDINGS (IF SPACE INADEQUATE ATTACH X-RAY REPORT)

19. DETAILED DIAGNOSIS OF PHYSICIAN (GIVE DETAILS AS TO NATURE & EXTENT OF INJURIES (IF SPACE INADEQUATE ATTACH PHYSICIAN'S REPORT)

20. (a) GENERAL X-RAY FINDINGS *(SEE REVERSE)*

20. (b) TOTAL NO. OF TREATMENTS

20. (c) DATE OF DISCHARGE

21. GENERAL DIAGNOSIS *(SEE REVERSE)*

22. IS WORKER CAPABLE OF DOING SAME WORK AS BEFORE INJURY? ☐ YES ☐ NO

23. DATE DISABILITY BEGAN

24. DATE PAYMENTS BEGAN

25. DATE INJURED RESUMED WORK

26. TOTAL TIME UNABLE TO WORK WEEKS MONTHS

27. DID ANY PERMANENT INJURY RESULT FROM THIS ACCIDENT? ☐ YES ☐ NO ☐ UNDETERMINED *(SEE REVERSE)*

28. IF YES DESCRIBE FULLY, GIVING PERCENTAGE OF MEMBER INVOLVED, IF UNDETERMINED *(SEE REVERSE)*

29. AMOUNT OF WEEKLY COMPENSATION $

30. NO. OF WEEKS AND AMOUNT PAID FOR TEMPORARY DISABILITY WEEKS $

31. NO. WEEKS TO BE PAID FOR AMPUTATION

32. NO. WEEKS TO BE PAID FOR OTHER PERMANENT INJURY

33. TOTAL AMOUNT OF COMPENATION FOR PERMANENT INJURY $

4

➡ 34. IF THERE HAS BEEN AN INFORMAL HEARING ON THIS CLAIM CHECK HERE ☐

(SEE REVERSE SIDE) SIGNATURE OF EMPLOYEE

☐ MARK

WITNESS SIGN HERE (IF EMPLOYEE SIGNS WITH MARK)

IF SIGNED WITH MARK, SAME MUST BE WITNESSED

EMPLOYER COPY

Final Report of Accident (Employee Copy)

WC-5 (R-9-94)

FINAL REPORT OF ACCIDENT
STATE OF NEW JERSEY
DEPARTMENT OF LABOR
DIVISION OF WORKERS' COMPENSATION
CN 381 - TRENTON, N. J. 08625-0381

THE NAMED EMPLOYER REPORTS AN INDUSTRIAL ACCIDENT AS FOLLOWS WHICH THIS CARRIER OR SELF-INSURER WILL PROCESS IN ACCORDANCE WITH APPLICABLE WORKERS COMPENSATION LAWS.

DATE WC-2 PREPARED

1. INJURED WORKER'S NAME AND HOME ADDRESS

SELF-INSURER OR CARRIER (GIVE DISTRICT OFFICE ADDRESS)

FOR INS. CO. USE ONLY

2. AGE

3. DATE OF ACCIDENT

3a. SOCIAL SECURITY NO.

STATE USE ONLY

4. PROBABLE DATE OF RECOVERY

5. DID INJURY CAUSE DEATH? ☐ YES ☐ NO ➡ IF "YES" IS CHECKED, THEN FORM WC-3A ON REVERSE SIDES *MUST* BE FILED ALSO.

6. EMPLOYER AND EMPLOYER'S ADDRESS INCLUDING COUNTY

☐ New Jersey Reg. No.
or
☐ Federal Employer Identification No.

7. *The undersigned hereby affirms the correctness of the statements given and guarantees the paying of compensation, according to law for temporary disability and for permanent injury, if any.*

X
AUTHORIZED SIGNATURE

8. DID INJURY REQUIRE MEDICAL AID? ☐ YES ☐ NO

9. *MEDICAL AID TO BE PAID* ☐ EMPLOYER ☐ CARRIER

9a. *COST OF MEDICAL AID RENDERED BY* CARRIER OR EMPLOYER $

BASIS OF PAY FILL IN 10 OR 11 OR 12

10. OUTPUT EARNINGS? GIVE AVERAGE DAILY $

11. BY DAY? GIVE WAGES PER DAY

12. BY HOUR? GIVE HOURLY RATE $

13. NO. HOURS IN REG. WORKDAY

14. NO. OF DAYS IN REG. WORK WEEK

15. AMOUNT OF WEEKLY WAGES

16. WERE BOARD AND LODGING FURNISHED? ☐ BOARD ☐ LODGING

17. NAME OF PHYSICIAN ADDRESS DATE FORM WC-3 PREPARED

18. DETAILED X-RAY FINDINGS (IF SPACE INADEQUATE ATTACH X-RAY REPORT)

19. DETAILED DIAGNOSIS OF PHYSICIAN (GIVE DETAILS AS TO NATURE & EXTENT OF INJURIES (IF SPACE INADEQUATE ATTACH PHYSICIAN'S REPORT)

20. (a) GENERAL X-RAY FINDINGS *(SEE REVERSE)*

20. (b) TOTAL NO. OF TREATMENTS

20. (c) DATE OF DISCHARGE

21. GENERAL DIAGNOSIS *(SEE REVERSE)*

22. IS WORKER CAPABLE OF DOING SAME WORK AS BEFORE INJURY? ☐ YES ☐ NO

23. DATE DISABILITY BEGAN

24. DATE PAYMENTS BEGAN

25. DATE INJURED RESUMED WORK

26. TOTAL TIME UNABLE TO WORK WEEKS MONTHS

27. DID ANY PERMANENT INJURY RESULT FROM THIS ACCIDENT? ☐ YES ☐ NO ☐ UNDETERMINED *(SEE REVERSE)*

28. IF YES DESCRIBE FULLY, GIVING PERCENTAGE OF MEMBER INVOLVED, IF UNDETERMINED *(SEE REVERSE)*

29. AMOUNT OF WEEKLY COMPENSATION $

30. NO. OF WEEKS AND AMOUNT PAID FOR TEMPORARY DISABILITY WEEKS $

31. NO. WEEKS TO BE PAID FOR AMPUTATION

32. NO. WEEKS TO BE PAID FOR OTHER PERMANENT INJURY

33. TOTAL AMOUNT OF COMPENATION FOR PERMANENT INJURY $

5

➡ 34. IF THERE HAS BEEN AN INFORMAL HEARING ON THIS CLAIM CHECK HERE ☐

(SEE REVERSE SIDE) SIGNATURE OF EMPLOYEE

☐ MARK

WITNESS SIGN HERE (IF EMPLOYEE SIGNS WITH MARK)

IF SIGNED WITH MARK, SAME MUST BE WITNESSED

EMPLOYEE COPY

Final Report of Accident (Insurance Carrier Copy)

WC-6 (R-9-94)

FINAL REPORT OF ACCIDENT

THIS FORM MUST BE FILED AT THE CLOSE OF THE TEMPORARY DISABILITY PERIOD OR AS SOON THEREAFTER AS THE EXTENT OF THE PERMANENT INJURY CAN BE DETERMINED, WHICHEVER IS LATER.

NEW JERSEY DIVISION OF WORKERS' COMPENSATION
CN 381
TRENTON, NEW JERSEY 08625-0381

MAIL FORMS WC-3, WC-4, WC-5 TO
Retain WC-6 for your records

THE NAMED EMPLOYER REPORTS AN INDUSTRIAL ACCIDENT AS FOLLOWS WHICH THIS CARRIER OR SELF-INSURER WILL PROCESS IN ACCORDANCE WITH APPLICABLE WORKERS COMPENSATION LAWS.

DATE WC-2 PREPARED

1. INJURED WORKER'S NAME AND HOME ADDRESS

SELF-INSURER OR CARRIER (GIVE DISTRICT OFFICE ADDRESS)

FOR INS. CO. USE ONLY

2. AGE

3. DATE OF ACCIDENT

3a. SOCIAL SECURITY NO.

STATE USE ONLY

4. PROBABLE DATE OF RECOVERY

5. DID INJURY CAUSE DEATH? ☐ YES ☐ NO ➡ IF "YES" IS CHECKED, THEN FORM WC-3A ON REVERSE SIDES *MUST* BE FILED ALSO.

6. EMPLOYER AND EMPLOYER'S ADDRESS INCLUDING COUNTY

☐ New Jersey Reg. No.
or
☐ Federal Employer Identification No.

7. *The undersigned hereby affirms the correctness of the statements given and guarantees the paying of compensation, according to law for temporary disability and for permanent injury, if any.*

X
AUTHORIZED SIGNATURE

8. DID INJURY REQUIRE MEDICAL AID? ☐ YES ☐ NO

9. MEDICAL AID TO BE PAID ☐ EMPLOYER ☐ CARRIER

9a. COST OF MEDICAL AID RENDERED BY CARRIER OR EMPLOYER $

BASIS OF PAY FILL IN 10 OR 11 OR 12

10. OUTPUT EARNINGS? GIVE AVERAGE DAILY $

11. BY DAY? GIVE WAGES PER DAY

12. BY HOUR? GIVE HOURLY RATE $

13. NO. HOURS IN REG. WORKDAY

14. NO. OF DAYS IN REG. WORK WEEK

15. AMOUNT OF WEEKLY WAGES

16. WERE BOARD AND LODGING FURNISHED? ☐ BOARD ☐ LODGING

17. NAME OF PHYSICIAN ADDRESS DATE FORM WC-3 PREPARED

18. DETAILED X-RAY FINDINGS (IF SPACE INADEQUATE ATTACH X-RAY REPORT)

19. DETAILED DIAGNOSIS OF PHYSICIAN (GIVE DETAILS AS TO NATURE & EXTENT OF INJURIES (IF SPACE INADEQUATE ATTACH PHYSICIAN'S REPORT)

20. (a) GENERAL X-RAY FINDINGS *(SEE REVERSE)*

20. (b) TOTAL NO. OF TREATMENTS

20. (c) DATE OF DISCHARGE

21. GENERAL DIAGNOSIS *(SEE REVERSE)*

22. IS WORKER CAPABLE OF DOING SAME WORK AS BEFORE INJURY? ☐ YES ☐ NO

23. DATE DISABILITY BEGAN

24. DATE PAYMENTS BEGAN

25. DATE INJURED RESUMED WORK

26. TOTAL TIME UNABLE TO WORK WEEKS MONTHS

27. DID ANY PERMANENT INJURY RESULT FROM THIS ACCIDENT? ☐ YES ☐ NO ☐ UNDETERMINED *(SEE REVERSE)*

28. IF YES DESCRIBE FULLY, GIVING PERCENTAGE OF MEMBER INVOLVED. IF UNDETERMINED *(SEE REVERSE)*

29. AMOUNT OF WEEKLY COMPENSATION $

30. NO. OF WEEKS AND AMOUNT PAID FOR TEMPORARY DISABILITY WEEKS $

31. NO. WEEKS TO BE PAID FOR AMPUTATION

32. NO. WEEKS TO BE PAID FOR OTHER PERMANENT INJURY

33. TOTAL AMOUNT OF COMPENATION FOR PERMANENT INJURY $

6

➡ 34. IF THERE HAS BEEN AN INFORMAL HEARING ON THIS CLAIM CHECK HERE ☐

(SEE REVERSE SIDE) SIGNATURE OF EMPLOYEE

☐ MARK

WITNESS SIGN HERE (IF EMPLOYEE SIGNS WITH MARK)

IF SIGNED WITH MARK, SAME MUST BE WITNESSED

INSURANCE CARRIER COPY

Substitution of Attorney

State of New Jersey Department of Labor Division of Workers' Compensation PO BOX 381 Trenton, New Jersey 08625	**SUBSTITUTION OF ATTORNEY**	Claim Petition No.(s): _____ District Office: _____

Submitted by: Attorney _____

Attorney For: _____

PETITIONER		VS	RESPONDENT
NAME:			NAME:
SOCIAL SECURITY NUMBER:			

The undersigned hereby consents to the substitution of

_____ as attorney for _____

in the above entitled matter.

Dated:

_____
Signature
Withdrawing Attorney

_____
Signature
Superceding Attorney

Withdrawing Attorney

Firm Name:

Superceding Attorney

Firm Name:

Address:

Telephone No.:

Frequent Filer Code:
(If Available)

(Please provide one of the following)

❑ Federal Employer I.D. No.

❑ N.J. Employer Reg. No.

❑ S.S. No.

The Privacy Act, 5 U.S.C. § 552a, the Social Security Act, 42 U.S.C. § 405, and *N.J.S.A.* 34:15-1 *et seq.* authorize the Division of Workers' Compensation to request that the Petitioner supply the Division with his or her Social Security number for record keeping purposes and cross-matches with the Social Security Administration, Workforce New Jersey, Temporary Disability Insurance and any other proper public purpose.

WC-10 (R-11-98)

Request for Records Inspection



State of New Jersey
Department of Labor
Division of Workers' Compensation
P O Box 381
Trenton, New Jersey 08625-0381

REQUEST FOR RECORDS INSPECTION

Requestor Information:

1. Your Name:	4. Telephone:
2. Company Name:	5. Your File No:
3. Address: (☐ Check if new address)	6. Account No (If previous requestor): ☐☐☐☐☐☐☐

Search Criteria:

1. Petitioner SS # (required):	2. Claim Petition # (required):_____
3. Petitioner Name (required):	☐ Exclude above CP# from search.
4. Records Requested if NOT Entire Case File(s): ☐ Claim Petition/Answer ☐ Medical ☐ Closure Documents	

The following statement must be completed, signed, dated and submitted to the Division of Workers' Compensation at the address shown above. All copies of documents provided through this request shall adhere to the provisions of N.J.S.A. 34:15-128, et seq as shown on the reverse.

CERTIFICATION

(Check appropriate box and complete the required information.)

☐ **I, the undersigned, do hereby certify that I am the claimant, the employer, the insurance carrier or the authorized agent of the claimant, the employer or the insurance carrier and that I am a party to or an authorized agent for a party in a pending workers' compensation case and that use of any records provided through this request will be used solely for purposes directly related to the above requested case. (Copy of agent authorization must be attached.)**

☐ **I, the undersigned, do hereby certify that I am a third party or an authorized agent for a third party directly involved in a workers' compensation case and that any records provided through this request will be used solely for purposes directly related to the above requested case. (Copy of agent authorization must be attached.)**

☐ **I, the undersigned, do hereby certify that I have received specific written release from the claimant in the above requested case allowing me to receive records related to this case, that such written release is attached hereto, and that I have read and agree to the restrictions on my use of such records as prescribed by law.**

☐ **I, the undersigned, do hereby certify that I am an official of a governmental agency and am authorized to request the above case information for purposes of carrying out the recognized purposes of my agency and shall not subsequently disclose any of such information to any person, organization, entity or governmental agency not entitled to receive such information.**

☐ **I, the undersigned, do hereby certify that I am the employer or the authorized agent for the employer and have obtained a signed authorization for the release of workers' compensation records from the prospective employee. The employer has certified that the employee has received an offer of employment and that the information will be used solely in accordance with the provisions of the Americans With Disabilities Act (ADA) and the New Jersey Law Against Discrimination (LAD). (Copy of agent authorization, original signed employee authorization and original signed employer certification must be attached.)**

Signature:_____ **Date**_____

Printed Name:_____

Delivery of Copies. **Unless otherwise indicated above, copies will be issued to the requestor via first class mail upon completion. P.L.1963,c.73 (C.41:1A-1 et seq.) requires that copies of requested documents be made available within seven business days where such documents are currently available and not in storage or archived. Every effort will be made to complete such request and issue resulting copies within seven business days. Where the location or storage condition of requested documents will result in a delay beyond seven business days, the requestor will be notified of such delay and an estimated completion date by first class mail within seven business days of the date of the request.**

Fees: **Copies are certified and are billable at rates of $.75 per page for the first ten pages, $.50 per page for the next ten pages, and $.25 per page thereafter for each workers' compensation case identified meeting the above search criteria. A processing fee of $1.50 per request will be billable in addition to postage for delivery of the results of each rquest.. Billed amounts are due upon presentation or, where a PrePaid Account has been established, will be deducted from positive account balances maintained by the requestor with the Division of Workers' Compensation for such purpose.**

The Division also reserves the right to deny copy services to any requestor where payment for previous copy work remains unpaid for a period of not less than sixty days following delivery and billing for same. A service charge of $25.00 shall also be assessed for any returned payment instrument.

WC-147 (R 10-02)

34:15-128 Limited right to inspect, copy records.

1.a. Notwithstanding any other provisions of the chapter to which this act is a supplement or of any other law, no records maintained by the Division of Workers' Compensation or the Compensation Rating and Inspection Bureau shall be disclosed to any person who seeks disclosure of the records for the purpose of selling or furnishing for a consideration to others information from those records or reports or abstracts or workers' compensation records or work-injury records pertaining to any claimant. No information shall be disclosed from those records to any person not in the division unless:

(1) The information is provided in a manner which makes it impossible to identify the claimant;

(2) The records are opened for the exclusive purpose of permitting a claimant, employer, insurance carrier or authorized agent of the claimant, employer or insurance carrier to conduct an investigation by or on behalf of the claimant, employer or insurance carrier in connection with any pending workers' compensation case to which the claimant, employer or insurance carrier is a party, and the party seeking access to the records certifies to the division that the information from the records will be used only for the purposes directly related to the case.

(3) The records are opened for the exclusive purpose of permitting a third party directly involved in a workers' compensation case, including any workers' compensation lienholders, or an authorized agent of the third party, to conduct an investigation by or on behalf of the third party in connection with the case, and the party seeking access to the records certifies to the division that the information from the records will be used only for the purposes directly related to the case.

(4) The records are subpoenaed by the Commissioner of Banking and Insurance pursuant to section 10 of P.L.1983,c.320(C.17:33A-10) or by a court of competent jurisdiction in a civil or criminal proceeding.

(5) The division provides the information to another government agency pursuant to law, for a duly recognized purpose of that agency, which agency shall not subsequently disclose any of the information to any person, organization, entity or governmental agency not entitled to receive the information from the Compensation Rating and Inspection Bureau or the Division of Workers' Compensation pursuant to the workers' compensation law, R.S. 34:15-1 et seq.; or

(6) The information is information about the claimant requested by the claimant, in which case the division shall disclose the information and the claimant shall not be charged fees in excess of the cost of providing copies of the information.

b. Notwithstanding any other provision of law, no information from records maintained by the Compensation Rating and Inspection Bureau pertaining to any work injury or illness or workers' compensation claim shall be disclosed to any business or other member of the public unless the bureau discloses the information in a manner which makes it impossible to identify the claimant.

c. Notwithstanding any other provision of law, no information provided by the division to any other governmental agency pursuant to subsection a. of this section shall be disclosed by the agency to any business or other member of the public unless the information is disclosed to the business or other member of the public in a manner which makes it impossible to identiry the claimant.

d. Notwithstanding the restrictions on disclosure set forth under subsections a. through c. of this section, a claimant may authorize the release of records of the claimant to a specific person not otherwise authorized to receive the records, by submitting written authorization for the release to the division specifically directing the division to release workers' compensation records to that person. However, no such authorization directing disclosure of records to a prospective employer shall be valid, nor shall an authorization permitting the disclosure of records in connection with assessing fitness or capability for employment be valid, and no disclosure of records shall be made with respect thereto., unless requested pursuant to and consistent with the federal "Americans with Disabilities Act of 1990," 42 U.S.C. s.12101 et seq. And the "Law Against Discrimination," P.L.1945,c.169©.10:5-1 et seq.). It shall be unlawful for any person to consider for the purposes of assessing eligibility for a benefit, or as the basis for an employment-related action, an individual's failure to provide authorization under this subsection.

By state law, requests must be denied when submitted by a person who has been convicted of an indictable offense in New Jersey, any other state, or the United States, who is seeking government records containing personal information pertaining to the person's victim or the victim's family.

By law, the Division of Workers' Compensation must notify you that it grants or denies a request for access to its records within 7 business days after the Division has received the request, provided that the record is currently available and not in storage or archived. If the requested record is not currently available or is in storage or archived, the Division will advise you, within 7 business days, of an estimated time that the record will be available. You may agree with the Division to extend the time for granting or denying your request or making records available.

You may be denied access to a Division record if your request would substantially disrupt agency operations and the Division is unable to reach an reasonable solution with you.

Except as otherwise provided by law or by agreement with the requestor, if the Division fails to respond to you within 7 business days of receiving a written, signed request form, the failure to respond will be considered a denial of your request.

Appeal of Denial of Access. A person who is denied access to a government record by the custodian of the record at the option of the requestor, may (1) institute a proceeding to challenge the custodian's decision by filing an action in Superior Court which shall be heard in the vicinage where it is filed by a Superior Court Judge who has been designated to hear such cases because of that judge's knowledge and expertise in matters relating to access to government records; or (2) in lieu of filing an action in Superior Court, file a complaint with the Government Records Council established pursuant to section 8 of P.L. 2001, C.404(C.47:1A-7). The Government Records Council 's address is P O Box 819, Trenton, New Jersey 08625-0819 and its telephone number is (866) 850-0511.

The right to institute any proceeding under this section shall be solely that of the requestor. Any such proceedings shall proceed in a summary or expedited manner. The public agency shall have the burden of proof that the denial of access is authorized by law. If it is determined that access has been improperly denied, the court or agency head shall order that access be allowed. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

Order for Distribution for Child Support

WC (DO)-103 (R-6-01) State of New Jersey Department of Labor Division of Workers' Compensation	**ORDER FOR DISTRIBUTION** **(For Child Support)** **Page 1 of 2**	WC CASE NO.(S) _____ _____ District Office: _____

PETITIONER

SOCIAL SECURITY NUMBER	
NAME	AGE
ADDRESS (Including County)	

ATTORNEY FOR PETITIONER

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER
NAME
ADDRESS
APPEARING

VS

RESPONDENT

NAME
ADDRESS (Including County)

ATTORNEY FOR RESPONDENT

NAME
ADDRESS (Including County)
APPEARING

INSURANCE CARRIER

NAME (Indicate if Not Covered or if Self-Insured)
PROBATION CASE NO. CS-

1. The Division of Workers' Compensation has matched data received from the New Jersey Administrative Office of the Courts on child support judgment debtors against the information the Division maintains for individuals who have filed workers' compensation claims, and the match has identified the petitioner as a child support judgment debtor;
2. Total support arrears owed by the petitioner on all cases enforceable through the state Probation Division are $ _____ as of___/___/___, as indicated in the records of _____ Probation Division;
3. The net proceeds of the within award are more than $2,000.00, after payment of attorney fees, witness fees, costs, fees payable to health care providers, reimbursement to the employer, employer's insurance carrier, Second Injury Fund of the State of New Jersey, State Division of Temporary Disability Insurance and an approved Private Plan covered under the Temporary Disability Benefits Law or other reimbursement to an employer or employer's workers' compensation carrier as provided in R.S.34:15-40;
4. The petitioner has one or more support orders and ☐ does/ ☐ does not support a current spouse or child not covered by a current child support order;
5. The petitioner ☐ does/ ☐ does not owe more than twelve weeks arrears on obligor's support orders, in total;
6. The net award represents ☐ a "lump sum" ☐ accumulated payments ☐ continuing periodic payments.

OFFICE COPY

WC(DO)-103.1 (R-6-01) State of New Jersey Department of Labor Division of Workers' Compensation	**ORDER FOR DISTRIBUTION** **(For Child Support)** **Page 2 of 2**	WC CASE NO.(S)_____ District Office:_____

IT IS ON THIS _____ DAY OF _____, _____, HEREBY ORDERED THAT

1. The petitioner shall pay $ _____ for Child Support arrearage(s), through the _____ Probation Division for obligations due from petitioner's award through the date of the execution of this order. The employer or employer's insurance carrier shall deduct said payment from the petitioner's net proceeds.

2. The employer or employer's insurance carrier shall contact the _____ Probation Division prior to the distribution of proceeds to the petitioner in order to arrange for the satisfaction of the child support judgment.

3. This order adjudicates the disbursement of net proceeds of the within award as it pertains to satisfaction of the above referenced child support obligation. All other provisions previously entered in this or related matters shall remain in full force and effect until further order of the court.

4. Periodic indemnity benefits due and owing from the date of the execution of the within order are subject to the appropriate garnishment rate until such time as the child support obligations have been satisfied or indemnity benefits exhausted. The employer or employer's carrier shall contact the applicable Probation Division to verify rates and amounts and shall make payments as appropriate.

5. A copy of this order shall be served upon the _____ Probation Division by the respondent's attorney within 10 days from the execution of this order.

_____ _____

Petitioner's Attorney *Judge of Compensation* *(Date)*

_____ _____

Petitioner *Name (Print or Type)*

_____

Respondent's Attorney

OFFICE COPY

Primary Worksheet #1: Calculating Net Award to be Paid to Probation Department

PRIMARY WORKSHEET #1
TO CALCULATE THE AMOUNT TO BE PAID TO PROBATION
FROM A QUALIFYING NET AWARD

NET AWARD $ _____

Name of Obligor _____ Date _____

Obligor's Social Security Number _____

Is the Obligor supporting a child or spouse not under court order (yes or no) ? _____

Child Support Case Numbers _____

Current Obligations ($) _____

Obligation Frequencies (Weekly, Biweekly, Semi-monthly or Monthly) _____

Weekly Obligations ($) (calculate each) _____

Current Arrears ($) (from Glink) _____

Total Obligation (add the Weekly Obligations above) = TO = _____

Total Arrears (add the Current Arrears above) = TA = _____

TA / TO = _____ / _____ = Number of Weeks of Arrears = _____

If the obligor is currently supporting a child or spouse not under a court order, and if the Number of Weeks of Arrears above is 12 or less, the maximum payable to probation is 50 percent of the net award.

If the obligor is currently supporting a child or spouse not under a court order, and if the Number of Weeks of Arrears above is more than 12, the maximum payable to probation is 55 percent of the net award.

If the obligor is not currently supporting a child or spouse not under a court order, and if the Number of Weeks of Arrears above is 12 or less, the maximum payable to probation is 60 percent of the net award.

If the obligor is not currently supporting a child or spouse not under a court order, and if the Number of Weeks of Arrears above is more than 12, the maximum payable to probation is 65 percent of the net award.

Calculate the maximum payable to Probation by taking the appropriate percentage (50, 55, 60 or 65 percent, determined above) of the Net Award. For example, if the percentage is 55 percent and the Net Award is $10,000, the maximum payable would be (.55) x ($10,000) or $5,500.

_____ x $ _____ = $ _____ = Maximum Payable

The amount to be paid to Probation is the smaller of the maximum payable amount and the Total Arrears. For example, if the maximum payable is $5,500 and the total arrears are $7,000, only $5,500 must be paid.

Maximum payable = MP = $ _____ Total Arrears = TA = $ _____

Amount to be paid to Probation (the smaller of the two amounts) = AP = $ _____

New Total Arrears after the payment = TA minus (AP) = $ _____

Supplementary Worksheet: Calculating Net Award to be Paid to Probation Department

SUPPLEMENTARY WORKSHEET # _____
TO CALCULATE AMOUNT TO BE PAID TO PROBATION
WHEN MORE THAN ONE QUALIFYING AWARD
IS MADE THE SAME DAY

Name of Obligor _____ Date _____

Obligor's Social Security Number _____

NET AWARD $ _____

Total Obligation (same as on Primary Worksheet) = TO = _____

New Total Arrears (NTA) = arrears after payment, from preceding worksheet _____

NTA / TO = _____/_____ = New Number of Weeks of Arrears = _____

If the obligor is currently supporting a child or spouse not under a court order, and if the New Number of Weeks of Arrears above is 12 or less, the maximum payable to probation is 50 percent of the net award.

If the obligor is currently supporting a child or spouse not under a court order, and if the New Number of Weeks of Arrears above is more than 12, the maximum payable to probation is 55 percent of the net award.

If the obligor is not currently supporting a child or spouse not under a court order, and if the New Number of Weeks of Arrears above is 12 or less, the maximum payable to probation is 60 percent of the net award.

If the obligor is not currently supporting a child or spouse not under a court order, and if the New Number of Weeks of Arrears above is more than 12, the maximum payable to probation is 65 percent of the net award.

Calculate the maximum payable to Probation by taking the appropriate percentage (50, 55, 60 or 65 percent, determined above) of the NET AWARD. For example, if the percentage is 50 percent and the NET AWARD is $5,000, the maximum payable would be (.50) x ($5,000) or $2,500.

_____ x $ _____ = $ _____ = Maximum payable

The amount to be paid to Probation is the smaller of the maximum payable amount and the NET AWARD.

For example, if the maximum payable is $2,500 and the total arrears are $1,500, only $1,500 must be paid.

Maximum payable = $ _____ New Total Arrears = $ _____

Amount to be paid (the smaller of the two amounts) = $ _____

Net Arrears After Payment = $ _____

Request for Social Security Information

REQUEST FOR SOCIAL SECURITY INFORMATION

PART I. TO BE COMPLETED BY PETITIONER'S ATTORNEY

1. Worker's Name:_____ 2. Social Security Number:_____

3. Employer's Name and Address:_____

_____

4. Date of Injury:_____ 5. Claim Petition No:_____

6. Information needed from SSA:

☐ 80% ACE Only ☐ 80% ACE plus Social Security Benefits

7. Attorney making request:

Address:_____

_____

_____ _____

(Printed Name) *(Phone)*

_____ _____

(Signature) *(Date)*

PART II. TO BE COMPLETED BY SSA

1. Has the above named worker applied for Social Security benefits? ☐ Yes ☐ No (Go to #9)
2. What type of benefits? ☐ Disability ☐ Other (Go to #9)
3. What is the status of the disability claim? ☐ Allowed ☐ Pending (Go to #9) ☐ Denied (Go to #9)
4. 80% Average Current Earnings (ACE): $_____
5. Amount of worker entitlement: $_____ 5.a. Date of Entitlement:_____
6. Are there any auxiliary beneficiaries? ☐ Yes ☐ No (Go to #8)
7. Please complete the information requested for each auxiliary beneficiary in the space on the attached sheet.
8. Is SSA currently reducing its benefits due to workers' compensation benefits? ☐ Yes ☐ No
9. SSA Official:

_____ _____

(Printed Name) *(Title)*

_____ _____ _____

(Signature) *(Date)* *(Phone)*

NOTE: Requests from a workers' compensation attorney must be accompanied by a signed authorization allowing information to be sent to the attorney.

WC-124 (R 6/03)

PART III. AUXILIARY BENEFICIARIES

Name	Date of Birth	Award	Entitlement Date	Termination Date

Subpoena

WC-5 (R-9-92)

State of New Jersey
Department of Labor
Division of Workers' Compensation
CN-381
Trenton, New Jersey 08625-0381

Date:

Claim Petition No:

To:

Subpoena

Duces Tecum
Ad Testificandum

You are hereby commanded that, setting aside all business and excuses whatsoever, you be and personally appear before the Judge of Compensation at the time and place to testify the truth according to your knowledge in the matter shown below:

You are further ordered and directed to bring with you and produce at said time and place the following:

And this you are not to omit under penalty which may ensue.

Duly Authenticated

Judge of Compensation

Date

Report of Non-Compliance



State of New Jersey
Department of Labor
Office of Special Compensation Funds
P O Box 399
Trenton, New Jersey 08625-0399

REPORT OF NON-COMPLIANCE

Form SCF-528 (09/1999)

The *Report of Non-Compliance* may be used by any individual or organization to report allegations of failure on the part of any employer operating in the State of New Jersey to provide for the protection of its workers by maintaining workers' compensation insurance or obtaining authorization to self-insure.

The following employing entities are required, by law, to maintain workers' compensation insurance coverage or to obtain authorization to self-insure:

- All corporations, regardless of type, operating in New Jersey that compensate any one or more individuals, including corporate officers, for services to the corporation.
- All partnerships operating in New Jersey that compensate any one or more individuals, other than partners, for services to the partnership.
- All sole proprietorships operating in New Jersey that compensate any one or more individuals, other than the principal business owner, for services to the business.

Compensation means any remuneration for services and includes cash or other remuneration in lieu of cash such as products, services, meals and/or lodging. Individuals means all persons including family members, minors and persons working full or part time.

* Denotes Required Information

Business Name*:			
Name(s) of Principals:			
Street Address / P O Box*:			
City / State*:		Zip Code*:	Telephone:
Nature of Business:			Number of Employees:
Last Date Insured:	Carrier:		Policy #:

The following information is optional - Please see note on reverse.

Your Name:		Organization:	
Address:		Telephone:	Fax:

Please submit this form to the address shown above. Thank you.

IMPORTANT NOTE ON RELEASE OF INFORMATION

The Office of Special Compensation Funds will accept and investigate allegations of non-compliance from anonymous sources. Therefore, while it would be helpful if further information is required in our investigation, it is not necessary for you to complete information about yourself at the bottom of the *Report of Non-Compliance*.

As investigations initiated by the *Report of Non-Compliance* may lead to civil and/or criminal action against the reported employer and/or others, the Office of Special Compensation Funds may be legally required to release a copy of the original *Report of Non-Compliance* to the reported employer or other parties and/or their legal representatives. In such cases, all information provided on the *Report of Non-Compliance*, including any information that you have provided on yourself, must be released.

Social Security Offset Calculation

State of New Jersey Division of Workers' Compensation Office of Special Compensation Funds	SCF-10 (R 5-95) **Social Security Offset Calculation** (Per N.J.S.A. 34:15-95.5)

01. Petitioner Name:	02. Petitioner Social Security No:
03. Petitioner Date of Birth:	04. Claim Petition No:

05. Average Current (monthly) Earnings (ACE):		
a. Average Current (monthly) Earnings (ACE):		
b. Multiply amount in #05.a. times 12 and divide by 52:		
06. 80% of ACE:		
a. Multiply amount in #05.a. by 0.80:		
b. Multiply amount in #06.a. times 12 and divide by 52:		
07. Monthly Soc Sec benefit, including auxiliaries:		
a. Monthly Soc Sec benefit, including auxiliaries:		
b. Multiply amount in #07.a. by 12 and divide by 52:		
08. Initial Workers' Compensation Award:		
a. Enter weekly benefit amount without Soc Sec reduction:		
09. Effective Workers' Compensation Weekly Award:		
a. If amount in #06.b. is greater than amount in #08.a., subtract amount in #07.b. from amount in #08.b. (If less than zero, enter zero; if greater than or equal to #08.a. enter amount from #08.a.)		
b. If amount in #06.b. is less than or equal to amount in #08.a., subtract amount in #07.b. from amount in #08.a.		

COMMENTS:

APPENDIX B

FACT PATTERNS

For Occupational Accident 312

For Occupational Disease Qualifying Petitioner for Eligibility to Second Injury Fund 320

For Occupational Disease and Death 354

* Please note that the fact patterns are taken from actual past cases, so the forms shown may have been modified by the Division of Compensation.

Fact Pattern for Occupational Accident

Rose Wall, age 69, residing at 91 Palisade Avenue, Jersey City, New Jersey was employed by the San Francisco Hospital, Jersey city, in its Housekeeping Department. On April 20, 1990, she fell injuring her neck, right shoulder and back on her job. Ms. Wall earned $9.93 an hour. She stopped work on the date of the accident and was able to return to work on September 19, 1990. Treatment was rendered at the San Francisco Hospital and by two physicians on behalf of the employer and its workers' compensation carrier, Prince Insurance Company. The insurance company paid Ms. Wall for being out of work for 150 days.

A claim petition for compensation was executed on April 27, 1990 and was filed on May 18, 1990. An answer was executed on January 3, 1991. On July 23, 1991 the matter was pretried and the matter came on for Trial before a Judge of Compensation in Jersey City on July 14, 1992 when it was reduced to Judgment.

(The forms which follow were prepared based upon the preceding facts.)

Petitioner's Transmittal Letter

September 9, 1989

Division of Workers' Compensation
CN 381
Trenton, New Jersey 08625

RE: Rose Walls vs. San Francisco Hospital

Gentlemen:

Enclosed herewith please find an original and copy of Employee's Claim Petition for Compensation with regard to the above case. Kindly file same and serve upon:

self-insured -- serve directly.

Will you also indicate on the additional copy of this letter the filing date and Claim Petition number of the above. An envelope is enclosed for your convenience.

Very truly yours,

BALK, OXFELD, MANDELL & COHEN

JACK MANDELL

JM:tdr
Encs.

Employee's Claim Petition

WC 4-1—EMPLOYEE'S CLAIM PETITION G VST-1 ALL-STATE LEGAL SUPPLY
One Commerce Drive, Cranford, N.J.

State of New Jersey
Department of Labor and Industry
DIVISION OF WORKERS' COMPENSATION
CN 381
Trenton, New Jersey 08625

EMPLOYEE'S CLAIM PETITION

(DO NOT FILL IN)
C.P. NO. _____
D.O. _____

PETITIONER

SOCIAL SECURITY NUMBER: 581-30-3283

NAME: ROSE WALL

COUNTY OF RESIDENCE: HUDSON

ADDRESS: 91 PALISADE AVENUE
JERSEY CITY, NEW JERSEY 07306

ATTORNEY FOR PETITIONER

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER (If none, insert Soc. Sec. No.): 22-2423794 ABXM

NAME: BALK, OXFELD, MANDELL & COHEN

ADDRESS: 50 COMMERCE STREET
NEWARK, NEW JERSEY 07102

TELEPHONE: (Area Code) (201) 623-0353

VS

RESPONDENT

NAME: SAN FRANCISCO HOSPITAL

COUNTY OF RESIDENCE: HUDSON

ADDRESS: 52 WILLIAM PLACE
JERSEY CITY, NEW JERSEY 07302

INSURANCE CARRIER

NAME: (Indicate if Not Covered or if Self-Insured): SELF-INSURED

ADDRESS:

CARRIER'S CLAIM FILE NUMBER:

TO THE DIVISION OF WORKERS' COMPENSATION:

Petitioner, alleging that the Petitioner sustained an injury by an accident arising out of and in the course of petitioner's employment with Respondent, compensable under R.S. 34:15-7 et seq., supplements and amendments, respectfully states:

DAT OF ACCIDENT OR DATES OF OCCUPATIONAL EXPOSURE: APRIL 20, 1990

WHERE: FIRST FLOOR HALLWAY

HOW: PETITIONER FELL

OCCUPATION:	DATE STOPPED WORK:	DATE RETURNED TO WORK:
HOUSEKEEPING	4/20/90	STILL OUT

SEX:	DATE OF BIRTH	MARITAL STATUS	DATE INJURY REPORTED TO EMPLOYER AND TO WHOM:
F	7/14/20	SEPARATED	4/20/90 - SUPERVISOR

GROSS WEEKLY WAGES	RATE OF COMPENSATION:	TEMPORARY DISABILITY PAID	PERMANENT DISABILITY PAID
$372.88	$260.66	$	$

DESCRIBE EXTENT AND CHARACTER OF INJURY: If there has been amputation or loss of usefulness of any member or impairment of any physical function, explain fully INJURY TO NECK, RIGHT SHOULDER AND LOW BACK

Petitioner (~~DID~~) (**DID NOT**) seek compensation at any informal hearing.

A true copy of Petitioner's treating physician's report is attached hereto [ ] Yes [X] No

Medical aid (**WAS**) (~~WAS NOT~~) furnished by Petitioner's employer.

Give names and addresses of physicians and hospitals:

SANFRANCISCO HOSPITAL EMERGENCY ROOM
FRANK HERMAN, M.D. BAYONE, NEW JERSEY

(OVER)

What other facts are there that you believe important?
PETITIONER DEMANDS THAT RESPONDENT FURNISH HER ATTORNEY WITH COPIES OF TREATING MEDICAL RECORDS.

In occupational disease claims, list claims against other employers filed or to be filed for the same or similar occupational diseases.

NAME & ADDRESS OF EMPLOYER	DATES OF EMPLOYMENT

Your Petitioner therefore requests that the Division of Workers' Compensation determine the amount of compensation due your Petitioner from said Responent, under Revised Statutes of New Jersey, Title 34, Chapter 15, and the Acts supplemental thereto and amendatory thereof, and that your Petitioner may be awarded Petioner's costs in this proceeding, and such other or further relief as may be proper.

/s/ ROSE WALL
ROSE WALL (Petitioner)

STATE OF NEW JERSEY
COUNTY OF ESSEX
:ss.
Subscribed and sworn or affirmed to before me
this 27th day of APRIL, 1990.
/s/ JACK MANDELL
AN ATTORNEY AT LAW OF NEW JERSEY

The foregoing Claim Petition has been presented by the Petitioner to the Division of Workers' Compensation for hearing and determination. Unless an Answer is filed within 30 days of the date of service of the Claim Petition upon you, with the assignment clerk at the office to which the claim is assigned as indicated on the reverse side, and a copy served upon the Petitioner's attorney, THE PETITIONER WILL PROCEED WITH PROOF OF CLAIM ACCORDING TO LAW AND MAY OBTAIN JUDGMENT AGAINST YOU.

DIVISION OF WORKERS' COMPENSATION

Respondent's Answer

ALL-STATE LEGAL SUPPLY
One Commerce Drive, Cranford, N.J.

State of New Jersey
Department of Labor and Industry
DIVISION OF WORKERS' COMPENSATION
CN 381
Trenton, New Jersey 08625

RESPONDENT'S ANSWER TO

CLAIM PETITION

(DO NOT FILL IN)

CASE NO. 90-202294

D.O. HUDSON

PETITIONER

SOCIAL SECURITY NUMBER:
581-30-3283

NAME:
ROSE WALL

ADDRESS (Including County) HUDSON
91 PALISADE AVENUE
JERSEY CITY, NEW JERSEY 07306

VS

RESPONDENT

NAME:
SAN FRANCISCO HOSPITAL

ADDRESS: HUDSON
52 WILLIAM PLACE
JERSEY CITY, NEW JERSEY 07302

☐ NEW JERSEY REGISTRATION NUMBER

or

☐ FEDERALEMPLOYER IDENTIFICATION NUMBER

ATTORNEY FOR RESPONDENT

☐ NEW JERSEY REGISTRATION NUMBER

☐ SSN

☐ FEDERAL EMPLOYER IDENTIFICATION NUMBER

NAME:
I.M. DEFENSIVE, ESQ.

ADDRESS:
WASHINGTON HIGHWAY
EDISON, NEW JERSEY

TELEPHONE: (Area Code)

INSURANCE CARRIER

NAME: (Indicate If Not Covered or If Self-Insured):

NJ REG. OR FEIN
PRINCE INSURANCE COMPANY

ADDRESS:
HAMILTON ROAD
PRINCETON, NEW JERSEY

CARRIER'S CLAIM FILE NUMBER:

IN ANSWER TO CLAIM PETITION IN THIS CAUSE RESPONDENT STATES:

Correct name of Respondeent if incorrect	Petitioner was in employment on date alleged in petition	Correct date of accident	Arose out of and in the course of employment	Employment was covered by article 2 R.S. 34:1
1.	2. ☒ Yes No	3. 4/20/90	4. ☒ Yes No	5. ☒ Yes No

6. How injury occurred
PETITIONER SLIPPED WHILE WALKING DOWN RAMP

7. Where injury occurred
RESPONDENT'S PREMISES

8. Nature of injury or disease
TO BE DETERMINED

9. Petitioner's occupation
HOUSEKEEPER

10. Respondent will order medical exams
☒ Yes No

11. Date respondent had knowledge and notice of injury	12. Date petitioner stopped work	13. Date returned to work	14. Gross weekly wage	15. Rate of compensation	16. Temporary Disability paid
TIMELY	4/20/90	9/19/90	$372.00	$260.75/$99.00	21 3/7TH $5624.75

17. Permanent disability paid or being paid NONE

____ % of ____ @ ____ weeks totaling ____

18. Respondent rendered aid to the petioner by the following individuals and/or institutions:
SAN FRANCISCO HOSPITAL
DR. FRANK HERMAN

Other pertinent information: (Use reverse side if necessary)

The Respondent reserves the right to cross examine all physicians upon whom the Petitioner will rely in proof of the claim.

I certify that the foregoing statements made by me are true to the best of my knowledge, information and belief.

/S/ I.M. DEFENSIVE, ESQ. — 1/3/91
Attorney for Respondent or Respondent's Insurance Carrier — Date

Pre-Trial Memorandum

NEW JERSEY DEPARTMENT OF LABOR

HUDSON District — PRE-TRIAL MEMORANDUM — Date 7/23/91

PETITIONER ROSE WALL — RESPONDENT SAN FRANCISCO HOSPITAL

SOCIAL SECURITY NO. 581-30-3283 — CARRIER PRINCE INSURANCE CO. — C.P. NO. 90-202294

STIPULATIONS: (Fill in)

Date of Accident 4/20/90 — Wages $372.00 — Rate $260.75/$99.00

Compensation Paid:

Temporary Disability from 4/20/90 to 9/19/90 — Rate $260.75

Permanent Disability percentage _____ member _____ Rate _____

CHECK IF AT ISSUE:

Employment _____ Wages _____ Rate _____ Accident _____ Notice _____ Exposure _____

Knowledge _____ Casual Relationship _____ Injuries _____ Arise out of Employment _____

In course of employment _____ Nature and extent of Temporary _____ and Permanent _____ disability

OTHER ISSUES

Medical Bills outstanding

F.O.B. Paid _____ Liens _____

TREATING DOCTORS—Reported Findings

Dr. _____

Reported x-ray findings

Dr. _____

FURTHER STIPULATIONS:

WITNESSES:

PETITIONER				RESPONDENT			
Doctor	Date of Exam	Est.	Testimony Required	Doctor	Date of Exam	Est.	Testimony Required
Sidney Tobias, M.D.	2/19/91	66⅔% of partial total				2% of partial total	

OTHER WITNESSES _____ Pet. 1 — Resp. 1

Trial time of petitioner ONE DAY — Trial time of respondent ONE DAY

JACK MANDELL
Attorney for Petitioner

/S/ I.M. DEFENSIVE
Attorney for Respondent

JOHN DOUGH
Referee Formal Hearing

Recommendation

Order for Judgment

State of New Jersey
Department of Labor

DIVISION OF WORKERS' COMPENSATION

ORDER
- [X] JUDGMENT
- [ ] APPROVING SETTLEMENT
- [ ] DISMISSAL
- [ ] DISCONTINUANCE
- [ ]

CASE NO.'S 90-202294

District Office: HUDSON

PETITIONER

SOCIAL SECURITY NUMBER: 581-30-3283

NAME: ROSE WALL

COUNTY OF RESIDENCE: HUDSON

ADDRESS: 91 PALISADE AVENUE
JERSEY CITY, NEW JERSEY 07306

ATTORNEY FOR PETITIONER

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER: 22-2423794 ABXM

NAME: BALK, OXFELD, MANDELL & COHEN

ADDRESS: 50 COMMERCE STREET
NEWARK, NEW JERSEY 07102

APPEARING: JACK MANDELL, ESQ.

VS

RESPONDENT

NAME: SAN FRANCISCO HOSPITAL

COUNTY OF RESIDENCE: HUDSON

ADDRESS: 52 WILLIAM PLACE
JERSEY CITY, NEW JERSEY 07302

ATTORNEY FOR RESPONDENT

NAME: I.M. DEFENSIVE

ADDRESS: (Including County) MIDDLESEX
WASHINGTON HIGHWAY
EDISON, NEW JERSEY

APPEARING: I.M. DEFENSIVE, ESQ.

INSURANCE CARRIER

NAME: (Indicate If Not Covered or If Self-Insured):
PRINCE INSURANCE COMPANY
HAMILTON ROAD
PRINCETON, NEW JERSEY

DATE OF ACCIDENT
OR 4/20/90
OCCUPATIONAL EXPOSURE:

DESCRIBE (Briefly)
PETITIONER FELL

Weekly Wages $372.00 Rate(s) 260.75 /99.00

IF RE-OPENED PETITION, INDICATE FOR LAST AWARD: DATE: _____ PERMANENT: _____ TEMP: $ _____

This matter having come on before the Court on this 14th day of July, 1992.

[X] ORDER FOR JUDGEMENT:
It appearing that the Petitioner suffered a compensable injury on the above mentioned date while in the employ of respondent: it is Ordered and Adjudged that the petitioner be awarded compensation benefits, payable as indicated on Page 2.

[ ] ORDER FOR APPROVING SETTLEMENT:
The parties having settled the matter and a finding by the Court having been made that the terms of the settlement are fair and just; it is Ordered that this settlement be approved and the petitioner be paid as indicated on Page 2.

[ ] ORDER FOR DISMISSAL
This matter having come on for hearing upon the respondent's motion for Dismissal which was made and duly served and there being good cause shown, the claim petition herein is hereby dismissed for
- [ ] 1. Lack of Prosecution
- [ ] 2.

[ ] ORDER FOR DISCONTINUANCE
This matter having come on before the Court and the Court having received evidence that this matter should be discontinued and for good cause shown. It is ORDERED AND ADJUDGED that this matter be discontinued for the following reasons:

[ ] It is FURTHER ORDERED that the payment indicated on Page 2 be made a part of the Order for Discontinuance for petitioner's disability. (Percentages and members involved.)

[ ]

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE RECEIPT OF A COPY. (Sign if applicable)

STENO FEE $65.00 BY RESPONDENT

/S/ JACK MANDELL
(PETITIONER'S ATTORNEY)

/S/ JOHN DOUGH 7/14/92
(JUDGE OF COMPENSATION) (DATE)

PETITIONER (*Where Applicable*)

/S/ I.M. DEFENSIVE
(RESPONDENT'S ATTORNEY)

NAME (PRINT OR TYPE)

State of New Jersey
Department of Labor
DIVISION OF WORKERS' COMPENSATION

(CONTINUATION)
ORDER
[X] JUDGMENT
[ ] APPROVING SETTLEMENT
[ ] DISMISSAL
[ ] DISCONTINUANCE

CASE NO.'S 90-202294

D.O HUDSON

Permanent Disability (Describe Percentages, Nature and extent of Disability, and Members involved)

33 1/3% of partial total, contusion and strains of cervicodorsal, lumbodorsal and lumbar areas, partially frozen right shoulder, disability is orthopedic.

DISABILITY AWARDED

TEMPORARY: 21 3/7 Weeks at $ 260.75 = $ 5624.75 less $ 5624.75 paid = Balance due $ 0.00

PERMANENT: 200 Weeks at $ 173.00 = $ 34,600.00 less $ 0.00 paid = Balance due $34,600.00

Medical Bills (Doctors and /or Institutions)

MEDICAL FEE ALLOWED (Expert and /or Testimonial)	TOTAL AMT. ALLOWED	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
Earl C. Shaw, M.D.	$150.00	$75.00	$75.00
ATTORNEY(S) FEE	**TOTAL**	**PAYABLE BY PETITIONER**	**PAYABLE BY RESPONDENT**
Balk, Oxfeld, Mandell & Cohen P.A.	$6920.00	$2765	$4155.00
	TOTAL	**PAYABLE BY PETITIONER**	**PAYABLE BY RESPONDENT**
North Jersey Reporting Services	65.00		65.00

/S/ JOHN DOUGH
(JUDGE OF COMPENSATION)

7/14/92
(DATE)

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE A COPY:

/S/ JACK MANDELL
(PETITIONER'S ATTORNEY)

/S/ I.M. DEFENSIVE
(RESPONDENT'S ATTORNEY)

PETITIONER (*Where Applicable*)

Fact Pattern for Occupational Disease
Qualifying Petitioner for Eligibility to Second Injury Fund

Lola Moralez, born March 22, 1933, in Cuba, came to the United States and secured employment as an assembly worker for Waterwell Industries of Moonachie, New Jersey. She worked for several years in a dusty, smokey atmosphere until April 18, 1988 when she had to stop work due to the effects of asthmatic bronchitis. On September 9, 1989 she consulted an attorney to see if she were entitled to any benefits.

A detailed medical history showed that she had suffered from food allergies and asthma from 1967; in 1986 she had removal of an ovary and her uterus; also in 1986 she was discovered to have high blood pressure, heart disease and a hiatus hernia. In 1981 she was found to have arthritis. In 1960 she had stripping bilaterally of varicose veins. She also had pre-existing obesity, glaucoma, osteoporosis and gastritis.

An occupational disease Claim Petition was filed with the Division of Workers' Compensation. Petitioner was also advised to file a claim for Social Security benefits, and eventually a claim for benefits was filed with the Second Injury Fund.

(The forms which follow were prepared based upon the preceding facts.)

Petitioner's Transmittal Letter

September 9, 1989

Division of Workers' Compensation
CN 381
Trenton, New Jersey 08625

RE: Lola Moralez vs. Waterwell Industries
Date of Last Exposure: April 18, 1988

Gentlemen:

Enclosed herewith please find an original and copy of Employee's Claim Petition for Compensation with regard to the above case. Kindly file same and serve upon:

NEW JERSEY INSURANCE COMPANY.

Will you also indicate on the additional copy of this letter the filing date and Claim Petition number of the above. An envelope is enclosed for your convenience.

Very truly yours,

BALK, OXFELD, MANDELL & COHEN

JACK MANDELL

JM:tdr
Encs.

Employee's Claim Petition

WC 4-1 --EMPLOYEE'S CLAIM PETITION | G VST-1 | ALL-STATE LEGAL SUPPLY, One Commerce Drive, Cranford, N.J.

State of New Jersey
Department of Labor and Industry
DIVISION OF WORKERS' COMPENSATION
CN 381
Trenton, New Jersey 08625

WC-385(7-80)
EMPLOYEE'S CLAIM PETITION

(DO NOT FILL IN)
C.P. NO. _____
D.O. _____

PETITIONER

SOCIAL SECURITY NUMBER: 311-84-7149

NAME: LOLA MORALEZ
COUNTY OF RESIDENCE: HUDSON
ADDRESS: 624 23RD STREET
UNION CITY, NEW JERSEY

ATTORNEY FOR PETITIONER

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER (If none, insert Soc. Sec. No.): 22-2423794 ABXM

NAME: BALK, OXFELD, MANDELL & COHEN
ADDRESS: 50 COMMERCE STREET
NEWARK, NEW JERSEY 07102
TELEPHONE: (Area Code) (201) 623-0353

VS

RESPONDENT

NAME: WATERWELL INDUSTRIES
COUNTY OF RESIDENCE: BERGEN
ADDRESS: MOONACHIE
NEW JERSEY

INSURANCE CARRIER

NAME: (Indicate If Not Covered or If Self-Insured): NEW JERSEY INSURANCE COMPANY
ADDRESS:

CARRIER'S CLAIM FILE NUMBER:

TO THE DIVISION OF WORKERS' COMPENSATION:

Petitioner, alleging that the Petitioner sustained an injury by an accident arising out of and in the course of petitioner's employment with Respondent, compensable under R.S. 34:15-7 et seq., supplements and amendments, respectfully states:

DAT OF ACCIDENT OR DATES OF OCCUPATIONAL EXPOSURE:	WHERE:
APRIL 18, 1988	RESPONDENT'S PREMISES

HOW: PETITIONER EXPOSED TO DELETERIOUS ENVIRONMENTAL POLLUTENTS

OCCUPATION:	DATE STOPPED WORK:	DATE RETURNED TO WORK:
ASSEMBLY WORKER	APRIL 18, 1988	NEVER RETURNED

SEX:	DATE OF BIRTH	MARITAL STATUS	DATE INJURY REPORTED TO EMPLOYER AND TO WHOM:
F	3/22/33	SINGLE	WITHIN STATUTORY PERIOD

GROSS WEEKLY WAGES	RATE OF COMPENSATION:	TEMPORARY DISABILITY PAID	PERMANENT DISABILITY PAID
$280.00	$196.00	$	$

DESCRIBE EXTENT AND CHARACTER OF INJURY: If there has been amputation or loss of usefulness of any member or impairment of any physical function, explain fully INJURY TO THE RESPIRATORY SYSTEM

Petitioner (~~DID~~) (**DID NOT**) seek compensation at any informal hearing.

A true copy of Petitioner's treating physician's report is attached hereto [ ] Yes [X] No

Medical aid (**WAS**) (~~WAS NOT~~) furnished by Petitioner's employer.

Give names and addresses of physicians and hospitals:

(OVER)

What other facts are there that you believe important?

In occupational disease claims, list claims against other employers filed or to be filed for the same or similar occupational diseases.

NAME & ADDRESS OF EMPLOYER	DATES OF EMPLOYMENT

Your Petitioner therefore requests that the Division of Workers' Compensation determine the amount of compensation due your Petitioner from said Responent, under Revised Statutes of New Jersey, Title 34, Chapter 15, and the Acts supplemental thereto and amendatory thereof, and that your Petitioner may be awarded Petioner's costs in this proceeding, and such other or further relief as may be proper.

/s/ LOLA MORALEZ
(Petitioner)

STATE OF NEW JERSEY
COUNTY OF ESSEX
:ss.
Subscribed and sworn or affirmed to before me
this 9th day of SEPTEMBER, 1989.
/s/ JACK MANDELL
AN ATTORNEY AT LAW OF NEW JERSEY

The foregoing Claim Petition has been presented by the Petitioner to the Division of Workers' Compensation for hearing and determination. Unless an Answer is filed within 30 days of the date of service of the Claim Petition upon you, with the assignment clerk at the office to which the claim is assigned as indicated on the reverse side, and a copy served upon the Petitioner's attorney, THE PETITIONER WILL PROCEED WITH PROOF OF CLAIM ACCORDING TO LAW AND MAY OBTAIN JUDGMENT AGAINST YOU.

DIVISION OF WORKERS' COMPENSATION

Respondent's Answer

ALL-STATE LEGAL SUPPLY
One Commerce Drive, Cranford, N.J.

State of New Jersey
Department of Labor and Industry
DIVISION OF WORKERS' COMPENSATION
CN 381
Trenton, New Jersey 08625

RESPONDENT'S ANSWER TO
CLAIM PETITION

(DO NOT FILL IN)
CASE NO. 89-456340
D.O. HUDSON

PETITIONER
SOCIAL SECURITY NUMBER:
311-84-7149
VS
NAME:
LOLA MORALEZ
ADDRESS (Including County) HUDSON
624 23RD STREET
UNION CITY, NEW JERSEY

ATTORNEY FOR RESPONDENT
NAME:
PETER PENNYPINCHER
ADDRESS:
BROAD STREET
TRENTON, NEW JERSEY
TELEPHONE: (Area Code)

RESPONDENT
NAME:
WATERWELL INDUSTRIES
ADDRESS: BERGEN
MOONACHIE
NEW JERSEY

INSURANCE CARRIER
NAME: (Indicate If Not Covered or If Self-Insured):
NEW JERSEY INSURANCE COMPANY
ADDRESS:
CLAIM NUMBER:

IN ANSWER TO CLAIM PETITION IN THIS CAUSE RESPONDENT STATES:

Correct name of Respondeent if incorrect	Petitioner was in employment on date alleged in petition	Correct date of accident	Arose out of and in the course of employment	Employment was covered by article 2 R.S. 34:1
1.	2. ☐ Yes ☐ No	3.	4. Yes ☐ No	5. ☒ Yes ☐ No

6. How injury occurred

7. Where injury occurred

8. Nature of injury or disease

9. Petitioner's occupation

10. Respondent will order medical exams
☒ Yes ☐ No

11. Date respondent had knowledge and notice of injury	12. Date petitioner stopped work	13. Date returned to work	14. Gross weekly wage	15. Rate of compensation	16. Temporary Disability paid

17. Permanent disability paid or being paid

_____ % of _____ @ _____ weeks totaling _____

18. Respondent rendered aid to the petioner by the following individuals and/or institutions:

Other pertinent information: (Use reverse side if necessary)

THE RESPONDENT RESERVES THE RIGHT TO CROSS EXAMINE ALL PHYSICIANS UPON WHOM THE PETITIONER WILL RELY IN PROOF OF THE CLAIM.

I certify that the foregoing statements made by me are true to the best of my knowledge, information and belief.

/S/ PETER PENNYPINCHER
Attorney for Respondent

2/20/90
Date

Pre-Trial Memorandum

NEW JERSEY DEPARTMENT OF LABOR

HUDSON District — PRE-TRIAL MEMORANDUM — Date APRIL 25, 199

PETITIONER LOLA MORALEZ RESPONDENT WATERWELL INDUSTRIES

SOCIAL SECURITY NO. 311-84-7149 CARRIER NEW JERSEY INSURANCE CO. C.P. NO. 89-456340

STIPULATIONS: (Fill in)

Date of Accident APRIL 18, 1988 Wages $316.00 Rate _____

Compensation Paid:

Temporary Disability from _____ to _____ Rate _____

Permanent Disability percentage _____ member _____ Rate _____

CHECK IF AT ISSUE:

Employment _____ Wages _____ Rate _____ Accident x Notice x Exposure x

Knowledge x Casual Relationship x Injuries x Arise out of Employment x

In course of employment x Nature and extent of Temporary x and Permanent x disability

OTHER ISSUES

_____

Medical Bills outstanding TO BE SUBMITTED

_____

F.O.B. Paid _____ Liens _____

TREATING DOCTORS—Reported Findings INTRACTABLE BRONCHIAL ASTHMA

_____

_____ Dr. _____

Reported x-ray findings _____

_____

_____

_____ Dr. _____

FURTHER STIPULATIONS: _____

_____

_____

WITNESSES:

PETITIONER				RESPONDENT			
Doctor	Date of Exam	Est.	Testimony Required	Doctor	Date of Exam	Est.	Testimony Required
Herbert Silberner	3/29/91	100% of partial total		Sanford Lewis, M.D.	5/1/90	100%	

OTHER WITNESSES _____ Pet. FOUR Resp. FOUR

Trial time of petitioner TWO DAYS

JACK MANDELL
Attorney for Petitioner

Trial time of respondent TWO DAYS

/S/ PETER PENNYPINCHER
Attorney for Respondent

JUDITH PRIEST
Referee, Formal Hearing

_____
Recommendation

Transmittal Letter for Motion

May 9, 1991

Division of Workers' Compensation
910 Bergen Avenue
Jersey City, New Jersey 07306-0603

RE: Lola Moralez vs. Waterwell Industries
C.P. No. 89-456340

Gentlemen:

Enclosed herewith please find an original and two copies of Notice of Motion together with an original and two copies of Second Injury Fund Application for Joinder of the Second Injury Fund in the above entitled matter. Will you kindly list same at your earliest convenience.

Copies of the Motion and Second Injury Fund Application are being served upon the respective parties as appears below.

Very truly yours,

BALK, OXFELD, MANDELL & COHEN

JACK MANDELL

JM:tdr
Encs.
cc: Commissioner of Labor
cc: Deputy Attorney General
cc: Peter Pennypincher, Esq.

Notice of Motion

BALK, OXFELD, MANDELL & COHEN, P.A.
Attorneys for Petitioner
50 Commerce Street
Newark, New Jersey

NEW JERSEY DEPARTMENT OF LABOR
DIVISION OF WORKERS' COMPENSATION
CLAIM PETITION NO. 89-456340

S.S. No. 311-84-7149 :
LOLA MORALEZ
:
PETITIONER
:
vs. NOTICE OF MOTION
:
WATERWELL INDUSTRIES
:
RESPONDENT.
:

TO: COMMISSIONER OF LABOR
JOHN FITCH PLAZA
TRENTON, NEW JERSEY 08625

DEPUTY ATTORNEY GENERAL
RICHARD J. HUGHES JUSTICE COMPLEX
CN 112
TRENTON, NEW JERSEY 08625

PETER PENNYPINCHER, ESQ.
BROAD STREET
TRENTON, NEW JERSEY 08625

SIRS:

PLEASE TAKE NOTICE, that the undersigned attorney for the Petitioner shall apply to the Presiding Judge of Compensation or to such other Judge to whom this matter may be assigned, at the Division of Workers' Compensation, 9 Bergen Avenue, Jersey City, New Jersey for an Order joining the Second Injury Fund as a party at the above proceedings, on the grounds that the circumstances and facts indicate that the Petitioner is totally and permanently disabled due to a combination of disability which would qualify her for eligibility to the Second Injury Fund. Annexed hereto are photocopies of medical reports of the Petitioner in support thereof.

BALK, OXFELD, MANDELL, & COHEN, P.A.
ATTORNEYS FOR PETITIONER

/S/ JACK MANDELL

DATED: May 9, 1991

Medical Report of Petitioner

HERBERT B. SILBERNER, M.D., P.A.
2130 MILLBURN AVE.
MAPLEWOOD, N.J. 07040

Telephone 201-763-6163

May 17, 1991

Jack Mandell, Esq.
Newark, New Jersey

RE: Lola Moralez

Dear Mr. Mandell:

At your request, I have examined the above named patient at my office on May 17, 1991.

She was born in Cuba and came to the United States during 1969.

History was obtained with the aid of an interpreter.

She has been employed by the Waterwell Industries from 1971 until she left during January of 1988 because of medical disability which prevented her from performing the required duties.

Prior to coming to the United States she was under medical treatment for "asthma." She was told that she was allergic to foods.

At the time of commencing her employment with Waterwell Industries she had no complaints of asthma or any difficulty in breathing.

Toward the end of her first year of employment she became aware of progressive difficulty in breathing associated with wheezing and asthmatic attacks. She associated this with her exposure to chronic inhalation of irritating dust, chemical fumes and other noxious elements in the work place which made her cough and feel short of breath. The exposure remained about the same throughout her employment. Her pulmonary complaints became progressively

HERBERT B. SILBERNER, M.D., P.A.
2130 MILLBURN AVE.
MAPLEWOOD, N.J. 07040

Telephone 201-763-6163

more severe and more frequent.

She has been under the care of a doctor in Hoboken, New Jersey, who has hospitalized her many times at the hospital in Hoboken. He has, also, prescribed the usual medication for out-patient inhalation treatment of asthma. These substances are anti-inflammatory and bronchodilator. She carries medication with her to have available in case of an emergency.

She, also, has been under treatment by a doctor for a heart condition which is associated with high blood pressure. She takes Nitrostat and Lanoxin. She is aware of the fact that she has an irregular heart beat.

She has, also, been advised by her personal physician that she has diabetes for which she takes oral medication (Micronese), a hiatus hernia and glaucoma.

The patient was awarded total permanent disability from Social Security, approximately, two years ago.

She has not been employed since 1988.

She never smoked any cigarettes.

Otherwise, system review and past medical history is not relevant.

On physical examination she presented as a 58 year old female, 60" tall, 196 pounds, blood pressure 148/94, pulse 84, total irregular.

Eyes, ears, nose and throat appeared to be normal.
Neck showed no enlargement.

HERBERT B. SILBERNER, M.D., P.A.
2130 MILLBURN AVE.
MAPLEWOOD, N.J. 07040

Telephone 201-763-6163

May 17, 1991
Page 3
RE: Lola Moralez

Heart sounds showed a grade 2 over 6 apical systolic murmur associated with a totally irregular hear beat, clinically diagnosed as atrial fibrillation.

Lung findings were markedly abnormal; distant breath sounds, prolonged expiration, wheezing on inspiration and exploration throughout, both, lung fields.

The abdomen was obese.

Extremities showed no cyanosis, clubbing or edema.

Laboratory data was as follows:

1. Hemoglobin - normal.

2. Urine - normal.

3. Electrocardiogram showed atrial fibrillation and low T-wave inversion.

4. X-ray of the chest showed the heart to be enlarged in transverse diameter compatible with hypertension; the lung fields showed pulmonary congestion.

5. Vital capacity studies were as follows:

   A. Forced vital capacity:

Predicted	2,620 cc.,
Observed	1,475 cc. (56%)
of predicted.	

HERBERT B. SILBERNER, M.D., P.A.
2130 MILLBURN AVE.
MAPLEWOOD, N.J. 07040

Telephone 201-763-6163

May 17, 1991
Page 4
RE: Lola Moralez

B. One second forced expiratory volume:

Predicted	2,140 cc.,
Observed	1,425 cc (66%)
of predicted.	

C. FBV1/FVC:

Predicted	80%
Observed	96%

The patient was co-operative.

The test is considered reliable, results indicate severe restrictive lung disease.

I diagnosed her condition as chronic bronchial asthma for which I estimate permanent pulmonary disability of 80% of total. The patient has continuous asthmatic symptoms with frequent exacerbations which have required hospitalizations many times during the past years. Historically, she did have asthmatic symptoms in Cuba, however, at the time of commencing employment at Waterwell Industries she had no asthmatic complaints. In the course of this employment, close to the end of the first year, during which time, she was aware of inhalation of irritating chemicals which made her cough and feel short of breath she developed an asthmatic condition which has been progressive to the present time. The physiologic mechanism is a chronic inflammation of the bronchial tubes which sensitizes them to any type of outward stimuli and produces the clinical picture as, described above.

It is, therefore, my opinion that her pulmonary condition is causally related to her employment at the Waterwell Industries by way of aggravation and acceleration of a pre-existing condition.

HERBERT B. SILBERNER, M.D., P.A.
2130 MILLBURN AVE.
MAPLEWOOD, N.J. 07040

Telephone 201-763-6163

May 17, 1991
Page 5
RE: Lola Moralez

Based upon, both, subjective and objective findings, I estimate her permanent pulmonary disability as 80% of total.

She, also, has a cardiac condition in the form of hypersensitive heart disease, atrial fibrillation, enlarged heart, symptomatic and requiring treatment as, described above, I estimate this disability as 40% of total, not causally related to her employment.

Diabetes, hiatus hernia and glaucoma which I group together as a disability of 25% of total.

Obviously, this patient is 100% totally and permanently disabled as an industrial unit and I agree with the decision of the Social Security Administration.

Statement for service is enclosed.

Respectfully submitted

Herbert S. Silberner, M.D.

HBS/lsu

Enc.

Medical Report of Respondent

SANFORD M. LEWIS, M.D., P.A.
SUITE 10
315 E. NORTHFIELD ROAD
LIVINGSTON, N.J. 07039

TELEPHONE (201) 894-1144
FAX: (201) 894-XXXX

June 1, 1990

Peter Pennypincher, Esq.
Broad Street
Trenton, New Jersey

Re: Lola Moralez
vs.: Waterwell Industries

ss: 311-84-7147

Dear Mr. Pennypincher:

The above captioned was examined on 5/1/90. The patient is a 57-year old married Hispanic female (separated). The patient speaks little English. Her son-in-law acted as interpreter. Communication was somewhat limited.

HISTORY:

The patient was born in Cuba and was educated for four years. She came to the United States in 1969.

In 1971 she was employed by Waterwell Industries where she worked on an assembly of garden equipment until January of 1988 when she left because of illness to be described below. There was some exposure to fumes.

Present Illness:

The patient experienced onset of asthma in 1967 while still in Cuba. She was found to be allergic to many foods but cannot recall what else she may have been allergic to and

doubts that there has been further allergy testing since she entered this country. She was hospitalized on several occasions for this over the years. The last such was at St. Mary's Hospital, Hoboken, four months ago.

In 1986 she had surgery at Robert Wood Johnson for an oophorectomy and hysterectomy and she was found to have hypertension, heart disease and diabetes. There was also hiatus hernia.

She is under the care of a doctor and is on eye drops, Thodur, Prednisone, Calan, Lanoxin, Micronase, Zantac, Lasix, potassium, Ventolin inhaler.

As of the present time asthmatic attacks of severe nature occur five or six times a year and are worse if it is very hot or very cold and if she exerts herself. In between she is short of breath with exertion and occasionally coughs. There is no chest pain or bilateral peripheral edema. Her eyes hurt. She has occasional indigestion and there are arthritic pains in the back and hips with radiation into the legs.

She uses no alcohol or tobacco.

Past history includes usual childhood diseases, two pregnancies, varicose vein surgery in the 1960's, menopause, glaucoma.

Family history includes her father and mother both of whom died of heart disease. A brother is diabetic. A sister died of diabetes and stroke.

PHYSICAL EXAMINATION:

Age:	57
Height:	59"
Weight:	193 lbs. (extremely obese)
B/P:	164/85

Pertinent physical observations relevant to the present examination include the following: The lungs reveal bi-lateral wheezing characteristic of asthma. The heart is not clinically enlarged and the sounds are of fair quality. A Grade III/VI systolic murmur is best heard in the lift third intercostal space. Rhythm is irregular suggesting atrial fibrillation. The abdomen is very heavy. There is no mass, tenderness or organ enlargement. There is no lymphadenopathy. There is no clubbing or bilateral peripheral edema.

LABORATORY STUDIES

Electrocardiograph Study: (13 leads)

Rhythm is regular. T waves are low to inverted. The tracing suggests controlled atrial fibrillation.

PULMONARY FUNCTION PROFILE

	Actual (Patient Best)	Predicted	A/P%	Normal Range
FVC	1.67	2.57	65%	80%
FEV1	1.31	1.90	69%	80%
FEV1/FVC	78%	75%	N/A	75%
FEF25-75%	1.10	2.27	48%	75%

Patient effort:

Good (diagnostic) - (x)
Fair (insufficient for reliable diagnosis of abnormality - ( )
Poor (non-diagnostic) - ( )

Interpretation:

The patient took medication 1 hour before the examination. Her very severe obesity and large abdominal mass interfere somewhat with ventilation although the findings are characteristic of bronchial asthma.

Re: Lola Moralez

Explanatory Note:

FVC	= Forced vital capacity (liters)
FEV1	= Times forced expiratory volume (liters in 1 second)
FEV1/FVC	= 1 second percentage of total FVC
FEF25-75%	= Forced mid-expiratory flow (liters/second)

BTPS: Values corrected for temperature

Urinalysis	Appearance	-clear acid
	Protein	-negative
	Glucose	-negative
	Ketones	-negative
	Bilirubin	-negative
	Blood	-negative
	Urobilinogen	-negative
	Specific gravity	-1010

Radiographic Examination of the Chest:

Normal cardiac status. The aortic shadow is somewhat accentuated. Normal pulmonary status.

REVIEW OF FILE

A doctor wrote in September of 1988 that the patient was disabled as a result of "chronic intractable asthma."

DISCUSSION AND CONCLUSIONS:

It is essential that I have the opportunity to review hospital records. The last such was apparently at St. Mary's, Hoboken, four months ago. There is no doubt that this lady has asthma, as well as a number of other conditions, but the etiology of that asthma is presently obscure. One hopes that previous records may illuminate.

As of the present time the patient, as a result of the asthma alone, is disabled to the extent of 35% of total. The cause of the asthma has not been ascertained. She was worked

Re: Lola Moralez

up in Cuba where, quite obviously, the asthma originated and has been told she was allergic to a number of foods. One wonders what else she is allergic to since patients in this category often have multiple allergies. Further, she stopped working in 1988 and yet, on the morning of my examination, even after taking medication, she has asthmatic wheezing. It is obvious she is responding to something in her present environment and I strongly suspect that she is allergic to a number of substances in the general environment.

As of the present time, I have nothing before me to suggest that work performed for Waterwell Industries contributed. There are innumerable individuals just like this lady who have had asthma for many years, who have not worked at all except in their own homes, and whose asthma continues over time just as hers has.

Overall the patient is totally disabled as a result of a number of other processes which have nothing to do with the work background. These include hypertension, probable hypertensive and arteriosclerotic heart disease, glaucoma, diabetes mellitus and hiatus hernia.

I hope these comments will be of assistance. Please do not hesitate to communicate with me again if further questions arise. Thank you for referring this matter.

Very truly yours,

Sanford M. Lewis, M.D.
Clin. Asst. Professor of Medicine
University of Medicine & Dentistry
of New Jersey

SML/ra
Enc.

```
ate: 5-1-90   Temperature (C): 20    Number
eight (in): 59    Age: 57    Sex: F    ID: 000

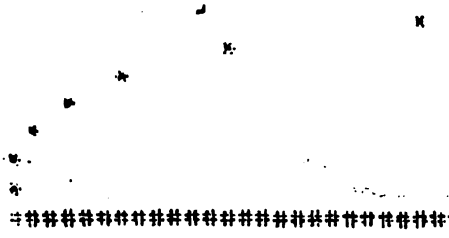
arameter    best      predicted      best /       normal
easured     actual    performance    predicted    value
=============================================================
VC            1.67        2.57          65%          80%
EV 1          1.31        1.90          69%          80%
EV 1 / FVC     78%         75%          N/A          75%
EF 25-75      1.10        2.27          48%          75%

ffort:  poor  fair  good      actual results if 3rd test

arameter    test 1    test 2    test
=============================================
VC            1.67      1.61      1.61
EV 1          1.31      1.20      1.18
EV 1 / FVC   78.21     74.67
EF 25-75      1.10      0.91      0.87

== end of printout ===
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.ot of best FVC
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SPECIAL NOTE ON EVALUATION OF PULMONARY FUNCTION TESTS:

The problem inherent in such testing are thoroughly discussed in an article entitled "Spirometry: Quantitative Test Criteria and Test Acceptability" written by Glindmeyer, et al and published in American Review of Respiratory Disease, 1987; 136:449-452.

Pertinent excerpts include the following:

> "Quantitative criteria have been developed to assess the acceptability of tracings in spirometric studies . . . . Most modern automated spirometers are programmed with these criteria and compare computed parameters from the collected tracings with the criteria. When three acceptable FVC maneuvers have been completed, the spirometer prints the statement that the test meets criteria for acceptability. However a review of actual test tracings confirms that, as stated in the test standards, these are minimum criteria and do not necessarily assure validity of the test.
>
> Qualitative criteria which require subjective evaluations by the spirometric technician were developed to assure that the test subject achieved maximal inhalation prior to commencing the FVC maneuver and maintain maximal effort throughout the exhalation phase, without excessive hesitation, coughing or closing of the glottis.
>
> Quality assurance is the most important aspect of spirometric data collection . . . computer-assisted spirometry will continue to evolve; however, the few numerical indices of test quality now available cannot relieve the spirometric technical of the obligation to inspect critically the graphic recording of each test."

Second Injury Fund Application

State of New Jersey Department of Labor and Industry DIVISION OF WORKERS' COMPENSATION CN 381 Trenton, New Jersey 08625	**SECOND INJURY FUND APPLICATION**	C.P. NO. 89-456340 D.O. HUDSON

SOCIAL SECURITY NUMBER: 311-84-7149		Federal Employer's I.D. Number:
NAME: LOLA MORALEZ	ATTORNEY FOR RESPONDENT	NAME: BALK, OXFELD, MANDELL & COHEN
ADDRESS (Including County) HUDSON 91 PALISADE AVENUE JERSEY CITY, NEW JERSEY 07306		ADDRESS: 50 COMMERCE STREET Newark, New Jersey 07102 (201) 623-0353

VS.

NAME: WATERWELL INDUSTRIES	INSURANCE CARRIER	NAME: (Indicate If Not Covered or If Self-Insured): NEW JERSEY INSURANCE COMPANY
ADDRESS: (Including County) BERGEN MOONACHIE NEW JERSEY		

TO THE COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY OF THE STA
OF NEW JERSEY:

Petitioner, hereby alleges eligibility for the Second Injury fund benefits pursuant to N.J.S.A. 34:15-95, et seq., supplements and amendments, respectfully states:

1. Age: 58 years;
2. Birth Date: 3/22/33 ';
3. Marital Status: Single ;
4. Educational Background: 4th Grade Cuba .

5. Summary of Employment History: Petitioner worked as a housewife in Cuba from 1950 to 1966. She worked as a farm laborer from 1966 to 1969 in Cuba. She came to the United States in 1969 and did not work until April, 1972 when she started her only job that she ever held in the United States with Waterwell Industries.

6. Description of Disabilities which existed prior to the date of the last compensable injury, and the date of onset of each.

a. Asthma	1967	j. Bilateral Varicose Veins Surgery	196?
b. Food Allergies	1967	k. Surgical Menopause	198?
c. Oophrectomy	1986	l. Glaucoma	
d. Hysterectomy	1986	m. Obesity	

e. Hypertension	1986	n. Supra ventricular Arrhythmia	
f. Heart Disease	1986	o. Osteoporosis	
g. Diabetes Mellitus	1986	p. Gastritis	
h. Hiatus Hernia	1986		
i. Arthritis	1981		

7. Description of Last Compensable Injury:
   a. Date: ;
   b. Description of Occurrence: Occupational Exposure ;
   c. Description of Injury: Chronic Asthmatic Bronchitis ;
   d. Medical Treatment: Prednisone ;
   e. Description of Permanent Injury: Chronic Asthmatic Bronchitis ;
   f. Name and Address of Employer: Waterwell Industries, Moonachie, New Jersey ;
   g. Insurance Carrier: New Jersey Insurance Company ;
   h. Petitioner's Wages: $316.00 ;
   i. Rate of Compensation: $252.70 ;
   j. Compensation Paid to Date for this Injury:
      (1) Permanent: $0.00 ;
      (2) Temporary: $0.00
8. A Third Party Tort Claim (~~has~~) (has not) been made as to the last compensable injury.
   a. Name and Address of the Third Party: ;
   b. Status of the claim: ;
9. A Copy of All Reports of All Proposed Expert Witnesses and of all Treating Physicians Which Are in the Possession or Control of the Party Filing the Application are Attached. The following Reports are Attached:
   a. Herbert Silberner, M.D. ;
   b. Sanford Lewis, M.D. ;
   c. ;
   d. ;
   e. ;
   f. ;
   g. ;
10. Description of All Wage Replacements Presently Being Received: Social Security Disability ;
11. References to All Prior Allowances and Awards in Workmen's Compensation Matters Concerning said Petitioner, including the Date of Accident and the Extent of the Allowance or Award:
   a. None ;
   b. ;
   c. ;
   d. ;
   e. ;

f. _____;

Your petitioner therefore prays that the Division of Workmen's Compensation will determine the amount of compensation due your petitioner from said respondents, and the petitioner's eligibility for the Second Injury Fund benefits, under Revised Statutes of New Jersey, Title 34, Chapter 15, and the Acts supplemental thereto and amendatory thereof, and such other or further relief as may be proper.

/S/ LOLA MORALEZ
Petitioner

STATE OF NEW JERSEY)
ss.
COUNTY OF ESSEX)

LOLA MORALEZ of full age, being duly sworn according to law, on his oath deposes and says: That he is the petitioner named in the foregoing petition: that he has read the same and is familiar with the contents thereof; and that the matters and things therein set forth are true according to the best of his knowledge and belief.

/S/ LOLA MORALEZ
Petitioner

Subscribed and sworn to before me: this 3RD day of May 1991, at NEWARK, New Jersey.

/S/ JACK MANDELL
An Attorney-at-Law of the State of New Jersey

(This affidavit may be sworn to before any person authorized to administer an oath.)

Request for Social Security Information

WC-124 (6-86)
New Jersey Department of Labor
Division of Workers' Compensation

REQUEST FOR SOCIAL SECURITY INFORMATION

I. TO BE COMPLETED BY WORKERS' COMPENSATION (WC) or INSURANCE COMPANY RESPRESENTATIVE or WORKER'S ATTORNEY*.

Worker's Name LOLA MORALEZ 2. Social Security Number 311-84-7149

Employer's Name and Address WATERWELL INDUSTRIES
MOONACHIE, NEW JERSEY

Injury Date APRIL 18, 1988

Information needed from SSA (check a or b)

a. 80% ACE only ☐
a. 80% ACE plus Social Security Benefits only ☒
Signature of WC, or Insurance Company Representative or Worker's Attorney

/S/ JACK MANDELL Date 9/18/91
AN ATTORNEY AT LAW OF NEW JERSEY

NOTE: REQUESTS FROM A WORKER'S ATTORNEY MUST BE ACCOMPANIED BY A SIGNED AUTHORIZATION ALLOWING INFORMATION TO BE SENT TO THE ATTORNEY

II. TO BE COMPLETED BY SSA

Has the above named worker applied for social security benefits? Yes ☒ No ☐ (If "no", go to #9)
If "yes", what is the type of benefit? Disability ☒ Other ☐ (If "other", go to #9)
What is the status of the disability claim? Pending ☐ Denied ☐ Allowed ☒
(If "pending" or "denied", go to #9)
80% Average Current Earnings (ACE) $779.20
Enter the amount of the worker entitlement $389.90
Are there any auxiliary beneficiaries? Yes ☐ No ☒ (If "no", go to #9)
Enter the amount which auxiliary was awarded as of the date of entitlement:

Auxiliary #1 #2 #3

#4 #5 #6

Use the reverse to show the date of new entitlements or terminations of an auxiliary.

Signature and Title of SSA Representative

/S/ JOHN JONES Date 9/21/91

RETURN INFORMATION TO:

Order for Judgment

State of New Jersey
Department of Labor
Division of Workers' Compensation
CN 381
Trenton, New Jersey 08625-0381

C.P. No. 89-456340
D.O. Hudson

ORDER FOR JUDGMENT
TOTAL PERMANENT DISABILITY

PETITIONER:

SSN: 311-84-7149
NAME: LOLA MORALEZ
ADDRESS: 624 23RD STREET
UNION CITY, NEW JERSEY

COUNTY OF RESIDENCE: HUDSON

VS.

RESPONDENT:

NAME: WATERWELL INDUSTRIES
ADDRESS: MOONACHIE
NEW JERSEY

COUNTY OF RESIDENCE: BERGEN

ATTORNEY FOR PETITIONER:

ID# 22-2423794 ABXM
NAME: BALK, OXFELD, MANDELL & COHEN
ADDRESS: 50 COMMERCE STREET
NEWARK, NEW JERSEY

PHONE: (201) 623-0353
FAX NO.: (201) 802-1055

INSURANCE CARRIER:

NAME: NEW JERSEY INSURANCE CO.
ADDRESS:

CLAIM NO.

STATEMENT OF AWARD

ASSESSED AGAINST RESPONDENT:

1. Temporary Disability: 4/49/88 to 5/16/91
160 and 3/7ths weeks at $221.20 per week
amounting to $35,486.60

2. Permanent Disability: 60% Permanent Total 270 weeks
A. To pay Petitioner's share of counsel fee.
5/17/91 to 12/11/91, 29 6/7ths weeks at
$221.20 amounting to 6,604.40

B. The offset period: 12/12/91 to 3/21/95
170 6/7ths weeks at $89.98 amounting to 15,373.73

C. The period of 3/22/95 to 7/18/96
69 2/7ths weeks at $221.20 amounting to 15,326.00

TOTAL AWARD TO PETITIONER $72,790.93

The Fund commencement date July 19, 1996

3. Dr. Herbert Silberner, M.D. for
examination and report 75.00

4. Balk, Oxfeld, Mandell & Cohen P.A., Esqs.
Petitioner's attorney, counsel fee 7,950.00

5. Stenographic fee 90.00

STATEMENT OF AWARD (CONT'D):

ASSESSED AGAINST PETITIONER:

1. Dr. Herbert Silberner, M.D. for examination and report $75.00

2. Balk, Oxfeld, Mandell & Cohen P.A., Esqs. Petitioner's attorney, counsel fee $6,600.00

STATEMENT:

A formal Petition having been duly filed, claiming compensation under R.S. 34:15-7 et seq., as amended and supplemented, an Answer having been filed, and the parties having appeared before me, JOHN DOUGH, a Judge of Compensation at the Division of Workers' Compensation on July 24, 1992, and testimony having been presented on the issues involved and stipulations :having been entered on the record, *I find and determine as follows:*

1. The Petitioner was in the employ of the Respondent on April 18, 1988 on which date Petitioner sustained personal injury as the result of an occupational disease arising out of and in the course of Petitioner's employment. The accident and injury occurred as follows: Exposure to deleterious environmental pollutants.

2. The Respondent had due and timely notice and actual knowledge thereof.

3. The Respondent has furnished and paid for medical treatment because of said injury.

4. Petitioner's wages were $316.00 per week making the compensation rate $221.20

5. Compensation shall be paid by Respondent under said Statute.

6. Payments shall be made as set forth in the STATEMENT OF AWARD.

7. The permanent disability resulting from the said occupational disease is pulmonary chronic asthmatic bronchitis and the extent thereof I find and determine to be 60% of total and permanent disability.

8. Date of totality is 5/17/91.

9. Respondent is entitled to a set off as a result of the payment of Social Security Disability payments made prior to age 62.

The Petitioner's weekly average current wages were $180.01. The Petitioner's initial Social Security disability weekly benefit was $89.98. The Petitioner's set off rate is calculated to be $89.98. The set off is to be paid for by compensation benefits due to the Petitioner until she reaches the age of 62 years. After the Petitioner's 62nd birthday, the Respondent will be responsible to pay the Petitioner at the base rate of $221.20 per week. At the conclusion of the trial, I made certain observations and findings which are recorded and which are made a part hereof as if set forth fully herein.

10. The Respondent is responsible to pay and furnish to the Petitioner future medical treatment for medical conditions related to this accident and/or occupational exposure.

Pursuant to such findings, judgment is entered in accordance with the above STATEMENT OF AWARD.

Pursuant to the provisions of R.S. 34:15-64, as amended, it is directed that amounts to be deducted for the Petitioner's expenses are to be paid to the persons entitled to the same, the remainder to be paid directly to the Petitioner.

DATED: July 24, 1992

/S/ JOHN DOUGH
Judge of Compensation

Decision of Eligibility

State of New Jersey Division of Workers' Compensation Office of Special Compensation Funds	SCF-6 (01-95) **DECISION OF ELIGIBILITY** – Second Injury Fund Application –

01. Petitioner Social Security Number: 311 - 84 - 7149	06. Petitioner Attorney F.E.I.N.: 22-2423794
02. Petitioner Name: LOLA MORALES 03. Age: 59	07. Petitioner Attorney: BALK, OXFELD, MANDELL & COHEN P.A.
04. Petitioner Address: 91 PALISADE AVENUE JERSEY CITY, NEW JERSEY 07306	08. Petitioner Attorney Address: 50 COMMERCE STREET NEWARK, NEW JERSEY 07102
05. D.A.G. Appearing for Second Injury Fund: I. M. PROPER, ESQ.	09. Appearing for Petitioner: JACK MANDELL, ESQ.
10. Fund Application Filed (date):	13. Vicinage: HUDSON
11. Claim Petition Number: 89-456340	14. Date of Hearing: JULY 24, 1992
12. Consolidated with:	15. Judge of Compensation: JOHN DOUGH

Upon the proofs presented and the stipulations made, I find and determine the following facts:

LAST COMPENSABLE ACCIDENT OR EXPOSURE

16. Claim Petition Number: 89-456340	19. Employer Name: WATERWELL INDUSTRIES
17. Date of Accident/Exposure: APRIL 18, 1988	20. Employer Address: MOONACHIE, NEW JERSEY
18. Weekly Gross Wages: $316.00	

21. Temporary Disability Award:

160 3/7 WEEKS at $221.20 = $35,486.60

22. Permanent Disability Award:

60% PERMANENT TOTAL 270 Weeks

23. Date of Totality: MAY 17, 1991	24. Date of last payment of compensation: JULY 18, 1996

25. Description of injury and disability:

CHRONIC ASTHMATIC BRONCHITIS

PRE-EXISTING COMPENSABLE DISABILITIES

1.	a. Date of Injury:	b. Claim Petition Number:
	c. Employer name and address:	
	d. Temporary Disability Award:	
	e. Permanent Disability Award:	
	f. Description of Injury and Disability:	
	g. Hearing Date:	h. Hearing Official:

2.	a. Date of Injury:	b. Claim Petition Number:
	c. Employer name and address:	
	d. Temporary Disability Award:	
	e. Permanent Disability Award:	
	f. Description of Injury and Disability:	
	g. Hearing Date:	h. Hearing Official:

3.	a. Date of Injury:	b. Claim Petition Number:
	c. Employer name and address:	
	d. Temporary Disability Award:	
	e. Permanent Disability Award:	
	f. Description of Injury and Disability:	
	g. Hearing Date:	h. Hearing Official:

(Provide like data on additional sheets as required)

PRE-EXISTING NON-COMPENSABLE DISABILITIES

1.	a. Date of Onset: 1986	b. Origin (if known): [X] Congenital [ ] Accident/Injury
	c. Description: OOPHRECTOMY AND HYSTERECTOMY	
2.	a. Date of Onset: 1986	b. Origin (if known): [X] Congenital [ ] Accident/Injury
	c. Description: HYPERTENSION	
3.	a. Date of Onset: 1986	b. Origin (if known): [X] Congenital [ ] Accident/Injury
	c. Description: HEART DISEASE	
4.	a. Date of Onset:	b. Origin (if known): [ ] Congenital [ ] Accident/Injury
	c. Description:	
5.	a. Date of Onset:	b. Origin (if known): [ ] Congenital [ ] Accident/Injury
	c. Description:	
6.	a. Date of Onset:	b. Origin (if known): [ ] Congenital [ ] Accident/Injury
	c. Description:	

(Provide like data on additional sheets as required)

PETITIONER PERSONAL DATA

1. Date of Birth:	2. Sex:
MARCH 22, 1933	☐ Male ☒ Female

3. Date of last employment:	4. Occupation:	5. Wages:
APRIL 18, 1988	ASSEMBLY WORKER	$316.00

6. Employer name and address:
WATERWELL INDUSTRIES
MOONACHIE, NEW JERSEY

7. Education: (check one)

- ☒ Some grade/junior high school
- ☐ Completed junior high school
- ☐ Some high school
- ☐ Completed high school
- ☐ Some college
- ☐ Associate Degree
- ☐ Bachelors Degree
- ☐ Graduate School
- ☐ Graduate Degree

8. Special occupational skills:
NONE

9. Rehabilitation potential:
NIL

10. Social Security status: SSD

Benefits Commenced: 11 / 1 / 88 Current Monthly Rate: $ 89.98 Reverse Offset? ☒ Yes ☐ No

(If Reverse Offset taken under N.J.S.A. 34:15-95.5, attach completed Form SCF-16)
(Second Injury Fund reserves right to offsets as prescribed under N.J.S.A. 34:15-95.5 where Social Security is payable to Petitioner. Petitioner shall promptly notify the Fund where such benefits are awarded.)

11. Third Pary Action:

If third party liability suit is pending, provide the name and address of the attorney representing this petitioner, if different than workers' compensation attorney.

NOT APPLICABLE

(Respondent and Second Injury Fund reserve their rights to credits under N.J.S.A. 34:15-40.)

12. Remarks:
NONE

DECISION

In accordance with the provision of the New Jersey Workers' Compensation Law (N.J.S.A. 34:15-1 et seq.), I find as follows:

1. Petitioner is totally and permanently disabled.

2. The total and permanent disability is not due solely to the petitioner's last compensable accident or occupation disease, but is due to the combined effects of the petitioner's previous disabilities and the last compensable accident or occupational disease and is clearly within the provisions of the above cited statute.

3. Accordingly, it is determined that the petitioner receive benefits from the Second Injury Fund as follows:

   a. 180 weeks, being the difference between 450 weeks and the 270 weeks of permanent disability compensation previously received.

   b. Awarded base weekly rate is $ 221.20 .

   c. Payable weekly base rate is $ 221.20 . (If third-party or other credits are involved, please explain below.)

   d. Payment to begin upon the expiration of payment of compensation from the last compensation award, but in any event, not sooner than the date of filing of the petition for benefits from said Fund.

      Commencement date for said payments is JULY 19, 1996 .

   e. Upon the expiration of the 450-week period, benefits to continue in accordance with the provisions of N.J.S.A. 34:15-12(b) as amended.

JOHN DOUGH

Judge of Compensation

JULY 24, 1992

Date

Explanation of #3.c., above if required:

SS OFFSET 12/12/91 - 3/21/95 170 6/7 WEEKS at $89.98

3/22/95 - 7/18/96 69 2/7 WEEKS at $221.20

(Attach additional sheets as needed)

Report of Monetary Award

NEW JERSEY DEPARTMENT OF LABOR *** OFFICE OF THE CONTROLLER

MAIL TO: Special Compensation Funds, Office of the Controller, CN-078, Trenton, NJ 08625-0078

1. CASE TYPE (Check One): [ ] TOTAL DISABILITY [ ] DEPENDENCY [X] SECOND INJURY FUND

2. PETITIONER NAME: (List other dependents in #14, below):
LOLA MORALEZ

3. CLAIM PETITION NUMBER:
89-456340

4. PETITIONER ADDRESS:
624 23RD STREET
UNION CITY, NEW JERSEY

5. PETITIONER TELEPHONE
NONE

6. PETITIONER SOCIAL SECURITY NUMBER:
311-84-7149

7. PETITIONER DATE OF BIRTH:
3/22/33

8. DECEASED WORKER NAME (Dependency):
N.A.

9. DECEASED WORKER'S S.S. NO. (Dependency):
N.A.

10. 100% PERM. TOTAL DISABILITY WEEKLY BASE RATE AWARDED:
$221.20

11. DATE OF PERMANENT DISABILITY (TOTALITY) COMMENCEMENT:
5/17/91

12. SECOND INJURY FUND COMMENCEMENT DATE:
7/19/96

13. DATE OF LAST COMPENSABLE INJURY/DEATH:
4/18/88

14. LIABILITY FOR PAYMENT OF AWARD:

	CARRIER/SELF-INSURER NAME(S)	WEEKLY RATE	COMMENCES	ENDS
A.	NEW JERSEY INSURANCE COMPANY	$ 221.20	5/17/91	12/11/91
B.	NEW JERSEY INSURANCE COMPANY	$ 89.98	12/12/91	3/21/95
C.	NEW JERSEY INSURANCE COMPANY	$ 221.20	3/22/95	7/18/96
D.		$		
E.	SECOND INJURY FUND	$ 221.20	7/19/96	12/30/99

15. ADDITIONAL DEPENDENTS (Dependency Only):

	NAME	SOC. SEC. NO.	DATE OF BIRTH
A.	N.A.		/ /
B.	N.A.		/ /
C.	N.A.		/ /

16. NAME OF JUDGE (Typer or Print): _____ LOCATION: HUDSON

SIGNATURE OF JUDGE: /S/ JOHN DOUGH DATE: 7/24/92
JOHN DOUGH

>>>>>>> BOTH SIDES MUST BE COMPLETED PRIOR TO SUBMITTAL <<<<<<<

ACG-TE2-12 (3-86)

Petitioner Questionnaire

NEW JERSEY DEPARTMENT OF LABOR * OFFICE OF THE CONTROLLER**

1. ARE YOU NOW RECEIVING SOCIAL SECURITY BENEFITS? [X] YES [ ] NO

   IF "YES", WHAT WAS THE AMOUNT OF YOUR LAST CHECK? $_____

   WHAT WAS THE DATE OF YOUR LAST CHECK? ___/___/___

2. ARE YOU NOW RECEIVING BLACK LUNG BENEFITS? [ ] YES [X] NO

   IF "YES", WHAT WAS THE AMOUNT OF YOUR LAST CHECK? $_____

3. ARE YOU NOW RECEIVING AN EMPLOYER OR UNION DISABILITY PENSION? [ ] YES [X] NO

   IF "YES", WHAT WAS THE AMOUNT OF YOUR LAST CHECK? $_____

   PROVIDE THE NAME AND ADDRESS OF THE EMPLOYER OR UNION THAT IS PAYING YOUR DISABILITY PENSION BENEFITS:

   _____

   _____

   _____

4. ARE YOU NOW EMPLOYED? [ ] YES [X] NO

   IF "YES", WHAT ARE YOUR AVERAGE WEEKLY EARNINGS? $_____

   PROVIDE THE NAME AND ADDRESS OF YOUR CURRENT EMPLOYER:

   _____

   _____

   _____

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF AND DO HEREBY AUTHORIZE THE EMPLOYERS AND/OR UNION ORGANIZATIONS CITED ABOVE AND THE SOCIAL SECURITY ADMINISTRATION TO RELEASE ALL INFORMATION AS MAY BE REQUESTED BY THE NEW JERSEY DEPARTMENT OF LABOR CONCERNING THE NATURE AND AMOUNTS OF BENEFITS AND/OR WAGES NOW OR PREVIOUSLY PAID OR PAYABLE TO ME.

PETITIONER NAME (Typer or Print): /S/ LOLA MORALEZ

SIGNATURE OF PETITIONER
OR PETITIONER ATTORNEY:

/S/ JACK MANDELL
JACK MANDELL

DATE: 7/24/92

Fact Pattern for Occupational Disease and Death

William Worker, residing at 120 Broadway, Newark, New Jersey was 35 years of age on July 15, 1980, his last day of exposure at Dangerous Chemicals Inc. of 40 Doremus Avenue, Newark, New Jersey. Worker, who was employed as a chemical operator at this employer for 15 years, was married to Mary Worker and had one child, Bill, Jr., who was born on June 1, 1979. As a chemical operator, Worker earned $11.50 per hour and worked a regular 40 hour week.

In his job, Worker was regularly exposed to dust, smoke, fumes and mists from various chemicals used in the plant.

Worker consulted with his employer's physician, James Jones, M.D. on July 16, 1980 complaining of coughing, productive of a dark colored phlegm, shortness of breath and easy fatigability.

Dr. Jones diagnosed the condition as chronic obstructive pulmonary disease with emphysema. He undertook a course of treatment for Worker and advised him to remain out of work.

Six months later on January 15, 1981 Dr. Jones discharged Worker from treatment and Worker returned to work for the same company; however, he was given a clerical hob in the office so as to prevent any further chemical exposure.

In May, 1983, Worker developed chest pain, shortness of breath and fatigue. Medical examination disclosed Bronchogenic Carcinoma. He stopped work on May 31, 1983 and was never able to return. Despite medical treatment and surgery, Worker died on July 10, 1985. He was survived by his wife and child, who were both living with him at the time of his death.

(The forms which follow were completed on the basis of the preceding facts.)

Employee's Claim Petition

WC 4-1 — EMPLOYEE'S CLAIM PETITION G VST ALL-STATE LEGAL SUPPLY CO. One Commerce Drive, Cranford, N. J. 07016

State of New Jersey
Department of Labor and Industry
DIVISION OF WORKERS' COMPENSATION
CN 381
Trenton, New Jersey 08625

WC - 365 (7-80)

EMPLOYEE'S CLAIM PETITION

(DO NOT FILL IN)
C.P. NO. _____
D.O. _____

PETITIONER
SOCIAL SECURITY NUMBER: 123-45-6789
NAME: William Worker, Sr.
COUNTY OF RESIDENCE: Essex
ADDRESS: 120 Broadway
Newark, New Jersey 07102

ATTORNEY FOR PETITIONER
FEDERAL EMPLOYER'S IDENTIFICATION NUMBER (If none, insert Soc. Sec. No.) 22-2423794
NAME: BALK, BALK & MANDELL, P. A.
ADDRESS: 1180 RAYMOND BOULEVARD
NEWARK, NEW JERSEY 07102
TELEPHONE: (Area Code) (201) 623-0353

VS

RESPONDENT
NAME: Dangerous Chemicals Inc.
COUNTY OF RESIDENCE: Essex
ADDRESS: 40 Doremus Avenue
Newark, New Jersey 07102

INSURANCE CARRIER
NAME (Indicate If Not Covered or If Self-Insured): Liberty Mutual Insurance Co.
ADDRESS: Six Becker Farm Road
Roseland, New Jersey 07068
CARRIER'S CLAIM FILE NUMBER: 123 ABC 4567 XYZ

TO THE DIVISION OF WORKERS' COMPENSATION:

Petitioner, alleging that the Petitioner sustained an injury by an accident arising out of and in the course of petitioner's employment with Respondent, compensable under R.S. 34:15-7 et seq., supplements and amendments, respectfully states:

DATE OF ACCIDENT OR DATES OF OCCUPATIONAL EXPOSURE: July 15, 1980
WHERE: Respondent's Plant
HOW: Exposed to deleterious industrial environmental pollutents: dust, smoke, gases, mists and chemicals.

OCCUPATION	DATE STOPPED WORK	DATE RETURNED TO WORK
Chemical Operator	July 15, 1980	January 15, 1981

SEX	DATE OF BIRTH	MARITAL STATUS	DATE INJURY REPORTED TO EMPLOYER AND TO WHOM
M	5/5/45	M	July 15, 1980, Foreman

GROSS WEEKLY WAGES	RATE OF COMPENSATION	TEMPORARY DISABILITY PAID	PERMANENT DISABILITY PAID
$ 460.00	$ 185.00	$ 4,810.00	$ 0

DESCRIBE EXTENT AND CHARACTER OF INJURY: If there has been amputation or loss of usefulness of any member or impairment of any physical function, explain fully ... Injury to bronchopulmonary tract with pulmonary sequelae

Petitioner (DID) (~~DID NOT~~) seek compensation at any Informal hearing.

A true copy of Petitioner's treating physician's report is attached hereto ☐ Yes ☒ No

Medical aid (WAS) (~~WAS NOT~~) furnished by Petitioner's employer.

Give names and addresses of physicians and hospitals:
James Jones, M.D., 123 First Street, Newark, New Jersey

(OVER)

What other facts are there that you believe important?

Petitioner demands that Respondent furnish his attorney with treating medical records.

In occupational disease claims, list claims against other employers filed or to be filed for the same or similar occupational diseases.

NAME & ADDRESS OF EMPLOYER	DATES OF EMPLOYMENT
None	Not Applicable

Your Petitioner therefore requests that the Division of Workers' Compensation determine the amount of compensation due your Petitioner from said Respondent, under Revised Statutes of New Jersey, Title 34, Chapter 15, and the Acts supplemental thereto and amendatory thereof, and that your Petitioner may be awarded Petitioner's costs in this proceeding, and such other or further relief as may be proper.

/s/ William Worker, Sr.
WILLIAM WORKER, SR. (Petitioner)

STATE OF NEW JERSEY
COUNTY OF ESSEX :ss.

Subscribed and sworn or affirmed to before me
this 17th day of January , 19 81

/s/ Jack Mandell
JACK MANDELL
An Attorney at Law of New Jersey

The foregoing Claim Petition has been presented by the Petitioner to the Division of Workers' Compensation for hearing and determination. Unless an Answer is filed within 30 days of the date of service of the Claim Petition upon you, with the assignment clerk at the office to which the claim is assigned as indicated on the reverse side, and a copy served upon the Petitioner's attorney, THE PETITIONER WILL PROCEED WITH PROOF OF CLAIM ACCORDING TO LAW AND MAY OBTAIN JUDGMENT AGAINST YOU.

DIVISION OF WORKERS' COMPENSATION

WC4 - 1
WC4 - 2

Respondent's Answer to Claim Petition

State of New Jersey
Department of Labor and Industry
IVISION OF WORKERS' COMPENSATION

RESPONDENT'S ANSWER TO CLAIM PETITION

CP NO 81-1416

DO Essex

PETITIONER

SOCIAL SECURITY NUMBER: 123-45-6789

NAME: William Worker, Sr.

ADDRESS (Including County): Essex
120 Broadway
Newark, New Jersey 07102

ATTORNEY FOR PETITIONER

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER: 22-2423794

NAME: Balk, Balk and Mandell P.A.

ADDRESS: 1180 Raymond Boulevard
Newark, New Jersey 07102

VS

RESPONDENT

NAME: Dangerous Chemicals Inc.

ADDRESS (Including County): Essex
40 Doremus Avenue
Newark, New Jersey 07102

INSURANCE CARRIER

NAME (Indicate if Not Covered or If Self-Insured): LIBERTY MUTUAL INSURANCE CO.

CLAIM NUMBER:

Six Becker Farm Road
Roseland, New Jersey 07068

IN ANSWER TO CLAIM PETITION IN THIS CAUSE RESPONDENT STATES:

☐ RESPONDENT AND CARRIER INFORMATION SUPPLIED BY PETITIONER HAS BEEN CORRECTED	PETITIONER WAS IN EMPLOYMENT ON DATE STATED	IF DIFFERENT INDICATE CORRECT DATE	INJURY OCCURRED OUT OF AND IN THE COURSE OF EMPLOYMENT	EMPLOYMENT WAS COVERED BY ARTICLE 2 R.S. 34:15
	☒ Yes ☐ No		☒ Yes ☐ No	☒ Yes ☐ No

HOW INJURY OCCURRED
Alleged Chemical Exposure

WHERE
Respondent's Plant

NATURE OF INJURY AND DISABILITY
Alleged Bronchopulmonary

PETITIONER'S OCCUPATION: Chemical Operator — AGE:

DATE RESPONDENT HAD KNOWLEDGE AND NOTICE OF INJURY	DATE PETITIONER STOPPED WORK	DATE RETURNED TO WORK	GROSS WEEKLY WAGE	RATE OF COMPENSATION	TEMPORARY DISABILITY PAID	PERMANENT DISABILITY PAID
7/15/80	7/15/80	1/15/81	$460.00	$185.00	$4,810.00	0

RESPONDENT RENDERED AID TO THE PETITIONER BY THE FOLLOWING INDIVIDUALS AND/OR INSTITUTIONS:
OTHER PERTINENT INFORMATION:

☐ Except as otherwise set forth herein respondent is without sufficient information touching the allegations of the petition and leaves petitioner to his (her) proofs.

☐ The claim petition is not filed within the time limited by the statute.

☐ Respondent did not have notice or knowledge as required by the statute and therefore petitioner's claim is barred.

☒ Respondent invokes the 26-week rule.

☐ Liberty Mutual Insurance Co. reserves its right to interpose the defense of lack of coverage on the date alleged in the claim petition.

☐ Liberty Mutual Insurance Co. denies any manifestation of disability during its coverage of the respondent.

CERTIFICATION

I certify that the foregoing statements are true to the best of my knowledge and belief.

Six Becker Farm Road
Roseland, New Jersey 07068
201-533-0752

Robert A. Bressler
Attorney for Respondent

Pre-Trial Memorandum

DIVISION OF WORKERS' COMPENSATION
NEW JERSEY DEPARTMENT OF LABOR

Essex District — PRE-TRIAL MEMORANDUM — Date 8/16/81

PETITIONER William Worker, Sr. RESPONDENT Dangerous Chemicals Inc.

SOCIAL SECURITY NO. 123-45-6789 CARRIER Liberty Mutual C.P. NO. 81-1416

STIPULATIONS: *(Fill in)*

Date of Accident 7/15/80 Wages $460.00 Rate $185.00

Compensation Paid:

Temporary Disability from 7/15/80 to 1/15/81 Rate $185.00

Permanent Disability percentage None member Rate

CHECK IF AT ISSUE:

Employment ____ Wages ____ Rate ____ Accident ____ Notice ____ Exposure ____

Knowledge ____ Casual Relationship X Injuries X Arise out of Employment ____

Incourse of employment ____ Nature and extent of Temporary ____ and Permanent X disability

OTHER ISSUES

None

Medical Bills outstanding None

T. D. B. Paid No Liens None

TREATING DOCTORS - Reported Findings Chronic Obstructive Pulmonary Disease

Dr. Jones

Reported x-ray findings Increased hilar markings bilaterally

Dr. Jones

FURTHER STIPULATIONS: None

WITNESSES:

PETITIONER				RESPONDENT			
Doctor	Date of Exam.	Est.	Testimony Required	Doctor	Date of Exam.	Est.	Testimony Required
I.M.Liberal	5/10/81	30% P.T.	☒	I.M.Knott	5/20/81	2% P.T.	☒
			☐				☐
			☐				☐

OTHER WITNESSES Pet. 1 Resp. 1

Trial time of petitioner 2 hours Trial time of respondent 2 hours

/s/ Jack Mandell
Attorney for Petitioner

/s/ Robert G.Bressler
Attorney for Respondent

/s/ John Dough
Judge ~~XXXXX~~ *Formal Hearing*

Order Approving Settlement

State of New Jersey
Department of Labor
DIVISION OF WORKERS' COMPENSATION

ORDER
☐ JUDGMENT
☒ APPROVING SETTLEMENT
☐ DISMISSAL
☐ DISCONTINUANCE

C.P. NO.'S 81-1416

District Office: Essex

PETITIONER
SOCIAL SECURITY NUMBER: 123-45-6789
NAME: William Worker, Sr. AGE: 36
ADDRESS (Including County): Essex
120 Broadway
Newark, New Jersey 07102

ATTORNEY FOR PETITIONER
FEDERAL EMPLOYER'S IDENTIFICATION NUMBER: 22-242-3794
NAME: BALK, BALK & MANDELL P.A.
ADDRESS: 1180 Raymond Boulevard
Newark, New Jersey 07102
APPEARING: Jack Mandell, Esq.

VS

RESPONDENT
NAME: Dangerous Chemicals Inc.
ADDRESS (Including County): Essex
40 Doremus Avenue
Newark, New Jersey 07102

ATTORNEY FOR RESPONDENT
NAME: Robert G. Bressler
ADDRESS (Including County): Essex
6 Becker Farm Road
Roseland, New Jersey
APPEARING: Robert G.Bressler, Esq.

INSURANCE CARRIER
NAME (Indicate If Not Covered or If Self-Insured)
Liberty Mutual Insurance Co.
Six Becker Farm Road
Roseland, New Jersey 07068

DATE OF ACCIDENT:
OR
OCCUPATIONAL EXPOSURE: 7/15/80

DESCRIBE (Briefly)
Exposure to Chemicals

Weekly Wages 460.00 Rate(s) 185 / 47

IF RE-OPENED PETITION, INDICATE FOR LAST AWARD: DATE: _____ PERMANENT: $ _____ TEMP: $ _____

This matter having come on before the Court on this 1st day of November, 19 81

☐ **ORDER FOR JUDGMENT:**
It appearing that the Petitioner suffered a compensable injury on the above mentioned date while in the employ of respondent is Ordered and Adjudged that petitioner be awarded compensation benefits, payable as indicated on Page 2.

☒ **ORDER APPROVING SETTLEMENT:**
The parties having settled the matter and a finding by the Court having been made that the terms of the settlement are fair and just; it is Ordered that this settlement be approved and the petitioner be paid as indicated on Page 2.

☐ **ORDER FOR DISMISSAL**
This matter having come on for hearing upon the respondent's motion for Dismissal which was made and duly served and there being good cause shown, the claim petition herein is hereby dismissed for
☐ 1. Lack of Prosecution
☐ 2.

☐ **ORDER FOR DISCONTINUANCE**
This matter having come on before the court and the court having received evidence that this matter should be discontinued for good cause shown. It is ORDERED AND ADJUDGED that this matter be discontinued for the following reasons:

☐ It is FURTHER ORDERED that the payment indicated on Page 2 be made a part of the Order for Discontinuance for petitioner's disability. (Percentages and members involved.)

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE RECEIPT OF A COPY. (Sign if applicable)

STENO FEE _____ BY _____

_____
(PETITIONER'S ATTORNEY)

_____
PETITIONER (Where Applicable)

_____
(RESPONDENT'S ATTORNEY)

/s/ John Dough 11/1/81
(HEARING OFFICIAL SIGNATURE) (D

JOHN DOUGH
(NAME OF HEARING OFFICIAL) (PRINT OR TYPE)

☒ Judge of Compensation ☐ Referee

WC-100 (R-4-82)

OFFICE COPY

State of New Jersey
Department of Labor and Industry
DIVISION OF WORKERS' COMPENSATION

(CONTINUATION)
ORDER
☐ JUDGMENT
☒ APPROVING SETTLEMENT
☐ DISMISSAL
☐ DISCONTINUANCE

C. P. NO.'S 81-1416

D. O. Essex

Permanent Disability *(Describe Percentages, Nature and extent of Disability, and Members Involved)*

12½% Partial Total
Bronchopulmonary in nature consisting of
Chronic obstructive pulmonary disease with emphysema

DISABILITY AWARDED

TEMPORARY: 26 Weeks at $ 185.00 - $ 4,820.00 less $ 4,820.00 paid = Balance due $ 0

PERMANENT: 75 Weeks at $ 47.00 - $ 3,525.00 less $ 0 paid = Balance due $ 3,525.00

Medical Bills *(Doctors and/or Institutions)*

Paid by Respondent

MEDICAL FEE ALLOWED (Expert and/or Testimonial)	TOTAL AMT. ALLOWED	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
I.M. Liberal, M.D.	150.00	75.00	75.00
ATTORNEY(S) FEE	**TOTAL**	**PAYABLE BY PETITIONER**	**PAYABLE BY RESPONDENT**
Balk, Balk & Mandell P.A.	700.00	300.00	400.00
STENOGRAPHIC SERVICE	**TOTAL**	**PAYABLE BY PETITIONER**	**PAYABLE BY RESPONDENT**
Wm. C. O'Brien and Associates	45.00		45.00

/s/ John Dough — 11/1/81
(HEARING OFFICIAL) (DATE)

☒ Judge of Compensation ☐ Referee

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE A COPY:

/s/ Jack Mandell
(PETITIONER'S ATTORNEY)

/s/ Robert G. Bressler
(RESPONDENT'S ATTORNEY)

PETITIONER *(Where Applicable)*

WC-198.1 (R-3-77) OFFICE COPY

Answer to Application for Review or Modification of Formal Award

WC 4-14 — APPLICATION FOR REVIEW OR MODIFICATION OF FORMAL AWARD | D G R S T | ALL-STATE LEGAL SUPPLY CO.

State of New Jersey
Department of Labor and Industry
DIVISION OF WORKERS' COMPENSATION
CN 381
Trenton, New Jersey 08625

WC - 388 (7-80)

APPLICATION FOR REVIEW OR MODIFICATION OF FORMAL AWARD

C.P. NO. 81-1416 (OF PRIOR AWARD)
D.O. Essex

PETITIONER

SOCIAL SECURITY NUMBER: 123-45-6789
NAME: William Worker, Sr.
COUNTY OF RESIDENCE: Essex
ADDRESS: 120 Broadway
Newark, New Jersey 07102

ATTORNEY FOR PETITIONER

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER (If none, insert Soc. Sec. No.) 22-2423794
NAME: BALK & BALK & MANDELL P.A.
ADDRESS: 1180 RAYMOND BOULEVARD
NEWARK, NEW JERSEY 07102
TELEPHONE: (Area Code) (201) 623-0353

VS

RESPONDENT

NAME: Dangerous Chemicals Inc.
COUNTY OF RESIDENCE: Essex
ADDRESS: 40 Doremus Avenue
Newark, New Jersey 07102

INSURANCE CARRIER

NAME (Indicate If Not Covered or If Self-Insured): Liberty Mutual Insurance Company
ADDRESS: Six Becker Farm Road
Roseland, New Jersey
CARRIER'S CLAIM FILE NUMBER: 123 ABC 4567 XYZ

TO THE DIVISION OF WORKERS' COMPENSATION: (Applicant) William Worker, Sr.
hereby makes application to the Division of Workers' Compensation to review the Order entered on 11/1/81
by Hon. John Doe, J.C. and respectfully states:

Applicant's Address: 120 Broadway
Newark, New Jersey 07102

AS TO CLAIM PETITIONER

AGE	SEX	MARITAL STATUS	DATE OF INJURY	DATE OF LAST COMPENSATION PAID	PRESENT EMPLOYMENT STATUS
38	M	M	7/15/80	6/25/82	On Disability

Copy of previous award and medical reports submitted are attached [X] Yes [ ] No

This is the 1st (Number) application for Review or Modification of this award

List all prior applications for Review or Modification of this Award.

Date	Place of Hearing	Hearing Official

The following is an accurate, succinct description of the Factual, Medical, and Legal reasons for the relief sought in the Application: (Use additional sheets, if necessary)

Petitioner's condition has worsened. Carcinoma has developed.

(OVER)

What other facts are there that you believe important?

In occupational disease claims, list claims against other employers filed or to be filed for the same or similar occupational diseases.

NAME & ADDRESS OF EMPLOYER	DATES OF EMPLOYMENT
None	Not Applicable

Your Applicant therefore requests that the Division of Workers' Compensation determine the amount of compensation due your Petitioner from said Respondent, under Revised Statutes of New Jersey, Title 34, Chapter 15, and the Acts supplemental thereto and amendatory thereof, and that your Petitioner may be awarded Petitioner's costs in this proceeding, and such other or further relief as may be proper.

/s/ William Worker, Sr.
WILLIAM WORKER SR. (Applicant)

STATE OF NEW JERSEY
COUNTY OF ESSEX :ss.

Subscribed and sworn or affirmed to before me
this 1st day of December , 19 82 .

/s/ Jack Mandell
JACK MANDELL
An Attorney at Law of New Jersey

The foregoing Claim Petition has been presented by the Petitioner to the Division of Workers' Compensation for hearing and determination. Unless an Answer is filed within 30 days of the date of service of the Claim Petition upon you, with the assignment clerk at the office to which the claim is assigned as indicated on the reverse side, and a copy served upon the Petitioner's attorney, THE PETITIONER WILL PROCEED WITH PROOF OF CLAIM ACCORDING TO LAW AND MAY OBTAIN JUDGMENT AGAINST YOU.

DIVISION OF WORKERS' COMPENSATION

Answer to Application for Review or Modification of Formal Award

WC 4-15 — ANSWER TO APPLICATION FOR REVIEW OR MODIFICATION OF FORMAL AWARD ADGR ST ALL-STATE LEGAL SUPPLY CO 269 Sheffield St., Mountainside, N. J. 07092

State of New Jersey
Department of Labor and Industry
DIVISION OF WORKERS' COMPENSATION
CN 381
Trenton, New Jersey 08625

WC - 389 (7-80)

ANSWER TO APPLICATION FOR REVIEW OR MODIFICATION OF FORMAL AWARD

C.P. NO. 81-1416

D.O. Essex

PETITIONER

SOCIAL SECURITY NUMBER: 123-45-6789

NAME: William Worker, Sr.

COUNTY OF RESIDENCE: Essex

ADDRESS: 120 Broadway
Newark, New Jersey 07102

ATTORNEY FOR RESPONDENT

NAME: Robert G. Bressler

ADDRESS: Six Becker Farm Road
Roseland, New Jersey 07068

TELEPHONE: (Area Code)

VS

RESPONDENT

NAME: Dangerous Chemicals Inc.

COUNTY OF RESIDENCE: Essex

ADDRESS: 40 Doremus Avenue
Newark, New Jersey 07102

INSURANCE CARRIER

NAME (Indicate If Not Covered or If Self-Insured): Liberty Mutual Insurance Co.

ADDRESS: Six Becker Farm Road
Roseland, New Jersey 07068

CLAIM NUMBER: 123 ABC 4567 XYZ

TO THE DIVISION OF WORKERS' COMPENSATION: Dangerous Chemicals Inc.

in answer to the Application for Review or Modification respectfully states:

TEMPORARY DISABILITY WAS PAID FROM 7/15/80 TO 1/15/81

for a total of 26 weeks at $ 185.00 per week, totaling $ 4,810.00

PERMANENT DISABILITY WAS PAID FROM 1/16/81 TO 6/25/82

for a total of 75 weeks at $ 47.00 per week, totaling $ 3,525.00

The date of the last compensation payment was 6/25/82. The date of the last authorized treatment was 1/15/81.

The factual, legal and medical reasons for denying the application are as follows:

Relationship of Carcinoma is denied.

I certify that the foregoing statements made by me are true to the best of my knowledge, information and belief.

/s/ Robert G. Bressler
Attorney for

Date: 2/1/83

Pre-Trial Memorandum

DIVISION OF WORKERS' COMPENSATION
NEW JERSEY DEPARTMENT OF LABOR

Essex District — **PRE-TRIAL MEMORANDUM** — Date 5/1/83

PETITIONER William Worker, Sr. RESPONDENT Dangerous Chemicals, Inc.

SOCIAL SECURITY NO. 123-45-6789 CARRIER Liberty Mutual C. P. NO. 81-1416

STIPULATIONS: *(Fill in)*

Date of Accident 7/15/80 Wages $460.00 Rate $185.00

Compensation Paid:

Temporary Disability from 7/15/80 to 1/15/81 Rate $185.00

Permanent Disability percentage 12½% member Partial Rate $47.00

CHECK IF AT ISSUE:

Employment ____ Wages ____ Rate ____ Accident ____ Notice ____ Exposure ____

Knowledge ____ Casual Relationship X Injuries ____ Arise out of Employment ____

Incourse of employment ____ Nature and extent of Temporary X and Permanent X disability

OTHER ISSUES

Increased Disability

Medical Bills outstanding None

T. D. B. Paid None Liens None

TREATING DOCTORS - Reported Findings Bronchogenic Carcinoma

Dr. Smith

Reported x-ray findings Pulmonary Carcinoma

Dr. Smith

FURTHER STIPULATIONS: None

WITNESSES:

PETITIONER				RESPONDENT			
Doctor	Date of Exam.	Est.	Testimony Required	Doctor	Date of Exam.	Est.	Testimony Required
I.M.Liberal	11/15/82	100%	☒	I.M.Knott	3/15/83	40% ROC.	☒
			☐				☐
			☐				☐

OTHER WITNESSES ____ Pet. 2 Resp. 2

Trial time of petitioner 1/2 day Trial time of respondent 1/2 day

/s/ Jack Mandell
Attorney for Petitioner

/s/ Robert G. Bressler
Attorney for Respondent

/s/ John Dough
Referee Formal Hearing

Order of Judgment

State of New Jersey
Department of Labor
DIVISION OF WORKERS' COMPENSATION

ORDER
- [X] JUDGMENT
- [ ] APPROVING SETTLEMENT
- [ ] DISMISSAL
- [ ] DISCONTINUANCE

C.P. NO.'S 81-1416

District Office: Essex

PETITIONER
SOCIAL SECURITY NUMBER: 123-45-6789
NAME: William Worker, Sr. AGE: 38
ADDRESS (Including County): Essex
120 Broadway
Newark, New Jersey 07102

ATTORNEY FOR PETITIONER
FEDERAL EMPLOYER'S IDENTIFICATION NUMBER: 22-2423794
NAME: Balk, Balk & Mandell P.A.
ADDRESS: 1180 Raymond Boulevard
Newark, New Jersey 07102
APPEARING: Jack Mandell, Esq.

vs

RESPONDENT
NAME: Dangerous Chemicals Inc.
ADDRESS (Including County): Essex
40 Doremus Avenue
Newark, New Jersey 07102

ATTORNEY FOR RESPONDENT
NAME: Robert Bressler, Esq.
ADDRESS (Including County): Essex
Six Becker Farm Road
Roseland, New Jersey 07068
APPEARING:

INSURANCE CARRIER
NAME (Indicate If Not Covered or If Self-Insured): Liberty Mutual Insurance Co.
Six Becker Farm Road
Roseland, New Jersey 07068

DATE OF ACCIDENT: OR OCCUPATIONAL EXPOSURE: 7/15/80

DESCRIBE (Briefly): Exposure to Chemicals

Weekly Wages: 460.00 Rate(s): 185.00 /

IF RE-OPENED PETITION, INDICATE FOR LAST AWARD: DATE: _____ PERMANENT: $ _____ TEMP: $ _____

This matter having come on before the Court on this 1st day of August, 19 83

[X] **ORDER FOR JUDGMENT:**
It appearing that the Petitioner suffered a compensable injury on the above mentioned date while in the employ of respondent, it is Ordered and Adjudged that petitioner be awarded compensation benefits, payable as indicated on Page 2.

[ ] **ORDER APPROVING SETTLEMENT:**
The parties having settled the matter and a finding by the Court having been made that the terms of the settlement are fair and just; it is Ordered that this settlement be approved and the petitioner be paid as indicated on Page 2.

[ ] **ORDER FOR DISMISSAL**
This matter having come on for hearing upon the respondent's motion for Dismissal which was made and duly served and there being good cause shown, the claim petition herein is hereby dismissed for
- [ ] 1. Lack of Prosecution
- [ ] 2.

[ ] **ORDER FOR DISCONTINUANCE**
This matter having come on before the court and the court having received evidence that this matter should be discontinued for good cause shown. It is ORDERED AND ADJUDGED that this matter be discontinued for the following reasons:

[ ] It is FURTHER ORDERED that the payment indicated on Page 2 be made a part of the Order for Discontinuance for petitioner's disability. (Percentages and members involved.)

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE RECEIPT OF A COPY. (Sign if applicable)

STENO FEE _____ BY _____

_____
(PETITIONER'S ATTORNEY)

_____
PETITIONER (Where Applicable)

_____
(RESPONDENT'S ATTORNEY)

_____
(HEARING OFFICIAL SIGNATURE) (D/

JOHN DOUGH
(NAME OF HEARING OFFICIAL) (PRINT OR TYPE)

[X] Judge of Compensation [ ] Referee

WC-100 (R-4-82) OFFICE COPY

State of New Jersey Department of Labor and Industry DIVISION OF WORKERS' COMPENSATION	(CONTINUATION) ORDER ☒ JUDGMENT ☐ APPROVING SETTLEMENT ☐ DISMISSAL ☐ DISCONTINUANCE	C. P. NO.'S 81-1416 D. O. Essex

Permanent Disability *(Describe Percentages, Nature and extent of Disability, and Members Involved)*

100% Total Permanent Disability
Oncological in Nature
Bronchogenic Carcinoma

DISABILITY AWARDED

TEMPORARY: 62 6/7 Weeks at $ 185.00 = $ 11,628.58 less $ 4,820.00 paid = Balance due $ 6,808.58

PERMANENT: 450 Weeks at $ 185.00 = $ 83,250.00 less $ 3,525.00 paid = Balance due $ 79,625.00

Medical Bills *(Doctors and/or Institutions)*

Respondent shall reimburse N.J. Hosp. Service Plan	$15,300.00
Respondent shall reimburse N.J. Med. Service Plan	5,823.00
Respondent shall reimburse Petitioner	819.00

MEDICAL FEE ALLOWED (Expert and/or Testimonial)	TOTAL AMT. ALLOWED	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
I.M. Liberal, M.D.	150.00	75.00	75.00
ATTORNEY(S) FEE	**TOTAL**	**PAYABLE BY PETITIONER**	**PAYABLE BY RESPONDENT**
Balk, Balk & Mandell, P.A.	8,500.00	3,500.00	5,000.00
STENOGRAPHIC SERVICE	**TOTAL**	**PAYABLE BY PETITIONER**	**PAYABLE BY RESPONDENT**
Wm. C. O'Brien & Assocs.	135.00		135.00

/s/ John Dough
(HEARING OFFICIAL) (DATE

☒ Judge of Compensation ☐ Referee

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE A COPY:

/s/ Jack Mandell
(PETITIONER'S ATTORNEY)

/s/ Robert G. Bressler
(RESPONDENT'S ATTORNEY)

PETITIONER *(Where Applicable)*

WC-188.1 (R-3-77) OFFICE COPY

Dependency Claim Petition

WC 4-2—DEPENDENCY CLAIM PETITION ADG VST ALL-STATE LEGAL SUPPLY CO. One Commerce Drive, Cranford, N. J. 07016

State of New Jersey
Department of Labor and Industry
DIVISION OF WORKERS' COMPENSATION
CN 381
Trenton, New Jersey 08625

WC - 368 (7-80)

DEPENDENCY CLAIM PETITION

(DO NOT FILL IN)
C.P. NO.
D.O.

PETITIONER
SOCIAL SECURITY NUMBER: 987-65-4321
NAME: Mary Worker
COUNTY OF RESIDENCE: Essex
ADDRESS: 120 Broadway
Newark, New Jersey 07102

ATTORNEY FOR PETITIONER
FEDERAL EMPLOYER'S IDENTIFICATION NUMBER (If none, insert Soc. Sec. No.) 22-2423794
NAME: BALK & BALK & MANDELL
ADDRESS: 1180 RAYMOND BOULEVARD
NEWARK, NEW JERSEY 07102
TELEPHONE: (Area Code) (201) 623-0353

VS

RESPONDENT
NAME: Dangerous Chemicals Inc.
COUNTY OF RESIDENCE: Essex
ADDRESS: 40 Doremus Avenue
Newark, New Jersey 07102

INSURANCE CARRIER
NAME (Indicate If Not Covered or If Self-insured): Liberty Mutual Insurance Company
ADDRESS: Six Becker Farm Road
Roseland, New Jersey 07068
CARRIER'S CLAIM FILE NUMBER: 123 ABC 4567 XYZ (2)

TO THE DIVISION OF WORKERS' COMPENSATION:

PETITIONER, alleging that the decedent hereinafter named sustained personal injury by an accident arising out of and in the course of employment with the Respondent, resulting in death, respectfully states:

DECEDENT
SOCIAL SECURITY NO.: 123-45-6789
NAME: William Worker, Sr.
ADDRESS: 120 Broadway
Newark, New Jersey 07102

DEPENDENTS (At time of death)

	NAME	AGE	DATE OF BIRTH	RELATIONSHIP
1.	Mary	35	3/3/50	Wife
2.	William, Jr.	6	6/1/79	Son
3.				
4.				

USE SEPARATE SHEET IF REQUIRED

SEX	DATE OF BIRTH	DATE INJURY OCCURRED	DATE EMPLOYER HAD KNOWLEDGE OF INJURY	DATE INJURY REPORTED	DATE STOPPED WORK	DATE RETURNED TO WORK	DATE OF DEATH
M	6/2/45	7/15/80	7/15/80	7/15/80	5/31/83	Did Not	7/10/85

OCCUPATION AND TYPE OF WORK: Clerk - Clerical

HOW INJURY OCCURRED (IF OCCUPATIONAL DISEASE GIVE PERIODS OF EXPOSURE): Exposed to chemicals while employed as a chemical operator

WHERE: 40 Doremus Avenue, Newark, New Jersey

NATURE OF INJURY: Oncological

CAUSE OF DEATH: Bronchogenic Carcinoma

MEDICAL EXPENSES	BURIAL EXPENSES	PAYABLE TO:
$35,750.00	$ 3,500.00	$ 3,500.00 Petitioner

GROSS WEEKLY WAGE	RATE OF COMPENSATION	COMPENSATION RECEIVED FOR INJURY	TOTAL DEPENDENCY BENEFITS PAID
$460.00	$ 253.00	$ 33,917.87	$ 0

EMPLOYER FURNISHED MEDICAL AID	DECEDENT GAVE WRITTEN NOTICE OF ARTICLE 2 EXEMPTION	DECEDENT RECEIVED WRITTEN NOTICE OF ARTICLE 2 EXEMPTION
☐ YES ☒ NO	☐ YES ☒ NO	☐ YES ☒ NO

True copy of treating physician's report is attached hereto: ☐ Yes ☒ No

Petitioner submits the following additional information.
(Enter none, if appropriate. Use additional sheets if required.)

(OVER)

What other facts are there that you believe important?

In occupational disease claims, list claims against other employers filed *or to be filed for the same or similar* occupational diseases.

NAME & ADDRESS OF EMPLOYER	DATES OF EMPLOYMENT
None	Not Applicable

Your Petitioner therefore requests that the Division of Workers' Compensation determine the amount of compensation due your Petitioner from said Respondent, under Revised Statutes of New Jersey, Title 34, Chapter 15, and the Acts supplemental thereto and amendatory thereof, and that your Petitioner may be awarded Petitioner's costs in this proceeding, and such other or further relief as may be proper.

/S/ MARY WORKER
MARY WORKER (Petitioner)

STATE OF NEW JERSEY
COUNTY OF ESSEX :ss.

Subscribed and sworn or affirmed to before me
this 25th day of July , 19 85

/S/ JACK MANDELL
JACK MANDELL
An Attorney at Law of New Jersey

The foregoing Claim Petition has been presented by the Petitioner to the Division of Workers' Compensation for hearing and determination. Unless an Answer is filed within 30 days of the date of service of the Claim Petition *upon you, with the assignment* clerk at the office to which the claim is assigned as indicated on the reverse side, and a copy served upon the Petitioner's attorney, THE PETITIONER WILL PROCEED WITH PROOF OF CLAIM ACCORDING TO LAW AND MAY OBTAIN JUDGMENT AGAINST YOU.

DIVISION OF WORKERS' COMPENSATION

WC4 - 1
WC4 - 2

Respondent's Answer to Dependency Claim Petition

L 50 R4

State of New Jersey
Department of Labor and Industry
ISION OF WORKERS' COMPENSATION

WCS 4-6

RESPONDENT'S ANSWER TO DEPENDENCY CLAIM PETITION

(DO NOT FILL IN)
C.P. NO. 85-19831
D.O. Essex

PETITIONER
SOCIAL SECURITY NUMBER: 987-65-4321
NAME: Mary Worker
ADDRESS (Including County): Essex
120 Broadway
Newark, New Jersey 07102

ATTORNEY FOR PETITIONER
FEDERAL EMPLOYER'S IDENTIFICATION NUMBER: 22-2423794
NAME: Balk, Balk and Mandell, P.A.
ADDRESS:
1180 Raymond Boulevard
Newark, New Jersey 07102

VS

RESPONDENT
NAME: Dangerous Chemicals Inc.
ADDRESS (Including County): Essex
40 Doremus Avenue
Newark, New Jersey 07102

INSURANCE CARRIER
NAME (Indicate If Not Covered or If Self-Insured): LIBERTY MUTUAL INSURANCE COMPANY
CLAIM NUMBER: 123ABC4567 X42 (2)

IN ANSWER TO THE DEPENDENCY CLAIM PETITION FILED IN THIS CAUSE RESPONDENT STATES:
RESPONDENT AND CARRIER INFORMATION SUPPLIED BY PETITIONER ☒ Is Correct ☐ Has Been Corrected

DECEDENT
SOCIAL SECURITY NUMBER: 123-45-6789
ADDRESS: 120 Broadway
NAME: William Worker, Sr.
Newark, New Jersey 07102

DATE INJURY OCCURRED	DATE EMPLOYER HAD KNOWLEDGE OF INJURY	DATE INJURY REPORTED	DATE STOPPED WORK	DATE RETURNED TO WORK	DATE OF DEATH
7/15/80 Alleged	7/15/80 Alleged	7/15/80 Alleged	5/31/83	Never	7/10/85

OCCUPATION AND TYPE OF WORK
Clerk - Clerical

HOW INJURY OCCURRED
Chemical Exposure Alleged

WHERE
Respondent's Plant

NATURE OF INJURY: Oncological
CAUSE OF DEATH: Carcinoma

MEDICAL EXPENSES	BURIAL EXPENSES	PAID BY RESPONDENT
$	$	☐ Yes ☒ No

GROSS WEEKLY WAGE	RATE OF COMPENSATION	COMPENSATION RECEIVED FOR INJURY	TOTAL COMPENSATION FROM EMPLOYER
$460.00	$253.00	$33,917.87	$55,859.87

EMPLOYER FURNISHED MEDICAL AID	DECEDENT GAVE WRITTEN NOTICE OF ARTICLE 2 EXEMPTION	DECEDENT RECEIVED WRITTEN NOTICE OF ARTICLE 2 EXEMPTION
☒ Yes ☐ No	☐ Yes ☒ No	☐ Yes ☒ No

RESPONDENT AGREES WITH INFORMATION CONCERNING DEPENDENTS NAMED IN THE DEPENDENCY CLAIM PETITION ☒ Yes ☐ No

IF NO, EXPLAIN

Respondent submits the following additional information (Enter none, if appropriate. Use additional sheets, if required)

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STATE OF NEW JERSEY,)
) ss
COUNTY OF_____)

_____, of full age, being duly sworn according to law, on h___ oath deposes and says: That __he is the_____respondent named in the foregoing answer to claim petition; that he has read the same and is familiar with the contents thereof; and that the matters and things therein set forth are true according to the best of his knowledge and belief.

_____

Subscribed and sworn to before me this_____day of _____, 19_____at _____

_____

_____

(This affidavit may be sworn to before any person authorized by law to administer an oath)

I am an attorney-at-law of New Jersey, associated with the office of Robert G. Bressler, 240 So. Harrison Street, East Orange, New Jersey, attorney for the respondent named in the within answer; I have read the same and am familiar with its contents and the matters and things therein set forth are true according to the best of my knowledge and belief.

ROBERT G. BRESSLER

BY: /s/ Robert G. Bressler

Pre-Trial Memorandum

DIVISION OF WORKERS' COMPENSATION
NEW JERSEY DEPARTMENT OF LABOR

Essex District **PRE-TRIAL MEMORANDUM** Date 10/1/85

PETITIONER Mary Worker RESPONDENT Dangerous Chemicals Inc.

SOCIAL SECURITY NO. 987-65-4321 CARRIER Liberty Mutual C. P. NO. 85-19831

STIPULATIONS: *(Fill in)*

Date of Accident 7/15/80 Wages $460.00 Rate $253.00

Compensation Paid:

Temporary Disability from _____ to _____ Rate _____

Permanent Disability percentage _____ *member* _____ Rate _____

CHECK IF AT ISSUE:

Employment _____ Wages _____ Rate _____ Accident _____ Notice _____ Exposure _____

Knowledge _____ Casual Relationship X injuries X Arise out of Employment X

Incourse of employment X Nature and extent of Temporary _____ and Permanent _____ disability

OTHER ISSUES

Dependency

Medical Bills outstanding None

T. D. B. Paid None Liens None

TREATING DOCTORS - Reported Findings Bronchogenic Carcinoma with Metastesis

Dr. Smith

Reported x-ray findings _____

Dr. _____

FURTHER STIPULATIONS: None

WITNESSES:

PETITIONER				RESPONDENT			
Doctor	Date of Exam.	Est.	Testimony Required	Doctor	Date of Exam.	Est.	Testimony Required
I.M.Liberal	9/1/85	Causal	☒	I.M. Knott	9/15/85	NO Relation	☒
			☐				☐
			☐				☐

OTHER WITNESSES _____ Pet. 1 Resp. 1

Trial time of petitioner 2 hours Trial time of respondent 2 hours

/s/ Jack Mandell
Attorney for Petitioner

/s/ Robert G. Bressler
Attorney for Respondent

/s/ John Dough
Judge ~~Referee~~ *Formal Hearing*

Order of Judgment

State of New Jersey
Department of Labor
DIVISION OF WORKERS' COMPENSATION

ORDER
[X] JUDGMENT
[ ] APPROVING SETTLEMENT
[ ] DISMISSAL
[ ] DISCONTINUANCE

C.P. NO.'S 85-19831

District Office: Essex

PETITIONER
SOCIAL SECURITY NUMBER: 987-65-4321
NAME: Mary Worker
AGE: 35
ADDRESS (Including County): 120 Broadway, Newark, New Jersey 07102

ATTORNEY FOR PETITIONER
FEDERAL EMPLOYER'S IDENTIFICATION NUMBER: 22-2423794
NAME: BALK & BALK, P.A.
ADDRESS: 1180 Raymond Boulevard, Newark, New Jersey 07102
APPEARING: Jack Mandell, Esq.

VS

RESPONDENT
NAME: Dangerous Chemicals Inc.
ADDRESS (Including County): Essex
40 Doremus Avenue
Newark, New Jersey 07102

ATTORNEY FOR RESPONDENT
NAME: Robert G. Bressler
ADDRESS (Including County): Six Becker Farm Road, Roseland, New Jersey 07068
APPEARING: Robert G. Bressler, Esq.

INSURANCE CARRIER
NAME (Indicate If Not Covered or If Self-Insured): Liberty Mutual Insurance Co.
Six Becker Farm Road
Roseland, New Jersey 07068
DATE OF ACCIDENT: OR OCCUPATIONAL EXPOSURE: 7/15/80
DESCRIBE (Briefly): Exposure to Chemicals

Weekly Wages 460.00 Rate(s) 253.00 /

IF RE-OPENED PETITION, INDICATE FOR LAST AWARD: DATE: _____ PERMANENT: $ _____ TEMP: $ _____

This matter having come on before the Court on this 1st day of December, 19 85

[X] **ORDER FOR JUDGMENT:**
It appearing that the Petitioner suffered a compensable injury on the above mentioned date while in the employ of respondent is Ordered and Adjudged that petitioner be awarded compensation benefits, payable as indicated on Page 2.

[ ] **ORDER APPROVING SETTLEMENT:**
The parties having settled the matter and a finding by the Court having been made that the terms of the settlement are fair and just; it is Ordered that this settlement be approved and the petitioner be paid as indicated on Page 2.

[ ] **ORDER FOR DISMISSAL**
This matter having come on for hearing upon the respondent's motion for Dismissal which was made and duly served and there being good cause shown, the claim petition herein is hereby dismissed for
[ ] 1. Lack of Prosecution
[ ] 2.

[ ] **ORDER FOR DISCONTINUANCE**
This matter having come on before the court and the court having received evidence that this matter should be discontinued for good cause shown. It is ORDERED AND ADJUDGED that this matter be discontinued for the following reasons:

[ ] It is FURTHER ORDERED that the payment indicated on Page 2 be made a part of the Order for Discontinuance for petitioner's disability. (Percentages and members involved.)

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE RECEIPT OF A COPY. (Sign if applicable)

STENO FEE _____ BY _____

(PETITIONER'S ATTORNEY)

/s/ John Dough 12/1/85
(HEARING OFFICIAL SIGNATURE) (D

PETITIONER (Where Applicable)

JOHN DOUGH
(NAME OF HEARING OFFICIAL) (PRINT OR TYPE)

(RESPONDENT'S ATTORNEY)

[X] Judge of Compensation [ ] Referee

WC-100 (R-4-82)

OFFICE COPY

State of New Jersey Department of Labor and Industry DIVISION OF WORKERS' COMPENSATION	(CONTINUATION) ORDER ☒ JUDGMENT ☐ APPROVING SETTLEMENT ☐ DISMISSAL ☐ DISCONTINUANCE	C. P. NO.'S 85-19831 D. O. Essex

Permanent Disability *(Describe Percentages, Nature and extent of Disability, and Members Involved)*: Dependency Payments payable to widow, Mary Worker and dependent child, William Worker, Jr. from 7/10/85 to 2/1/94, 450 weeks at $253.00 amounting to $113,850.00 on which date the widow's benefits shall expire unless the widow shall continued unmarried and not employed in which case benefits shall continue @ $253.00 per week for 177 6/7 additional weeks to 6/1/97 amounting to $44,997.84 on which date William Jr will attain 18 years of age; thereafter dependency benefits to the widow continues at the rate c $230.00 per week for the balance of her widowhood. Funeral allowance to widow $2,000.00.

DISABILITY AWARDED

TEMPORARY: ____ Weeks at $ ____ = $ ____ less $ ____ paid = Balance due $ ____

PERMANENT: ____ Weeks at $ ____ = $ ____ less $ ____ paid = Balance due $ ____

Medical Bills *(Doctors and/or Institutions)*

MEDICAL FEE ALLOWED (Expert and/or Testimonial)	TOTAL AMT. ALLOWED	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
I.M. Liberal, M.D.	150.00	75.00	75.00
ATTORNEY(S) FEE	**TOTAL**	**PAYABLE BY PETITIONER**	**PAYABLE BY RESPONDENT**
Balk, Balk & Mandell P.A.	10,000.00	3,000.00	7,000.00
STENOGRAPHIC SERVICE	**TOTAL**	**PAYABLE BY PETITIONER**	**PAYABLE BY RESPONDENT**
Wm. C. O'Brien Associates	90.00		90.00

/s/ John Dough 12/1/85
(HEARING OFFICIAL) JOHN DOUGH (DATE)

☒ Judge of Compensation ☐ Referee

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE A COPY:

/s/ Jack Mandell
(PETITIONER'S ATTORNEY)

/s/ Robert G. Bressler
(RESPONDENT'S ATTORNEY)

PETITIONER *(Where Applicable)*

WC-160.1 (R-3-77) OFFICE COPY

APPENDIX C

NEW JERSEY ADMINISTRATIVE CODE
CHAPTER 235
RULES OF THE DIVISION OF WORKERS COMPENSATION

CHAPTER 235
RULES OF THE DIVISION OF WORKERS' COMPENSATION

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:1A-12(b), (c) and 34:15-64.
Department of Labor and Workforce Development
Division of Workers' Compensation
Authorized by: David J. Socolow, Commissioner, Department of Labor & Workforce Development
Revision Date: October 5, 2009

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NEW JERSEY ADMINISTRATIVE CODE
CHAPTER 235
RULES OF THE DIVISION OF WORKERS' COMPENSATION

SUBCHAPTER 1. GENERAL PROVISIONS

12:235-1.1 Purpose and scope

(a) The purpose of this chapter is to establish rules to carry out the responsibilities of the Division of Workers' Compensation under the Act.

(b) This chapter shall apply to all persons subject to the Workers' Compensation Law, N.J.S.A. 34:15-7 et seq.

12:235-1.2 Construction

The rules contained in this chapter shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Unless otherwise stated, any rule may be relaxed or dispensed with if strict adherence would cause an injustice.

12:235-1.3 Certification in lieu of oath

(a) Claim petitions shall be notarized and filed under oath as set forth in N.J.S.A. 34:15-51 and 34:15-52 and in accordance with N.J.A.C. 12-235-3.1.

(b) Certifications in lieu of oath as provided in the New Jersey Rules of Court may be used for motions and any other documents filed with the Court.

12:235-1.4 Still and television camera and audio coverage of proceedings

(a) All requests for still and television camera and audio coverage of proceedings shall be forwarded to the Chief Judge.

(b) Such requests shall be considered in accordance with Department procedures and the "New Jersey Supreme Court Guidelines For Still And Television Camera And Audio Coverage of Proceedings In The Courts Of New Jersey", which are incorporated herein by reference and contained in Vicinage Operations Directive #10-03 issues by Richard J. Williams, Administrative Director, on October 8, 2003.

12:235-1.5 (Reserved)

12:235-1.6 Maximum workers' compensation benefit rates

(a) In accordance with the provisions of N.J.S.A. 34:15-12(a), the maximum workers' compensation benefit rate for temporary disability, permanent

total disability, permanent partial disability, and dependency is hereby promulgated as being $773.00 per week.

(b) The maximum compensation shall be effective as to injuries occurring in the calendar year 2009.

12:235-1.7 (Reserved)

12:235-1.8 (Reserved)

SUBCHAPTER 2. DEFINITIONS

12:235-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means Workers' Compensation Law, N.J.S.A. 34:15-7 et seq.

"Division" means the Division of Workers' Compensation, PO 381, Trenton, New Jersey 08625-0381.

"Chief Judge" means the Director/Chief Judge of the Division.

"Commissioner" means the Commissioner of Labor and Workforce Development or his or her designee.

"Department" means the New Jersey Department of Labor and Workforce Development.

"Director" means Director/Chief Judge of the Division.

"Judge" means Judge of Compensation.

"N.J.A.C." means New Jersey Administrative Code.

"N.J.S.A." means New Jersey Statutes Annotated.

"Respondent," "employer" or "insurance carrier" are used interchangeably.

SUBCHAPTER 3. FORMAL CLAIMS

12:235-3.1 Initial Pleadings

(a) Claim petitions shall be subject to the following:

1. The claim petition may be filed electronically or on paper.

2. Claim petitions filed on paper shall be verified by the claimant and include the date of the signature and verification. The formal hearing process shall be initiated by the filing of a verified claim petition in duplicate with the central office of the Division within the time prescribed by law on a form prescribed by the Division. Claim petitions filed electronically shall follow the procedures in (c) below. If an attorney for the petitioner knowingly files an incomplete or inaccurate petition any fee that may be awarded may be reduced by 15 percent or $200.00, whichever is greater.

3. Except as provided in subsection (a)2 above, all paper pleadings, motions and briefs shall be signed by the attorney of record, or the attorney's associate or by the party if pro se. Signatures of a firm may be typed, followed by the signature of an attorney of the firm. Signatures on any duplicate original or carbon copy required to be filed may be typed. Every paper to be filed shall bear the date on which it was signed.

4. The signature of an attorney or party pro se constitutes a certification that the signatory has read the pleading or motion; that to the best of the signatory's knowledge, information and belief there is good ground to support it.

5. Material allegations, if known, shall be stated. Material allegations include a description of the accident or occupational exposure, the nature of the injury, the date and place of the occurrence, the wage, compensation benefits provided to date, a description of all other claims made for this injury and all other information requested on the prescribed form.

6. Claim petitions by or on behalf of a worker seeking compensation for injury caused by an accident shall describe the date, place and description of the accident, the injury, the name and address of the employer, the name and address of the treating provider, the name of the compensation insurer and all other pertinent information required by the Act and these rules.

7. Claim petitions filed by dependents for benefits provided by N.J.S.A. 34:15-13 shall set forth the identity, address, relationship and date of birth of all dependents, the social security number of the decedent, the date and cause of death, whether compensation benefits were paid or claimed during the deceased's lifetime, and the type and amount of benefits claimed. To the extent applicable, the petitioner shall comply with the information required for

accidental injury claims or occupational disease claims. Multiple claims arising from one decedent shall be consolidated for disposition.

8. All known multiple occupational claims by a worker or dependent against the same respondent employer shall be joined in one petition. Claim petitions for occupational disease as defined by N.J.S.A. 34:15-31 which are filed on behalf of a worker shall describe the dates, place and description of the exposure and the injury or illness claimed to have occurred as a result of the exposure. The occupational disease petition shall include the name and address of the employer(s) and the identity of its compensation insurer for the pertinent period of time as well as all other information required in filing a claim petition required by this section. The Division shall notify all parties of disposition.

9. Vague or evasive pleadings may be stricken or a claim petition dismissed without prejudice on motion brought by a party or the Judge of Compensation on notice. Claim petitions which merely describe the injury or illness by generic definition, such as orthopedic, internal, neuropsychiatric or similar terms without description of the particular injury shall be considered vague or evasive.

(b) Answers to a claim petition may be filed electronically or on paper subject to the following:

1. The answer of the respondent to a claim petition shall be on a form prescribed by the Division and shall, if known, contain the following:

i. The name and address of the respondent's attorney;

ii. The name and address of the carrier;

iii. The carrier's claim number;

iv. The employer's State registration number;

v. An admission or denial of employment;

vi. An admission or denial if accident or illness arose out of and in the course of employment;

vii. Gross weekly wage;

viii. Benefit rates;

ix. Medical providers;

x. Temporary disability paid, if any; and

xi. An admission or denial of jurisdiction.

2. The answer shall be filed with the office to which the claim is assigned within 30 days of the date of service of the petition except for good cause shown. The answer may be prepared by the attorney for the respondent based upon knowledge, information or belief and shall be regarded as his or her certification of its contents without the necessity of an affidavit.

   i. If the answer is filed on paper, it shall be filed with the office to which the claim is assigned. A copy of the answer shall be forwarded to the petitioner's attorney by first class mail, or its equivalent.

   ii. If an answer is filed electronically with the Division and the petitioner's attorney is a duly authorized electronic filer with the Division, the Division shall cause the answer to be forwarded to the petitioner's attorney in electronic format which will constitute service under the rules.

   iii. If an answer is filed electronically with the Division and the petitioner's attorney is not a duly authorized electronic filer with the Division, the respondent's attorney shall serve a copy of the answer on paper with the petitioner's attorney by first class mail, or its equivalent.

3. If the answer is not filed as specified in (b)1 and 2 above, the Judge of Compensation to whom the case is assigned may, on motion, either suppress the defenses and permit the petitioner to prove his or her case, or permit the filing of the answer on such terms as may be fixed in the discretion or the Judge of Compensation.

4. If the respondent knowingly files an incomplete or inaccurate answer or unnecessarily delays filing an answer, such circumstances shall be considered in the apportionment of any counsel fee awarded.

5. Answers which put petitioner to proofs without conforming with(b)(1) and (2) above may be stricken and subject to the penalties pursuant to Section 12:235-3.14 of these Rules.

(c) Petitions and answers filed electronically shall be accepted by the Division in lieu of paper pleadings provided:

1. The filer is an attorney licensed in the State of New Jersey and duly authorized by the Division to file pleadings electronically.

2. The filer submits the pleading in the format approved by the Division.

3. The filer makes an identical paper copy of the electronically submitted pleading and obtains thereon a verification by oath, affirmation or certification of the petitioner or respondent, as applicable, as to the accuracy of the information set forth therein.

4. The filer shall retain, as an officer of the court, the duly verified pleading and shall make same available to the Division and/or his/her adversary upon request.

5. Failure to maintain the paper copy of said pleadings and make it available within a reasonable time upon proper request shall constitute grounds for the revocation of the privilege of electronic filing in addition to whatever other sanction may be deemed appropriate under the law.

(d) Upon receipt of an electronically filed pleading the Division shall send an electronic copy of same to the insurance carrier, third party administrator or designated legal representative of the respondent provided that the insurance carrier, third party administrator or designated legal representative has requested to be and has been approved by the Division to receive such pleadings. Notification of the electronic pleading to the electronic address of the approved recipient shall constitute valid service of process.

(e) Claim petitions filed electronically where the insurance carrier, third party administrator or designated legal representative is not approved to receive service of an electronic pleading shall be sent by the Division to the addressee specified in the claim petition, by regular mail together with a request for Acknowledgment of Service in accordance with N.J.S.A. 34:15-51 and N.J.S.A. 34:15-52. Answers shall likewise be submitted by regular mail in accordance with (b)2i.

(f) Claim petitions will be assigned in the following priority order: the vicinage for the county where the petitioner resides, the vicinage for the county where the respondent is situated, or the vicinage for the county where the accident or exposure occurred.

(g) A copy of the claim petition shall be forwarded by the Division to the

respondent either electronically for electronic filers, by regular mail, or by registered mail return receipt requested if served pursuant to N.J.S.A. 34:15-55.1. Where a motion for default has been filed, the petitioner must provide proof that the claim petition and motion for default have also been served personally on the respondent, its agents, and/or corporate officers as applicable, pursuant to R. 4:4-4 of the New Jersey Rules of Court.

12:235-3.2 General Motions for temporary disability and/or medical benefits

(a) In all motions by the petitioner for temporary disability or medical benefits, the original notice of motion shall be filed with the district office to which the case is assigned and a copy of the notice of motion and claim petition served by certified mail or personal service on the attorneys of record. If the attorney of record is unknown, then service shall be made by certified mail on the respondent(s) and its carrier(s). If it is a new claim petition and it is a claim petition filed on paper, then the notice of motion shall also be filed with the central office. Motions for temporary disability and/or medical benefits must evidence that petitioner is currently temporarily totally disabled and/or in need of current medical treatment. Where only past periods of temporary total disability and/or medical expenses are claimed by petitioner, such issues should be presented at pretrial for resolution or trial and not by motion under this section.

(b) The notice of motion for temporary disability or medical benefits shall be on a form prescribed by the Division and shall contain:

1. A detailed account of compensable lost time claimed by the petitioner, indicating any period paid by the respondent;

2. Affidavits or certifications made in personal knowledge by the petitioner or the petitioner's attorney, as well as the report(s) of a physician(s) stating the medical diagnosis and the specific type of diagnostic study, referral to specialist, or treatment being sought, and, if available, an itemized bill and report of the treating physicians or institutions or both for which services past, present and future, petitioner is seeking payment and such other evidence as shall relate to the petitioner's claim for temporary disability and/or medical treatment; and

3. If the petitioner, having received treatment, cannot secure a report of the medical provider authorized by the respondent, it shall be set forth in the affidavit in lieu of the physician's report.

(c) If an attorney for the petitioner knowingly files an incomplete, inaccurate or misleading notice of motion for temporary disability and/or medical benefits, or an attorney for the respondent files an untimely, incomplete,

inaccurate or misleading answer, the attorney may be assessed a penalty in accordance with 12:235-3.14.

(d) Except for good cause shown, respondent(s) shall file an answer within 21 days of service of the motion or within 30 days after service of the claim petition whichever is later.

(e) When the Division has received a notice of motion for temporary disability and/or medical benefits filed in accordance with (a), (b) and (c) above, it shall list the motion for a hearing before a Judge of Compensation peremptorily within 30 days of the filing of the motion. Motions for medical and/or temporary benefits shall commence and continue in a timely manner subject to the scheduling constraints of the Division. Said scheduling may be accelerated as ordered by the Director, the Supervising Judge of the vicinage, or the Judge of Compensation to whom the case is assigned.

(f) Affidavits, certifications and medical reports submitted in accordance with (b) above in support of the motion may constitute a prima facie case and may be sufficient basis for the issuance of an order compelling the respondent to provide the relief sought unless respondent files supporting affidavits or certifications to oppose said motion on a legal or factual basis, or files medical reports if there is a medical basis to oppose said motion. No order shall be issued until 30 days after service of the claim petition.

(g) Examination, if required by respondent, shall be completed within 30 days of receipt of the motion and the report issued in not more than 35 days from receipt of the motion and shall not delay the start of the hearing of the motion except for good cause shown.

(h) For motions where it appears the only issue involved is which carrier or employer is liable to petitioner for the benefits sought, a judge of compensation may order one carrier or employer to pay benefits without prejudice and subject to an order of reimbursement if another party is later held liable for such benefits.

(i) On conclusion of the hearing on the motion for temporary and/or medical benefits, the Judge of Compensation shall, within 15 days, render a final decision on the motion and notify the respective counsel of the decision. In computing the 15 days' time, the 15 days shall be from the last day of hearing or from the date of filing of briefs as ordered by the Judge, whichever is later. Under no circumstances shall briefs be filed later than 15 days after the hearing.

(j) Every carrier and self-insured employer shall designate a contact person who is responsible for responding to issues concerning medical and temporary

disability benefits where no claim petition has been filed or where a claim petition has not been answered. The full name, telephone number, address, e-mail address, and fax number of the contact person shall be submitted to the Division. Whenever any of this information about the contact person needs to be updated, such updated information shall be submitted to the Division. After an answer is filed with the division, the attorney of record for the respondent shall act as the contact person in the case.

12:235-3.3 Motions for emergent medical care pursuant to N.J.S.A. 34:15-15.3

(a) With or after the filing of a claim petition, a petitioner may file a motion for emergent medical care directly with the district office to which the petition is or will be assigned (See N.J.A.C. 12:235-3.1 for claim petition filing and assignment).

(b) The notice of motion for emergent medical care shall be on a form prescribed by the Division and shall contain or be accompanied by the following:

1. A statement by the petitioner or the petitioner's attorney of the specific request(s) for medical treatment made by the petitioner or the petitioner's attorney to the employer and/or the employer's insurance carrier, including the name of the person(s) to whom the request(s) was/were made;

2. Medical documentation, including a statement by a physician indicating that the petitioner is in need of emergent medical care, that the delay in treatment will result in irreparable harm or damage to the petitioner and the specific nature of the irreparable harm or damage;

3. All medical records relating to the requested medical care, which are in the possession of the petitioner or the petitioner's attorney;

4. Copies of the claim petition and answer.

   i. If no answer to the claim petition has been filed, the notice of motion shall include the following information if known by the petitioner: the telephone number and the fax number of the employer, the name of the employer's workers' compensation insurance carrier and the insurance carrier or self-insured employer contact person's telephone number and fax number, as required to be maintained under N.J.A.C. 12:235-3.4; and

5. Proof of service under (c), (d) and (e) below.

(c) Where an answer to the claim petition has been filed by the respondent, the notice of motion and supporting papers shall be served on respondent's attorney by fax and by a one-day delivery service.

(d) Where no answer to the claim petition has been filed by the respondent, the notice of motion and supporting papers shall be served on the employer and, if known by the petitioner, upon the employer's insurance carrier.

1. Service on the employer under this subsection shall be either by personal service or by fax and a one-day delivery service.

2. Service on the insurance carrier under this subsection shall be by fax and a one-day delivery service to the contact person listed pursuant to N.J.A.C. 12:235-3.4.

(e) Where the employer is uninsured or where the employer's insurer is not known by the petitioner, the notice of motion and supporting papers shall, in addition to the requirements under (c) or (d) above, be served on the Uninsured Employer's Fund by fax and by a one-day delivery service.

(f) The date of the personal service, the date of the fax service or the date of receipt of the one-day delivery service, whichever is latest, shall be considered the date of service under (c), (d) and (e) above.

(g) No later than five calendar days after receiving service of the petitioner's notice of motion for emergent medical care, the respondent shall file with the district office an answer to the motion.

(h) Within 15 calendar days after the petitioner has served the notice of motion for emergent medical care upon the appropriate party or parties under (c), (d) and (e) above, the employer or the employer's insurance carrier may have a medical examination of petitioner conducted.

(i) The petitioner is required to attend and cooperate with the medical examination process under (h) above.

(j) Motions for emergent medical care shall take precedence over all other court listings.

(k) The judge should use telephone conferences and afternoon hearings, as appropriate, to expedite the disposition of motions for emergent medical care and to avoid as much as possible the disruption of other court proceedings.

(l) Within five calendar days of the filing of an answer by respondent or, if no answer has been filed, within five calendar days from the date an answer

should have been filed, an initial conference on the motion for emergent medical care shall take place

(m) The district office shall provide notice of the initial conference to the following parties under the following circumstances:

1. Where an answer to the notice of motion for emergent medical care has been filed, the district office shall provide notice of the initial conference by telephone and fax to the petitioner's attorney or petitioner pro se and to the answering party using the telephone numbers and fax numbers indicated in the notice of motion for emergent medical care and the answer, respectively;

2. Where an answer to the notice of motion for emergent medical care has not been filed and where the employer is insured, the district office shall provide notice of the initial conference by telephone and fax to the employer and to the insurance carrier contact person listed in the notice of motion for emergent medical care; or

3. Where an answer to the notice of motion for emergent medical care has not been filed and where the employer is not insured or the insurer is not known, the district office shall provide notice of the initial conference by telephone and fax to the employer and to the Uninsured Employer's Fund.

(n) If the motion for emergent medical care has not been resolved at the initial conference and the employer or the employer's insurance carrier has not requested a medical examination of the petitioner under (h) above, the judge shall hold a hearing on the merits of the motion for emergent medical care as soon as is practicable, but no later than five calendar days from the date of the initial conference.

(o) If the motion for emergent medical care has not been resolved at the initial conference and the employer or employer's insurance carrier has requested a medical examination of the petitioner under (h) above, the judge shall hold a hearing on the merits of the motion for emergent medical care as soon as is practicable after the medical examination of the petitioner, but no later than five calendar days from the date of the medical examination of the petitioner.

(p) With regard to the hearing on the merits of the motion for emergent medical care, the judge may require a continuous trial or may use other procedures to ensure that the motion is expeditiously heard.

(q) The judge hearing the motion for emergent medical care shall render a decision and issue an order on the motion within one business day of the

conclusion of the trial testimony.

(r) The judge may supplement the decision and order rendered under (q) above at a later date.

(s) If a motion for emergent medical care does not meet the requirements under this section, but does meet the requirements for a general motion for temporary and/or medical benefits under N.J.A.C. 12:235-3.3, the motion shall be listed and proceed as a general motion for temporary and/or medical benefits.

12:235-3.4 Insurance carrier or self-insured employer contact person procedures pursuant to N.J.S.A. 34:15-15.4

(a) Every insurance carrier providing workers' compensation insurance and every workers' compensation self-insured employer shall designate a contact person who is responsible for responding to issues concerning medical and temporary disability benefits where no claim petition has been filed or where a claim petition has not been answered.

(b) The contact person referred to in (a) above shall also receive notice of motions for emergent medical care under N.J.A.C. 12:235-3.3.

(c) The full name, telephone number, mailing address, e-mail address and fax number of the contact person referred to in (a) above shall be submitted to the Division utilizing the Division's contact person form in the manner instructed on the form.

(d) The Division's contact person form shall be made available on the Division's website and at the Division's district offices.

(e) Any changes of contact person or in information about the contact person shall be immediately submitted to the Division using the Division's contact person form.

(f) After an answer to a claim petition has been filed, the attorney of record for the respondent shall be the point of contact for issues concerning temporary disability and/or medical benefits.

(g) A contact person roster using the information provided under (c) above will be available on the Division's website.

(h) Failure to comply with the requirements of N.J.S.A. 34:15-15.4 or this section shall result in a fine of $ 2,500 for each day of noncompliance, which fine shall be payable to the Second Injury Fund.

1. The Division shall send notice of noncompliance and of the fine amount by certified mail, return receipt requested, to the business address of the insurance carrier or self-insured employer.

2. The insurance carrier or self-insured employer shall have 30 calendar days to pay the fine or to contest the fine.

3. Where the insurance carrier or self-insured employer contests the fine, the Division shall hold a conference in an attempt to resolve the dispute.

12:235-3.5 Other motions

(a) All other motions shall be in the form of a notice of motion, the original of which shall be filed with the district office to which the case is assigned with copies served on petitioner(s), respondent(s), carrier(s), or attorney(s). Every notice of motion shall include the factual and legal basis for the relief requested and a proposed form of order in triplicate.

(b) If the notice of motion or responsive pleading relies on facts not of record, it shall be supported by affidavit made on personal knowledge setting forth facts which are admissible in evidence to which the affiant is competent to testify. The notice of motion shall be considered uncontested unless responsive papers are filed and served within 14 days of the service of the notice of motion.

(c) Motions to dismiss for lack of prosecution pursuant to N.J.S.A. 34:15-54 and motions to suppress defenses shall be listed for hearing. All other motions shall be disposed of on the papers, unless a Judge of Compensation directs oral argument or further proceedings, in which event a hearing shall be scheduled within 30 days from the filing of the last papers contemplated by this section. At the conclusion of any such hearing the Judge of Compensation shall render a decision and enter an appropriate order within 30 days.

12:235-3.6 Third party joinder by respondent

(a) A respondent who alleges that another employer or insurance carrier may be liable for all or part of the benefits claimed by the petitioner may move to join such employer or insurance carrier as a responding party to the original claim petition by notice of motion which shall be supported by a definitive statement setting forth the factual and legal basis for the relief sought.

(b) A copy of the motion and supporting statement with a copy of the original claim petition shall be served upon the party sought to be joined and all

other parties.

(c) It shall be the responsibility of the moving party to give notice of any hearing of the motion to the party sought to be impleaded.

(d) Such motion shall be granted only where the moving party has satisfied the Judge of Compensation that there exists a substantial likelihood that the party to be joined is or may be liable for compensation benefits to the petitioner.

(e) If the order sought is granted, the order shall be served upon the party joined forthwith who shall file an answer within 30 days of the date of service of the order.

(f) In cases where it appears that the only issue involved is which carrier or employer is liable to the petitioner for the benefits sought, the Judge of Compensation may order the moving party to pay the benefits in whole or in part as a condition of joinder subject to an order for reimbursement, if another party is held to be liable for such benefits.

(g) If a respondent knowingly files an incomplete, inaccurate or frivolous motion for third party joinder, such circumstances may be considered in the apportionment of any counsel fee awarded, in addition to a counsel fee not to exceed $ 200.00 to each opposing counsel of each party sought to be joined.

12:235-3.7 Conditions allowable for discovery

(a) Discovery, except a deposition for preservation of testimony, may be allowed in those contested cases where there are issues in dispute in addition to the nature and extent of petitioner's temporary or permanent disability.

(b) All discovery shall be concluded within 180 days from the filing of respondent's answer or from petitioner's last authorized medical treatment, whichever date is later. A Judge of Compensation may extend or reopen discovery on his or her own motion or on application of a party for good cause appearing.

12:235-3.8 Discovery

(a) Interrogatories shall be allowed without motion in dependency cases.

(b) Interrogatories shall be allowed without motion where the injured worker is treated by the employer's physician and where medical information is not available to the worker.

(c) The employer shall be required to furnish or make available for inspection and copying all records of medical treatment, examinations and diagnostic studies authorized by the respondent. The respondent shall have the same right when the worker is treated by his or her own physician. If either party fails to furnish said information within 30 days of receipt of demand of records, it may be responsible to reimburse its adversary for the cost of procuring the same.

(d) Interrogatories shall be allowed without motion in cases of review or modification of a prior award on the grounds of increase or decrease of disability. The party seeking such review or modification shall furnish the adversary party with a chronology of the pertinent events from the date of the last award or judgment to the filing of the petition for the increase or decrease of disability indicating the essential facts upon which the petition is grounded.

(e) Interrogatories in those cases allowed without motion shall be served by the petitioner not later than 30 days after service of the answer to the petition and by the respondent not later than 15 days after the service of its answer. Answers to the interrogatories shall be served within 45 days after service of the interrogatories. A Judge of Compensation upon motion for good cause may enlarge the time provided for service of answers. Supplemental interrogatories may be allowed on motion for good cause shown.

(f) In occupational disease cases, a party may propound interrogatories only by demanding in the initial pleading that the opposing party answer the standard form interrogatories as listed in N.J.A.C. 12:235-14.1. The demand shall be stated in the claim petition by the petitioner and in the answer by the respondent immediately following signature. Interrogatory answers shall be served by all parties within 90 days from the filing of respondent's answer to the claim petition. A Judge of Compensation upon motion for good cause may extend the time provided for service of answers. Supplemental interrogatories may be allowed on motion for good cause shown.

(g) Interrogatories may be allowed in other cases, upon motion, for good cause shown.

(h) Depositions of witnesses may be allowed, upon motion, for good cause shown.

(i) If timely response to a discovery demand has not been provided under this rule and no motion for an extension has been made, the party entitled to the discovery may move, on notice, for an order dismissing the claim petition for lack of prosecution or suppressing the defenses of the delinquent party which are pertinent to the unanswered interrogatories. See N.J.A.C. 12:235-3.3. Such noncompliance may also be the subject of an

enforcement action under N.J.A.C.12:235-3.14. Failure to move to dismiss the claim petition or suppress defenses, as appropriate, prior to the first trial date shall be deemed a waiver of a discovery demand.

12:235-3.9 Testimony of injured or ill petitioner by depositions

(a) A petitioner seeking compensation who is in such a physical condition that it is imperative that his or her testimony be taken by deposition, in order to preserve the person's rights or those of his or her estate or dependents, may give a deposition.

(b) The deposition may be ordered by a Judge of Compensation upon notice to the adverse party and taken before a certified shorthand reporter.

(c) The appearance by an attorney for the respondent shall not constitute a waiver of any of the rights of the respondent or its insurance carrier.

(d) A report from a physician shall be attached to the application to take depositions stating the medical basis upon which the deposition is sought.

(e) A deposition for this purpose may also be taken by consent of all parties, provided there is a report from a physician stating the medical basis upon which the deposition is sought.

12:235-3.10 Certification of pre-existing conditions

(a) In all cases in which the petitioner claims total and permanent disability, the petitioner or petitioner's attorney shall, prior to the first hearing date, furnish to all other parties a written certification as to the existence of any condition pre-existing the last claimed compensable episode.

(b) The certification shall include the names and addresses of physicians and institutions furnishing treatment or examinations for any such pre-existing conditions.

(c) The petitioner may in lieu of furnishing actual records or reports, furnish executed authorizations for the records and reports of each such physician and institution.

(d) Copies of all records and reports so obtained by the respondent shall be furnished to the petitioner or petitioner's attorney within 10 days of receipt.

12:235-3.11 Pre-trial conference

(a) In any formal proceeding, the Division shall schedule a pre-trial conference where the following shall be accomplished:

1. All medical reports shall be exchanged;

2. The Judge and the attorneys shall agree upon the type of examination(s) required by each party;

3. The Judge and the attorneys shall make a sincere effort to limit issues; and

4. A pre-trial memorandum on a form prescribed by the Division shall be executed.

   (i) Any party that intends to utilize videos or other electronic media, including surveillance tapes, must indicate that such media will be utilized at trial and identify the witness who will authenticate and testify concerning the materials to be presented in the "Other Witness" section of the pre-trial memorandum or as an addendum to the pre-trial memorandum. A party is not required to provide or exhibit electronic information, including surveillance tapes, to another party prior to the other party's testimony under oath.

   (ii) A party may move to amend the pre-trial memorandum to include any necessary changes including the introduction of electronic materials obtained subsequent to the pre-trial.

5. There shall be an adjournment upon good cause shown.

(b) Incomplete medical examinations by either party shall be considered good cause for the adjournment of a pre-trial conference; provided, however, that no such adjournment shall be granted unless each party requesting the adjournment shall supply to the Judge the name(s) of the examining physician(s) and the date(s) of the examination(s).

(c) Any case set down for pre-trial on more than one occasion, if not ready because of failure of respondent to comply with this section, shall be placed on the trial list, and in the event an award is made, such failure shall be considered in the apportionment of the counsel fee. This provision shall not apply in any case in which the failure to have medical examinations is due to petitioner's neglect or refusal to appear for the examinations, in which event the case shall be marked, "not moved."

(d) Any case listed, in which no appearance is made on behalf of the petitioner and which is not adjourned for good cause, shall be marked "not moved" and may be administratively discontinued. A matter that has been administratively discontinued may be the subject of a motion to dismiss for lack of prosecution or any other appropriate basis. The case shall not

be restored to the calendar except on notice of motion, provided however, the Judge of Compensation may for good cause and on the Judge's own motion restore a case marked "not moved" to the trial or pre-trial calendar. The counsel fee normally allowed shall be reduced within the discretion of the Judge of Compensation for each time a case has been marked "not moved" when the attorney for the petitioner is responsible for such marking. When a case has been marked "not moved" because of the petitioner's failure without good cause to submit to a physical examination at the request of the respondent, the petitioner may be penalized in the apportionment of fees or reimbursement of respondent's cost for a missed appointment at the discretion of the Judge of Compensation.

12:235-3.12 Conduct of formal hearings

(a) The following concern appearances:

1. Only an attorney at law licensed to practice in the State of New Jersey shall act as attorney of record.

   (i) A substitution of attorney is permitted by filing a Substitution of Attorney (WC-10) form anytime up to the commencement of a trial when another attorney is being substituted to represent a party. At or after the commencement of a trial, a substitution of attorney must be approved by a Judge of Compensation.

   (ii) An attorney who has entered an appearance for a party must file a motion to be relieved as counsel when another attorney is not being substituted. Notice of such motion, including the date of the hearing, shall be given to the client to afford an opportunity to be heard on the motion.

2. Unless otherwise required by law to be represented by counsel and subject to 1.ii. above when an attorney has entered an appearance, a party may appear pro se.

3. A medical provider or carrier, who claims to have performed services or made payment for a work related condition or disability, may intervene by motion in a pending case, to seek payment or assert a lien. Such motion shall be supported by an affidavit or certification and shall include a copy of the bills for which payment is being sought.

(b) Attorneys representing both petitioners and respondents shall provide sufficient personnel to handle all lists expeditiously.

(c) Hearings shall be scheduled by the Director or a designated representative of the Director.

(d) The Judge of Compensation shall, at the commencement of the day, call the list of cases in open court. No adjournment shall be granted unless there is found to be good cause. No adjournment shall be granted for medical examination unless the name of the examining physician and date of examination are supplied.

(e) Trials shall commence and continue in a timely manner subject to scheduling constraints of the Division. Said scheduling may be accelerated as ordered by the Director, the Supervising Judge of the vicinage or the Judge of Compensation to whom the case has been assigned. A Judge shall issue a preemptory trial scheduling order for all cases that have been listed as a partial trial for six months.

1. Except in situations where there is no material dispute of fact, issues shall not be decided until all sides have had the opportunity to provide full proofs based upon, but not limited to, oral testimony, affidavits and other proofs as stipulated by the parties or required by the judge.
2. Except where the judge for good cause directs otherwise, the order of proofs at trial shall be:

    i. Appearances;

    ii. Stipulated facts;

    iii. Rulings on motions including motions to modify order of proofs;

    iv. Opening Statements;

    v. Testimony of petitioner;

    vi. Testimony of petitioner's lay witnesses;

    vii. Testimony of respondent's lay witnesses;

    viii. Testimony of petitioner's non-medical expert witnesses;

    ix. Testimony of respondent's non-medical expert witnesses;
    x. Testimony of treating medical experts;

    xi. Testimony of petitioner's medical experts unless testimony waived and reports submitted into evidence;

xii. Testimony of respondent's medical experts unless testimony waived and reports submitted into evidence;

xiii. Ruling on motions at the conclusion of testimony including motions to call additional witnesses upon a showing of good cause;

xiv. Closing statements;

xv. Post trial briefs.

3. Bifurcation of any trial may be permitted by the Judge to whom the case is assigned. The order of proof shall be determined by the Judge of Compensation.

(f) All formal hearings or applications shall be conducted in open court, except:

1. The Judge of Compensation to whom the case is assigned may deem the matter so delicate that the hearing of a party or witness in camera is warranted. When this occurs, a stenographic record shall be made.

2. The telephonic testimony of a witness may be permitted for good cause by the Judge of Compensation to whom the case is assigned and with the consent of the parties. When this occurs, a stenographic record shall be made.

3. Deposition testimony of a witness in lieu of an appearance other than that provided under N.J.A.C. 12:235-3.7 may be permitted by the Judge of Compensation to whom the case is assigned and with the consent of the parties.

4. Testimony of witnesses by video teleconferencing procedures may be permitted for good cause by the Judge of Compensation to whom the case is assigned. When this occurs, a stenographic record shall be made and all costs associated with the use of video teleconferencing shall be borne by the requesting party.

(g) All formal hearings including motions where a record is required shall be recorded stenographically by a certified shorthand reporter subject to such limitation as may be provided by statute.

1. Upon a determination reached at the conclusion of all hearings, including motions, the cost for the attendance of the certified shorthand reporter shall be assessed by the Judge of Compensation. Transcripts of the testimony may be obtained from the certified

shorthand reporter at the official scheduled rates.

(h) When there are pending in the Division two or more formal proceedings involving a common question of law or fact arising out of employment by the same employer or different employers, or out of the same accident or series of accidents, or out of the same exposure or series of exposures, to causes of occupational disease, the Judge of Compensation or the Director may, on motion, or on the Judge's own initiative, order a joint hearing of any or all matters in issue. The Director or the Judge of Compensation may order all such proceedings consolidated, and have such orders concerning proceedings designed to avoid unnecessary costs or delay. The order shall state the county in which the consolidated proceedings are to be heard.

(i) Upon the commencement of a formal hearing, counsel may make opening statements on behalf of their respective clients. All matters agreed upon shall be stipulated upon the record. However, this shall not bar the parties from making further stipulations as the trial proceeds, until the close of the formal hearing.

(j) Counsel may make closing statements or file post-trial briefs. Post-trial briefs, if ordered or volunteered, shall be submitted within 15 days after the conclusion of the hearing. Each party thereafter may have seven days to file a reply brief, if so desired or ordered.

(k) Prior to the testimony of an expert witness, the producing party shall provide the Judge of Compensation and opposing counsel with a written curriculum vitae of the witness.

(l) Questions calling for the opinion of an expert witness need not be hypothetical in form, unless the Judge of Compensation in the Judge's discretion so requires. If the hypothetical question is submitted in written form, counsel shall provide sufficient copies for the Judge of Compensation, opposing counsel, the witness and the stenographer, and the hypothetical question may be marked as an exhibit in the proceedings in lieu of reading it to the witness.

(m) All medical experts for both parties who regularly examine petitioners to determine the nature and extent of their disability shall adhere to the vacation schedules established annually by the Director. If such medical expert is not available to testify because of an unexcused absence at any other time, the Judge of Compensation may require the party for whom such medical witness is to appear, to arrange for an examination and appearance at trial by another medical expert.

1. A medical expert who regularly examines petitioners means a medical

expert who performs a minimum of 25 workers' compensation examinations per year.

(n) All exhibits shall be marked with an identifying number, the date of submission and initials of the court reporter or the Judge.

1. An exhibit list shall be prepared by the Judge to be retained in the file and forwarded to the Division for microfilming and storage.

2. At the conclusion of the hearing, the Judge shall determine which exhibits are to be retained in the file and forwarded to the Division for microfilming and storage.

3. All other exhibits shall be returned to respective counsel for retention until the expiration of time for appeal or 20 years as determined by the Judge.

(o) When a deposition has been taken to preserve the testimony of an injured or ill petitioner the introduction into evidence of such deposition shall be limited to those cases where the deponent cannot appear because of medical inability to appear or death or where all parties consent to the introduction of the deposition into evidence.

(p) Judges of Compensation may refer the petitioner to the Division of Vocational Rehabilitation when warranted.

(q) Prior to testifying, a witness shall be administered an oath by the Judge of Compensation or by a certified shorthand reporter qualified to administer oaths. Because of religious beliefs, a witness may affirm in place of an oath.

(r) Forms of subpoena, bearing the seal of the Department, shall be made available at all district offices. A party may prepare a subpoena and authorize its service, in accordance with the New Jersey Rules of Court, in the name of the Judge of Compensation assigned to the case, to compel the attendance of witnesses and the production of books and papers and such other items as shall be subject to production. However, the return date of such subpoena will be the date of the workers' compensation proceeding instead of the date of deposition referred to by the New Jersey Rules of Court. A copy of the subpoena shall also be provided to the Judge of Compensation whose name appears on the subpoena.

(s) When a party has unreasonably failed to present its case in a timely fashion, the Judge of Compensation may, upon 21 days notice, close the proofs as to that party.

(t) All reserved decisions shall be rendered by the Judge of Compensation within 30 days from completion of the last day of hearing, or within 30 days from the date of filing of briefs. Additional time to render a reserved decision

may be allowed only on approval of a written application to the Director.

(u) The Judge of Compensation shall notify all parties by letter of the decision, detailing its terms and the name of: the reporter and the certified shorthand reporting firm to which it has been dictated; centralized word processing center; or other method by which the opinion is produced.

(v) A judgment or an order shall be deemed entered as of the date the judgment or order is signed by the Judge.

(w) (Reserved)

(x) A party proposing the form of judgment or order may forward the original thereof to the Judge who heard the matter and shall serve a copy thereof on every other party together with a notice advising said party that unless they notify the Judge and the proponent of the judgment or order in writing of their specific objection thereto within 10 days after such service, the judgment or order may be signed in the Judge's discretion. If no such objection is timely made, the Judge may forthwith sign the judgment or order. If objection is made, the matter may be listed for hearing in the discretion of the Court.

12:235-3.13 Orders Approving Settlement reached pursuant to N.J.S.A. 34:15-20

(a) A settlement agreement reached pursuant to N.J.S.A. 34:15-20 ("Section 20 settlement") may be approved by a judge of compensation when:

1. The petitioner is represented by counsel;

2. The case involves contested issues of jurisdiction, liability, causal relationship and/or dependency; and

3. The settlement is determined to be fair and just under the circumstances.

(b) A Section 20 settlement shall have the force and effect of a dismissal of the petitioner's claim and a complete surrender by the petitioner of any future right to compensation or benefits arising out of the injuries, conditions or exposures encompassed in the claim petition.

(c) A Section 20 settlement shall not be a waiver of future dependency claims in the event that the petitioner's death occurs as a result of the injuries, conditions or exposures encompassed by petitioner's claim petition unless:

1. The petitioner's dependents (as defined in N.J.S.A. 34:15-13) join in a waiver of future dependency benefits.

i. A parent, other than the petitioner, shall ordinarily represent the interests of petitioner's dependent minor children residing in that parent's household. The judge of compensation shall determine whether circumstances dictate that a representative other than a parent is necessary for any dependents for the purposes of a Section 20 proceeding.

(d) A petitioner's acceptance of a Section 20 settlement and a dependent's waiver of dependency benefits shall be given knowingly, intelligently and voluntarily. The judge of compensation shall explain on the record the preclusive effect the Section 20 settlement shall have on the petitioner's claim and on any future dependency claims, except as provided in (e) below.

(e) A petitioner's acceptance of a Section 20 settlement and any waiver of future dependency claims shall occur on the record of the Section 20 settlement proceeding unless the judge of compensation determines that sufficient circumstances preclude the appearance of the petitioner, a dependent and/or representative. In such case, an affidavit executed by such petitioner, dependent and/or representative shall be submitted. The affidavit must contain all of the facts to which the petitioner, dependent and/or representative would be required to testify if present in court.

(f) A Section 20 settlement shall encompass all injuries, conditions or exposures set forth in the petitioner's claim petition unless the parties amend the claim petition at the Section 20 settlement proceeding and specifically set forth any amendments to the claim petition on the settlement form. Where intended, the parties shall specifically set forth that the claim petition and settlement includes latent or unknown consequences of the alleged injuries, conditions or exposures.

12:235-3.14 Notice of appeal

Copies of a notice of appeal of any order or judgment shall be provided to the Division and the judge who decided the matter. See New Jersey Court Rule 2:5-1.

12:235-3.15 Interpreters

In any proceeding for which the services of an interpreter are required, a professional interpreter shall be utilized unless the Judge of Compensation, with the consent of the parties, determines otherwise. An interpreter shall be sworn or make affirmation or declaration to interpret accurately.

12:235-3.16 Enforcement

(a) A party may, by written motion pursuant to N.J.A.C. 12:235-3.5(a) and (b), move against an employer, insurance carrier, petitioner, case attorney or any other party to a claim petition for enforcement of any court order or for the enforcement of the requirements of the workers' compensation statute or rules.

(b) The motion under (a) above shall identify the order, statute or regulation sought to be enforced.

(c) The party against whom the motion has been brought shall file a written response to the motion within 14 calendar days of the notice of motion.

(d) The response under (c) above shall include the reasons for any noncompliance and the manner and time period to ensure compliance.

(e) Any time after the 14-day period to respond under (c) above has elapsed and on notice to the parties, the judge shall hold a hearing on the motion.

(f) A judge on his or her own motion may at any time, upon notice to the affected parties, move to enforce a court order or to enforce the requirements of the workers' compensation statute or rules.

(g) Prior to ruling on a motion under (f) above, the judge shall provide the parties an opportunity to respond to the motion and to be heard on the record.

(h) Upon a finding by a judge of noncompliance with a court order or the workers' compensation statute or rules, the judge, in addition to any other remedy provided by law, may take any or all of the following actions:

1. Impose costs and simple interest on any monies due.

    i. The judge may impose an additional assessment not to exceed 25 percent on any moneys due if the judge finds the payment delay to be unreasonable;

2. Levy fines or other penalties on parties or case attorneys in an amount not to exceed $ 5,000 for unreasonable delay or continued noncompliance.

    i. A fine shall be imposed by the judge as a form of pecuniary punishment.

    ii. A penalty shall be imposed by the judge to reimburse the Division's administrative costs.

iii. The proceeds under this paragraph shall be paid into the Second Injury Fund;

3. Close proofs, dismiss a claim or suppress a defense as to any party;

4. Exclude evidence or witnesses;

5. Take other appropriate case-related action to ensure compliance; and/or

6. Allow a reasonable counsel fee to a prevailing party, where supported by an affidavit of services.

(i) Upon a finding by a judge of noncompliance by a party with a court order or the workers' compensation law or rules, the judge, in addition to any other remedy provided by law, may hold a separate hearing on the issue of contempt.

(j) Following a hearing under (i) above and upon a finding by the judge of contempt, the successful party in the contempt hearing or the judge may file a motion with the Superior Court for contempt action.

(k) Any fine, penalty, assessment or cost imposed by a judge under this section shall be paid by the entity or party found to be in noncompliance and shall not be included in the expense base of an insurance carrier for the purpose of determining rates or as a reimbursement or case expense.

12:235-3.17 Hearing to request a stay of the order or judgment

A request for a stay of an order or judgment shall be heard on the record when a party requests a hearing on the stay.

12:235-3.18 Non-duplication of benefits under the Temporary Disability Benefits Law N.J.S.A. 43:21-25 et seq. and the Workers' Compensation Act, N.J.S.A. 34:15-1 et seq.; temporary disability benefit liens in workers' compensation cases

(a) Administrative procedures for avoiding duplication of benefits in cases where claimants have pursued temporary disability benefits under both the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq. (hereinafter referred to in this section as the "TDBL") and the Workers' Compensation Act, N.J.S.A. 34:15-1 et seq. (hereinafter referred to in this section as the "WCA") are as follows:

1. Where a claimant has filed a claim petition under the WCA and where his or her claim is disputed or contested by the employer or its workers' compensation carrier in regard to whether temporary disability benefits are due to the claimant in workers' compensation, then such claimant may apply for temporary disability benefits under the TDBL and, if eligible, may receive temporary disability benefits as allowable by law during the pendency of the workers' compensation claim.

2. Where a claimant has not filed a workers' compensation claim and seeks benefits through the TDBL due to an alleged work-related condition, the Division of Temporary Disability Insurance or private plan disability carrier shall deny said benefits and inform the claimant that should he or she file a workers' compensation claim, benefits may be payable pursuant to the TDBL under (a)1 above.

3. As a condition to receiving temporary disability benefits under (a)1 above, a claimant shall be required to sign a written subrogation agreement which documents that the claimant will prosecute the workers' compensation claim and reimburse the Division of Temporary Disability Insurance or private plan disability carrier, as applicable, from the proceeds of any workers' compensation benefits the claimant subsequently receives based upon the same injury or illness as that for which the temporary disability benefits were obtained under the TDBL.

4. As a result of the subrogation agreement under (a)3 above, the Division of Temporary Disability Insurance or private plan disability carrier shall have the right to file a notice of lien with the Division of Workers' Compensation that shall apply against any workers' compensation award the claimant subsequently receives that is based upon the same injury or illness as that for which the temporary disability benefits were obtained under the TDBL.

5. Where the Division of Temporary Disability Insurance or private plan disability carrier has paid benefits to a claimant under the TDBL and later has reason to believe that the injury or illness upon which the TDBL benefits were based may also be compensable under the WCA, the Division of Temporary Disability Insurance or private plan disability carrier may file a lien against any workers' compensation claim.

6. Where a lien has been filed pursuant to (a)4 or 5 above, or where the parties and/or the Judge of Compensation become aware during workers' compensation proceedings that benefits had been paid

under the TDBL, the Division of Temporary Disability Insurance or private plan disability carrier shall be reimbursed the amount of temporary disability benefits paid pursuant to the TDBL from any workers' compensation award, order, or settlement including lump sum or permanent disability benefits the claimant receives.

7. Where a claimant's workers' compensation award, order, or settlement after deductions for allowances totals less than the amount of the benefits paid under the TDBL, then the net amount due to the petitioner shall be reimbursed to the Division of Temporary Disability Insurance or private plan disability carrier in full satisfaction of the petitioner's obligation resulting from the written subrogation agreement.

8. While a judge of compensation would determine any contested issue with respect to temporary disability benefits payable by the respondent under the WCA, should a claimant wish to contest the amount of the lien or reimbursement required under (a)6 above or other issues related to the lien or reimbursement, including disabilities covered by the lien or reimbursement, the claimant shall either:

   i. Reimburse the amount of the temporary disability insurance lien as part of the workers' compensation award, order or settlement and then appeal, pursuant to (a)9 and 10 below, such amount or other issues related to the lien within 24 days from the date of the workers' compensation award, order or settlement; or

   ii. File an appeal, pursuant to (a)9 and 10 below, of the reimbursement amount or other issues related to the lien, which shall stay the workers' compensation proceedings until the reimbursement issue is determined.

9. The Division of Temporary Disability Insurance shall forward appeals under this section in accordance with N.J.A.C. 12:20 (for liens arising from State plan and disability during unemployment benefits) or N.J.A.C. 1:12A (for liens arising from private plan benefits).

10. Appeals filed under (a)9 above shall be directed by appellants to the following addresses, as appropriate:

    i. For appeals arising from State plan temporary disability benefits:
       Division of Temporary Disability Insurance
       Attention: Appeal Unit

PO Box 387
Trenton, New Jersey 08625-0387

ii. For appeals arising from State disability during unemployment (4F) benefits:
Division of Temporary Disability Insurance
Attention: Disability During Unemployment Section
PO Box 956
Trenton, New Jersey 08625-0956

iii. For appeals arising from private plan temporary disability benefits:
Division of Temporary Disability Insurance
Attention: Private Plan Claims Review Unit
PO Box 957
Trenton, New Jersey 08625-0957

SUBCHAPTER 4. INFORMAL HEARINGS

12:235-4.1 Purpose of informal hearings

(a) The informal hearing process is a service provided by the Division to effectuate the amicable adjustment of controversies between injured workers and their employers involving their respective rights under the Act.

(b) The informal hearing procedure is not expressly contained within the provisions of the Act.

(c) The filing of an application for an informal hearing will not toll the time limitation periods for the filing of a formal claim petition or a dependency claim petition as provided by the Act.

12:234-4.2 Filing of an application for an informal hearing

(a) The informal process is initiated by the filing of an application in duplicate with the Division.

(b) The filing for informal hearing may be made by any party of interest including the injured worker, petitioner's attorney, the employer, the employer's representative or insurance carrier, or the Division.

(c) The application shall be filed within the time periods prescribed for the filing of a formal claim petition.

12:235-4.3 Contents of the application

(a) The application for an informal hearing shall contain:

1. The worker's name, address, age, and social security number;
2. The employer's name and address;

3. The name of the employer's insurance carrier, if any;

4. The date of the accident;

5. A brief description of how the accident occurred;

6. A brief description of the injury.

12:235-4.4 Scheduling of informal hearings

(a) Upon receipt of the completed application the Division shall schedule the matter as soon as practicable.

(b) The Division shall give written notice of the time, place and name of the assigned Judge of Compensation to all parties involved in the controversy. In addition the Division shall include, with the notice to the worker that is the subject of the proceeding, an informational brochure explaining the nature of the proceedings and the rights of the parties involved. The form brochure shall be as set forth in N.J.A.C. 12:235-14.1.

12:235-4.5 Attendance at hearings

The worker's attorney, employer, insurance carrier, or self-insured shall provide sufficient personnel to insure prompt attendance at the scheduled time and place of the hearing to expeditiously handle all listed cases.

12:235-4.6 Representative of employer or carrier

An employer or carrier shall be represented by an individual expressly empowered with authority to act on its behalf to agree or disagree with the recommendations made by the Judge of Compensation at the time of the hearing.

12:235-4.7 Registration of representatives for employers or carriers

(a) Each employer, carrier, or self-insured shall submit to the Director for distribution to all Judges of Compensation a list of each individual who will represent them at informal hearings.

(b) Each employer, carrier, or self-insured shall indicate that such individuals shall have the authority to represent and agree to settle on behalf of the respondent at informal proceedings.

12:235-4.8 Representation of claimant

Only an attorney at law licensed to practice in the State of New Jersey shall act as attorney for a worker in any informal hearing.

12:235-4. 9 Procedure where employer has no insurance

Where it is brought to the attention of the Judge of Compensation that the employer has failed to comply with N.J.S.A. 34:15-71, written notice of such violation shall be given to the Director for appropriate action.

12:235-4.10 Allowance of attorney fees

(a) A Judge of Compensation conducting informal hearings may allow counsel a fee, where warranted, for services rendered on behalf of the worker, in an amount not to exceed 10 percent of the worker's award.

(b) The fee in (a) above shall be payable by the worker.

12:235-4.11 Commencement of informal hearings

(a) Hearings shall be conducted by a Judge of Compensation designated by the Director.

(b) Hearings shall commence promptly at the time and place designated in the notice of informal hearing by a call of the daily court to ascertain the presence of all parties to the controversy and to identify those cases ready for disposition.

(c) Upon completion of the daily call, the Judge of Compensation shall inform all parties present of the order for hearing the ready cases and commence hearings, excusing those persons whose presence will not be required and granting those adjournments the Judge feels are warranted.

12:235-4.12 Determination of issues

(a) Upon a review of the application for the informal hearing and any supporting documents, the Judge of Compensation shall ascertain the areas of dispute and make recommendations to the parties to resolve any controversy as to unpaid temporary disability benefits and/or medical expenses.

(b) After a review of medical records or evaluation reports or both submitted by

the parties and having personally inquired of the worker as to all present complaints, the Judge of Compensation shall make recommendations regarding permanent disability.

(c) In cases where there is insufficient factual or medical information upon which a recommendation can be made, the Judge of Compensation shall require either party to provide such information and shall adjourn the hearing until such time as the information is available.

12:235-4.13 Acceptance of settlement recommendations and entry of informal award

(a) When agreement has been reached by all parties and approved by the Judge of Compensation, the terms of such settlement shall be entered in the "Statement of Award," on a form prescribed by the Division.

(b) The claimant shall be fully advised of all rights under the Act and as more particularly described in the brochure as prescribed at N.J.A.C. 12:235-14.1.

(c) The "Statement of Award" shall be signed by the claimant, the employer or the employer's representative, and by the Judge of Compensation.

12:235-4.14 Fee for service of physician

A Judge of Compensation conducting an informal hearing may allow a fee to a physician for medical services rendered to a claimant for the term of a compensable injury, unless such treatment was not ordered or authorized by the employer or carrier.

12:235-4.15 Denial of compensability or refusal to accept findings of informal hearings

In cases where the employer or the representative denies compensability under the Act or where either party refuses to accept the recommendations made by the Judge of Compensation, the claimant shall be made aware of all statutory rights, including the right to obtain counsel, to file a formal claim petition, and the applicable time period within which a claim petition must be filed.

12:235-4.16 Failure of employer or carrier to appear

(a) If a worker is present and the employer or its carrier fails to appear, the Judge of Compensation shall inform the worker of:

1. The procedure and time limit relating to rescheduling for rehearing;

2. The approximate date of rescheduling; and

3. The worker's statutory rights as stated at N.J.A.C. 12:235-4:15.

12:235-4.17 Adjournment

When it appears that certain cases cannot be resolved at the first hearing, due to lack of notice or knowledge of any injury, incomplete reports, or for any good cause, the Judge of Compensation shall be promptly informed so that the Judge may have an opportunity to notify the parties and arrange for rescheduling.

12:235-4.18 (Reserved)

SUBCHAPTER 5. SECOND INJURY FUND CASES

12:235-5.1 General procedure

(a) Upon the filing of a verified petition for Second Injury Fund (Fund) benefits a settlement conference shall be scheduled before a Judge of Compensation where representatives of the employee, employer(s) and the Fund are noticed to attend

1. The settlement conference may be adjourned by a Judge of Compensation for good cause.

2. If a settlement cannot be effectuated at the settlement conference, the matter may be bifurcated and listed for trial on a day when the probable responsible respondent is regularly scheduled to appear.

(b) If the Judge of Compensation finds that the petitioner is not totally and permanently disabled, the Fund petition shall be dismissed.

(c) If the Judge of Compensation finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the last compensable accident, the Fund application shall be dismissed.

(d) If the Judge of Compensation finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the effects of the last compensable accident and subsequent conditions, the Fund application shall be dismissed.

(e) If the Judge of Compensation finds that the petitioner is totally and permanently disabled and the total and permanent disability may be the result of the last compensable accident together with pre-existing conditions, the Judge of Compensation shall schedule a hearing upon the application for Fund benefits on a day when the Deputy Attorney General

representing the Fund regularly appears.

1. The hearing to determine whether the petitioner is entitled to Fund benefits shall be upon the transcript of the hearing for benefits previously heard, supplemented by oral and documentary evidence as may be required in the discretion of the Judge of Compensation for a full and true disclosure of the facts as to Fund responsibility and where applicable, as to an apportionment of the responsibility of the Fund.

2. Pending determination of the application for Fund benefits, the employer previously found liable shall commence payments at the applicable rate for permanent total disability.

12:235-5.2 Payment of benefits

(a) Upon approval of an application for benefits from the Fund, the Judge of Compensation shall enter an order requiring payment from the Fund from the date when the final payment of compensation by the employer is or was payable for the last compensable injury following which the employee became totally and permanently disabled. No payment from the Fund shall be made for any period prior to the date of filing the verified petition for Fund benefits.

1. If the employer has paid in excess of the amount for which it is responsible, the employer shall be reimbursed by the Fund.

(b) The payment from the Fund may be made to the employer as reimbursement for a period where the payments have been made by the employer to the employee beyond the time period for which the employer is determined to be liable.

(c) Such payments shall be made from the Fund directly to the employee for such periods to which the employee may be entitled in accordance with the provisions of N.J.S.A. 34:15-95 and subject to N.J.A.C. 12:235-5.1(e)(2).

12:235-5.3 Filing

(a) The verified petition for benefits shall be filed in accordance with N.J.S A. 34:15-95.l and shall include a succinct and accurate description of all medical, legal and factual basis upon which the petitioner alleges eligibility for Fund benefits pursuant to N.J.S.A. 34:15-95. The verified petition shall be under oath or affirmation and be accompanied by all physician's reports in possession of the applicant or the applicant's attorney.

(b) The verified petition shall also include the following:

1. Name and address of petitioner;

2. Social security number of petitioner;

3. Age and date of birth of petitioner;

4. Marital status and educational background of petitioner;

5. A summary of petitioner's employment history;

6. A description of disabilities which existed prior to the date of the last compensable injury, and the date of onset of each;

7. The last compensable injury, indicating the date and a description of the occurrence; a description of the injury; brief description of the medical treatment for the injury; a description of permanent injury; name and address of employer and its insurance carrier; petitioner's wages and compensation rate; and a listing of all compensation paid to date for this injury;

8. An indication as to whether a third party tort claim has been made as to the last compensable injury, stating the name and address of the third party and the status of the claim;

9. A copy of all reports which are in the possession or control of the party filing the applications from all proposed expert witnesses and all treating physicians;

10. A description of all wage replacements presently being received by the petitioner;

11. References to all prior allowances and awards in workers' compensation matters concerning the petitioner, including the date of the accident and the extent of the allowance or award.

(c) Respondent shall provide all evaluative reports to the Second Injury Fund at the first motion hearing.

SUBCHAPTER 6. COMMUTATION OF AWARD

12:235-6.1 Application for commutation

(a) All applications for commutation of compensation payments pursuant to N.J.S.A. 34:15-25 shall be filed with the Director.

(b) Applications for commutation of compensation shall be made only after the entry of an award.

12:235-6.2 Application form for commutation

(a) The application for commutation shall be made on a form prescribed by the Division which shall include:

1. The applicant's name, address, and social security number;

2. The name and address of the employer;

3. The name, address, and file number of the employer's insurance carrier;

4. The date of award;

5. The Judge of Compensation and the place wherein the award was rendered;

6. The amount of the award;

7. The amount of balance due on the award;

8. The amount requested for commutation; applicant's marital, employment, and economic status;

9. Purpose(s) for which commutation is being requested; and

10. Such other information as prescribed by the Director.

(b) The application for commutation shall be under oath or affirmation of the applicant.

(c) The application for commutation shall include, or have attached thereto, all documents upon which the applicant is relying in the application.

12:235-6.3 Approval or disapproval of application for commutation

(a) Upon receipt of the application for commutation, the matter shall be forwarded for hearing to the Judge of Compensation who entered the award which is sought to be commuted.

1. If that Judge is not available, then any Judge in the vicinage may hear the application.

(b) After hearing the application, the Judge of Compensation shall enter an order either granting or denying the application and shall state the reasons therefor, pursuant to N.J.S.A. 34:15-25.

(c) The disbursement of all funds commuted shall be under the supervision of the Director.

(d) No award for total disability or dependency benefits shall be commuted.

SUBCHAPTER 7. UNINSURED EMPLOYER'S FUND

12:235-7.1 Purpose; scope

(a) The Uninsured Employer's Fund (UEF) has been established pursuant to N.J.S.A. 34:15-120.1 to provide for the payment of certain awards of medical and temporary benefits entered against uninsured defaulting employers. This subchapter sets forth the procedures by which the UEF will be operated.

(b) Benefits for temporary disability and medical costs shall be provided in accordance with N.J.S.A. 34:15-120.1 et seq.

(c) The UEF shall be a party to proceedings under this subchapter. However, no judgment or order for the payment of benefits shall be entered against the UEF.

(d) The UEF may relax or dispense with requirements under the subchapter where appropriate and with the consent of the judge hearing the case.

(e) A petitioner may move to relax or dispense with requirements under this subchapter.

1. After a hearing on the motion to relax or dispense with requirements under this subchapter, the judge may grant the motion upon a finding that the subject requirements under the particular facts of the case are unduly burdensome and that grant of the motion would not adversely affect the UEF.

(f) Where petitioner seeks current medical treatment and/or temporary disability benefits and the only issue is the cancellation or non-renewal of an insurance policy, the judge may order the insurance carrier to provide treatment and/or benefits without prejudice and subject to reimbursement by the employer or, if not paid by the employer, by the UEF, if it is subsequently determined that the policy was not in effect.

(g) The UEF shall be provided a copy of a notice of appeal of any order or

judgment in which the UEF is a party.

12:235-7.2 Filing notice of an uninsured claim; personal service; subpoena duces tecum; third party joinder;

(a) Petitioner or petitioner's attorney shall contact the Compensation Rating and Inspection Bureau for coverage information in writing within 30 days after the petitioner or the petitioner's attorney knew or should have known that the employer was uninsured or has received confirmation that the employer was uninsured on the date of the accident or occupational exposure alleged in the claim petition. A copy of the Rating Bureau's response shall be included in the motion to join the UEF.

(b) If benefits may be sought from the UEF, the petitioner or petitioner's attorney shall notify the UEF in writing within 30 days after the petitioner or petitioner's attorney knew or should have known that the employer was uninsured on the date of the accident or occupational exposure or has received information from the Compensation Rating and Inspection Bureau showing that the employer was uninsured on the date alleged.

(c) In order to secure reimbursement of a petitioner's temporary disability benefits from the Uninsured Employers Fund, the petitioner shall file a motion to join the UEF in an action brought by or against the uninsured employer.

1. When filing a motion to join the UEF, the petitioner's attorney or petitioner shall attach a copy of the inquiry and response of the Compensation Rating and Inspection Bureau.

2. The motion to join the UEF shall be filed in the vicinage in which the case is assigned.

3. A copy of the motion to join the UEF shall be served upon the Fund in the Office of Special Compensation Funds, P.O. Box 399, Trenton, New Jersey 08625-0399.

(d) Petitioner's attorney may make personal service of the claim petition and the motion to join the UEF on respondent.

1. Proof of service shall be filed with the Division and with the attorney representing the UEF.

2. If respondent is unable to be served, petitioner's attorney shall make a motion with the Judge of Compensation for substituted service pursuant to Rules of Civil Practice. The motion shall be supported by convincing evidence that the petitioner has made all reasonable attempts to serve respondent.

(e) The UEF shall have the authority to join a third-party and the third-party's insurance carrier when it appears that such party is or may be liable for the benefits sought.

(f) In reviewing claims submitted to the Uninsured Employer's Fund for payment pursuant to N.J.S.A. 34:15-120.4, the Commissioner may consider the extent of delay in notification to the Uninsured Employer's Fund by the petitioner and/or his/her attorney from the time they knew or reasonably should have known the respondent employer was uninsured.

12:235-7.3 Certification

(a). Petitioner shall submit a certification when filing a motion for an uninsured claim. The certification shall be specific, and shall contain the following information if known or available to the petitioner and should be supplemented as such information becomes known or available to the petitioner:

1. The date of hire immediately preceding the date of the accident, injury or occupational exposure;

2. The length of employment: If not continuous, list all dates of employment;

3. Copies of petitioner's W-2 forms for all dates of employment during the year in which the accident occurred;

4. Pay stubs for or other documentation in support of all wages received from respondent for the six months immediately preceding the date of the accident or occupational exposure;

5. The total wages received from respondent for 12 months immediately preceding the accident which includes salary, gratuities, services in lieu of wages, meals or lodging;

6. The name, address (business and personal) and phone number of the respondent and any corporate officer or manager of the company;

7. Any documents relating to the employer/employee relationship or lack thereof;

8. A statement of facts which establish the employer-employee relationship;

9. The name, address and phone number of all persons with knowledge of

the existence of an employer/employee relationship between petitioner and respondent;

10. The address and/or other identifying information about where the injury occurred, including the name of the owner of the property and the reason why the employee was at the location where the injury occurred;

11. The name, address and phone number of all witnesses to the accident, and whereabouts of respondent when the accident occurred;

12. The name, address and phone number of all persons with any knowledge of the accident;

13. The date on which a medical provider was first contacted concerning injuries sustained in the accident or occupational condition;

14. The name and address of all treating physicians and the name and address of any hospital, laboratory or other facility where treatment was received;

15. Copies of all medical reports from the hospitals and treating physicians;

16. Medical insurance coverage for employee and/or spouse, and if available, the name and address of the company and the policy number;

17. A detailed listing of medical expenses which have been paid, the dates the medical services were provided, the names of individuals and entities providing such services, and the sources and amounts of such payments; and

18. Whether or not the petitioner is receiving or has applied for Social Security, unemployment compensation, temporary disability insurance, disability insurance, pensions or any other wage-related benefits.

12:235-7.4 Medical bills; physician's examination

(a) Any medical bills or charges for which petitioner seeks payment from the UEF must be timely submitted by the petitioner to the UEF and be supported by the following:

1. Related treating records, itemized bills and a physician's report, which reflects that the bills and charges were reasonable, necessary and causally related to the work accident or occupational exposure alleged in the claim petition; and

2. Other necessary medical documentation or information required by the UEF.

(b) Any dispute under this section concerning the treating records, bills, physician's report or UEF request for other medical documentation or information shall be determined by the judge after a hearing upon oral or written motion by the UEF or another party.

(c) The UEF may order an independent medical examination of a petitioner by a physician at any time when the UEF is involved or when it appears the UEF may become involved in a case. The examining physician may be asked to offer an opinion on:

1. The causal relationship between the alleged accident or occupational exposure and the petitioner's current medical condition;

2. The necessity of petitioner's previous and current medical treatment and the reasonableness of charges for such treatment for the alleged accident or occupational exposure;

3. The prognosis for the petitioner;

4. Whether the petitioner is able to return to work;

5. Whether or not petitioner required further treatment to reach maximum medical improvement; and

6. Any other pertinent issues or information.

(d) Fees for the independent medical evaluation ordered by the UEF shall be paid by the UEF.

(e) If it appears that the petitioner may be entitled to benefits from the UEF, then the UEF may direct the petitioner to the appropriate authorized treating physician for treatment.

1. Treatment obtained by petitioner from any physician other than the one authorized by the UEF shall be deemed to be unauthorized treatment, and costs for such treatment shall not be payable by the UEF.

(f) The UEF may provide for medical care to assist the petitioner until he or she has reached maximum medical improvement.

12:235-7.5 Assignment of cases; schedules

(a) The Director shall assign the UEF cases for hearing.

(b) The Director shall establish the vicinages in which the cases shall be heard.

(c) The Director shall establish the hearing dates and schedules for all uninsured employer cases.

12:235-7.6 Payments from the UEF

Payments from the UEF shall be made only in accordance with NJ.S.A. 34:15-120.4.

(a) The UEF shall not reimburse governmental agencies for benefits paid to or on behalf of the petitioner except for benefits or expenses conditionally paid under the New Jersey Temporary Disability Benefits Law (N.J.S.A. 43:21-25 et seq.), New Jersey Medicaid reimbursement statute (N.J.S.A. 30:4D-7.1), and the federal Medicare Secondary Provider Statute (42 U.S.C. 1395y). Such reimbursements for medical expenses are subject to the limitation set forth in N.J.A.C. 12.235-7.4 (e).

(b) Payments under (a) above can be made only after a Judge of Compensation has ordered the uninsured employer to reimburse the agency or agencies making the conditional payments and the uninsured employer has defaulted on making such reimbursements within the time period set forth by N.J.S.A. 34:15-120.3 and N.J.S.A. 34:15-120.4

12:235-7.7 Attorney fees

(a) An attorney fee may be payable from the UEF to the petitioner's attorney when the petitioner is found eligible for UEF benefits by the Commissioner and shall exclude any fees awarded in association with permanent disability benefits.

(b) An attorney shall make an application to the Commissioner for payment of the attorney fee awarded by the Judge of Compensation for obtaining the medical and/or temporary benefits assessed against the respondent.

12:235-7.8 Asbestos exposure claims under N.J.S.A. 34:15-33.3

(a) After due diligence, as defined in (b) below, an application may be filed with the UEF for compensation for asbestosis or asbestos-induced cancer, including mesothelioma, resulting in injury or death from exposure to asbestos where:

1. The workers' compensation insurance carrier of the employer, the

employer, or the principals of the employer where the employee was last exposed cannot be located or the employee worked for more than one employer during the time the exposure to asbestos may reasonably be deemed to have taken place but the employer or employers where the employee was last exposed cannot reasonably be identified;

2. The claim petition was pending on or filed after January 14, 2004 and had not been concluded or dismissed prior to that date; and

3. Compensation is based on the last date of exposure if known, or if such date cannot be known, on an appropriate date established by the judge of workers' compensation, pursuant to N.J.S.A. 34:15-33.3 (d).

(b) "Due diligence" shall be defined as a reasonable effort on the part of the petitioner or the petitioner's attorney, given the particular facts and circumstances of the case, to determine the identities of the carrier of the employer, the employer, and/or the principals of the employer where the employee was last exposed to asbestos, as well as the identities of any other carriers, employers, and/or principals of other employers that may be liable for benefits. Such efforts shall be listed in the certification required under N.J.A.C. 12:235-7.9 and shall include, unless explained under N.J.A.C. 12:235-7.9(b), the following:

1. Inquiries made to the Compensation Rating and Inspection Bureau to ascertain the workers' compensation insurance coverage of such employers;

2. Acquisition and review of the employee's Social Security earnings history for the period or periods during which the employee was exposed to asbestos;

3. Review of the employee's Federal and state income tax returns for the period or periods during which the employee was exposed to asbestos;

4. Acquisition and review of labor union records and/or pension plan records maintained for the employee for the period or periods during which the employee was exposed to asbestos;

5. Review of the employee's medical records during and subsequent to the period during which the employee was exposed to asbestos;

6. Review of any personal records maintained by the employee with respect to employment for the period or periods during which the employee was exposed to asbestos; and

7. Any other efforts by the petitioner or the petitioner's attorney to establish due diligence.

(c) The UEF may without motion take the deposition of a petitioner and/or other individuals that may have information relevant to the application.

(d) In (a) above, the UEF shall have subrogation and lien rights including those provided by N.J.S.A. 34:15-33.3 (b) and (c).

12:235-7.9 Certification to the UEF, medical information in asbestos exposure cases

(a) In addition to the items specified at N.J.A.C. 12:235-7.3 for certification to the UEF, the petitioner shall, in asbestos exposure claims under N.J.A.C.

12:235-7.8, provide the following as part of such certification:

1. Identification of all third-party actions or latent disease claims filed by or on behalf of the employee based upon exposure(s) to asbestos, including the names of the defendants and the courts in which such actions are pending or were concluded;

2. Date of manifestation of the employee's asbestosis or asbestos-induced cancer;

3. Date of discovery, disclosure or diagnosis of the employee's asbestosis or asbestos-induced cancer and its relation to the ability of the employee to work;

4. Rate of progression of the employee's asbestosis or asbestos-induced cancer;

5. Date(s) the employee was impaired or unable to work as a result of the asbestosis or asbestos-induced cancer;

6. Date(s) of any lost time for medical treatments related to asbestosis or asbestos-induced cancer;

7. Nature of pre-existing pulmonary conditions, cancer-related conditions, exposure to any other chemicals, and/or smoking history;

8. Medical basis for concluding that there is a causal relationship between the employee's work and the employee's asbestosis or asbestos-induced cancer;

9. Medical conditions pre-existing the alleged exposure(s) to asbestos, including the nature of the pre-existing condition(s), the date(s) and

type(s) or medical treatment received, and the names and addresses of all medical practitioners and providers involved in the diagnosis and treatment of such condition(s);

10. Details of efforts made under the provisions of N.J.A.C. 12:235-7.8 (b);
11. Dates and nature of employment during which the employee was exposed to asbestos or during which the employee was exposed to conditions which aggravated or contributed to the asbestosis or asbestos-induced cancer. Such information should include, but not be limited to, any environmental information and data giving evidence of the level of exposure to asbestos and how such levels exceeded those encountered in the general environment; and
12. Nature and extent of any future treatment for the employee's asbestosis or asbestos-induced cancer.

(b) If any of these items of information are not provided to the UEF, the petitioner or the petitioner's attorney shall indicate that a request or search has established that such item or information is not available. The UEF may require such additional information and searches that are necessary and reasonable for review of the application.

(c) In addition to the information required under the provisions of this rule in (a) above and under N.J.A.C. 12:235-7.3, the petitioner shall provide the UEF with all medical records and information related to the asbestos exposure claim.

SUBCHAPTER 8. DISCRIMINATION COMPLAINTS

12:235-8.1 Filing discrimination complaints

All complaints alleging discrimination pursuant to N.J.S.A. 34:15-39.1 shall be filed with the Director.

12:235-8.2 Contents of discrimination complaints

(a) The complaint alleging discrimination shall be under the oath or affirmation of the complainant, and shall be on a form prescribed by the Division.

(b) The complaint alleging discrimination shall include the following:

1. Complainant's name, address, social security number, and claim petition number, if a claim for formal hearing has been filed;

2. The name and address of the insurance carrier for the employer;

3. The date of complainant's accident;

4. Complainant's occupation and wages;

5. Complainant's current employment and wages;

6. Complainant's occupational duties and indication as to whether he or she is able to perform those duties;

7. The date and reason for complainant's termination of employment;

8. The factual and legal reasons for alleging discrimination;

9. Such other information as requested by the Director.

12:235-8.3 Attachments to discrimination complaints

The complaint for discrimination shall include, or have attached thereto, all documents upon which the complainant is relying on in the application.

12:235-8.4 Investigation of discrimination complaints; appeal procedures

(a) Subject to the discretion of the Commissioner of Labor, the Director/Chief Judge shall supervise the investigation and review of discrimination complaints filed under N.J.S.A. 34:15-39.1.

(b) No discrimination complaint shall be accepted by the Division of Workers' Compensation unless filed with the Director/Chief Judge within 180 days of the date of the last act of alleged discrimination.

(c) Upon receipt of a sworn complaint alleging a violation of N.J.S.A. 34:15-39.1 the Division of Workers' Compensation shall transmit a copy of the complaint to the named employer within fourteen days thereafter.

(d) The named employer shall file an answer to the complaint, under oath, with the Division of Workers' Compensation within 14 days of the employer's receipt of the complaint.

(e) The named employer, for good cause, may request from the Division of Workers' Compensation an additional period of not more than thirty days to file an answer to the discrimination charge.

(f) Upon receipt of the employer's answer, the Division will transmit a copy of the answer to the complainant. The complainant will be allowed fourteen days to respond to the answer in writing. At the end of the fourteen day period the record will be closed unless the Division requests additional

submissions from the parties or allows additional time, for good cause shown, for the parties to respond.

(g) The Director/Chief Judge shall review the submission of the parties and determine if the complaint should be affirmed, dismissed or determined to be a contested case and forwarded to the Office of Administrative Law for hearing. The Director/Chief Judge shall render his/her decision within 90 days after the filing of a discrimination complaint or 30 days of the last evidentiary submission from the parties, whichever is later. If the complaint is affirmed, the decision will be transmitted to the Commissioner of Labor for imposition of penalties and such other relief authorized pursuant to N.J.S.A. 34:15-39.1 and N.J.S.A. 34:15-39.2.

(h) Any individual who disagrees with the decision of the Director may submit to the Division a written request for a formal hearing to be held in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 within 20 days from the date of the receipt of the Director's decision, by the party seeking the appeal.

SUBCHAPTER 9. ASSIGNMENT AND SUPERVISION OF JUDGES

12:235-9.1 Assignment of Judges

It shall be within the sole discretion of the Director to assign judges throughout the State as he/she shall deem appropriate for the effective administration of the Division.

12:235-9.2 Assignment to supervisory positions

(a) It shall be within the power of the Director to ascertain the need to assign Judges to supervisory positions and exercise the administrative duties as set forth in this chapter for the districts the Director may designate.

(b) The Director may at his or her discretion:

1. Determine the number of Judges needed to provide the necessary supervision; and

2. Appoint Judges of Compensation to supervisory positions in which the Judges shall serve at the pleasure of the Director.

12:235-9.3 Personnel functions

(a) The Supervising Judge of a particular district shall be directly responsible for the general conduct and performance of each Judge of Compensation Rules of the Division of Workers' Compensation, rev. 10/5/2009 52

in that district. The Supervising Judge shall be prepared to give a periodic performance evaluation of each Judge at the request of the Director.

(b) The Supervising Judge of a particular district shall be responsible for the orderly and prompt flow of work in that district.

(c) Subject to the approval of the Director, the Supervising Judge shall determine the composition of the daily calendar and shall designate the Judge of Compensation to be responsible for each calendar list. The Supervising Judge shall be responsible for all daily changes of scheduling for all hearing personnel within each district and be available to discuss particular scheduling problems with attorneys.

(d) Each Supervising Judge shall furnish statistical reports as required by the Director.

SUBCHAPTER 10. CONDUCT OF JUDGES

12:235-10.1 A judge should perform the duties of judicial office impartially and diligently

(a) A judge shall be prompt in the performance of all duties, including, but not limited to:

1. Convening court proceedings at the time and in the manner established by the Director;

2. Completing final disposition of cases; and

3. Completing and forwarding to the Director at regular intervals performance records and other data relating to judicial performance in a manner established by the Director.

(b) The adjudicative responsibilities of a judge are as follows:

1. A judge should maintain professional competence and be faithful to and comply with the law, regulations and Division procedures. A judge should not be influenced by partisan interest, public opinion, or fear of criticism.

2. A judge should maintain order and decorum in judicial proceedings.

3. A judge should be patient, dignified, and courteous to litigants, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should not permit lawyers, court officials, and others subject to the judge's direction and control to display

impatience or discourtesy or to detract from the dignity of the court.

4. A judge should be impartial and should not discriminate because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or disability.

5. A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status or disability against parties, witnesses, counsel, or others. This section does not preclude legitimate advocacy when race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status or disability, or other similar factors are issues in the proceeding.

6. A judge should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider substantive ex parte communications concerning a pending or impending proceeding. The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are participants in the proceeding, except to the limited extent permitted. This does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities.

7. A judge should abstain from public comment about a pending or impending proceeding in any court and should require similar abstention on the part of court personnel subject to the judge's direction and control.

8. A judge should permit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions only in accordance with the guidelines promulgated by the Supreme Court as modified by these rules of the Division of Workers' Compensation and subject to the restrictions contained therein. See Supreme Court Guidelines For Still and Television Camera and Audio Proceedings in the Courts of New Jersey. New Jersey Court Rules 1999.

(c) The administrative responsibilities of a judge are as follows:

1. A judge should diligently discharge the administrative responsibilities of the office without bias or prejudice, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

2. A judge should require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

3. A judge has the following disciplinary responsibilities:

   i. A judge who receives information indicating a substantial likelihood that another judge has committed a violation of these Rules should take appropriate action. A judge having knowledge that another judge has committed a violation of these Rules that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority;

   ii. A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority; and

   iii. Acts of a judge in the discharge of disciplinary responsibilities required or permitted are part of a judge's judicial duties.

12:235-10.2 Courtesy and civility

(a) A judge shall be impartial and courteous to parties, counsel, and all others appearing or concerned with the administration of justice in the court.

(b) A judge shall require, so far as their power extends, that those individuals assisting the judge in the administration of the function of the court extend the same civility and courtesy to counsel and all others having business in the court.

(c) The conduct of a judge shall be free from impropriety and the appearance of impropriety. A judge's personal demeanor, not only on the bench and in

the performance of a judge's judicial duties, but also in their everyday life, shall be beyond reproach. A judge shall be temperate, attentive, patient, and impartial.

12:235-10.3 Conduct of attorneys

(a) Attorneys shall conduct themselves in a professional manner at all times, as defined by the Rules of Professional Conduct.

(b) A judge shall report to the Supervising Judge and Director all instances of attorney conduct which violates the Rules of Professional Conduct.

12:235-10.4 Conduct of witnesses and others having business before the court

(a) Witnesses and others having business before the court shall conduct themselves in a proper manner.

(b) A judge shall report to the Supervising Judge and Director all instances of improper, unethical or illegal practices by any expert witness, interpreter, court reporter, or party before the judge.

12:235-10.5 A judge should uphold the integrity and independence of the judiciary

An independent and honorable judiciary is indispensable to justice in society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this subchapter should be construed and applied to further that objective.

12:235-10.6 A judge should avoid impropriety and the appearance of impropriety in all activities

(a) A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(b) A judge should not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge should not lend the prestige of office to advance the private interests of others; nor should a judge convey or permit others to convey the impression that they are in a special position of influence. A judge shall not testify as a character witness.

(c) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

12:235-10.7 Disqualification of a judge

(a) A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including, but not limited to, instances where:

1. The judge has a personal bias or prejudice concerning a party or a party's lawyer or has personal knowledge of disputed evidentiary facts concerning the proceeding;

2. The judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a witness concerning it;

3. The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child or any other member of the judge's family residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be affected by the outcome of the proceeding; or

4. The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

i. Is a party to the proceeding, or an officer, director, or trustee of a party;

ii. Is acting as, or is in the employ of or associated in the practice of law with, a lawyer in the proceeding;

iii. Is known by the judge to have an interest that could be affected by the outcome of the proceeding; or

iv. Is to the judge's knowledge likely to be a witness in the proceeding.

(b) A judge should keep informed about his or her personal and fiduciary financial interests and make a reasonable effort to keep informed about the personal financial interests of his or her spouse and dependent children.

(c) For the purposes of this section:

1. The degree of relationship is calculated according to the common law;

2. "Fiduciary" includes such relationships as executor, administrator,

trustee, and guardian;

3. "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other participant in the affairs of a party, except that:

i. Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities;
ii. An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

iii. The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest; and

iv. Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

12:235-10.8 A judge may engage in activities to improve the law, the legal system, and the administration of justice

(a) A judge, subject to the proper performance of judicial duties, may engage in the following activities if in doing so the judge does not cast doubt on the judge's capacity to decide impartially any issue that may come before the court and provided the judge is not compensated therefor:

1. A judge may speak, write, lecture, and participate in other activities concerning the law, the legal system, and the administration of justice upon notice to and approval by the Director and Chief Judge.

2. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice upon notice to and approval by the Director and Chief Judge, and may otherwise consult with an executive or legislative body or official on matters concerning the administration of justice with which the judge is charged with responsibility by the Rules and statutes pertaining to workers' compensation. This section shall not preclude a judge from appearing at a public hearing or consulting with an executive or legislative body or official on pension, salary or any issue which has a direct impact on the judge.

3. A judge may serve as a member, officer or director of a non-governmental organization devoted to the improvement of the law, the legal system, or the administration of justice. A judge may not, however, assist such an organization in raising funds nor may a judge participate in their management and investment. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, legal system, and the administration of justice.

12:235-10.9 A judge shall so conduct the judge's personal activities as to minimize the risk of conflict with judicial obligations

(a) A judge shall conduct all of the judge's personal activities so that they do not:

1. Cast reasonable doubt on the judge's capacity to act impartially as a judge;

2. Demean the judicial office; or

3. Interfere with the proper performance of judicial duties.

(b) The following concern avocational activities:

1. A judge may write, lecture, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the judicial office or interfere with the performance of judicial duties and provided the judge is not compensated therefor.

2. A judge may teach on non-legal subjects provided the judge is not compensated therefor subject to notice to and approval by the Director and Chief Judge.

(c) A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

1. A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

2. A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, nor may a judge be listed as an officer, director, or trustee of such an organization in any letters or other documents used in such solicitations. A judge shall not be a speaker or the guest of honor at an organization's fundraising events, but may attend such events and contribute to such organizations.
3. A judge shall not give investment advice to such an organization, nor may a judge serve on its board of directors or trustees if it has the responsibility for approving investment decisions.

(d) The following concern financial activities:

1. A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judicial position, or involve the judge in transactions with lawyers or persons likely to come before the court on which the judge serves.

2. A judge may hold investments, including real estate, but shall not serve as an officer, director, manager, advisor, or employee of any business.

3. A judge should manage his or her investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as a judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other financial interests that the judge could reasonably anticipate might require frequent disqualification.

4. Neither a judge nor a member of the judge's family residing in the same household should accept a gift, bequest, favor, or loan from anyone, except as follows:

    i. A judge may accept a gift of nominal value incident to a public testimonial; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and the judge's spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

    ii. A judge or a member of the judge's family residing in the same household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a lending institution in its regular course of business on the same terms generally

available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants; and

iii. A judge or a member of the judge's family residing in the same household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge.

5. For the purposes of this section, "member of the judge's family residing in the same household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the family, who resides in the same household as the judge.

6. A judge is not required to disclose income, debts, or investment, except as provided in this subsection and subsection 12:235-10.7.

7. Information acquired by a judge in a judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

(e) A judge shall not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties. "Member of the judge's family" includes only a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. While acting as a fiduciary for a member of the judge's family a judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.

(f) A judge shall not act as an arbitrator or mediator.

(g) A judge shall be prohibited from the practice of law, which shall include, but not be limited to, the acceptance of compensation, pecuniary or otherwise, in exchange for referring matters to other attorneys except in situations where the judge prior to his/her appointment made written arrangements for the distribution of fees on cases already in existence.

(h) A judge shall not accept appointment to a governmental committee, commission, or other position except with prior approval of the Director and Chief Judge as well as the Executive Commission on Ethical Standards.

12:235-10.10 Other compensation

(a) Except as otherwise provided by (b) below, a judge may not receive compensation for activities permitted by this subchapter but may receive

reimbursement of actual expenses that the judge reasonably incurred for travel, food, and lodging, provided that the source of such payments does not give the appearance of influencing the judge in the exercise of judicial duties or otherwise give the appearance of impropriety.

(b) A judge may receive compensation for teaching at law schools and/or colleges provided that the source of such payments does not give the appearance of impropriety, upon notice to and approval by the Director.

12:235-10.11 A judge shall refrain from political activity

(a) A judge shall not:

1. Act as a leader or hold any office in a political organization;

2. Make speeches for a political organization or candidate or publicly endorse a candidate for public office;

3. Attend political functions that are likely to be considered as being political in nature; or

4. Solicit funds or pay an assessment or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions.

(b) A judge shall resign from office when the judge becomes a candidate for an elective public office.

(c) A judge shall not otherwise engage in any political activity.

12:235-10.12 Medical reports

Any judge who has reason to believe that a medical report, medical bill for services, or medical finding has been altered, falsified, or withheld by a licensed physician, dentist, chiropractor, osteopath, optometrist, physical therapist, medical technician, attorney, or a representative of an insurance carrier or self-insured shall notify the Director.

12:235-10.13 Causes for discipline or removal

(a) A Judge may be disciplined for:

1. Violation of the code of judicial conduct as set forth in N.J.A.C. 12:235-10.1 through N.J.A.C. 12:235-10.12;

2. Willful misconduct including misconduct which, although not directly pertaining to judicial duties, brings the office into disrepute or is prejudicial to the administration of justice; and/or

3. Failure, neglect or inability to perform judicial duties.

12:235-10.14 Forms of discipline

(a) Disciplinary sanctions shall include, but not be limited to:

1. An oral or written private reprimand;

2. An oral or written public reprimand;

3. A suspension; and

4. Removal.

(b) A judge may be suspended by the Commissioner with or without pay pending the outcome of the disciplinary process in accordance with Department procedures.

(c) A judge may be represented by counsel in any step of the disciplinary proceeding.

12:235-10.15 Minor discipline

Oral or written private reprimands shall constitute minor discipline. A judge shall receive formal notification of the charges and the facts upon which the charges are based. The judge shall be afforded an opportunity to respond either in writing or orally to the Director or Supervisory Judge presenting the charges. No formal hearing will be held and the decision of the Director or Supervisory Judge shall be final. A judge may request of the Director that records of minor discipline and all related documents be expunged after one year provided no subsequent reprimands have been issued.

12:235-10.16 Major Discipline

Oral or written public reprimands, suspensions and removal shall constitute major disciplinary actions. A judge is entitled to notice of major disciplinary charges and an opportunity to be heard pursuant to N.J.A.C. 12:235-10.21.

12:235-10.17 Establishment of Commission on Judicial Performance

(a) There is established a Commission on Judicial Performance to investigate complaints or reports referred by the Director concerning judicial conduct and to give advisory opinions, recommendations, and reports to the Director. The Division will provide necessary staff or other resources for the Commission. The Commission shall consist of nine members. The Director shall designate one member to serve as Chairperson and another

member to serve as Vice Chairperson. At least two members shall be retired Judges of Compensation, not less than three members shall be members of the Bar, and not less than one, but no more than four members shall be laypersons who do not hold public office of any nature. The members shall be appointed by the Director for terms of two years and may be reappointed for such additional term or terms as the Director shall determine. Membership on the Commission shall terminate if a member is appointed or elected to public office or to any position considered by the Director to be incompatible with such service.

(b) A quorum shall consist of five members of the Commission. No action of the Commission shall be valid unless concurred in by a majority of its membership. However, if the Commission finds cause and recommends to the Director the institution of formal proceedings which may lead to reprimand, suspension, or removal of the Judge, such recommendation shall be made only on the affirmative vote of five members of the Commission who have considered the record and at least three of whom were present at all proceedings at which evidence was produced. If not present at all proceedings, other voting members must have listened to the tape recordings or read transcripts of any missed proceedings.

12:235-10.18 Initial Review by the Commission

(a) The Commission shall conduct an initial review upon receipt of a written complaint or report, which is not obviously unfounded or frivolous, or related solely to the subject of an appeal and which, if true, would constitute a violation of this subchapter.

(b) Prior to any meeting to decide the merits of the complaint or report, the Commission shall send a copy of the complaint or report to the judge who is the subject of the review.

12: 235-10.19 Evidentiary Review By the Commission

(a) When the Commission conducts an evidentiary review , the Commission shall:

1. Shall require the filing of a verified complaint or report.

2. Notify the judge of the nature of the complaint or report and the name of the person making the complaint or report, provide a copy of the complaint or report, and notify the judge that he or she has the opportunity to present, within such reasonable time as the Commission shall fix, such matters as the judge may choose to place on the record. The notice to the judge shall specify in ordinary and in concise language the complaint or report against the judge and the alleged facts upon which the complaint or report

is based. A presentation by the judge includes the right to appear before the Commission, with or without counsel, to confront and cross-examine witnesses and present evidence on his or her behalf and to make a statement under oath as the judge deems appropriate. The Commission may request that the complainant make a supplemental statement under oath. Any statements, if oral, shall be taken stenographically or by sound recording.

3. Review and determine requests for discovery.

12:235-10.20 Recommendations of the Commission

(a) Upon completion of the initial review, the Commission may take any of the following actions which may be accepted, rejected or modified by the Director:

1. The Commission may recommend that the Director dismiss the charges and notify the parties of the action taken. If the matter has been made public, the Director shall, at the request of the judge involved, issue a short statement of clarification and correction of any dismissed complaint or report.

2. If the initial review reveals a departure by the judge from common standards of judicial propriety, such as discourtesy, rudeness, disparagement of witnesses or attorneys, and the like, or other conduct or demeanor which would reflect unfavorably upon the administration of justice if persisted in or were to become habitual or more substantial in character, the Commission may request the judge to appear at a time and place designated for an informal discussion of the matter. After making the judge aware of the objectionable conduct, and becoming satisfied that it was temporary in nature and not likely to become habitual, the Commission may recommend to the Director that the complaint or report be dismissed and the parties advised of the action taken, and the reasons therefore. Any such conference shall be recorded stenographically or by sound recording and a transcribed record filed with the papers in the proceeding.

3. If the Commission believes that the judge may be suffering from a mental or physical disability which is disabling the judge and may continue to disable the judge indefinitely or permanently from the performance of his or her duties, it may recommend to the Director an appropriate response that balances any medical need of the judge and protects the public interest.

4. Whenever the Commission concludes that the circumstances merit

minor discipline, the Commission shall promptly file a copy of the recommendation, and the record of the Commission certified as such by its Chairperson, with the Director. If the Director agrees with the recommendation, the Director shall proceed in accordance with N.J.A.C. 12:235-10.15. If the Director disagrees with the recommendation, the Director may dismiss or refer the matter for major disciplinary charges in accordance with N.J.A.C. 12:235-10.16.

5. Whenever the Commission concludes, and only after an evidentiary review under N.J.A.C. 12:235-10.19, that the basis of the complaint or report merits disciplinary action greater than minor discipline and that formal charges should be instituted, the Commission shall promptly file a copy of the recommendation and the record of the Commission certified as such by its Chairperson with the Director. The Commission shall issue also without delay and serve upon the judge a notice advising him or her that it has filed such a recommendation with the Director.

12:235-10.21 Final Hearing

When requested by the judge, a final hearing in major discipline shall be conducted by an independent hearing officer under procedures set by the hearing officer. The hearing officer will make a recommendation to the Commissioner. As feasible and as permitted by law, the hearing officer shall be a retired judge of the Superior Court. At the hearing, the Department may be represented by the Attorney General or a designated representative. After recommendation of the hearing officer or on the record if no hearing had been requested, the Commissioner shall make the final decision in all cases other than removal. The Governor, pursuant to Art. V, Sec. IV, Par. 5 of the New Jersey Constitution and upon recommendation of the Commissioner, may remove a judge from office.

12:235-10.22 Confidentiality

The record before the Commission on Judicial Performance shall be confidential and shall not be available to any person except in the proper discharge of official duties, unless the judge requests that the charge, proceedings, or action shall be made public. If a public reprimand is imposed by the Director, the written reprimand shall be made public. Upon the issuance of a complaint or disciplinary charges, the complaint and/or charges shall be made public. The entire record shall, unless the Director otherwise orders, be made public upon the entry of a final decision imposing a public reprimand, suspension, or removal.

12:235-10.23 Judicial independence and discipline process

The methods used by the judge, but not the result arrived at by the judge in any

case, may be the cause for discipline of the judge. In order to foster and encourage judicial independence, claims of error shall be left to appellate review and not be subject to discipline.

SUBCHAPTER 11. ACCIDENT REPORTS

12:235-11.1 Employer's First notice of accidental injury or occupational disease

(a) Every employer subject to N.J.S.A. 34:15-96 shall file a first notice of accidental injury or occupational disease under the procedures set forth in (b) below when:

1. The injury causes a loss of time from regular duties beyond the working day or shift on which the accident occurred; or

2. Medical treatment beyond ordinary first aid is required; or

3. Occupational disease exists whether or not time is lost.

(b) Upon the happening of an accident or the occurrence of any occupational disease, an employer who has insurance coverage or utilizes a third party administrator shall promptly furnish the insurance carrier or the third party administrator with accident or occupational disease information.

(c) Within three weeks after an accident or upon knowledge of the occurrence of an occupational disease, every insurance carrier, third party administrator, statutory non-insured employer, including the State, counties, municipalities and school districts, and duly authorized self-insured employer not utilizing a third party administrator shall file a report designated as "first notice of accident" in electronic data interchange media with the Division of Workers' Compensation through the Compensation and Rating and Inspection Bureau in a format prescribed by the Compensation and Rating and Inspection Bureau. When filed by an insurance carrier or third party administrator, the report shall also be sent to the employer. If the employer disagrees with the report, the employer may prepare and sign an amended report and file the amended report with the insurance carrier or third party administrator. The amended report must then be filed electronically with the Division through the Compensation Rating and Inspection Bureau.

(d) The Compensation Rating and Inspection Bureau shall insure the information received pursuant to this subchapter is readily available to the Division or any person authorized by the Commissioner of Labor pursuant to N.J.S.A. 34:15-99.

12:235-11.2 Employer's final report of accidental injury or occupational disease

(a) Not more than 26 weeks after the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer learns that an employee has recovered so as to resume work or has reached maximum medical improvement prior to resumption of work, the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer shall prepare a final report in electronic data interchange media with the Division through the Compensation Rating and Inspection Bureau in a format prescribed by the Compensation Rating and Inspection Bureau. A benefits status letter will be sent to the employee by the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer which shall contain the information filed with Division and Compensation Rating and Inspection Bureau.

(b) If the employee disagrees with the benefits status letter, the employee may contact the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer directly or write to the Division pursuant to instructions on the New Jersey Benefit Status Letter. Any changes to the report shall be filed by the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer in the same manner as the original report under (a) above.

12:235-11.3 Penalty for noncompliance

(a) Every employer, insurer, third party administrator or other person who fails to comply with the terms of this subchapter shall be liable for a penalty of $10.00 for the first offense, $25.00 for the second offense and $50.00 for the third and subsequent offenses. Violations under this section include, but are not limited to, a failure to file a required report, a failure to file a report electronically, a failure to supply information to another party and a failure to file a complete and accurate report.

(b) A person or entity who receives notice of a penalty assessment may request in writing a review of the penalty assessment within 20 days of the notice of penalty assessment. Such request must include the reasons and basis for a dismissal or waiver of the penalty.

SUBCHAPTER 12. SURCHARGE COLLECTION PROCEDURES

12:235-12.1 Purpose and scope

(a) The purpose of this subchapter is to establish surcharge collection procedures to fund the Uninsured Employers Fund and the Second Injury Fund.

(b) The surcharges shall be levied against all workers' compensation and

employers' liability insurance policyholders and self-insured employers.

12:235-12.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Department" means the New Jersey Department of Labor.

"Director" means the Director/Chief Judge of the Division of Workers' Compensation.

"Earned premium" means the portion of the standard premium that was earned on a pro-rata basis of the policy term. As of January 1, 1999, the earned premium shall be defined as the portion of modified premium that was earned on a pro-rata basis of the policy term.

"Insurer" means a domestic, foreign, or alien mutual association or stock company writing workers' compensation or employer's liability insurance on risks located in this State who is subject to premium taxes pursuant to N.J.S.A. 54:18A-l et seq. Rules of the Division of Workers' Compensation, rev. 10/5/2009 69

"Modified premium" means the earned premium after application of any experience modification and prior to the application of an approved managed care premium reduction, a premium reduction in consideration of the New Jersey Construction Classification Premium Adjustment Program, the expense constant, surcharges, premium discount, retrospective rating plans, or premium reductions for deductible coverages.

"Policyholder" means a holder of a policy of workers' compensation and employer's liability insurance issued by an insurer, exclusive of any workers' compensation endorsement requirement pursuant to N.J.S.A. 17:36-5.29.

"Report of compensation paid" is a report of the total amount of workers' compensation paid pursuant to N.J.S.A. 34:15-1 et seq., adjusted for the amounts paid for funeral expenses and for the compromise of disputed claims pursuant to N.J.S.A. 34:15-20.

"Second Injury Fund" means a fund established pursuant to N.J.S.A. 34:15-94 which is designed to provide funds for workers who have experienced two disability injuries.

"Self-insured employer" means an employer which is authorized to self-insure for workers' compensation or employer's liability pursuant to N.J.S.A. 34:15-77.

"Standard premium" means the premium earned after application of any experience modification and prior to the application of the expense constant, premium

discounts, retrospective rating plans or premium reductions for deductible coverages.

"Uninsured Employer's Fund" means a fund to provide for the payment of awards against uninsured defaulting employers pursuant to N.J.S.A. 34:15-120.1 et seq.

12:235-12.3 Reporting compensation paid

(a) Report forms for the reporting of compensation paid shall be mailed by the Department to the respective insurers or self-insured employers by June 15 of each calendar year.

(b) Insurers and self-insured employers shall file the report of compensation paid for the calendar period July 1 to June 30 with the Department by July 31 following the end of the report year to be filed.

12:235-12.4 Calculation and notification of surcharge

(a) Insurers shall include the surcharge percentages as provided by the Department of Insurance, for both the Second Injury Fund and the Uninsured Employer's Fund, respectively, on each policyholder's premium notice.

(b) The surcharge amounts shall be calculated by multiplying the surcharge rate by the standard premium. For quarters after December 31, 1998, the surcharge amounts shall be calculated by multiplying the surcharge by the modified premium.

(c) The resulting surcharge amounts shall be stated by the insurer separately on the premium notice.

(d) The surcharge shall be remitted to the insurer in accordance with the payment schedule established by the insurer for the policyholder, for the annual policy term.

(e) Self-insured employers shall be notified of their share of the surcharge by September 15 of the calendar year that precedes the year for which the surcharge applies.

12:235-12.5 Surcharge collection procedure

(a) The Department shall provide each insurer and self-insured employer with the appropriate form for calculating the surcharge remittance. The form shall contain express instructions for the completion of the items pertaining to the calculation of the surcharge remittance.

1. For insurers, the following apply:

i. The amount of the remittance shall be proportionate to the earned premium at the end of the calendar quarter of remittance, less any supplemental benefits and special adjustments that have been paid;

ii. The quarterly calculation of the surcharge amount due shall be adjusted for changes in prior quarter earned premiums, if any. For example, in 1989, the maximum number of prior quarters that may need earned premium adjustment will be three. In 1993, the maximum number of prior quarters that may need earned premium adjustment will be 19. In 1994, and thereafter, the maximum number of quarters that may need earned premium adjustment will vary from 16 to 19; and

iii. Surcharges collected shall be remitted within 30 days following the end of each calendar quarter ending March 31, June 30, September 30, and December 31.

2. For self-insured employers, the following apply:

i. The amount of the remittance shall be equal to one-quarter of the annual surcharge, adjusted for supplemental benefits and special adjustments paid during the calendar quarter of remittance; and

ii. One-quarter of the annual surcharge shall be remitted within 30 days of the end of each calendar quarter ending March 31, June 30, September 30, and December 31.

(b) The surcharge remittance form shall be returned with the surcharge remitted to the Department.

12:235-12.6 Verification and audit procedures

(a) Insurers and self-insured employers shall submit a quarterly detailed report that supports the amount of credits, supplemental benefits and special adjustment payments claimed on the quarterly remittance.

1. The form and manner of completion shall be as directed by the Director.

(b) Claims for credits for supplemental benefits and special adjustment payments made pursuant to N.J.S.A. 34:15-94 are subject to review and approval by the Director.

1. Any credits claimed that are not approved by the Director shall result in

the insurer or self-insured employer being liable for the surcharge in the amount of the disallowed claim for credit.

(c) Insurers and self-insured employers that fail to submit the support of the credits claimed on their quarterly remittance shall be liable for the total amount of the quarterly surcharge due without credit for the amount of supplemental benefits and special adjustment payments.

(d) Earned premiums and reports of compensation paid are subject to audit and verification by the Department.

1. Adjustments resulting from incorrectly reported earned premiums or reports of compensation paid shall result in a recalculation of the surcharge due from the insurer or self-insured employer who filed the incorrect information.

(e) Any amounts of surcharges due as the result of disallowed claims for credit or incorrect reports of earned premiums or reports of compensation paid shall be subject to interest on the portion of the surcharge that is due as the result of the disallowance or adjustment made by the Department.

12:235-12.7 Earned premium notification

Insurers are required to notify the Department of Insurance of the amount of standard earned premiums for the period January 1 to December 31 of each calendar year by August 31 of the immediately following year. Such premiums shall be used in the determination of the annual policyholder surcharge rate applicable during the next policy year.

12:235-12.8 Forms

Forms referred to in this subchapter are available from the Department, and may be requested in writing from:

Office of the Controller
New Jersey Department of Labor
CN 078
Trenton, New Jersey 08625-0078

12:235-12.9 Penalties

(a) Any insurer or self-insured employer who fails to submit a completed report of compensation paid by July 31 of any calendar year shall be subject to a penalty of $100.00 for each 30 day period that the report is delinquent, up to a maximum of $500.00.

(b) Any insurer or self-insured employer who fails to remit a quarterly surcharge by the due date shall be subject to a penalty of one-half of one percent (0.5%) of the surcharge remittance amount for each 30 day period, or portion thereof, that the remittance is delinquent, up to a maximum of five percent.

(c) Surcharges and penalties which are delinquent are subject to collection proceedings pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1.

SUBCHAPTER 13. ENFORCEMENT AND COLLECTION OF NON-INSURANCE PENALTIES

12:235-13.1 General

(a) The Director/Chief Judge or his or her designee may, upon finding that an employer has failed for a period of not less than ten (10) consecutive days to make provision for payment of compensation as required by N.J.S.A. 34:15-71 and N.J.S.A. 34:15-72 and subsequent to notice and demand for proof of such provision pursuant to N.J.A.C. 12:235-13.2, impose upon that employer, in addition to all other penalties, fines or assessments provided for in the New Jersey Workers' Compensation Law (N.J.S.A. 34:15-7 et seq.) an assessment up to an amount of $1,000.00 and when the period exceeds twenty (20) days, an additional assessment of up to $1,000.00 for each period of 10 days thereafter. All such assessments shall be collectible in a court of competent jurisdiction in a summary civil proceeding and shall be paid into the "Uninsured Employers Fund."

12:235-3.2 General motions for temporary disability and/or medical benefits

(a) In all motions by the petitioner for temporary disability or medical benefits, the original notice of motion shall be filed with the district office to which the case is assigned and a copy of the notice of motion and claim petition served by certified mail or personal service on the attorneys of record. If the attorney of record is unknown, then service shall be made by certified mail on the respondent(s) and its carrier(s). If it is a new claim petition and it is a claim petition filed on paper, then the notice of motion shall also be filed with the central office. Motions for temporary disability and/or medical benefits shall evidence that petitioner is currently temporarily totally disabled and/or in need of current medical treatment. Where only past periods of temporary total disability and/or medical expenses are claimed by petitioner, such issues should be presented at pretrial for resolution or trial and not by motion under this section.

(b) The notice of motion for temporary disability or medical benefits shall be on a form prescribed by the Division and shall contain:

1. A detailed account of compensable lost time claimed by the petitioner, indicating any period paid by the respondent;

2. Affidavits or certifications made in personal knowledge by the petitioner or the petitioner's attorney, as well as the report(s) of a physician(s) stating the medical diagnosis and the specific type of diagnostic study, referral to specialist, or treatment being sought, and, if available, an itemized bill and report of the treating physicians or institutions or both for which services past, present and future, petitioner is seeking payment and such other evidence as shall relate to the petitioner's claim for temporary disability and/or medical treatment; and

3. If the petitioner, having received treatment, cannot secure a report of the medical provider authorized by the respondent, it shall be set forth in the affidavit in lieu of the physician's report.

(c) If an attorney for the petitioner knowingly files an incomplete, inaccurate or misleading notice of motion for temporary disability and/or medical benefits, or an attorney for the respondent files an untimely, incomplete, inaccurate or misleading answer, the attorney may be assessed a penalty in accordance with N.J.A.C. 12:235-3.14.

(d) Except for good cause shown, respondent(s) shall file an answer within 21 days of service of the motion or within 30 days after service of claim petition whichever is later.

(e) When the Division has received a notice of motion for temporary disability and/or medical benefits filed in accordance with (a), (b) and (c) above, it shall list the motion for a hearing before a Judge of Compensation peremptorily within 30 days of the filing of the motion. Motions for medical and/or temporary benefits shall commence and continue in a timely manner subject to the scheduling constraints of the Division. Said scheduling may be accelerated as ordered by the Director, the Supervising Judge of the vicinage, or the Judge of Compensation to whom the case is assigned.

(f) Affidavits, certifications and medical reports submitted in accordance with (b) above in support of the motion may constitute a prima facie case and may be sufficient basis for the issuance of an order compelling the respondent to provide the relief sought unless respondent files supporting affidavits or certifications to oppose said motion on a legal or factual basis, or files medical reports if there is a medical basis to oppose said motion. No order shall be issued until 30 days after service of the claim petition.

(g) Examination, if required by respondent, shall be completed within 30 days of receipt of the motion and the report issued in not more than 35 days from receipt of the motion and shall not delay the start of the hearing of the motion except for good cause shown.

(h) For motions where it appears the only issue involved is which carrier or employer is liable to petitioner for the benefits sought, a judge of compensation may order one carrier or employer to pay benefits without prejudice and subject to an order of reimbursement if another party is later held liable for such benefits.

(i) On conclusion of the hearing on the motion for temporary and/or medical benefits, the Judge of Compensation shall, within 15 days, render a final decision on the motion and notify the respective counsel of the decision. In computing the 15 days' time, the 15 days shall be from the last day of hearing or from the date of filing of briefs as ordered by the Judge, whichever is later. Under no circumstances shall briefs be filed later than 15 days after the hearing.

12:235-13.2 Notice and Demand for Proof of Coverage

(a) In the event the Division determines that a business entity is or may be operating as an employer in the State of New Jersey without the required workers' compensation coverage, the Division shall issue a notice, by regular and certified mail, to the business entity. Notice shall include a statement of the allegation, penalties to be assessed for such failure, a demand for proof of required coverage to be submitted within twenty (20) calendar days and procedures for the business entity to request a hearing on the allegation.

12:235-13.3 Acceptable Proofs

(a) In response to a notice issued pursuant to N.J.A.C. 12:235-13.2, acceptable preliminary proof of the required workers' compensation insurance coverage shall include a copy of a current certificate of insurance issued by a mutual association or stock company authorized to write on such risks in the State of New Jersey, a sworn affidavit by the agent of such mutual association or stock company stating the policy number(s) and the effective date(s) of coverage, documentation evidencing application for required coverage through the Compensation Rating and Inspection Bureau (CRIB), or a copy of the certificate of approval issued by the Commissioner of Insurance for self-insurance privilege under N.J.S.A. 34:15-77. Where a CRIB application is provided as proof of coverage, the

Division shall issue a preliminary acceptance notice to the business entity with a copy to CRIB, requiring submittal by the business entity of a certificate of insurance within sixty (60) calendar days from the date of the mailing of such notice.

(b) All proofs of coverage submitted in the form of insurance certificate or agent affidavit are subject to verification by the Division with the named mutual association or stock company. Proofs of coverage submitted in the form of certificates of self-insurance shall likewise be subject to verification with the Department of Insurance.

(c) Where proofs of coverage as submitted by the business entity are found to be invalid on their face or through the process of verification, a second notice shall be issued to the business entity stating such findings and the current amount of assessment to be imposed, and providing procedures for the business entity to request a hearing on the allegation within twenty (20) calendar days following the date of the second notice.

(d) All notices prescribed hereunder shall be served by the Division by certified and regular mail and shall be deemed satisfactory if not returned as undeliverable.

12:235-13.4 Failure to Respond

(a) Where the business entity fails to respond to either the initial or second notice and demand for proof of coverage within the period allowed, the amount of assessment stated in the last notice issued to the business entity shall become the final administrative order with respect to the imposition of such penalties.

12:235-13.5 Hearings

(a) A hearing will be conducted by the Director/Chief Judge or designee if requested pursuant to N.J.A.C. 12:235-13.2.

(b) The employer shall have the opportunity to present any and all relevant evidence but the Director/Chief Judge or designee conducting the hearing shall not be bound by the Rules of Evidence.

(c) Penalties assessed against an employer will be dismissed upon a finding by a preponderance of the credible proof that the requirements of Article 5 and related sections of the Workers' Compensation Act were met as of the date of the issuance of the initial notice of violation.

(d) If, upon finding that the employer was in violation of N.J.S.A. 34:15-7 et seq., a portion or all of the administrative penalty assessed in the initial notice

of violation may be abated by the Director/Chief Judge or designee based on the following factors:

1. Length of time the employer was without workers' compensation coverage;

2. An occurrence of a compensable injury while the employer was uninsured;

3. Past history of violations by the employer or an entity in which the violator was an owner, officer or principal shareholder;

4. Good faith of the employer;

5. Size of the employer's business; and

6. Any other material factors which the Director/Chief Judge or designee deems appropriate.

(e) If, as the result of a hearing, pursuant to this subchapter, an initial penalty amount is abated in part upon condition of timely payment, in whole or by installment, said employer shall make payment in strict accordance with the schedule of payments set forth by the Director/Chief Judge or designee. If the conditions of the penalty abatement order are not met, the abatement shall, upon further order of the Director/Chief Judge or designee, and without further hearing, be rescinded and the full amount of the initial assessment shall be due and owing.

(f) The Director/Chief Judge or designee shall issue a final administrative order within a reasonable time following the conclusion of the hearing.

12:235-13.6 Payments

(a) All penalties shall be paid in compliance with the final administrative order. Failure to pay such penalties when due shall result in a judgment being obtained in a court of competent jurisdiction.

(b) All sums shall be made payable to the "Uninsured Employers Fund" in the form of a certified check, money order or such other form authorized by the Director/Chief Judge or designee.

SUBCHAPTER 14. STANDARD FORMS

12:235-14.1 Listing of forms

(a) Listed below are the titles and numerical designations of the standard forms utilized for workers' compensation:

1. Employee Claim Petition, WC 365;

2. Dependency Claim Petition, WC 366;

3. Application for Review or Modification of Formal Award, WC 368;

4. Notice of Motion for Temporary and/or Medical Benefits, WC 101;

5. Respondent's Answer to Claim Petition, WC 367;

6. Respondent's Answer to Dependency Claim Petition, WC 171;

7. Answer to Application for Review or Modification of Formal Award, WC 369;

8. Answering Statement to Motion for Temporary and Medical Benefits, WC 102;

9. Standard Respondent's Interrogatories: Occupational Diseases (WC-22);

10. Standard Petitioner's Interrogatories: Occupational Diseases (WC-23)

11. Pre-Trial Memorandum, WC(DO) 31;

12. Order Approving Settlement WC(DO) 370;

13. No Insurance Case, WC(DO)-339;

14. Bench Referral from Division of Workers' Compensation to New Jersey Division of Vocational Rehabilitation Services;

15. Application for Informal Hearing WC(CF) 66;

16. Central Office Record of Informal Proceedings, WC(CF) 11;

17. Second Injury Fund Application and Verified Petition;

18. Decision of Eligibility, WC 48;

19. Application for Commutation, WC(1) 60;

20. Decision of Dismissal, WC 47;

21. Discrimination Complaint, SCF 4;

22. Employer's First Report of Accidental Injury or Occupational Illness, L&I 1;

23. Employer's First Report to Division of Workers' Compensation of Accidental Injury or Occupational Disease, WC 1;

24. Insurer's Initial Notice of Accident and Insurer's and Self-Insurer's Statement of Wages and Agreement to Care for Case, WC 2;

25. Informational Brochure on Informal Proceedings;

26. Final Report of Accident, WC 3;

27. Final Report of Accident, WC 4;

28. Final Report of Accident, WC 5;

29. Final Report of Accident, WC 6;

30. Substitution of Attorney, WC 10.

12:235-14.2 Sample forms

Samples of the standard forms listed in N.J.A.C. 12:235-14.1 follow:

OFFICE OF ADMINISTRATIVE LAW NOTE: The Division of Workers' Compensation submitted 30 sample forms. These forms are not reproduced herein but may be inspected at:

Office of Administrative Law
Building 9
Quakerbridge Plaza, Quakerbridge Road
PO Box 049
Trenton, NJ 08625-0049

and

Department of Labor
Division of Workers' Compensation

19. Application for Commutation, WC(1) 60;

20. Decision of Dismissal, WC 47;

21. Discrimination Complaint, SCF 4;

22. Employer's First Report of Accidental Injury or Occupational Illness, L&I 1;

23. Employer's First Report to Division of Workers' Compensation of Accidental Injury or Occupational Disease, WC 1;

24. Insurer's Initial Notice of Accident and Insurer's and Self-Insurer's Statement of Wages and Agreement to Care for Case, WC 2;

25. Informational Brochure on Informal Proceedings;

26. Final Report of Accident, WC 3;

27. Final Report of Accident, WC 4;

28. Final Report of Accident, WC 5;

29. Final Report of Accident, WC 6;

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12:235-14.2 Sample forms

Samples of the standard forms listed in N.J.A.C. 12:235-14.1 follow:

OFFICE OF ADMINISTRATIVE LAW NOTE: The Division of Workers' Compensation submitted 30 sample forms. These forms are not reproduced herein but may be inspected at:

Office of Administrative Law
Building 9
Quakerbridge Plaza, Quakerbridge Road
PO Box 049
Trenton, NJ 08625-0049

and

Department of Labor
Division of Workers' Compensation
Sixth Floor
John Fitch Plaza
PO Box 399
Trenton, NJ 087625

APPENDIX D

NEW JERSEY MANUFACTURERS INSURANCE COMPANIES DISABILITY SCHEDULES

SCHEDULE OF DISABILITIES AND MAXIMUM BENEFITS EXCLUSIVE OF AMPUTATION AND ENUCLEATION

EFFECTIVE 1/1/2011

PER-CENT	HAND 245 WEEKS	ARM 330 WEEKS	FINGERS - SEE FOOTNOTE					LEG 315 WEEKS	FOOT 230 WEEKS	TOES		EYE 200 WEEKS	HEARING		PARTIAL TOTAL BASED ON 600 WEEKS	PER-CENT
			THUMB 75 WEEKS	FIRST 50 WEEKS	SECOND 40 WEEKS	THIRD 30 WEEKS	FOURTH 20 WEEKS			GREAT TOE 40 WEEKS	OTHER TOE 15 WEEKS		1 EAR 60 WEEKS	2 EARS 200 WEEKS		
1	2.4500 516.95	3.3000 696.30	0.7500 158.25	0.5000 105.50	0.4000 84.40	0.3000 63.30	0.2000 42.20	3.1500 664.65	2.3000 485.30	0.4000 84.40	0.1500 31.65	2.0000 422.00	0.6000 126.60	2.0000 422.00	6.0000 1,266.00	1
1 1/2	3.6750 775.43	4.9500 1,044.45	1.1250 237.38	0.7500 158.25	0.6000 126.60	0.4500 94.95	0.3000 63.30	4.7250 996.98	3.4500 727.95	0.6000 126.60	0.2250 47.48	3.0000 633.00	0.9000 189.90	3.0000 633.00	9.0000 1,899.00	1 1/2
2	4.9000 1,033.90	6.6000 1,392.60	1.5000 316.50	1.0000 211.00	0.8000 168.80	0.6000 126.60	0.4000 84.40	6.3000 1,329.30	4.6000 970.60	0.8000 168.80	0.3000 63.30	4.0000 844.00	1.2000 253.20	4.0000 844.00	12.0000 2,532.00	2
2 1/2	6.1250 1,292.38	8.2500 1,740.75	1.8750 395.63	1.2500 263.75	1.0000 211.00	0.7500 158.25	0.5000 105.50	7.8750 1,661.63	5.7500 1,213.25	1.0000 211.00	0.3750 79.13	5.0000 1,055.00	1.5000 316.50	5.0000 1,055.00	15.0000 3,165.00	2 1/2
3	7.3500 1,550.85	9.9000 2,088.90	2.2500 474.75	1.5000 316.50	1.2000 253.20	0.9000 189.90	0.6000 126.60	9.4500 1,993.95	6.9000 1,455.90	1.2000 253.20	0.4500 94.95	6.0000 1,266.00	1.8000 379.80	6.0000 1,266.00	18.0000 3,798.00	3
3 1/2	8.5750 1,809.33	11.5500 2,437.05	2.6250 553.88	1.7500 369.25	1.4000 295.40	1.0500 221.55	0.7000 147.70	11.0250 2,326.28	8.0500 1,698.55	1.4000 295.40	0.5250 110.78	7.0000 1,477.00	2.1000 443.10	7.0000 1,477.00	21.0000 4,431.00	3 1/2
4	9.8000 2,067.80	13.2000 2,785.20	3.0000 633.00	2.0000 422.00	1.6000 337.60	1.2000 253.20	0.8000 168.80	12.6000 2,658.60	9.2000 1,941.20	1.6000 337.60	0.6000 126.60	8.0000 1,688.00	2.4000 506.40	8.0000 1,688.00	24.0000 5,064.00	4
5	12.2500 2,584.75	16.5000 3,481.50	3.7500 791.25	2.5000 527.50	2.0000 422.00	1.5000 316.50	1.0000 211.00	15.7500 3,323.25	11.5000 2,426.50	2.0000 422.00	0.7500 158.25	10.0000 2,110.00	3.0000 633.00	10.0000 2,110.00	30.0000 6,330.00	5
7 1/2	18.3750 3,877.13	24.7500 5,222.25	5.6250 1,186.88	3.7500 791.25	3.0000 633.00	2.2500 474.75	1.5000 316.50	23.6250 4,984.88	17.2500 3,639.75	3.0000 633.00	1.1250 237.38	15.0000 3,165.00	4.5000 949.50	15.0000 3,165.00	45.0000 9,495.00	7 1/2
10	24.5000 5,169.50	33.0000 6,963.00	7.5000 1,582.50	5.0000 1,055.00	4.0000 844.00	3.0000 633.00	2.0000 422.00	31.5000 6,646.50	23.0000 4,853.00	4.0000 844.00	1.5000 316.50	20.0000 4,220.00	6.0000 1,266.00	20.0000 4,220.00	60.0000 12,660.00	10
12 1/2	30.6250 6,461.88	41.2500 8,703.75	9.3750 1,978.13	6.2500 1,318.75	5.0000 1,055.00	3.7500 791.25	2.5000 527.50	39.3750 8,308.13	28.7500 6,066.25	5.0000 1,055.00	1.8750 395.63	25.0000 5,275.00	7.5000 1,582.50	25.0000 5,275.00	75.0000 15,825.00	12 1/2
15	36.7500 7,754.25	49.5000 10,444.50	11.2500 2,373.75	7.5000 1,582.50	6.0000 1,266.00	4.5000 949.50	3.0000 633.00	47.2500 9,969.75	34.5000 7,279.50	6.0000 1,266.00	2.2500 474.75	30.0000 6,330.00	9.0000 1,899.00	30.0000 6,330.00	90.0000 18,990.00	15
17 1/2	42.8750 9,046.63	57.7500 12,185.25	13.1250 2,769.38	8.7500 1,846.25	7.0000 1,477.00	5.2500 1,107.75	3.5000 738.50	55.1250 11,631.38	40.2500 8,492.75	7.0000 1,477.00	2.6250 553.88	35.0000 7,385.00	10.5000 2,215.50	35.0000 7,385.00	105.0000 23,433.00	17 1/2
20	49.0000 10,339.00	66.0000 13,926.00	15.0000 3,165.00	10.0000 2,110.00	8.0000 1,688.00	6.0000 1,266.00	4.0000 844.00	63.0000 13,293.00	46.0000 9,706.00	8.0000 1,688.00	3.0000 633.00	40.0000 8,440.00	12.0000 2,532.00	40.0000 8,440.00	120.0000 27,270.00	20
22 1/2	55.1250 11,631.38	74.2500 15,666.75	16.8750 3,560.63	11.2500 2,373.75	9.0000 1,899.00	6.7500 1,424.25	4.5000 949.50	70.8750 14,954.63	51.7500 10,919.25	9.0000 1,899.00	3.3750 712.13	45.0000 9,495.00	13.5000 2,848.50	45.0000 9,495.00	135.0000 31,518.00	22 1/2
25	61.2500 12,923.75	82.5000 17,407.50	18.7500 3,956.25	12.5000 2,637.50	10.0000 2,110.00	7.5000 1,582.50	5.0000 1,055.00	78.7500 16,616.25	57.5000 12,132.50	10.0000 2,110.00	3.7500 791.25	50.0000 10,550.00	15.0000 3,165.00	50.0000 10,550.00	150.0000 36,144.00	25
27 1/2	67.3750 14,216.13	90.7500 20,146.50	20.6250 4,351.88	13.7500 2,901.25	11.0000 2,321.00	8.2500 1,740.75	5.5000 1,160.50	86.6250 18,277.88	63.2500 13,345.75	11.0000 2,321.00	4.1250 870.38	55.0000 11,605.00	16.5000 3,481.50	55.0000 11,605.00	165.0000 41,187.00	27 1/2
30	73.5000 15,508.50	99.0000 22,008.00	22.5000 4,747.50	15.0000 3,165.00	12.0000 2,532.00	9.0000 1,899.00	6.0000 1,266.00	94.5000 20,979.00	69.0000 14,559.00	12.0000 2,532.00	4.5000 949.50	60.0000 12,660.00	18.0000 3,798.00	60.0000 12,660.00	180.0000 46,608.00	30
33 1/3	81.6667 17,231.67	110.0000 24,670.00	25.0000 5,275.00	16.6667 3,516.67	13.3333 2,813.33	10.0000 2,110.00	6.6667 1,406.67	105.0000 23,433.00	76.6667 16,176.67	13.3333 2,813.33	5.0000 1,055.00	66.6667 14,066.67	20.0000 4,220.00	66.6667 14,066.67	200.0000 74,000.00	33 1/3
35	85.7500 18,093.25	115.5000 26,082.00	26.2500 5,538.75	17.5000 3,692.50	14.0000 2,954.00	10.5000 2,215.50	7.0000 1,477.00	110.2500 24,733.50	80.5000 16,985.50	14.0000 2,954.00	5.2500 1,107.75	70.0000 14,770.00	21.0000 4,431.00	70.0000 14,770.00	210.0000 77,700.00	35
37 1/2	91.8750 20,396.25	123.7500 28,301.25	28.1250 5,934.38	18.7500 3,956.25	15.0000 3,165.00	11.2500 2,373.75	7.5000 1,582.50	118.1250 26,775.00	86.2500 18,198.75	15.0000 3,165.00	5.6250 1,186.88	75.0000 15,825.00	22.5000 4,747.50	75.0000 15,825.00	225.0000 95,175.00	37 1/2
40	98.0000 21,776.00	132.0000 30,630.00	30.0000 6,330.00	20.0000 4,220.00	16.0000 3,376.00	12.0000 2,532.00	8.0000 1,688.00	126.0000 28,920.00	92.0000 20,424.00	16.0000 3,376.00	6.0000 1,266.00	80.0000 16,880.00	24.0000 5,064.00	80.0000 16,880.00	240.0000 101,520.00	40
45	110.2500 24,733.50	148.5000 35,668.50	33.7500 7,121.25	22.5000 4,747.50	18.0000 3,798.00	13.5000 2,848.50	9.0000 1,899.00	141.7500 33,553.50	103.5000 23,068.50	18.0000 3,798.00	6.7500 1,424.25	90.0000 18,990.00	27.0000 5,697.00	90.0000 18,990.00	270.0000 128,250.00	45
50	122.5000 27,957.50	165.0000 41,187.00	37.5000 7,912.50	25.0000 5,275.00	20.0000 4,220.00	15.0000 3,165.00	10.0000 2,110.00	157.5000 38,619.00	115.0000 25,950.00	20.0000 4,220.00	7.5000 1,582.50	100.0000 22,240.00	30.0000 6,330.00	100.0000 22,240.00	300.0000 158,400.00	50
55	134.7500 31,444.00	181.5000 67,155.00	41.2500 8,703.75	27.5000 5,802.50	22.0000 4,642.00	16.5000 3,481.50	11.0000 2,321.00	173.2500 44,118.75	126.5000 29,062.50	22.0000 4,642.00	8.2500 1,740.75	110.0000 24,670.00	33.0000 6,963.00	110.0000 24,670.00	330.0000 191,730.00	55
60	147.0000 35,193.00	198.0000 73,260.00	45.0000 9,495.00	30.0000 6,330.00	24.0000 5,064.00	18.0000 3,798.00	12.0000 2,532.00	189.0000 69,930.00	138.0000 32,406.00	24.0000 5,064.00	9.0000 1,899.00	120.0000 27,270.00	36.0000 7,596.00	120.0000 27,270.00	360.0000 228,240.00	60
65	159.2500 39,210.50	214.5000 90,733.50	48.7500 10,286.25	32.5000 6,857.50	26.0000 5,486.00	19.5000 4,114.50	13.0000 2,743.00	204.7500 75,757.50	149.5000 35,985.50	26.0000 5,486.00	9.7500 2,057.25	130.0000 30,060.00	39.0000 8,229.00	130.0000 30,060.00	390.0000 267,930.00	65
66 2/3	163.3333 40,605.32	220.0000 93,060.00	50.0000 10,550.00	33.3333 7,033.33	26.6667 5,626.67	20.0000 4,220.00	13.3333 2,813.33	210.0000 77,700.00	153.3333 37,237.32	26.6667 5,626.67	10.0000 2,110.00	133.3333 31,024.66	40.0000 8,440.00	133.3333 31,024.66	400.0000 296,000.00	66 2/3
70	171.5000 43,490.50	231.0000 97,713.00	52.5000 11,077.50	35.0000 7,385.00	28.0000 5,908.00	21.0000 4,431.00	14.0000 2,954.00	220.5000 93,271.50	161.0000 39,802.00	28.0000 5,908.00	10.5000 2,215.50	140.0000 33,018.00	42.0000 8,862.00	140.0000 33,018.00	420.0000 310,800.00	70
75	183.7500 67,987.50	247.5000 117,562.50	56.2500 11,868.75	37.5000 7,912.50	30.0000 6,330.00	22.5000 4,747.50	15.0000 3,165.00	236.2500 99,933.75	172.5000 43,849.50	30.0000 6,330.00	11.2500 2,373.75	150.0000 36,144.00	45.0000 9,495.00	150.0000 36,144.00	450.0000 356,400.00	75
80	196.0000 72,520.00	264.0000 125,400.00	60.0000 12,660.00	40.0000 8,440.00	32.0000 6,752.00	24.0000 5,064.00	16.0000 3,376.00	252.0000 119,700.00	184.0000 68,080.00	32.0000 6,752.00	12.0000 2,532.00	160.0000 39,464.00	48.0000 10,128.00	160.0000 39,464.00	480.0000 380,160.00	80
85	208.2500 77,052.50	280.5000 148,104.00	63.7500 13,451.25	42.5000 8,967.50	34.0000 7,174.00	25.5000 5,380.50	17.0000 3,587.00	267.7500 127,181.25	195.5000 72,335.00	34.0000 7,174.00	12.7500 2,690.25	170.0000 42,952.00	51.0000 10,761.00	170.0000 42,952.00	510.0000 403,920.00	85
90	220.5000 93,271.50	297.0000 156,816.00	67.5000 14,242.50	45.0000 9,495.00	36.0000 7,596.00	27.0000 5,697.00	18.0000 3,798.00	283.5000 149,688.00	207.0000 76,590.00	36.0000 7,596.00	13.5000 2,848.50	180.0000 46,608.00	54.0000 11,394.00	180.0000 46,608.00	540.0000 427,680.00	90
95	232.7500 98,453.25	313.5000 182,143.50	71.2500 15,033.75	47.5000 10,022.50	38.0000 8,018.00	28.5000 6,013.50	19.0000 4,009.00	299.2500 158,004.00	218.5000 92,425.50	38.0000 8,018.00	14.2500 3,006.75	190.0000 70,300.00	57.0000 12,027.00	190.0000 70,300.00	570.0000 451,440.00	95
100	245.0000 116,375.00	330.0000 191,730.00	75.0000 15,825.00	50.0000 10,550.00	40.0000 8,440.00	30.0000 6,330.00	20.0000 4,220.00	315.0000 183,015.00	230.0000 97,290.00	40.0000 8,440.00	15.0000 3,165.00	200.0000 74,000.00	60.0000 12,660.00	200.0000 74,000.00	600.0000 XXXXXXXX	100

Footnote: Hand or Thumb and First and Second Fingers (on 1 Hand) or 4 Fingers (on 1 Hand)

EXPLANATION: The percent columns on the outside of the chart represent percentage of disability. The remaining columns show this percentage in terms of weeks and total benefits. The top figure in each box represents weeks, and the lower figure is dollar benefits.

WEEKS	90	90	97	103	109	115	121	127	133	139	145	151	157	163	169	175											
		96	102	108	114	120	126	132	138	144	150	156	162	168	174	180											
MAX. DOLLAR AMT.	18,990	21,312	22,704	24,162	25,686	27,270	28,920	30,630	32,406	34,242	36,144	38,112	40,140	42,234	44,388	46,608											
90 20% of SAWW	211																										
91 TO 96 21% of SAWW	222	222																									
97 TO 102 22% of SAWW	222	222	232																								
103 TO 108 23% of SAWW	222	222	232	243																							
109 TO 114 24% of SAWW	222	222	232	243	254																						
115 TO 120 25% of SAWW	222	222	232	243	254	264																					
121 TO 126 26% of SAWW	222	222	232	243	254	264	275																				
127 TO 132 27% of SAWW	222	222	232	243	254	264	275	285																			
133 TO 138 28% of SAWW	222	222	232	243	254	264	275	285	296																		
139 TO 144 29% of SAWW	222	222	232	243	254	264	275	285	296	306																	
145 TO 150 30% of SAWW	222	222	232	243	254	264	275	285	296	306	317																
151 TO 156 31% of SAWW	222	222	232	243	254	264	275	285	296	306	317	328															
157 TO 162 32% of SAWW	222	222	232	243	254	264	275	285	296	306	317	328	338														
163 TO 168 33% of SAWW	222	222	232	243	254	264	275	285	296	306	317	328	338	349													
169 TO 174 34% of SAWW	222	222	232	243	254	264	275	285	296	306	317	328	338	349	359												
175 TO 180 35% of SAWW	222	222	232	243	254	264	275	285	296	306	317	328	338	349	359	370											
181 TO 210 35% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	370										
211 TO 240 40% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	423									
241 TO 270 45% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	475								
271 TO 300 50% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	528							
301 TO 330 55% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	581						
331 TO 360 60% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	634					
361 TO 390 65% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	687				
391 TO 420 70% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	740			
421 TO 600 75% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	792		

SAWW $ 1,056.54
Maximum Rate $792.00
Maximum Rate Chart
Permanent Partial Disability
Compensation Rate - 70% of Wage
Minimum Rate $35.00 per week
Amputation - 30% of Award - Added
no counsel fee
25 Weeks Additional for Enucleation of Eye

1/1/2011
TOTAL PERMANENT DISABILITY- 70% of Wages - Maximum $792.00 - Minimum $211.00 - 450 Weeks, Plus Additional Benefits as Set Forth in R.S. 34:15-12(b)
TEMPORARY DISABILITY - 70% of Wages - Maximum $792.00 - Minimum $211.00 - Maximum 400 Weeks
DEATH BENEFITS - 70% of Wages - 450 Weeks Plus Spouse's Statutory Benefits - Maximum Rate $792.00
FUNERAL ALLOWANCE - Not to Exceed $3,500.00

SCHEDULE OF DISABILITIES AND MAXIMUM BENEFITS EXCLUSIVE OF AMPUTATION AND ENUCLEATION

EFFECTIVE 1/1/2010

PER-CENT	HAND 245 WEEKS	ARM 330 WEEKS	FINGERS - SEE FOOTNOTE					LEG 315 WEEKS	FOOT 230 WEEKS	TOES		EYE 200 WEEKS	HEARING		PARTIAL TOTAL BASED ON 600 WEEKS	PER-CENT
			THUMB 75 WEEKS	FIRST 50 WEEKS	SECOND 40 WEEKS	THIRD 30 WEEKS	FOURTH 20 WEEKS			GREAT TOE 40 WEEKS	OTHER TOE 15 WEEKS		1 EAR 60 WEEKS	2 EARS 200 WEEKS		
1	2 4500 519 40	3 3000 699 60	0 7500 159 00	0 5000 106 00	0 4000 84 80	0 3000 63 60	0 2000 42 40	3 1500 667 80	2 3000 487 60	0 4000 84 80	0 1500 31 80	2 0000 424 00	0 6000 127 20	2 0000 424 00	6 0000 1 272 00	1
1 1/2	3 6750 779 10	4 9500 1 049 40	1 1250 238 50	0 7500 159 00	0 6000 127 20	0 4500 95 40	0 3000 63 60	4 7250 1,001 70	3 4500 731 40	0 6000 127 20	0 2250 47 70	3 0000 636 00	0 9000 190 80	3 0000 636 00	9 0000 1 908 00	1 1/2
2	4 9000 1 038 80	6 6000 1 399 20	1 5000 318 00	1 0000 212 00	0 8000 169 60	0 6000 127 20	0 4000 84 80	6 3000 1,335.60	4 6000 975 20	0 8000 169 60	0 3000 63 60	4 0000 848 00	1 2000 254 40	4 0000 848 00	12 0000 2 544 00	2
2 1/2	6 1250 1 298 50	8 2500 1 749 00	1 8750 397 50	1 2500 265 00	1 0000 212 00	0 7500 159.00	0 5000 106 00	7 8750 1 669 50	5 7500 1 219.00	1 0000 212 00	0 3750 79 50	5 0000 1 060 00	1 5000 318 00	5 0000 1 060 00	15 0000 3 180 00	2 1/2
3	7 3500 1 558 20	9 9000 2 098 80	2 2500 477 00	1 5000 318 00	1 2000 254 40	0 9000 190 80	0 6000 127 20	9 4500 2,003 40	6 9000 1 462 80	1 2000 254 40	0 4500 95 40	6 0000 1 272 00	1 8000 381 60	6 0000 1 272 00	18 0000 3,816 00	3
3 1/2	8 5750 1 817 50	11 5500 2 448 60	2 6250 556 50	1 7500 371 00	1 4000 296 80	1 0500 222 60	0 7000 148 40	11 0250 2 337 30	8 0500 1 706 60	1 4000 296 80	0 5250 111 30	7 0000 1 484 00	2 1000 445 20	7 0000 1 484 00	21 0000 4 452 00	3 1/2
4	9 8000 2 077 60	13 2000 2 798 40	3 0000 636 00	2 0000 424 00	1 6000 339 20	1 2000 254 40	0 8000 169 60	12 6000 2,671 20	9 2000 1 950 40	1 6000 339 20	0 6000 127 20	8 0000 1 696 00	2 4000 508 80	8 0000 1 696 00	24 0000 5,088 00	4
5	12 2500 2 597 00	16 5000 3 498 00	3 7500 795 00	2 5000 530 00	2 0000 424 00	1 5000 318 00	1 0000 212 00	15 7500 3 339 00	11 5000 2 438 00	2 0000 424 00	0 7500 159 00	10 0000 2 120 00	3 0000 636 00	10 0000 2 120 00	30 0000 6 360 00	5
7 1/2	18 3750 3 895 50	24 7500 5 247 00	5 6250 1 192 50	3 7500 795 00	3 0000 636 00	2 2500 477 00	1 5000 318 00	23 6250 5 008 50	17 2500 3 657 00	3 0000 636 00	1 1250 238 50	15 0000 3,180 00	4 5000 954 00	15 0000 3 180 00	45 0000 9,540 00	7 1/2
10	24 5000 5,194 00	33 0000 6 996 00	7 5000 1 590 00	5 0000 1 060 00	4 0000 848 00	3 0000 636 00	2.0000 424 00	31 5000 6,678 00	23 0000 4 876 00	4 0000 848 00	1 5000 318 00	20 0000 4 240 00	6 0000 1 272 00	20 0000 4 240 00	60 0000 12 720 00	10
12 1/2	30 6250 6,492 50	41 2500 8 745 00	9 3750 1 987 50	6 2500 1 325 00	5 0000 1 060 00	3 7500 795 00	2 5000 530 00	39 3750 8,347 50	28 7500 6 095 00	5 0000 1 060 00	1 8750 397 50	25 0000 5 300 00	7 5000 1 590 00	25 0000 5,300 00	75 0000 15 900 00	12 1/2
15	36 7500 7 791 00	49 5000 10 494 00	11 2500 2 385 00	7 5000 1 590.00	6 0000 1 272 00	4 5000 954 00	3 0000 636 00	47 2500 10 017 00	34.5000 7 314 00	6 0000 1 272 00	2 2500 477 00	30 0000 6,360 00	9 0000 1 908 00	30 0000 6,360 00	90 0000 19,080 00	15
17 1/2	42 8750 9,089 50	57 7500 12 243 00	13 1250 2 782 50	8 7500 1 855 00	7 0000 1 484 00	5 2500 1 113 00	3 5000 742 00	55 1250 11 686 50	40 2500 8 533 00	7 0000 1 484 00	2 6250 556 50	35 0000 7 420 00	10 5000 2 226 00	35 0000 7 420 00	105 0000 22 442 00	17 1/2
20	49 0000 10 388 00	66 0000 13 992.00	15 0000 3 180 00	10 0000 2 120 00	8 0000 1 696 00	6 0000 1 272 00	4 0000 848 00	63 0000 13 356 00	46 0000 9 752 00	8 0000 1 696 00	3 0000 636 00	40 0000 8 480 00	12 0000 2 544 00	40 0000 8 480 00	120 0000 27 288 00	20
22 1/2	55 1250 11 686 50	74 2500 15 741 00	16 8750 3 577 50	11 2500 2 385 00	9 0000 1 908 00	6 7500 1 431 00	4 5000 954 00	70 8750 15 025 50	51 7500 10,971 00	9 0000 1 908 00	3 3750 715 50	45 0000 9 540 00	13 5000 2 862 00	45 0000 9 540 00	135 0000 31 545 00	22 1/2
25	61 2500 12 985 00	82 5000 17 490 00	18 7500 3 975 00	12 5000 2 650.00	10 0000 2 120 00	7 5000 1 590 00	5 0000 1 060 00	78 7500 16,695 00	57 5000 12 190 00	10 0000 2 120 00	3 7500 795 00	50 0000 10 600 00	15 0000 3 180 00	50 0000 10 600 00	150 0000 35 185 00	25
27 1/2	67 3750 14 283 50	90 7500 20 146 50	20 6250 4 372 50	13 7500 2 915.00	11 0000 2 332 00	8 2500 1 749 00	5 5000 1 166 00	86 6250 18,384 50	63 2500 13 409.00	11 0000 2 332 00	4 1250 874 50	55 0000 11 660 00	16 5000 3 498 00	55 0000 11 660 00	165 0000 41 238 00	27 1/2
30	73 5000 15,582 00	99 0000 22 011 00	22 5000 4 770 00	15 0000 3 180 00	12 0000 2 544 00	9 0000 1 908 00	6 0000 1 272 00	94 5000 20,979 00	69 0000 14 628 00	12 0000 2 544 00	4 5000 954 00	60 0000 12 720 00	18 0000 3 816 00	60 0000 12 720 00	180 0000 46 674 00	30
33 1/3	81 6667 17 313 34	110 0000 24,682 00	25 0000 5 300 00	16 6667 3 533 34	13 3333 2 828 66	10 0000 2.120 00	6 6667 1 413 34	105 0000 23,442 00	76 6667 16 253 34	13 3333 2 826 65	5 0000 1 060 00	66 6667 14 133 34	20 0000 4 240 00	66 6667 14 133 34	200 0000 74 200 00	33 1/3
35	85 7500 18 179 00	115 5000 26,095 50	26 2500 5 565 00	17 5000 3 710 00	14 0000 2 968 00	10 5000 2 226 00	7 0000 1 484 00	110 2500 24,745 50	80 5000 17 066 00	14 0000 2 968 00	5 2500 1 113 00	70 0000 14 840 00	21 0000 4 452 00	70 0000 14 840 00	210 0000 77 910 00	35
37 1/2	91 8750 20 396 25	123 7500 28 319 25	28 1250 5,962 50	18 7500 3,975 00	15 0000 3 180 00	11 2500 2 385 00	7 5000 1 590.00	118 1250 26,791 13	86 2500 18,285.00	15 0000 3 180 00	5 6250 1 192 50	75 0000 15 900 00	22 5000 4 770 00	75 0000 15 900 00	225 0000 95 400 00	37 1/2
40	98 0000 21,778 00	132 0000 30,654 00	30 0000 6 360 00	20 0000 4 240 00	16 0000 3,392 00	12 0000 2 544 00	8 0000 1 696 00	126 0000 28,938 00	92 0000 20 424 00	16 0000 3 392 00	6 0000 1 272 00	80 0000 16 960 00	24 0000 5 089 00	80 0000 16,960 00	240 0000 101 760 00	40
45	110 2500 24,745 50	148 5000 35 709 00	33 7500 7 155 00	22 5000 4 770 00	18 0000 3,816 00	13 5000 2,862 00	9 0000 1 908 00	141 7500 33 587 25	103 5000 23 076 00	18 0000 3 816 00	6 7500 1 431 00	90 0000 19 080 00	27 0000 5,724 00	90 0000 19 080 00	270 0000 128 790 00	45
50	122 5000 27,975 50	165 0000 41 238 00	37 5000 7 950 00	25 0000 5 300 00	20 0000 4 240.00	15 0000 3,180 00	10 0000 2 120 00	157 5000 38,662 50	115 0000 25 993 00	20 0000 4 240 00	7 5000 1,590 00	100 0000 22 244 00	30 0000 6 360 00	100 0000 22 244 00	300 0000 159 000 00	50
55	134 7500 31 470 75	181 5000 67 336 50	41 2500 8 745 00	27 5000 5 830 00	22 0000 4 664 00	16.5000 3 498 00	11 0000 2 332 00	173 2500 44,178 00	126 5000 29 081 00	22 0000 4 664 00	8 2500 1 749 00	110 0000 24 682 00	33 0000 6 996 00	110 0000 24 682 00	330 0000 192 390 00	55
60	147 0000 35 232 00	198 0000 73 458 00	45 0000 9 540 00	30 0000 6 360 00	24 0000 5,088 00	18 0000 3 816.00	12 0000 2 544 00	189 0000 70,119 00	138 0000 32 496 00	24 0000 5 088 00	9 0000 1 908 00	120 0000 27 288 00	36 0000 7 632 00	120 0000 27 288 00	360 0000 228 960 00	60
65	159 2500 39 255 75	214 5000 90,948.00	48 7500 10,335 00	32 5000 6 890 00	26.0000 5 512 00	19 5000 4 134 00	13 0000 2 756 00	204 7500 75,962 25	149 5000 36,027 00	26 0000 5 512 00	9 7500 2 067 00	130 0000 30 082 00	39 0000 8 268 00	130 0000 30 082 00	390 0000 268 710 00	65
66 2/3	163 3333 40,654 66	220 0000 93 280 00	50 0000 10 600 00	33 3333 7,068 66	26 6667 5,653 34	20 0000 4 240 00	13 3333 2 826 66	210 0000 77 910 00	153 3333 37 279 32	26 6667 5,653 34	10 0000 2 120.00	133 3333 31,049 99	40 0000 8,480 00	133 3333 31 049 99	400 0000 296,800 00	66 2/3
70	171 5000 43 548 00	231 0000 97 944 00	52 5000 11 130 00	35 0000 7 420 00	28 0000 5,936 00	21 0000 4 452 00	14 0000 2 968 00	220 5000 93,492 00	161 0000 39 849 00	28 0000 5,936 00	10 5000 2 226 00	140 0000 33,050 00	42 0000 8 904 00	140 0000 33,050 00	420 0000 311 840 00	70
75	183 7500 68,171 25	247 5000 118,057 50	56 2500 11 925 00	37 5000 7,950 00	30 0000 6 360 00	22 5000 4 770 00	15.0000 3 180.00	236 2500 100 170 00	172 5000 43,508 00	30 0000 6,360 00	11 2500 2,385 00	150 0000 35 185 00	45 0000 9 540 00	150 0000 36 185 00	450 0000 357 300 00	75
80	196 0000 72 716 00	264 0000 125 928 00	60 0000 12,720 00	40 0000 8 480 00	32.0000 6 784 00	24 0000 5,088 00	16 0000 3,392 00	252 0000 120 204 00	184 0000 68 264 00	32 0000 6 784 00	12 0000 2 544 00	160 0000 39 510 00	48 0000 10 176 00	160 0000 39,510 00	480 0000 381 120 00	80
85	208 2500 77 260 75	280 5000 148 665 00	63 7500 13 515 00	42 5000 9,010 00	34 0000 7 208 00	25 5000 5 406 00	17 0000 3,604 00	267 7500 127 716 75	195 5000 72,530 50	34 0000 7 208.00	12 7500 2 703 00	170 0000 43,008 00	51 0000 10,812 00	170 0000 43,008 00	510 0000 404 940 00	85
90	220 5000 93 492 00	297 0000 157 410.00	67 5000 14 310 00	45 0000 9 540 00	36 0000 7 632 00	27 0000 5 724 00	18 0000 3 816 00	283 5000 150 255 00	207 0000 76 797 00	36 0000 7 632.00	13 5000 2 862 00	180 0000 46,674 00	54 0000 11,448 00	180 0000 46 674 00	540 0000 428 760 00	90
95	232 7500 98,686 00	313 5000 182 770 50	71 2500 15 105 00	47 5000 10,070 00	38.0000 8 056 00	28 5000 6 042 00	19 0000 4,028 00	299 2500 158,602 50	218 5000 92,644 00	38 0000 8 056.00	14 2500 3 021 00	190 0000 70 490 00	57 0000 12 084 00	190 0000 70 490 00	570 0000 452 580 00	95
100	245.0000 116,865 00	330 0000 192,390 00	75 0000 15 900 00	50 0000 10 600 00	40 0000 8 480 00	30.0000 8 360 00	20 0000 4 240 00	315 0000 183 845 00	230 0000 97 520 00	40 0000 8 480 00	15 0000 3 180 00	200 0000 74 200 00	60 0000 12 720 00	200 0000 74 200 00	600 0000 XXXXXXXX	100

Footnote: Hand or Thumb and First and Second Fingers (on 1 Hand) or 4 Fingers (on 1 Hand)

EXPLANATION: The percent columns on the outside of the chart represent percentage of disability. The remaining columns show this percentage in terms of weeks and total benefits. The top figure in each box represents weeks, and the lower figure is dollar benefits.

WEEKS	90	90	97	103	109	115	121	127	133	139	145	151	157	163	169	175			
		96	102	108	114	120	126	132	138	144	150	156	162	168	174	180			
MAX. DOLLAR AMT.	19,080	21,312	22,710	24,174	25,698	27,288	28,936	30,654	32,436	34,278	36,186	38,154	40,188	42,288	44,446	46,674			
90 20% of SAWW	212																		
91 TO 96 21% of SAWW	222	222																	
97 TO 102 22% of SAWW	222	222	233																
103 TO 108 23% of SAWW	222	222	233	244															
109 TO 114 24% of SAWW	222	222	233	244	254														
115 TO 120 25% of SAWW	222	222	233	244	254	265													
121 TO 126 26% of SAWW	222	222	233	244	254	265	275												
127 TO 132 27% of SAWW	222	222	233	244	254	265	275	286											
133 TO 138 28% of SAWW	222	222	233	244	254	265	275	286	297										
139 TO 144 29% of SAWW	222	222	233	244	254	265	275	286	297	307									
145 TO 150 30% of SAWW	222	222	233	244	254	265	275	286	297	307	318								
151 TO 156 31% of SAWW	222	222	233	244	254	265	275	286	297	307	318	328							
157 TO 162 32% of SAWW	222	222	233	244	254	265	275	286	297	307	318	328	339						
163 TO 168 33% of SAWW	222	222	233	244	254	265	275	286	297	307	318	328	339	350					
169 TO 174 34% of SAWW	222	222	233	244	254	265	275	286	297	307	318	328	339	350	360				
175 TO 180 35% of SAWW	222	222	233	244	254	265	275	286	297	307	318	328	339	350	360	371			
181 TO 210 35% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	371		
211 TO 240 40% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	424	
241 TO 270 45% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	477
271 TO 300 50% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
301 TO 330 55% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
331 TO 360 60% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
361 TO 390 65% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
391 TO 420 70% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
421 TO 600 75% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

SAWW $ 1,059.29
Maximum Rate $794.00
Maximum Rate Chart
Permanent Partial Disability
Compensation Rate - 70% of Wage
Minimum Rate $35.00 per week
Amputation - 30% of Award - Added
no counsel fee
25 Weeks Additional for Enucleation
of Eye

530						
-	583					
-	-	636				
-	-	-	689			
-	-	-	-	742		
-	-	-	-	-	794	

1/1/2010
TOTAL PERMANENT DISABILITY- 70% of Wages - Maximum $794.00 - Minimum $212.00 - 450 Weeks, Plus Additional Benefits as Set Forth in R.S. 34:15-12(b)
TEMPORARY DISABILITY - 70% of Wages - Maximum $794.00 - Minimum $212.00 - Maximum 400 Weeks
DEATH BENEFITS - 70% of Wages - 450 Weeks Plus Spouse's Statutory Benefits - Maximum Rate $794.00
FUNERAL ALLOWANCE - Not to Exceed $3,500.00

SCHEDULE OF DISABILITIES AND MAXIMUM BENEFITS EXCLUSIVE OF AMPUTATION AND ENUCLEATION

EFFECTIVE 1/1/2009

PER-CENT	HAND 245 WEEKS	ARM 330 WEEKS	FINGERS - SEE FOOTNOTE					LEG 315 WEEKS	FOOT 230 WEEKS	TOES		EYE 200 WEEKS	HEARING		PARTIAL TOTAL BASED ON 600 WEEKS	PER-CENT
			THUMB 75 WEEKS	FIRST 50 WEEKS	SECOND 40 WEEKS	THIRD 30 WEEKS	FOURTH 20 WEEKS			GREAT TOE 40 WEEKS	OTHER TOE 15 WEEKS		1 EAR 60 WEEKS	2 EARS 200 WEEKS		
1	2.4500 504.70	3.3000 679.80	0.7500 154.50	0.5000 103.00	0.4000 82.40	0.3000 61.80	0.2000 41.20	3.1500 648.90	2.3000 473.80	0.4000 82.40	0.1500 30.90	2.0000 412.00	0.6000 123.60	2.0000 412.00	6.0000 1,236.00	1
1 1/2	3.6750 757.05	4.9500 1,019.70	1.1250 231.75	0.7500 154.50	0.6000 123.60	0.4500 92.70	0.3000 61.80	4.7250 973.35	3.4500 710.70	0.6000 123.60	0.2250 46.35	3.0000 618.00	0.9000 185.40	3.0000 618.00	9.0000 1,854.00	1 1/2
2	4.9000 1,009.40	6.6000 1,359.60	1.5000 309.00	1.0000 206.00	0.8000 164.80	0.6000 123.60	0.4000 82.40	6.3000 1,297.80	4.6000 947.60	0.8000 164.80	0.3000 61.80	4.0000 824.00	1.2000 247.20	4.0000 824.00	12.0000 2,472.00	2
2 1/2	6.1250 1,261.75	8.2500 1,699.50	1.8750 386.25	1.2500 257.50	1.0000 206.00	0.7500 154.50	0.5000 103.00	7.8750 1,622.25	5.7500 1,184.50	1.0000 206.00	0.3750 77.25	5.0000 1,030.00	1.5000 309.00	5.0000 1,030.00	15.0000 3,090.00	2 1/2
3	7.3500 1,514.10	9.9000 2,039.40	2.2500 463.50	1.5000 309.00	1.2000 247.20	0.9000 185.40	0.6000 123.60	9.4500 1,946.70	6.9000 1,421.40	1.2000 247.20	0.4500 92.70	6.0000 1,236.00	1.8000 370.80	6.0000 1,236.00	18.0000 3,708.00	3
3 1/2	8.5750 1,766.45	11.5500 2,379.30	2.6250 540.75	1.7500 360.50	1.4000 288.40	1.0500 216.30	0.7000 144.20	11.0250 2,271.15	8.0500 1,658.30	1.4000 288.40	0.5250 108.15	7.0000 1,442.00	2.1000 432.60	7.0000 1,442.00	21.0000 4,326.00	3 1/2
4	9.8000 2,018.80	13.2000 2,719.20	3.0000 618.00	2.0000 412.00	1.6000 329.60	1.2000 247.20	0.8000 164.80	12.6000 2,595.60	9.2000 1,895.20	1.6000 329.60	0.6000 123.60	8.0000 1,648.00	2.4000 494.40	8.0000 1,648.00	24.0000 4,944.00	4
5	12.2500 2,523.50	16.5000 3,399.00	3.7500 772.50	2.5000 515.00	2.0000 412.00	1.5000 309.00	1.0000 206.00	15.7500 3,244.50	11.5000 2,369.00	2.0000 412.00	0.7500 154.50	10.0000 2,060.00	3.0000 618.00	10.0000 2,060.00	30.0000 6,180.00	5
7 1/2	18.3750 3,785.25	24.7500 5,098.50	5.6250 1,158.75	3.7500 772.50	3.0000 618.00	2.2500 463.50	1.5000 309.00	23.6250 4,866.75	17.2500 3,553.50	3.0000 618.00	1.1250 231.75	15.0000 3,090.00	4.5000 927.00	15.0000 3,090.00	45.0000 9,270.00	7 1/2
10	24.5000 5,047.00	33.0000 6,798.00	7.5000 1,545.00	5.0000 1,030.00	4.0000 824.00	3.0000 618.00	2.0000 412.00	31.5000 6,488.00	23.0000 4,738.00	4.0000 824.00	1.5000 309.00	20.0000 4,120.00	6.0000 1,236.00	20.0000 4,120.00	60.0000 12,360.00	10
12 1/2	30.6250 6,308.75	41.2500 8,497.50	9.3750 1,931.25	6.2500 1,287.50	5.0000 1,030.00	3.7500 772.50	2.5000 515.00	39.3750 8,111.25	28.7500 5,922.50	5.0000 1,030.00	1.8750 386.25	25.0000 5,150.00	7.5000 1,545.00	25.0000 5,150.00	75.0000 15,450.00	12 1/2
15	36.7500 7,570.50	49.5000 10,197.00	11.2500 2,317.50	7.5000 1,545.00	6.0000 1,236.00	4.5000 927.00	3.0000 618.00	47.2500 9,733.50	34.5000 7,107.00	6.0000 1,236.00	2.2500 463.50	30.0000 6,180.00	9.0000 1,854.00	30.0000 6,180.00	90.0000 18,540.00	15
17 1/2	42.8750 8,832.25	57.7500 11,896.50	13.1250 2,703.75	8.7500 1,802.50	7.0000 1,442.00	5.2500 1,081.50	3.5000 721.00	55.1250 11,355.75	40.2500 8,291.50	7.0000 1,442.00	2.6250 540.75	35.0000 7,210.00	10.5000 2,163.00	35.0000 7,210.00	105.0000 22,905.00	17 1/2
20	49.0000 10,094.00	66.0000 13,596.00	15.0000 3,090.00	10.0000 2,060.00	8.0000 1,648.00	6.0000 1,236.00	4.0000 824.00	63.0000 12,978.00	46.0000 9,476.00	8.0000 1,648.00	3.0000 618.00	40.0000 8,240.00	12.0000 2,472.00	40.0000 8,240.00	120.0000 26,652.00	20
22 1/2	55.1250 11,355.75	74.2500 15,295.50	16.8750 3,476.25	11.2500 2,317.50	9.0000 1,854.00	6.7500 1,390.50	4.5000 927.00	70.8750 14,600.25	51.7500 10,660.50	9.0000 1,854.00	3.3750 695.25	45.0000 9,270.00	13.5000 2,781.00	45.0000 9,270.00	135.0000 30,795.00	22 1/2
25	61.2500 12,617.50	82.5000 16,995.00	18.7500 3,862.50	12.5000 2,575.00	10.0000 2,060.00	7.5000 1,545.00	5.0000 1,030.00	78.7500 16,222.50	57.5000 11,845.00	10.0000 2,060.00	3.7500 772.50	50.0000 10,300.00	15.0000 3,090.00	50.0000 10,300.00	150.0000 35,310.00	25
27 1/2	67.3750 13,879.25	90.7500 19,592.75	20.6250 4,248.75	13.7500 2,832.50	11.0000 2,266.00	8.2500 1,699.50	5.5000 1,133.00	86.6250 17,844.75	63.2500 13,029.50	11.0000 2,266.00	4.1250 849.75	55.0000 11,330.00	16.5000 3,399.00	55.0000 11,330.00	165.0000 40,230.00	27 1/2
30	73.5000 15,141.00	99.0000 21,513.00	22.5000 4,635.00	15.0000 3,090.00	12.0000 2,472.00	9.0000 1,854.00	6.0000 1,236.00	94.5000 20,506.50	69.0000 14,214.00	12.0000 2,472.00	4.5000 927.00	60.0000 12,360.00	18.0000 3,708.00	60.0000 12,360.00	180.0000 45,522.00	30
33 1/3	81.6667 16,823.34	110.0000 24,112.00	25.0000 5,150.00	16.6667 3,433.34	13.3333 2,746.66	10.0000 2,060.00	6.6667 1,373.34	105.0000 22,905.00	76.6667 15,793.34	13.3333 2,746.66	5.0000 1,030.00	66.6667 13,733.34	20.0000 4,120.00	66.6667 13,733.34	200.0000 72,200.00	33 1/3
35	85.7500 17,664.50	115.5000 25,491.00	26.2500 5,407.50	17.5000 3,605.00	14.0000 2,884.00	10.5000 2,163.00	7.0000 1,442.00	110.2500 24,174.00	80.5000 16,583.00	14.0000 2,884.00	5.2500 1,081.50	70.0000 14,420.00	21.0000 4,326.00	70.0000 14,420.00	210.0000 75,810.00	35
37 1/2	91.8750 19,936.88	123.7500 27,657.00	28.1250 5,793.75	18.7500 3,862.50	15.0000 3,090.00	11.2500 2,317.50	7.5000 1,545.00	118.1250 26,168.25	86.2500 17,767.50	15.0000 3,090.00	5.6250 1,158.75	75.0000 15,450.00	22.5000 4,635.00	75.0000 15,450.00	225.0000 92,925.00	37 1/2
40	98.0000 21,266.00	132.0000 29,920.00	30.0000 6,180.00	20.0000 4,120.00	16.0000 3,296.00	12.0000 2,472.00	8.0000 1,648.00	126.0000 28,260.00	92.0000 19,964.00	16.0000 3,296.00	6.0000 1,236.00	80.0000 16,480.00	24.0000 4,944.00	80.0000 16,480.00	240.0000 99,120.00	40
45	110.2500 24,174.00	148.5000 34,846.50	33.7500 6,952.50	22.5000 4,635.00	18.0000 3,708.00	13.5000 2,781.00	9.0000 1,854.00	141.7500 32,783.25	103.5000 22,549.50	18.0000 3,708.00	6.7500 1,390.50	90.0000 18,540.00	27.0000 5,562.00	90.0000 18,540.00	270.0000 125,280.00	45
50	122.5000 27,322.00	165.0000 40,230.00	37.5000 7,725.00	25.0000 5,150.00	20.0000 4,120.00	15.0000 3,090.00	10.0000 2,060.00	157.5000 37,725.00	115.0000 25,362.00	20.0000 4,120.00	7.5000 1,545.00	100.0000 21,740.00	30.0000 6,180.00	100.0000 21,740.00	300.0000 154,800.00	50
55	134.7500 30,722.75	181.5000 65,521.50	41.2500 8,497.50	27.5000 5,665.00	22.0000 4,532.00	16.5000 3,399.00	11.0000 2,266.00	173.2500 43,092.75	126.5000 28,399.00	22.0000 4,532.00	8.2500 1,699.50	110.0000 24,112.00	33.0000 6,798.00	110.0000 24,112.00	330.0000 187,110.00	55
60	147.0000 34,383.00	198.0000 71,478.00	45.0000 9,270.00	30.0000 6,180.00	24.0000 4,944.00	18.0000 3,708.00	12.0000 2,472.00	189.0000 68,229.00	138.0000 31,662.00	24.0000 4,944.00	9.0000 1,854.00	120.0000 26,652.00	36.0000 7,416.00	120.0000 26,652.00	360.0000 222,840.00	60
65	159.2500 38,302.50	214.5000 88,568.50	48.7500 10,042.50	32.5000 6,695.00	26.0000 5,356.00	19.5000 4,017.00	13.0000 2,678.00	204.7500 73,914.75	149.5000 35,155.50	26.0000 5,356.00	9.7500 2,008.50	130.0000 29,372.00	39.0000 8,034.00	130.0000 29,372.00	390.0000 261,300.00	65
66 2/3	163.3333 39,663.32	220.0000 90,860.00	50.0000 10,300.00	33.3333 6,866.66	26.6667 5,493.34	20.0000 4,120.00	13.3333 2,746.66	210.0000 75,810.00	153.3333 36,376.66	26.6667 5,493.34	10.0000 2,060.00	133.3333 30,313.32	40.0000 8,240.00	133.3333 30,313.32	400.0000 288,800.00	66 2/3
70	171.5000 42,478.50	231.0000 95,403.00	52.5000 10,815.00	35.0000 7,210.00	28.0000 5,768.00	21.0000 4,326.00	14.0000 2,884.00	220.5000 91,066.50	161.0000 38,880.00	28.0000 5,768.00	10.5000 2,163.00	140.0000 32,260.00	42.0000 8,652.00	140.0000 32,260.00	420.0000 303,240.00	70
75	183.7500 66,333.75	247.5000 114,840.00	56.2500 11,587.50	37.5000 7,725.00	30.0000 6,180.00	22.5000 4,635.00	15.0000 3,090.00	236.2500 97,571.25	172.5000 42,829.50	30.0000 6,180.00	11.2500 2,317.50	150.0000 35,310.00	45.0000 9,270.00	150.0000 35,310.00	450.0000 347,850.00	75
80	196.0000 70,756.00	264.0000 122,496.00	60.0000 12,360.00	40.0000 8,240.00	32.0000 6,592.00	24.0000 4,944.00	16.0000 3,296.00	252.0000 116,928.00	184.0000 66,424.00	32.0000 6,592.00	12.0000 2,472.00	160.0000 38,550.00	48.0000 9,888.00	160.0000 38,550.00	480.0000 371,040.00	80
85	208.2500 75,178.25	280.5000 144,738.00	63.7500 13,132.50	42.5000 8,755.00	34.0000 7,004.00	25.5000 5,253.00	17.0000 3,502.00	267.7500 124,236.00	195.5000 70,575.50	34.0000 7,004.00	12.7500 2,626.50	170.0000 41,952.00	51.0000 10,506.00	170.0000 41,952.00	510.0000 394,230.00	85
90	220.5000 91,066.50	297.0000 153,252.00	67.5000 13,905.00	45.0000 9,270.00	36.0000 7,416.00	27.0000 5,562.00	18.0000 3,708.00	283.5000 146,286.00	207.0000 74,727.00	36.0000 7,416.00	13.5000 2,781.00	180.0000 45,522.00	54.0000 11,124.00	180.0000 45,522.00	540.0000 417,420.00	90
95	232.7500 96,125.75	313.5000 177,754.50	71.2500 14,677.50	47.5000 9,785.00	38.0000 7,828.00	28.5000 5,871.00	19.0000 3,914.00	299.2500 154,413.00	218.5000 90,240.50	38.0000 7,828.00	14.2500 2,935.50	190.0000 68,590.00	57.0000 11,742.00	190.0000 68,590.00	570.0000 440,610.00	95
100	245.0000 113,680.00	330.0000 187,110.00	75.0000 15,450.00	50.0000 10,300.00	40.0000 8,240.00	30.0000 6,180.00	20.0000 4,120.00	315.0000 178,605.00	230.0000 94,990.00	40.0000 8,240.00	15.0000 3,090.00	200.0000 72,200.00	60.0000 12,360.00	200.0000 72,200.00	600.0000 XXXXXXXX	100

Footnote: Hand or Thumb and First and Second Fingers (on 1 Hand) or 4 Fingers (on 1 Hand)

EXPLANATION: The percent columns on the outside of the chart represent percentage of disability. The remaining columns show this percentage in terms of weeks and total benefits. The top figure in each box represents weeks, and the lower figure is dollar benefits.

WEEKS		90	90	97	103	109	115	121	127	133	139	145	151	157	163	169	175											
			96	102	108	114	120	126	132	138	144	150	156	162	168	174	180											
MAX. DOLLAR AMT.		18,540	20,832	22,194	23,616	25,104	26,652	28,260	29,928	31,662	33,456	35,310	37,230	39,210	41,250	43,356	45,522											
90	20% of SAWW	206																										
91 TO 96	21% of SAWW	217	217																									
97 TO 102	22% of SAWW	217	217	227																								
103 TO 108	23% of SAWW	217	217	227	237																							
109 TO 114	24% of SAWW	217	217	227	237	248																						
115 TO 120	25% of SAWW	217	217	227	237	248	258																					
121 TO 126	26% of SAWW	217	217	227	237	248	258	268																				
127 TO 132	27% of SAWW	217	217	227	237	248	258	268	278																			
133 TO 138	28% of SAWW	217	217	227	237	248	258	268	278	289																		
139 TO 144	29% of SAWW	217	217	227	237	248	258	268	278	289	299																	
145 TO 150	30% of SAWW	217	217	227	237	248	258	268	278	289	299	309																
151 TO 156	31% of SAWW	217	217	227	237	248	258	268	278	289	299	309	320															
157 TO 162	32% of SAWW	217	217	227	237	248	258	268	278	289	299	309	320	330														
163 TO 168	33% of SAWW	217	217	227	237	248	258	268	278	289	299	309	320	330	340													
169 TO 174	34% of SAWW	217	217	227	237	248	258	268	278	289	299	309	320	330	340	351												
175 TO 180	35% of SAWW	217	217	227	237	248	258	268	278	289	299	309	320	330	340	351	361											
181 TO 210	35% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	361										
211 TO 240	40% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	413									
241 TO 270	45% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	464								
271 TO 300	50% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	516							
301 TO 330	55% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	567						
331 TO 360	60% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	619					
361 TO 390	65% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	670				
391 TO 420	70% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	722			
421 TO 600	75% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	773		

SAWW $ 1,031.28
Maximum Rate $773.00
Maximum Rate Chart
Permanent Partial Disability
Compensation Rate - 70% of Wage
Minimum Rate $35.00 per week
Amputation - 30% of Award - Added
no counsel fee
25 Weeks Additional for Enucleation
of Eye

1/1/2009

TOTAL PERMANENT DISABILITY - - 70% of Wages - Maximum $773.00 - Minimum $206.00 - 450 Weeks, Plus Additional Benefits as Set Forth in R.S. 34:15-12(b)
TEMPORARY DISABILITY - 70% of Wages - Maximum $773.00 - Minimum $206.00 - Maximum 400 Weeks
DEATH BENEFITS - 70% of Wages - 450 Weeks Plus Spouse's Statutory Benefits - Maximum Rate $773.00
FUNERAL ALLOWANCE - Not to Exceed $3,500.00

SCHEDULE OF DISABILITIES AND MAXIMUM BENEFITS EXCLUSIVE OF AMPUTATION AND ENUCLEATION

EFFECTIVE 1/1/2008

PER-CENT	HAND 245 WEEKS	ARM 330 WEEKS	FINGERS - SEE FOOTNOTE					LEG 315 WEEKS	FOOT 230 WEEKS	TOES		EYE 200 WEEKS	HEARING		PARTIAL TOTAL BASED ON 600 WEEKS	PER-CENT
			THUMB 75 WEEKS	FIRST 50 WEEKS	SECOND 40 WEEKS	THIRD 30 WEEKS	FOURTH 20 WEEKS			GREAT TOE 40 WEEKS	OTHER TOE 15 WEEKS		1 EAR 60 WEEKS	2 EARS 200 WEEKS		
1	2.4500 485.10	3.3000 653.40	0.7500 148.50	0.5000 99.00	0.4000 79.20	0.3000 59.40	0.2000 39.60	3.1500 623.70	2.3000 455.40	0.4000 79.20	0.1500 29.70	2.0000 396.00	0.6000 118.80	2.0000 396.00	6.0000 1,188.00	1
1 1/2	3.6750 727.65	4.9500 980.10	1.1250 222.75	0.7500 148.50	0.6000 118.80	0.4500 89.10	0.3000 59.40	4.7250 935.55	3.4500 683.10	0.6000 118.80	0.2250 44.55	3.0000 594.00	0.9000 178.20	3.0000 594.00	9.0000 1,782.00	1 1/2
2	4.9000 970.20	6.6000 1,306.80	1.5000 297.00	1.0000 198.00	0.8000 158.40	0.6000 118.80	0.4000 79.20	6.3000 1,247.40	4.6000 910.80	0.8000 158.40	0.3000 59.40	4.0000 792.00	1.2000 237.60	4.0000 792.00	12.0000 2,376.00	2
2 1/2	6.1250 1,212.75	8.2500 1,633.50	1.8750 371.25	1.2500 247.50	1.0000 198.00	0.7500 148.50	0.5000 99.00	7.8750 1,559.25	5.7500 1,138.50	1.0000 198.00	0.3750 74.25	5.0000 990.00	1.5000 297.00	5.0000 990.00	15.0000 2,970.00	2 1/2
3	7.3500 1,455.30	9.9000 1,960.20	2.2500 445.50	1.5000 297.00	1.2000 237.60	0.9000 178.20	0.6000 118.80	9.4500 1,871.10	6.9000 1,366.20	1.2000 237.60	0.4500 89.10	6.0000 1,188.00	1.8000 356.40	6.0000 1,188.00	18.0000 3,564.00	3
3 1/2	8.5750 1,697.85	11.5500 2,286.90	2.6250 519.75	1.7500 346.50	1.4000 277.20	1.0500 207.90	0.7000 138.60	11.0250 2,182.95	8.0500 1,593.90	1.4000 277.20	0.5250 103.95	7.0000 1,386.00	2.1000 415.80	7.0000 1,386.00	21.0000 4,158.00	3 1/2
4	9.8000 1,940.40	13.2000 2,613.60	3.0000 594.00	2.0000 396.00	1.6000 316.80	1.2000 237.60	0.8000 158.40	12.6000 2,494.80	9.2000 1,821.60	1.6000 316.80	0.6000 118.80	8.0000 1,584.00	2.4000 475.20	8.0000 1,584.00	24.0000 4,752.00	4
5	12.2500 2,425.50	16.5000 3,267.00	3.7500 742.50	2.5000 495.00	2.0000 396.00	1.5000 297.00	1.0000 198.00	15.7500 3,118.50	11.5000 2,277.00	2.0000 396.00	0.7500 148.50	10.0000 1,980.00	3.0000 594.00	10.0000 1,980.00	30.0000 5,940.00	5
7 1/2	18.3750 3,638.25	24.7500 4,900.50	5.6250 1,113.75	3.7500 742.50	3.0000 594.00	2.2500 445.50	1.5000 297.00	23.6250 4,677.75	17.2500 3,415.50	3.0000 594.00	1.1250 222.75	15.0000 2,970.00	4.5000 891.00	15.0000 2,970.00	45.0000 8,910.00	7 1/2
10	24.5000 4,851.00	33.0000 6,534.00	7.5000 1,485.00	5.0000 990.00	4.0000 792.00	3.0000 594.00	2.0000 396.00	31.5000 6,237.00	23.0000 4,554.00	4.0000 792.00	1.5000 297.00	20.0000 3,960.00	6.0000 1,188.00	20.0000 3,960.00	60.0000 11,880.00	10
12 1/2	30.6250 6,063.75	41.2500 8,167.50	9.3750 1,856.25	6.2500 1,237.50	5.0000 990.00	3.7500 742.50	2.5000 495.00	39.3750 7,796.25	28.7500 5,692.50	5.0000 990.00	1.8750 371.25	25.0000 4,950.00	7.5000 1,485.00	25.0000 4,950.00	75.0000 14,850.00	12 1/2
15	36.7500 7,276.50	49.5000 9,801.00	11.2500 2,227.50	7.5000 1,485.00	6.0000 1,188.00	4.5000 891.00	3.0000 594.00	47.2500 9,355.50	34.5000 6,831.00	6.0000 1,188.00	2.2500 445.50	30.0000 5,940.00	9.0000 1,782.00	30.0000 5,940.00	90.0000 17,820.00	15
17 1/2	42.8750 8,489.25	57.7500 11,434.50	13.1250 2,598.75	8.7500 1,732.50	7.0000 1,386.00	5.2500 1,039.50	3.5000 693.00	55.1250 10,914.75	40.2500 7,969.50	7.0000 1,386.00	2.6250 519.75	35.0000 6,930.00	10.5000 2,079.00	35.0000 6,930.00	105.0000 21,960.00	17 1/2
20	49.0000 9,702.00	66.0000 13,068.00	15.0000 2,970.00	10.0000 1,980.00	8.0000 1,584.00	6.0000 1,188.00	4.0000 792.00	63.0000 12,474.00	46.0000 9,108.00	8.0000 1,584.00	3.0000 594.00	40.0000 7,920.00	12.0000 2,376.00	40.0000 7,920.00	120.0000 25,548.00	20
22 1/2	55.1250 10,914.75	74.2500 14,701.50	16.8750 3,341.25	11.2500 2,227.50	9.0000 1,782.00	6.7500 1,336.50	4.5000 891.00	70.8750 14,033.25	51.7500 10,246.50	9.0000 1,782.00	3.3750 668.25	45.0000 8,910.00	13.5000 2,673.00	45.0000 8,910.00	135.0000 29,523.00	22 1/2
25	61.2500 12,127.50	82.5000 16,335.00	18.7500 3,712.50	12.5000 2,475.00	10.0000 1,980.00	7.5000 1,485.00	5.0000 990.00	78.7500 15,592.50	57.5000 11,385.00	10.0000 1,980.00	3.7500 742.50	50.0000 9,900.00	15.0000 2,970.00	50.0000 9,900.00	150.0000 33,858.00	25
27 1/2	67.3750 13,340.25	90.7500 17,976.00	20.6250 4,083.75	13.7500 2,722.50	11.0000 2,178.00	8.2500 1,633.50	5.5000 1,089.00	86.6250 17,151.75	63.2500 12,523.50	11.0000 2,178.00	4.1250 816.75	55.0000 10,890.00	16.5000 3,267.00	55.0000 10,890.00	165.0000 38,580.00	27 1/2
30	73.5000 14,553.00	99.0000 20,622.00	22.5000 4,455.00	15.0000 2,970.00	12.0000 2,376.00	9.0000 1,782.00	6.0000 1,188.00	94.5000 18,756.00	69.0000 13,662.00	12.0000 2,376.00	4.5000 891.00	60.0000 11,880.00	18.0000 3,564.00	60.0000 11,880.00	180.0000 43,650.00	30
33 1/3	81.6667 16,170.01	110.0000 23,118.00	25.0000 4,950.00	16.6667 3,300.01	13.3333 2,639.99	10.0000 1,980.00	6.6667 1,320.01	105.0000 21,960.00	76.6667 15,180.01	13.3333 2,639.99	5.0000 990.00	66.6667 13,200.01	20.0000 3,960.00	66.6667 13,200.01	200.0000 69,200.00	33 1/3
35	85.7500 16,978.50	115.5000 24,436.50	26.2500 5,197.50	17.5000 3,465.00	14.0000 2,772.00	10.5000 2,079.00	7.0000 1,386.00	110.2500 23,177.25	80.5000 15,939.00	14.0000 2,772.00	5.2500 1,039.50	70.0000 13,860.00	21.0000 4,158.00	70.0000 13,860.00	210.0000 72,660.00	35
37 1/2	91.8750 18,210.00	123.7500 26,511.75	28.1250 5,568.75	18.7500 3,712.50	15.0000 2,970.00	11.2500 2,227.50	7.5000 1,485.00	118.1250 25,084.88	86.2500 17,077.50	15.0000 2,970.00	5.6250 1,113.75	75.0000 14,850.00	22.5000 4,455.00	75.0000 14,850.00	225.0000 89,100.00	37 1/2
40	98.0000 20,404.00	132.0000 28,692.00	30.0000 5,940.00	20.0000 3,960.00	16.0000 3,168.00	12.0000 2,376.00	8.0000 1,584.00	126.0000 27,090.00	92.0000 18,236.00	16.0000 3,168.00	6.0000 1,188.00	80.0000 15,840.00	24.0000 4,752.00	80.0000 15,840.00	240.0000 95,040.00	40
45	110.2500 23,177.25	148.5000 33,412.50	33.7500 6,682.50	22.5000 4,455.00	18.0000 3,564.00	13.5000 2,673.00	9.0000 1,782.00	141.7500 31,430.25	103.5000 21,618.00	18.0000 3,564.00	6.7500 1,336.50	90.0000 17,820.00	27.0000 5,346.00	90.0000 17,820.00	270.0000 120,150.00	45
50	122.5000 26,190.50	165.0000 38,580.00	37.5000 7,425.00	25.0000 4,950.00	20.0000 3,960.00	15.0000 2,970.00	10.0000 1,980.00	157.5000 36,175.50	115.0000 24,313.00	20.0000 3,960.00	7.5000 1,485.00	100.0000 20,840.00	30.0000 5,940.00	100.0000 20,840.00	300.0000 148,500.00	50
55	134.7500 29,453.75	181.5000 62,799.00	41.2500 8,167.50	27.5000 5,445.00	22.0000 4,356.00	16.5000 3,267.00	11.0000 2,178.00	173.2500 41,322.00	126.5000 27,223.50	22.0000 4,356.00	8.2500 1,633.50	110.0000 23,118.00	33.0000 6,534.00	110.0000 23,118.00	330.0000 179,520.00	55
60	147.0000 32,967.00	198.0000 68,508.00	45.0000 8,910.00	30.0000 5,940.00	24.0000 4,752.00	18.0000 3,564.00	12.0000 2,376.00	189.0000 65,394.00	138.0000 30,354.00	24.0000 4,752.00	9.0000 1,782.00	120.0000 25,548.00	36.0000 7,128.00	120.0000 25,548.00	360.0000 213,840.00	60
65	159.2500 36,730.25	214.5000 84,942.00	48.7500 9,652.50	32.5000 6,435.00	26.0000 5,148.00	19.5000 3,861.00	13.0000 2,574.00	204.7500 70,843.50	149.5000 33,709.50	26.0000 5,148.00	9.7500 1,930.50	130.0000 28,158.00	39.0000 7,722.00	130.0000 28,158.00	390.0000 250,770.00	65
66 2/3	163.3333 38,036.66	220.0000 87,120.00	50.0000 9,900.00	33.3333 6,599.99	26.6667 5,280.01	20.0000 3,960.00	13.3333 2,639.99	210.0000 72,660.00	153.3333 34,881.32	26.6667 5,280.01	10.0000 1,980.00	133.3333 29,061.32	40.0000 7,920.00	133.3333 29,061.32	400.0000 276,800.00	66 2/3
70	171.5000 40,734.00	231.0000 91,476.00	52.5000 10,395.00	35.0000 6,930.00	28.0000 5,544.00	21.0000 4,158.00	14.0000 2,772.00	220.5000 87,318.00	161.0000 37,285.00	28.0000 5,544.00	10.5000 2,079.00	140.0000 30,928.00	42.0000 8,316.00	140.0000 30,928.00	420.0000 290,640.00	70
75	183.7500 63,577.50	247.5000 110,137.50	56.2500 11,137.50	37.5000 7,425.00	30.0000 5,940.00	22.5000 4,455.00	15.0000 2,970.00	236.2500 93,555.00	172.5000 41,070.00	30.0000 5,940.00	11.2500 2,227.50	150.0000 33,858.00	45.0000 8,910.00	150.0000 33,858.00	450.0000 333,900.00	75
80	196.0000 67,816.00	264.0000 117,480.00	60.0000 11,880.00	40.0000 7,920.00	32.0000 6,336.00	24.0000 4,752.00	16.0000 3,168.00	252.0000 112,140.00	184.0000 63,664.00	32.0000 6,336.00	12.0000 2,376.00	160.0000 36,968.00	48.0000 9,504.00	160.0000 36,968.00	480.0000 356,160.00	80
85	208.2500 72,054.50	280.5000 138,847.50	63.7500 12,622.50	42.5000 8,415.00	34.0000 6,732.00	25.5000 5,049.00	17.0000 3,366.00	267.7500 119,148.75	195.5000 67,643.00	34.0000 6,732.00	12.7500 2,524.50	170.0000 40,230.00	51.0000 10,098.00	170.0000 40,230.00	510.0000 378,420.00	85
90	220.5000 87,318.00	297.0000 147,015.00	67.5000 13,365.00	45.0000 8,910.00	36.0000 7,128.00	27.0000 5,346.00	18.0000 3,564.00	283.5000 140,332.50	207.0000 71,622.00	36.0000 7,128.00	13.5000 2,673.00	180.0000 43,650.00	54.0000 10,692.00	180.0000 43,650.00	540.0000 400,680.00	90
95	232.7500 92,169.00	313.5000 170,544.00	71.2500 14,107.50	47.5000 9,405.00	38.0000 7,524.00	28.5000 5,643.00	19.0000 3,762.00	299.2500 148,128.75	218.5000 86,526.00	38.0000 7,524.00	14.2500 2,821.50	190.0000 65,740.00	57.0000 11,286.00	190.0000 65,740.00	570.0000 422,940.00	95
100	245.0000 109,025.00	330.0000 179,520.00	75.0000 14,850.00	50.0000 9,900.00	40.0000 7,920.00	30.0000 5,940.00	20.0000 3,960.00	315.0000 171,360.00	230.0000 91,080.00	40.0000 7,920.00	15.0000 2,970.00	200.0000 69,200.00	60.0000 11,880.00	200.0000 69,200.00	600.0000 XXXXXXXX	100

Footnote: Hand or Thumb and First and Second Fingers (on 1 Hand) or 4 Fingers (on 1 Hand)

EXPLANATION: The percent columns on the outside of the chart represent percentage of disability. The remaining columns show this percentage in terms of weeks and total benefits. The top figure in each box represents weeks, and the lower figure is dollar benefits.

Charts Courtesy of

NEW JERSEY MANUFACTURES INSURANCE COMPANY

301 SULLIVAN WAY, WEST TRENTON, NJ 08628

WEEKS		90	90 96	97 102	103 108	109 114	115 120	121 126	127 132	133 138	139 144	145 150	151 156	157 162	163 168	169 174	175 180			
MAX. DOLLAR AMT.		17,820	19,968	21,276	22,644	24,066	25,548	27,090	28,692	30,354	32,076	33,858	35,700	37,602	39,558	41,574	43,650			
90	20% of SAWW	198																		
91 TO 96	21% of SAWW	208	208																	
97 TO 102	22% of SAWW	208	208	218																
103 TO 108	23% of SAWW	208	208	218	228															
109 TO 114	24% of SAWW	208	208	218	228	237														
115 TO 120	25% of SAWW	208	208	218	228	237	247													
121 TO 126	26% of SAWW	208	208	218	228	237	247	257												
127 TO 132	27% of SAWW	208	208	218	228	237	247	257	267											
133 TO 138	28% of SAWW	208	208	218	228	237	247	257	267	277										
139 TO 144	29% of SAWW	208	208	218	228	237	247	257	267	277	287									
145 TO 150	30% of SAWW	208	208	218	228	237	247	257	267	277	287	297								
151 TO 156	31% of SAWW	208	208	218	228	237	247	257	267	277	287	297	307							
157 TO 162	32% of SAWW	208	208	218	228	237	247	257	267	277	287	297	307	317						
163 TO 168	33% of SAWW	208	208	218	228	237	247	257	267	277	287	297	307	317	326					
169 TO 174	34% of SAWW	208	208	218	228	237	247	257	267	277	287	297	307	317	326	336				
175 TO 180	35% of SAWW	208	208	218	228	237	247	257	267	277	287	297	307	317	326	336	346			
181 TO 210	35% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	346		
211 TO 240	40% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	396	
241 TO 270	45% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	445
271 TO 300	50% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
301 TO 330	55% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
331 TO 360	60% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
361 TO 390	65% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
391 TO 420	70% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
421 TO 600	75% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

SAWW $ 989.23
Maximum Rate $742.00
Maximum Rate Chart
Permanent Partial Disability
Compensation Rate - 70% of Wage
Minimum Rate $35.00 per week
Amputation - 30% of Award - Added
no counsel fee
25 Weeks Additional for Enucleation of Eye

495						
-	544					
-	-	594				
-	-	-	643			
-	-	-	-	692		
-	-	-	-	-	742	

1/1/2008
TOTAL PERMANENT DISABILITY - - 70% of Wages - Maximum $742.00 - Minimum $198.00 - 450 Weeks, Plus Additional Benefits as Set Forth in R.S. 34:15-12(b)
TEMPORARY DISABILITY - 70% of Wages - Maximum $742.00 - Minimum $198.00 - Maximum 400 Weeks
DEATH BENEFITS - 70% of Wages - 450 Weeks Plus Spouse's Statutory Benefits - Maximum Rate $742.00
FUNERAL ALLOWANCE - Not to Exceed $3,500.00

SCHEDULE OF DISABILITIES AND MAXIMUM BENEFITS EXCLUSIVE OF AMPUTATION AND ENUCLEATION

EFFECTIVE 1/1/2007

PER-CENT	HAND 245 WEEKS	ARM 330 WEEKS	FINGERS - SEE FOOTNOTE					LEG 315 WEEKS	FOOT 230 WEEKS	TOES		EYE 200 WEEKS	HEARING		PARTIAL TOTAL BASED ON 600 WEEKS	PER-CENT
			THUMB 75 WEEKS	FIRST 50 WEEKS	SECOND 40 WEEKS	THIRD 30 WEEKS	FOURTH 20 WEEKS			GREAT TOE 40 WEEKS	OTHER TOE 15 WEEKS		1 EAR 60 WEEKS	2 EARS 200 WEEKS		
1	2.4500 465.50	3.3000 627.00	0.7500 142.50	0.5000 95.00	0.4000 76.00	0.3000 57.00	0.2000 38.00	3.1500 598.50	2.3000 437.00	0.4000 76.00	0.1500 28.50	2.0000 380.00	0.6000 114.00	2.0000 380.00	6.0000 1,140.00	1
1 1/2	3.6750 698.25	4.9500 940.50	1.1250 213.75	0.7500 142.50	0.6000 114.00	0.4500 85.50	0.3000 57.00	4.7250 897.75	3.4500 655.50	0.6000 114.00	0.2250 42.75	3.0000 570.00	0.9000 171.00	3.0000 570.00	9.0000 1,710.00	1 1/2
2	4.9000 931.00	6.6000 1,254.00	1.5000 285.00	1.0000 190.00	0.8000 152.00	0.6000 114.00	0.4000 76.00	6.3000 1,197.00	4.6000 874.00	0.8000 152.00	0.3000 57.00	4.0000 760.00	1.2000 228.00	4.0000 760.00	12.0000 2,280.00	2
2 1/2	6.1250 1,163.75	8.2500 1,567.50	1.8750 356.25	1.2500 237.50	1.0000 190.00	0.7500 142.50	0.5000 95.00	7.8750 1,496.25	5.7500 1,092.50	1.0000 190.00	0.3750 71.25	5.0000 950.00	1.5000 285.00	5.0000 950.00	15.0000 2,850.00	2 1/2
3	7.3500 1,396.50	9.9000 1,881.00	2.2500 427.50	1.5000 285.00	1.2000 228.00	0.9000 171.00	0.6000 114.00	9.4500 1,795.50	6.9000 1,311.00	1.2000 228.00	0.4500 85.50	6.0000 1,140.00	1.8000 342.00	6.0000 1,140.00	18.0000 3,420.00	3
3 1/2	8.5750 1,629.25	11.5500 2,194.50	2.6250 498.75	1.7500 332.50	1.4000 266.00	1.0500 199.50	0.7000 133.00	11.0250 2,094.75	8.0500 1,529.50	1.4000 266.00	0.5250 99.75	7.0000 1,330.00	2.1000 399.00	7.0000 1,330.00	21.0000 3,990.00	3 1/2
4	9.8000 1,862.00	13.2000 2,508.00	3.0000 570.00	2.0000 380.00	1.6000 304.00	1.2000 228.00	0.8000 152.00	12.6000 2,394.00	9.2000 1,748.00	1.6000 304.00	0.6000 114.00	8.0000 1,520.00	2.4000 456.00	8.0000 1,520.00	24.0000 4,560.00	4
5	12.2500 2,327.50	16.5000 3,135.00	3.7500 712.50	2.5000 475.00	2.0000 380.00	1.5000 285.00	1.0000 190.00	15.7500 2,992.50	11.5000 2,185.00	2.0000 380.00	0.7500 142.50	10.0000 1,900.00	3.0000 570.00	10.0000 1,900.00	30.0000 5,700.00	5
7 1/2	18.3750 3,491.25	24.7500 4,702.50	5.6250 1,068.75	3.7500 712.50	3.0000 570.00	2.2500 427.50	1.5000 285.00	23.6250 4,488.75	17.2500 3,277.50	3.0000 570.00	1.1250 213.75	15.0000 2,850.00	4.5000 855.00	15.0000 2,850.00	45.0000 8,550.00	7 1/2
10	24.5000 4,655.00	33.0000 6,270.00	7.5000 1,425.00	5.0000 950.00	4.0000 760.00	3.0000 570.00	2.0000 380.00	31.5000 5,985.00	23.0000 4,370.00	4.0000 760.00	1.5000 285.00	20.0000 3,800.00	6.0000 1,140.00	20.0000 3,800.00	60.0000 11,400.00	10
12 1/2	30.6250 5,818.75	41.2500 7,837.50	9.3750 1,781.25	6.2500 1,187.50	5.0000 950.00	3.7500 712.50	2.5000 475.00	39.3750 7,481.25	28.7500 5,462.50	5.0000 950.00	1.8750 356.25	25.0000 4,750.00	7.5000 1,425.00	25.0000 4,750.00	75.0000 14,250.00	12 1/2
15	36.7500 6,982.50	49.5000 9,405.00	11.2500 2,137.50	7.5000 1,425.00	6.0000 1,140.00	4.5000 855.00	3.0000 570.00	47.2500 8,977.50	34.5000 6,555.00	6.0000 1,140.00	2.2500 427.50	30.0000 5,700.00	9.0000 1,710.00	30.0000 5,700.00	90.0000 17,100.00	15
17 1/2	42.8750 8,146.25	57.7500 10,972.50	13.1250 2,493.75	8.7500 1,662.50	7.0000 1,330.00	5.2500 997.50	3.5000 665.00	55.1250 10,473.75	40.2500 7,647.50	7.0000 1,330.00	2.6250 498.75	35.0000 6,650.00	10.5000 1,995.00	35.0000 6,650.00	105.0000 21,006.00	17 1/2
20	49.0000 9,310.00	66.0000 12,540.00	15.0000 2,850.00	10.0000 1,900.00	8.0000 1,520.00	6.0000 1,140.00	4.0000 760.00	63.0000 11,970.00	46.0000 8,740.00	8.0000 1,520.00	3.0000 570.00	40.0000 7,600.00	12.0000 2,280.00	40.0000 7,600.00	120.0000 24,444.00	20
22 1/2	55.1250 10,473.75	74.2500 14,107.50	16.8750 3,206.25	11.2500 2,137.50	9.0000 1,710.00	6.7500 1,282.50	4.5000 855.00	70.8750 13,466.25	51.7500 9,832.50	9.0000 1,710.00	3.3750 641.25	45.0000 8,550.00	13.5000 2,565.00	45.0000 8,550.00	135.0000 28,251.00	22 1/2
25	61.2500 11,637.50	82.5000 15,675.00	18.7500 3,562.50	12.5000 2,375.00	10.0000 1,900.00	7.5000 1,425.00	5.0000 950.00	78.7500 14,962.50	57.5000 10,925.00	10.0000 1,900.00	3.7500 712.50	50.0000 9,500.00	15.0000 2,850.00	50.0000 9,500.00	150.0000 32,400.00	25
27 1/2	67.3750 12,801.25	90.7500 17,249.25	20.6250 3,918.75	13.7500 2,612.50	11.0000 2,090.00	8.2500 1,567.50	5.5000 1,045.00	86.6250 16,458.75	63.2500 12,017.50	11.0000 2,090.00	4.1250 783.75	55.0000 10,450.00	16.5000 3,135.00	55.0000 10,450.00	165.0000 36,921.00	27 1/2
30	73.5000 13,965.00	99.0000 19,728.00	22.5000 4,275.00	15.0000 2,850.00	12.0000 2,280.00	9.0000 1,710.00	6.0000 1,140.00	94.5000 17,995.50	69.0000 13,110.00	12.0000 2,280.00	4.5000 855.00	60.0000 11,400.00	18.0000 3,420.00	60.0000 11,400.00	180.0000 41,784.00	30
33 1/3	81.6667 15,516.67	110.0000 22,114.00	25.0000 4,750.00	16.6667 3,166.67	13.3333 2,533.33	10.0000 1,900.00	6.6667 1,266.67	105.0000 21,006.00	76.6667 14,566.67	13.3333 2,533.33	5.0000 950.00	66.6667 12,666.67	20.0000 3,800.00	66.6667 12,666.67	200.0000 66,400.00	33 1/3
35	85.7500 16,292.50	115.5000 23,377.50	26.2500 4,987.50	17.5000 3,325.00	14.0000 2,660.00	10.5000 1,995.00	7.0000 1,330.00	110.2500 22,170.75	80.5000 15,295.00	14.0000 2,660.00	5.2500 997.50	70.0000 13,300.00	21.0000 3,990.00	70.0000 13,300.00	210.0000 69,720.00	35
37 1/2	91.8750 17,473.13	123.7500 25,366.50	28.1250 5,343.75	18.7500 3,562.50	15.0000 2,850.00	11.2500 2,137.50	7.5000 1,425.00	118.1250 23,999.63	86.2500 16,387.50	15.0000 2,850.00	5.6250 1,068.75	75.0000 14,250.00	22.5000 4,275.00	75.0000 14,250.00	225.0000 85,275.00	37 1/2
40	98.0000 19,520.00	132.0000 27,456.00	30.0000 5,700.00	20.0000 3,800.00	16.0000 3,040.00	12.0000 2,280.00	8.0000 1,520.00	126.0000 25,920.00	92.0000 17,498.00	16.0000 3,040.00	6.0000 1,140.00	80.0000 15,200.00	24.0000 4,560.00	80.0000 15,200.00	240.0000 90,960.00	40
45	110.2500 22,170.75	148.5000 31,974.00	33.7500 6,412.50	22.5000 4,275.00	18.0000 3,420.00	13.5000 2,565.00	9.0000 1,710.00	141.7500 30,077.25	103.5000 20,679.00	18.0000 3,420.00	6.7500 1,282.50	90.0000 17,100.00	27.0000 5,130.00	90.0000 17,100.00	270.0000 115,020.00	45
50	122.5000 25,059.00	165.0000 36,921.00	37.5000 7,125.00	25.0000 4,750.00	20.0000 3,800.00	15.0000 2,850.00	10.0000 1,900.00	157.5000 34,618.50	115.0000 23,259.00	20.0000 3,800.00	7.5000 1,425.00	100.0000 19,936.00	30.0000 5,700.00	100.0000 19,936.00	300.0000 142,200.00	50
55	134.7500 28,184.75	181.5000 60,258.00	41.2500 7,837.50	27.5000 5,225.00	22.0000 4,180.00	16.5000 3,135.00	11.0000 2,090.00	173.2500 39,550.50	126.5000 26,048.00	22.0000 4,180.00	8.2500 1,567.50	110.0000 22,114.00	33.0000 6,270.00	110.0000 22,114.00	330.0000 171,930.00	55
60	147.0000 31,548.00	198.0000 65,736.00	45.0000 8,550.00	30.0000 5,700.00	24.0000 4,560.00	18.0000 3,420.00	12.0000 2,280.00	189.0000 62,748.00	138.0000 29,046.00	24.0000 4,560.00	9.0000 1,710.00	120.0000 24,444.00	36.0000 6,840.00	120.0000 24,444.00	360.0000 204,840.00	60
65	159.2500 35,148.75	214.5000 81,295.50	48.7500 9,262.50	32.5000 6,175.00	26.0000 4,940.00	19.5000 3,705.00	13.0000 2,470.00	204.7500 67,977.00	149.5000 32,258.00	26.0000 4,940.00	9.7500 1,852.50	130.0000 26,944.00	39.0000 7,410.00	130.0000 26,944.00	390.0000 240,240.00	65
66 2/3	163.3333 36,399.32	220.0000 83,380.00	50.0000 9,500.00	33.3333 6,333.33	26.6667 5,066.67	20.0000 3,800.00	13.3333 2,533.33	210.0000 69,720.00	153.3333 33,379.99	26.6667 5,066.67	10.0000 1,900.00	133.3333 27,809.32	40.0000 7,600.00	133.3333 27,809.32	400.0000 265,200.00	66 2/3
70	171.5000 38,987.00	231.0000 87,549.00	52.5000 9,975.00	35.0000 6,650.00	28.0000 5,320.00	21.0000 3,990.00	14.0000 2,660.00	220.5000 83,569.50	161.0000 35,679.00	28.0000 5,320.00	10.5000 1,995.00	140.0000 29,596.00	42.0000 7,980.00	140.0000 29,596.00	420.0000 278,460.00	70
75	183.7500 61,005.00	247.5000 105,435.00	56.2500 10,687.50	37.5000 7,125.00	30.0000 5,700.00	22.5000 4,275.00	15.0000 2,850.00	236.2500 89,538.75	172.5000 39,309.00	30.0000 5,700.00	11.2500 2,137.50	150.0000 32,400.00	45.0000 8,550.00	150.0000 32,400.00	450.0000 319,950.00	75
80	196.0000 65,072.00	264.0000 112,464.00	60.0000 11,400.00	40.0000 7,600.00	32.0000 6,080.00	24.0000 4,560.00	16.0000 3,040.00	252.0000 107,352.00	184.0000 61,088.00	32.0000 6,080.00	12.0000 2,280.00	160.0000 35,376.00	48.0000 9,120.00	160.0000 35,376.00	480.0000 341,280.00	80
85	208.2500 69,139.00	280.5000 132,957.00	63.7500 12,112.50	42.5000 8,075.00	34.0000 6,460.00	25.5000 4,845.00	17.0000 3,230.00	267.7500 114,061.50	195.5000 64,906.00	34.0000 6,460.00	12.7500 2,422.50	170.0000 38,504.00	51.0000 9,690.00	170.0000 38,504.00	510.0000 362,610.00	85
90	220.5000 83,569.50	297.0000 140,778.00	67.5000 12,825.00	45.0000 8,550.00	36.0000 6,840.00	27.0000 5,130.00	18.0000 3,420.00	283.5000 134,379.00	207.0000 68,724.00	36.0000 6,840.00	13.5000 2,565.00	180.0000 41,784.00	54.0000 10,260.00	180.0000 41,784.00	540.0000 383,940.00	90
95	232.7500 88,212.25	313.5000 163,333.50	71.2500 13,537.50	47.5000 9,025.00	38.0000 7,220.00	28.5000 5,415.00	19.0000 3,610.00	299.2500 141,844.50	218.5000 82,811.50	38.0000 7,220.00	14.2500 2,707.50	190.0000 63,080.00	57.0000 10,830.00	190.0000 63,080.00	570.0000 405,270.00	95
100	245.0000 104,370.00	330.0000 171,930.00	75.0000 14,250.00	50.0000 9,500.00	40.0000 7,600.00	30.0000 5,700.00	20.0000 3,800.00	315.0000 164,115.00	230.0000 87,170.00	40.0000 7,600.00	15.0000 2,850.00	200.0000 66,400.00	60.0000 11,400.00	200.0000 66,400.00	600.0000 XXXXXXX	100

Footnote: Hand or Thumb and First and Second Fingers (on 1 Hand) or 4 Fingers (on 1 Hand)

EXPLANATION: The percent columns on the outside of the chart represent percentage of disability. The remaining columns show this percentage in terms of weeks and total benefits. The top figure in each box represents weeks, and the lower figure is dollar benefits.

WEEKS	90	90	97	103	109	115	121	127	133	139	145	151	157	163	169	175			
		96	102	108	114	120	126	132	138	144	150	156	162	168	174	180			
MAX. DOLLAR AMT.	17,100	19,104	20,352	21,660	23,022	24,444	25,920	27,456	29,046	30,696	32,400	34,164	35,982	37,860	39,792	41,784			
90 20% of SAWW	190																		
91 TO 96 21% of SAWW	199	199																	
97 TO 102 22% of SAWW	199	199	208																
103 TO 108 23% of SAWW	199	199	208	218															
109 TO 114 24% of SAWW	199	199	208	218	227														
115 TO 120 25% of SAWW	199	199	208	218	227	237													
121 TO 126 26% of SAWW	199	199	208	218	227	237	246												
127 TO 132 27% of SAWW	199	199	208	218	227	237	246	256											
133 TO 138 28% of SAWW	199	199	208	218	227	237	246	256	265										
139 TO 144 29% of SAWW	199	199	208	218	227	237	246	256	265	275									
145 TO 150 30% of SAWW	199	199	208	218	227	237	246	256	265	275	284								
151 TO 156 31% of SAWW	199	199	208	218	227	237	246	256	265	275	284	294							
157 TO 162 32% of SAWW	199	199	208	218	227	237	246	256	265	275	284	294	303						
163 TO 168 33% of SAWW	199	199	208	218	227	237	246	256	265	275	284	294	303	313					
169 TO 174 34% of SAWW	199	199	208	218	227	237	246	256	265	275	284	294	303	313	322				
175 TO 180 35% of SAWW	199	199	208	218	227	237	246	256	265	275	284	294	303	313	322	332			
181 TO 210 35% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	332		
211 TO 240 40% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	379	
241 TO 270 45% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	426
271 TO 300 50% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
301 TO 330 55% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
331 TO 360 60% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
361 TO 390 65% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
391 TO 420 70% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
421 TO 600 75% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

SAWW $647.64

Maximum Rate $711.00
Maximum Rate Chart
Permanent Partial Disability
Compensation Rate - 70% of Wage
Minimum Rate $35.00 per week
Amputation - 30% of Award - Added
no counsel fee
25 Weeks Additional for Enucleation of Eye

474																											
-	521																										
-	-	569																									
-	-	-	616																								
-	-	-	-	663																							
-	-	-	-	-	711																						

1/1/2007
TOTAL PERMANENT DISABILITY - 70% of Wages - Maximum 711.00 - Minimum $190.00 - 450 Weeks, Plus Additional Benefits as Set Forth in R.S. 34:15-12(b)
TEMPORARY DISABILITY - 70% of Wages - Maximum $711.00 - Minimum $190.00 - Maximum 400 Weeks
DEATH BENEFITS - 70% of Wages - 450 Weeks Plus Spouse's Statutory Benefits - Maximum Rate $711.00
FUNERAL ALLOWANCE - Not to Exceed $3,500.00

SCHEDULE OF DISABILITIES AND MAXIMUM BENEFITS EXCLUSIVE OF AMPUTATION AND ENUCLEATION

EFFECTIVE 1/1/2006

PER-CENT	HAND 245 WEEKS	ARM 330 WEEKS	FINGERS - SEE FOOTNOTE					LEG 315 WEEKS	FOOT 230 WEEKS	TOES		EYE 200 WEEKS	HEARING		PARTIAL TOTAL BASED ON 600 WEEKS	PER-CENT
			THUMB 75 WEEKS	FIRST 50 WEEKS	SECOND 40 WEEKS	THIRD 30 WEEKS	FOURTH 20 WEEKS			GREAT TOE 40 WEEKS	OTHER TOE 15 WEEKS		1 EAR 60 WEEKS	2 EARS 200 WEEKS		
1	2.4500 450.80	3.3000 607.20	0.7500 138.00	0.5000 92.00	0.4000 73.60	0.3000 55.20	0.2000 36.80	3.1500 579.60	2.3000 423.20	0.4000 73.60	0.1500 27.60	2.0000 368.00	0.6000 110.40	2.0000 368.00	6.0000 1,104.00	1
1 1/2	3.6750 676.20	4.9500 910.80	1.1250 207.00	0.7500 138.00	0.6000 110.40	0.4500 82.80	0.3000 55.20	4.7250 869.40	3.4500 634.80	0.6000 110.40	0.2250 41.40	3.0000 552.00	0.9000 165.60	3.0000 552.00	9.0000 1,656.00	1 1/2
2	4.9000 901.60	6.6000 1,214.40	1.5000 276.00	1.0000 184.00	0.8000 147.20	0.6000 110.40	0.4000 73.60	6.3000 1,159.20	4.6000 846.40	0.8000 147.20	0.3000 55.20	4.0000 736.00	1.2000 220.80	4.0000 736.00	12.0000 2,208.00	2
2 1/2	6.1250 1,127.00	8.2500 1,518.00	1.8750 345.00	1.2500 230.00	1.0000 184.00	0.7500 138.00	0.5000 92.00	7.8750 1,449.00	5.7500 1,058.00	1.0000 184.00	0.3750 69.00	5.0000 920.00	1.5000 276.00	5.0000 920.00	15.0000 2,760.00	2 1/2
3	7.3500 1,352.40	9.9000 1,821.60	2.2500 414.00	1.5000 276.00	1.2000 220.80	0.9000 165.60	0.6000 110.40	9.4500 1,738.80	6.9000 1,269.60	1.2000 220.80	0.4500 82.80	6.0000 1,104.00	1.8000 331.20	6.0000 1,104.00	18.0000 3,312.00	3
3 1/2	8.5750 1,577.80	11.5500 2,125.20	2.6250 483.00	1.7500 322.00	1.4000 257.60	1.0500 193.20	0.7000 128.80	11.0250 2,028.60	8.0500 1,481.20	1.4000 257.60	0.5250 96.60	7.0000 1,288.00	2.1000 386.40	7.0000 1,288.00	21.0000 3,864.00	3 1/2
4	9.8000 1,803.20	13.2000 2,428.80	3.0000 552.00	2.0000 368.00	1.6000 294.40	1.2000 220.80	0.8000 147.20	12.6000 2,318.40	9.2000 1,692.80	1.6000 294.40	0.6000 110.40	8.0000 1,472.00	2.4000 441.60	8.0000 1,472.00	24.0000 4,416.00	4
5	12.2500 2,254.00	16.5000 3,036.00	3.7500 690.00	2.5000 460.00	2.0000 368.00	1.5000 276.00	1.0000 184.00	15.7500 2,898.00	11.5000 2,116.00	2.0000 368.00	0.7500 138.00	10.0000 1,840.00	3.0000 552.00	10.0000 1,840.00	30.0000 5,520.00	5
7 1/2	18.3750 3,381.00	24.7500 4,554.00	5.6250 1,035.00	3.7500 690.00	3.0000 552.00	2.2500 414.00	1.5000 276.00	23.6250 4,347.00	17.2500 3,174.00	3.0000 552.00	1.1250 207.00	15.0000 2,760.00	4.5000 828.00	15.0000 2,760.00	45.0000 8,280.00	7 1/2
10	24.5000 4,508.00	33.0000 6,072.00	7.5000 1,380.00	5.0000 920.00	4.0000 736.00	3.0000 552.00	2.0000 368.00	31.5000 5,796.00	23.0000 4,232.00	4.0000 736.00	1.5000 276.00	20.0000 3,680.00	6.0000 1,104.00	20.0000 3,680.00	60.0000 11,040.00	10
12 1/2	30.6250 5,635.00	41.2500 7,590.00	9.3750 1,725.00	6.2500 1,150.00	5.0000 920.00	3.7500 690.00	2.5000 460.00	39.3750 7,245.00	28.7500 5,290.00	5.0000 920.00	1.8750 345.00	25.0000 4,600.00	7.5000 1,380.00	25.0000 4,600.00	75.0000 13,800.00	12 1/2
15	36.7500 6,762.00	49.5000 9,108.00	11.2500 2,070.00	7.5000 1,380.00	6.0000 1,104.00	4.5000 828.00	3.0000 552.00	47.2500 8,694.00	34.5000 6,348.00	6.0000 1,104.00	2.2500 414.00	30.0000 5,520.00	9.0000 1,656.00	30.0000 5,520.00	90.0000 16,560.00	15
17 1/2	42.8750 7,889.00	57.7500 10,626.00	13.1250 2,415.00	8.7500 1,610.00	7.0000 1,288.00	5.2500 966.00	3.5000 644.00	55.1250 10,143.00	40.2500 7,406.00	7.0000 1,288.00	2.6250 483.00	35.0000 6,440.00	10.5000 1,932.00	35.0000 6,440.00	105.0000 20,382.00	17 1/2
20	49.0000 9,016.00	66.0000 12,144.00	15.0000 2,760.00	10.0000 1,840.00	8.0000 1,472.00	6.0000 1,104.00	4.0000 736.00	63.0000 11,592.00	46.0000 8,464.00	8.0000 1,472.00	3.0000 552.00	40.0000 7,360.00	12.0000 2,208.00	40.0000 7,360.00	120.0000 23,724.00	20
22 1/2	55.1250 10,143.00	74.2500 13,662.00	16.8750 3,105.00	11.2500 2,070.00	9.0000 1,656.00	6.7500 1,242.00	4.5000 828.00	70.8750 13,041.00	51.7500 9,522.00	9.0000 1,656.00	3.3750 621.00	45.0000 8,280.00	13.5000 2,484.00	45.0000 8,280.00	135.0000 27,426.00	22 1/2
25	61.2500 11,270.00	82.5000 15,180.00	18.7500 3,450.00	12.5000 2,300.00	10.0000 1,840.00	7.5000 1,380.00	5.0000 920.00	78.7500 14,490.00	57.5000 10,580.00	10.0000 1,840.00	3.7500 690.00	50.0000 9,200.00	15.0000 2,760.00	50.0000 9,200.00	150.0000 31,458.00	25
27 1/2	67.3750 12,397.00	90.7500 16,704.75	20.6250 3,795.00	13.7500 2,530.00	11.0000 2,024.00	8.2500 1,518.00	5.5000 1,012.00	86.6250 15,939.00	63.2500 11,638.00	11.0000 2,024.00	4.1250 759.00	55.0000 10,120.00	16.5000 3,036.00	55.0000 10,120.00	165.0000 35,850.00	27 1/2
30	73.5000 13,524.00	99.0000 19,137.00	22.5000 4,140.00	15.0000 2,760.00	12.0000 2,208.00	9.0000 1,656.00	6.0000 1,104.00	94.5000 17,428.50	69.0000 12,696.00	12.0000 2,208.00	4.5000 828.00	60.0000 11,040.00	18.0000 3,312.00	60.0000 11,040.00	180.0000 40,572.00	30
33 1/3	81.6667 15,026.67	110.0000 21,460.00	25.0000 4,600.00	16.6667 3,066.67	13.3333 2,453.33	10.0000 1,840.00	6.6667 1,226.67	105.0000 20,382.00	76.6667 14,106.67	13.3333 2,453.33	5.0000 920.00	66.6667 12,266.67	20.0000 3,680.00	66.6667 12,266.67	200.0000 64,400.00	33 1/3
35	85.7500 15,778.00	115.5000 22,689.00	26.2500 4,830.00	17.5000 3,220.00	14.0000 2,576.00	10.5000 1,932.00	7.0000 1,288.00	110.2500 21,515.25	80.5000 14,812.00	14.0000 2,576.00	5.2500 966.00	70.0000 12,880.00	21.0000 3,864.00	70.0000 12,880.00	210.0000 67,620.00	35
37 1/2	91.8750 16,921.88	123.7500 24,620.25	28.1250 5,175.00	18.7500 3,450.00	15.0000 2,760.00	11.2500 2,070.00	7.5000 1,380.00	118.1250 23,292.75	86.2500 15,870.00	15.0000 2,760.00	5.6250 1,035.00	75.0000 13,800.00	22.5000 4,140.00	75.0000 13,800.00	225.0000 82,800.00	37 1/2
40	98.0000 18,934.00	132.0000 26,652.00	30.0000 5,520.00	20.0000 3,680.00	16.0000 2,944.00	12.0000 2,208.00	8.0000 1,472.00	126.0000 25,158.00	92.0000 16,946.00	16.0000 2,944.00	6.0000 1,104.00	80.0000 14,720.00	24.0000 4,416.00	80.0000 14,720.00	240.0000 88,320.00	40
45	110.2500 21,515.25	148.5000 31,044.00	33.7500 6,210.00	22.5000 4,140.00	18.0000 3,312.00	13.5000 2,484.00	9.0000 1,656.00	141.7500 29,201.25	103.5000 20,064.00	18.0000 3,312.00	6.7500 1,242.00	90.0000 16,560.00	27.0000 4,968.00	90.0000 16,560.00	270.0000 111,780.00	45
50	122.5000 24,321.50	165.0000 35,850.00	37.5000 6,900.00	25.0000 4,600.00	20.0000 3,680.00	15.0000 2,760.00	10.0000 1,840.00	157.5000 33,610.50	115.0000 22,574.00	20.0000 3,680.00	7.5000 1,380.00	100.0000 19,340.00	30.0000 5,520.00	100.0000 19,340.00	300.0000 138,000.00	50
55	134.7500 27,361.50	181.5000 58,443.00	41.2500 7,590.00	27.5000 5,060.00	22.0000 4,048.00	16.5000 3,036.00	11.0000 2,024.00	173.2500 38,405.25	126.5000 25,282.50	22.0000 4,048.00	8.2500 1,518.00	110.0000 21,460.00	33.0000 6,072.00	110.0000 21,460.00	330.0000 166,980.00	55
60	147.0000 30,630.00	198.0000 63,756.00	45.0000 8,280.00	30.0000 5,520.00	24.0000 4,416.00	18.0000 3,312.00	12.0000 2,208.00	189.0000 60,858.00	138.0000 28,200.00	24.0000 4,416.00	9.0000 1,656.00	120.0000 23,724.00	36.0000 6,624.00	120.0000 23,724.00	360.0000 199,080.00	60
65	159.2500 34,126.75	214.5000 78,936.00	48.7500 8,970.00	32.5000 5,980.00	26.0000 4,784.00	19.5000 3,588.00	13.0000 2,392.00	204.7500 65,929.50	149.5000 31,320.00	26.0000 4,784.00	9.7500 1,794.00	130.0000 26,154.00	39.0000 7,176.00	130.0000 26,154.00	390.0000 233,610.00	65
66 2/3	163.3333 35,343.32	220.0000 80,960.00	50.0000 9,200.00	33.3333 6,133.33	26.6667 4,906.67	20.0000 3,680.00	13.3333 2,453.33	210.0000 67,620.00	153.3333 32,407.99	26.6667 4,906.67	10.0000 1,840.00	133.3333 26,995.99	40.0000 7,360.00	133.3333 26,995.99	400.0000 258,000.00	66 2/3
70	171.5000 37,857.50	231.0000 85,008.00	52.5000 9,660.00	35.0000 6,440.00	28.0000 5,152.00	21.0000 3,864.00	14.0000 2,576.00	220.5000 81,144.00	161.0000 34,643.00	28.0000 5,152.00	10.5000 1,932.00	140.0000 28,734.00	42.0000 7,728.00	140.0000 28,734.00	420.0000 270,900.00	70
75	183.7500 59,167.50	247.5000 102,465.00	56.2500 10,350.00	37.5000 6,900.00	30.0000 5,520.00	22.5000 4,140.00	15.0000 2,760.00	236.2500 86,940.00	172.5000 38,170.50	30.0000 5,520.00	11.2500 2,070.00	150.0000 31,458.00	45.0000 8,280.00	150.0000 31,458.00	450.0000 310,950.00	75
80	196.0000 63,112.00	264.0000 109,296.00	60.0000 11,040.00	40.0000 7,360.00	32.0000 5,888.00	24.0000 4,416.00	16.0000 2,944.00	252.0000 104,328.00	184.0000 59,248.00	32.0000 5,888.00	12.0000 2,208.00	160.0000 34,348.00	48.0000 8,832.00	160.0000 34,348.00	480.0000 331,680.00	80
85	208.2500 67,056.50	280.5000 129,030.00	63.7500 11,730.00	42.5000 7,820.00	34.0000 6,256.00	25.5000 4,692.00	17.0000 3,128.00	267.7500 110,848.50	195.5000 62,951.00	34.0000 6,256.00	12.7500 2,346.00	170.0000 37,388.00	51.0000 9,384.00	170.0000 37,388.00	510.0000 352,410.00	85
90	220.5000 81,144.00	297.0000 136,620.00	67.5000 12,420.00	45.0000 8,280.00	36.0000 6,624.00	27.0000 4,968.00	18.0000 3,312.00	283.5000 130,410.00	207.0000 66,654.00	36.0000 6,624.00	13.5000 2,484.00	180.0000 40,572.00	54.0000 9,936.00	180.0000 40,572.00	540.0000 373,140.0	90
95	232.7500 85,652.00	313.5000 158,631.00	71.2500 13,110.00	47.5000 8,740.00	38.0000 6,992.00	28.5000 5,244.00	19.0000 3,496.00	299.2500 137,655.00	218.5000 80,408.00	38.0000 6,992.00	14.2500 2,622.00	190.0000 61,180.00	57.0000 10,488.00	190.0000 61,180.00	570.0000 393,870.0	95
100	245.0000 101,430.00	330.0000 166,980.00	75.0000 13,800.00	50.0000 9,200.00	40.0000 7,360.00	30.0000 5,520.00	20.0000 3,680.00	315.0000 159,390.00	230.0000 84,640.00	40.0000 7,360.00	15.0000 2,760.00	200.0000 64,400.00	60.0000 11,040.00	200.0000 64,400.00	600.0000 XXXXXXX	100

Footnote: Hand or Thumb and First and Second Fingers (on 1 Hand) or 4 Fingers (on 1 Hand)

EXPLANATION: The percent columns on the outside of the chart represent percentage of disability. The remaining columns show this percentage in terms of weeks and total benefits. The top figure in each box represents weeks, and the lower figure is dollar benefits.

WEEKS	90	90	97	103	109	115	121	127	133	139	145	151	157	163	169	175			
		96	102	108	114	120	126	132	138	144	150	156	162	168	174	180			
MAX. DOLLAR AMT.	16,560	18,528	19,746	21,018	22,344	23,724	25,158	26,652	28,200	29,802	31,458	33,168	34,938	36,762	38,640	40,572			
90 20% of SAWW	184																		
91 TO 96 21% of SAWW	184	193																	
97 TO 102 22% of SAWW	193	193	203																
103 TO 108 23% of SAWW	193	193	203	212															
109 TO 114 24% of SAWW	193	193	203	212	221														
115 TO 120 25% of SAWW	193	193	203	212	221	230													
121 TO 126 26% of SAWW	193	193	203	212	221	230	239												
127 TO 132 27% of SAWW	193	193	203	212	221	230	239	249											
133 TO 138 28% of SAWW	193	193	203	212	221	230	239	249	258										
139 TO 144 29% of SAWW	193	193	203	212	221	230	239	249	258	267									
145 TO 150 30% of SAWW	193	193	203	212	221	230	239	249	258	267	276								
151 TO 156 31% of SAWW	193	193	203	212	221	230	239	249	258	267	276	285							
157 TO 162 32% of SAWW	193	193	203	212	221	230	239	249	258	267	276	285	295						
163 TO 168 33% of SAWW	193	193	203	212	221	230	239	249	258	267	276	285	295	304					
169 TO 174 34% of SAWW	193	193	203	212	221	230	239	249	258	267	276	285	295	304	313				
175 TO 180 35% of SAWW	193	193	203	212	221	230	239	249	258	267	276	285	295	304	313	322			
181 TO 210 35% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	322		
211 TO 240 40% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	368	
241 TO 270 45% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	414
271 TO 300 50% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
301 TO 330 55% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
331 TO 360 60% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
361 TO 390 65% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
391 TO 420 70% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
421 TO 600 75% of SAWW	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

SAWW $920.88

Maximum Rate $691.00
Maximum Rate Chart
Permanent Partial Disability
Compensation Rate - 70% of Wage
Minimum Rate $35.00 per week
Amputation - 30% of Award - Added
no counsel fee
25 Weeks Additional for Enucleation of Eye

460																										
-	506																									
-	-	553																								
-	-	-	599																							
-	-	-	-	645																						
-	-	-	-	-	691																					

1/1/2006
TOTAL PERMANENT DISABILITY - 70% of Wages - Maximum 691.00 - Minimum $184.00 - 450 Weeks, Plus Additional Benefits as Set Forth in R.S. 34:15-12(b)
TEMPORARY DISABILITY - 70% of Wages - Maximum $691.00 - Minimum $184.00 - Maximum 400 Weeks
DEATH BENEFITS - 70% of Wages - 450 Weeks Plus Spouse's Statutory Benefits - Maximum Rate $691.00
FUNERAL ALLOWANCE - Not to Exceed $3,500.00

SCHEDULE OF DISABILITIES AND MAXIMUM BENEFITS EXCLUSIVE OF AMPUTATION AND ENUCLEATION

EFFECTIVE 1/1/2005

PER-CENT	HAND 245 WEEKS	ARM 330 WEEKS	FINGERS - SEE FOOTNOTE					LEG 315 WEEKS	FOOT 230 WEEKS	TOES		EYE 200 WEEKS	HEARING		PARTIAL TOTAL BASED ON 600 WEEKS	PER-CENT
			THUMB 75 WEEKS	FIRST 50 WEEKS	SECOND 40 WEEKS	THIRD 30 WEEKS	FOURTH 20 WEEKS			GREAT TOE 40 WEEKS	OTHER TOE 15 WEEKS		1 EAR 60 WEEKS	2 EARS 200 WEEKS		
1	2.4500 436.10	3.3000 587.40	0.7500 133.50	0.5000 89.00	0.4000 71.20	0.3000 53.40	0.2000 35.60	3.1500 560.70	2.3000 409.40	0.4000 71.20	0.1500 26.70	2.0000 356.00	0.6000 106.80	2.0000 356.00	6.0000 1,068.00	1
1 1/2	3.6750 654.15	4.9500 881.10	1.1250 200.25	0.7500 133.50	0.6000 106.80	0.4500 80.10	0.3000 53.40	4.7250 841.05	3.4500 614.10	0.6000 106.80	0.2250 40.05	3.0000 534.00	0.9000 160.20	3.0000 534.00	9.0000 1,602.00	1 1/2
2	4.9000 872.20	6.6000 1,174.80	1.5000 267.00	1.0000 178.00	0.8000 142.40	0.6000 106.80	0.4000 71.20	6.3000 1,121.40	4.6000 818.80	0.8000 142.40	0.3000 53.40	4.0000 712.00	1.2000 213.80	4.0000 712.00	12.0000 2,136.00	2
2 1/2	6.1250 1,090.25	8.2500 1,468.50	1.8750 333.75	1.2500 222.50	1.0000 178.00	0.7500 133.50	0.5000 89.00	7.8750 1,401.75	5.7500 1,023.50	1.0000 178.00	0.3750 66.75	5.0000 890.00	1.5000 267.00	5.0000 890.00	15.0000 2,670.00	2 1/2
3	7.3500 1,308.30	9.9000 1,762.20	2.2500 400.50	1.5000 267.00	1.2000 213.60	0.9000 160.20	0.6000 106.80	9.4500 1,682.10	6.9000 1,228.20	1.2000 213.60	0.4500 80.10	6.0000 1,068.00	1.8000 320.40	6.0000 1,068.00	18.0000 3,204.00	3
3 1/2	8.5750 1,526.35	11.5500 2,055.90	2.6250 467.25	1.7500 311.50	1.4000 249.20	1.0500 186.90	0.7000 124.60	11.0250 1,962.45	8.0500 1,432.90	1.4000 249.20	0.5250 93.45	7.0000 1,246.00	2.1000 373.80	7.0000 1,246.00	21.0000 3,738.00	3 1/2
4	9.8000 1,744.40	13.2000 2,349.60	3.0000 534.00	2.0000 356.00	1.6000 284.80	1.2000 213.60	0.8000 142.40	12.6000 2,242.80	9.2000 1,637.60	1.6000 284.80	0.6000 106.80	8.0000 1,424.00	2.4000 427.20	8.0000 1,424.00	24.0000 4,272.00	4
5	12.2500 2,180.50	16.5000 2,937.00	3.7500 667.50	2.5000 445.00	2.0000 356.00	1.5000 267.00	1.0000 178.00	15.7500 2,803.50	11.5000 2,047.00	2.0000 356.00	0.7500 133.50	10.0000 1,780.00	3.0000 534.00	10.0000 1,780.00	30.0000 5,340.00	5
7 1/2	18.3750 3,270.75	24.7500 4,405.50	5.6250 1,001.25	3.7500 667.50	3.0000 534.00	2.2500 400.50	1.5000 267.00	23.6250 4,205.25	17.2500 3,070.50	3.0000 534.00	1.1250 200.25	15.0000 2,670.00	4.5000 801.00	15.0000 2,670.00	45.0000 8,010.00	7 1/2
10	24.5000 4,361.00	33.0000 5,874.00	7.5000 1,335.00	5.0000 890.00	4.0000 712.00	3.0000 534.00	2.0000 356.00	31.5000 5,607.00	23.0000 4,094.00	4.0000 712.00	1.5000 267.00	20.0000 3,560.00	6.0000 1,068.00	20.0000 3,560.00	60.0000 10,680.00	10
12 1/2	30.6250 5,451.25	41.2500 7,342.50	9.3750 1,668.75	6.2500 1,112.50	5.0000 890.00	3.7500 667.50	2.5000 445.00	39.3750 7,008.75	28.7500 5,117.50	5.0000 890.00	1.8750 333.75	25.0000 4,450.00	7.5000 1,335.00	25.0000 4,450.00	75.0000 13,350.00	12 1/2
15	36.7500 6,541.50	49.5000 8,811.00	11.2500 2,002.50	7.5000 1,335.00	6.0000 1,068.00	4.5000 801.00	3.0000 534.00	47.2500 8,410.50	34.5000 6,141.00	6.0000 1,068.00	2.2500 400.50	30.0000 5,340.00	9.0000 1,602.00	30.0000 5,340.00	90.0000 16,020.00	15
17 1/2	42.8750 7,631.75	57.7500 10,279.50	13.1250 2,336.25	8.7500 1,557.50	7.0000 1,246.00	5.2500 934.50	3.5000 623.00	55.1250 9,812.25	40.2500 7,164.50	7.0000 1,246.00	2.6250 467.25	35.0000 6,230.00	10.5000 1,869.00	35.0000 6,230.00	105.0000 19,734.00	17 1/2
20	49.0000 8,722.00	66.0000 11,748.00	15.0000 2,670.00	10.0000 1,780.00	8.0000 1,424.00	6.0000 1,068.00	4.0000 712.00	63.0000 11,214.00	46.0000 8,188.00	8.0000 1,424.00	3.0000 534.00	40.0000 7,120.00	12.0000 2,136.00	40.0000 7,120.00	120.0000 22,956.00	20
22 1/2	55.1250 9,812.25	74.2500 13,216.50	16.8750 3,003.75	11.2500 2,002.50	9.0000 1,602.00	6.7500 1,201.50	4.5000 801.00	70.8750 12,615.75	51.7500 9,211.50	9.0000 1,602.00	3.3750 600.75	45.0000 8,010.00	13.5000 2,403.00	45.0000 8,010.00	135.0000 26,529.00	22 1/2
25	61.2500 10,902.50	82.5000 14,685.00	18.7500 3,337.50	12.5000 2,225.00	10.0000 1,780.00	7.5000 1,335.00	5.0000 890.00	78.7500 14,017.50	57.5000 10,235.00	10.0000 1,780.00	3.7500 667.50	50.0000 8,900.00	15.0000 2,670.00	50.0000 8,900.00	150.0000 30,420.00	25
27 1/2	67.3750 11,992.75	90.7500 16,160.25	20.6250 3,671.25	13.7500 2,447.50	11.0000 1,958.00	8.2500 1,468.50	5.5000 979.00	86.6250 15,419.25	63.2500 11,258.50	11.0000 1,958.00	4.1250 734.25	55.0000 9,790.00	16.5000 2,937.00	55.0000 9,790.00	165.0000 34,653.00	27 1/2
30	73.5000 13,083.00	99.0000 18,537.00	22.5000 4,005.00	15.0000 2,670.00	12.0000 2,136.00	9.0000 1,602.00	6.0000 1,068.00	94.5000 16,861.50	69.0000 12,282.00	12.0000 2,136.00	4.5000 801.00	60.0000 10,680.00	18.0000 3,204.00	60.0000 10,680.00	180.0000 39,210.00	30
33 1/3	81.6667 14,536.67	110.0000 20,772.00	25.0000 4,450.00	16.6667 2,966.67	13.3333 2,373.33	10.0000 1,780.00	6.6667 1,186.67	105.0000 19,734.00	76.6667 13,646.67	13.3333 2,373.33	5.0000 890.00	66.6667 11,866.67	20.0000 3,560.00	66.6667 11,866.67	200.0000 62,200.00	33 1/3
35	85.7500 15,263.50	115.5000 21,957.00	26.2500 4,672.50	17.5000 3,115.00	14.0000 2,492.00	10.5000 1,869.00	7.0000 1,246.00	110.2500 20,825.25	80.5000 14,329.00	14.0000 2,492.00	5.2500 934.50	70.0000 12,460.00	21.0000 3,738.00	70.0000 12,460.00	210.0000 65,310.00	35
37 1/2	91.8750 16,370.63	123.7500 23,822.25	28.1250 5,006.25	18.7500 3,337.50	15.0000 2,670.00	11.2500 2,002.50	7.5000 1,335.00	118.1250 22,539.75	86.2500 15,352.50	15.0000 2,670.00	5.6250 1,001.25	75.0000 13,350.00	22.5000 4,005.00	75.0000 13,350.00	225.0000 79,875.00	37 1/2
40	98.0000 18,342.00	132.0000 25,782.00	30.0000 5,340.00	20.0000 3,560.00	16.0000 2,848.00	12.0000 2,136.00	8.0000 1,424.00	126.0000 24,342.00	92.0000 16,394.00	16.0000 2,848.00	6.0000 1,068.00	80.0000 14,240.00	24.0000 4,272.00	80.0000 14,240.00	240.0000 85,200.00	40
45	110.2500 20,825.25	148.5000 30,021.00	33.7500 6,007.50	22.5000 4,005.00	18.0000 3,204.00	13.5000 2,403.00	9.0000 1,602.00	141.7500 28,243.50	103.5000 19,428.00	18.0000 3,204.00	6.7500 1,201.50	90.0000 16,020.00	27.0000 4,806.00	90.0000 16,020.00	270.0000 108,000.00	45
50	122.5000 23,533.50	165.0000 34,653.00	37.5000 6,675.00	25.0000 4,450.00	20.0000 3,560.00	15.0000 2,670.00	10.0000 1,780.00	157.5000 32,496.00	115.0000 21,846.00	20.0000 3,560.00	7.5000 1,335.00	100.0000 18,732.00	30.0000 5,340.00	100.0000 18,732.00	300.0000 133,200.00	50
55	134.7500 26,466.75	181.5000 56,446.50	41.2500 7,342.50	27.5000 4,895.00	22.0000 3,916.00	16.5000 2,937.00	11.0000 1,958.00	173.2500 37,117.50	126.5000 24,462.00	22.0000 3,916.00	8.2500 1,468.50	110.0000 20,772.00	33.0000 5,874.00	110.0000 20,772.00	330.0000 161,370.00	55
60	147.0000 29,622.00	198.0000 61,578.00	45.0000 8,010.00	30.0000 5,340.00	24.0000 4,272.00	18.0000 3,204.00	12.0000 2,136.00	189.0000 58,779.00	138.0000 27,276.00	24.0000 4,272.00	9.0000 1,602.00	120.0000 22,956.00	36.0000 6,408.00	120.0000 22,956.00	360.0000 191,880.00	60
65	159.2500 32,993.00	214.5000 76,147.50	48.7500 8,677.50	32.5000 5,785.00	26.0000 4,628.00	19.5000 3,471.00	13.0000 2,314.00	204.7500 63,677.25	149.5000 30,287.00	26.0000 4,628.00	9.7500 1,735.50	130.0000 25,302.00	39.0000 6,942.00	130.0000 25,302.00	390.0000 225,030.00	65
66 2/3	163.3333 34,164.66	220.0000 78,100.00	50.0000 8,900.00	33.3333 5,933.33	26.6667 4,746.67	20.0000 3,560.00	13.3333 2,373.33	210.0000 65,310.00	153.3333 31,336.66	26.6667 4,746.67	10.0000 1,780.00	133.3333 26,113.99	40.0000 7,120.00	133.3333 26,113.99	400.0000 248,800.00	66 2/3
70	171.5000 36,589.00	231.0000 82,005.00	52.5000 9,345.00	35.0000 6,230.00	28.0000 4,984.00	21.0000 3,738.00	14.0000 2,492.00	220.5000 78,277.50	161.0000 33,490.00	28.0000 4,984.00	10.5000 1,869.00	140.0000 27,792.00	42.0000 7,476.00	140.0000 27,792.00	420.0000 261,240.00	70
75	183.7500 57,146.25	247.5000 99,000.00	56.2500 10,012.50	37.5000 6,675.00	30.0000 5,340.00	22.5000 4,005.00	15.0000 2,670.00	236.2500 83,868.75	172.5000 36,891.00	30.0000 5,340.00	11.2500 2,002.50	150.0000 30,420.00	45.0000 8,010.00	150.0000 30,420.00	450.0000 299,700.00	75
80	196.0000 60,956.00	264.0000 105,600.00	60.0000 10,680.00	40.0000 7,120.00	32.0000 5,696.00	24.0000 4,272.00	16.0000 2,848.00	252.0000 100,800.00	184.0000 57,224.00	32.0000 5,696.00	12.0000 2,136.00	160.0000 33,206.00	48.0000 8,544.00	160.0000 33,206.00	480.0000 319,680.00	80
85	208.2500 64,765.75	280.5000 124,542.00	63.7500 11,347.50	42.5000 7,565.00	34.0000 6,052.00	25.5000 4,539.00	17.0000 3,026.00	267.7500 107,100.00	195.5000 60,800.50	34.0000 6,052.00	12.7500 2,269.50	170.0000 36,136.00	51.0000 9,078.00	170.0000 36,136.00	510.0000 339,660.00	85
90	220.5000 78,277.50	297.0000 131,868.00	67.5000 12,015.00	45.0000 8,010.00	36.0000 6,408.00	27.0000 4,806.00	18.0000 3,204.00	283.5000 125,874.00	207.0000 64,377.00	36.0000 6,408.00	13.5000 2,403.00	180.0000 39,210.00	54.0000 9,612.00	180.0000 39,210.00	540.0000 359,640.00	90
95	232.7500 82,626.25	313.5000 153,301.50	71.2500 12,682.50	47.5000 8,455.00	38.0000 6,764.00	28.5000 5,073.00	19.0000 3,382.00	299.2500 132,867.00	218.5000 77,567.50	38.0000 6,764.00	14.2500 2,536.50	190.0000 59,090.00	57.0000 10,146.00	190.0000 59,090.00	570.0000 379,620.00	95
100	245.0000 98,000.00	330.0000 161,370.00	75.0000 13,350.00	50.0000 8,900.00	40.0000 7,120.00	30.0000 5,340.00	20.0000 3,560.00	315.0000 154,035.00	230.0000 81,650.00	40.0000 7,120.00	15.0000 2,670.00	200.0000 62,200.00	60.0000 10,680.00	200.0000 62,200.00	600.0000 XXXXXXX	100

Footnote: Hand or Thumb and First and Second Fingers (on 1 Hand) or 4 Fingers (on 1 Hand)

EXPLANATION: The percent columns on the outside of the chart represent percentage of disability. The remaining columns show this percentage in terms of weeks and total benefits. The top figure in each box represents weeks, and the lower figure is dollar benefits.

NEW JERSEY MANUFACTURERS INSURANCE COMPANY
301 SULLIVAN WAY, WEST TRENTON, N.J. 08628

WCC-231 (9/04)

WEEKS	90	90	97	103	109	115	121	127	133	139	145	151	157	163	169	175			
		96	102	108	114	120	126	132	138	144	150	156	162	168	174	180			
MAX. DOLLAR AMT.	16,020	17,952	19,122	20,346	21,624	22,956	24,342	25,782	27,276	28,824	30,420	32,070	33,774	35,532	37,344	39,210			
90 20% of SAWW	178																		
91 TO 96 21% of SAWW	178	187																	
97 TO 102 22% of SAWW	187	187	195																
103 TO 108 23% of SAWW	187	187	195	204															
109 TO 114 24% of SAWW	187	187	195	204	213														
115 TO 120 25% of SAWW	187	187	195	204	213	222													
121 TO 126 26% of SAWW	187	187	195	204	213	222	231												
127 TO 132 27% of SAWW	187	187	195	204	213	222	231	240											
133 TO 138 28% of SAWW	187	187	195	204	213	222	231	240	249										
139 TO 144 29% of SAWW	187	187	195	204	213	222	231	240	249	258									
145 TO 150 30% of SAWW	187	187	195	204	213	222	231	240	249	258	266								
151 TO 156 31% of SAWW	187	187	195	204	213	222	231	240	249	258	266	275							
157 TO 162 32% of SAWW	187	187	195	204	213	222	231	240	249	258	266	275	284						
163 TO 168 33% of SAWW	187	187	195	204	213	222	231	240	249	258	266	275	284	293					
169 TO 174 34% of SAWW	187	187	195	204	213	222	231	240	249	258	266	275	284	293	302				
175 TO 180 35% of SAWW	187	187	195	204	213	222	231	240	249	258	266	275	284	293	302	311			
181 TO 210 35% of SAWW												-	-	-	-	-	311		
211 TO 240 40% of SAWW												-	-	-	-	-	-	355	
241 TO 270 45% of SAWW												-	-	-	-	-	-	-	400
271 TO 300 50% of SAWW												-	-	-	-	-	-	-	-
301 TO 330 55% of SAWW												-	-	-	-	-	-	-	-
331 TO 360 60% of SAWW												-	-	-	-	-	-	-	-
361 TO 390 65% of SAWW												-	-	-	-	-	-	-	-
391 TO 420 70% of SAWW												-	-	-	-	-	-	-	-
421 TO 600 75% of SAWW												-	-	-	-	-	-	-	-

SAWW $888.30

Maximum Rate $666.00

Maximum Rate Chart

Permanent Partial Disability

Compensation Rate - 70% of Wage

Minimum Rate $35.00 per week

Amputation - 30% of Award - Added no counsel fee

25 Weeks Additional for Enucleation of Eye

444						
-	489					
-	-	533				
-	-	-	577			
-	-	-	-	622		
-	-	-	-	-	666	

1/1/2005

TOTAL PERMANENT DISABILITY - 70% of Wages - Maximum $666.00 - Minimum $178.00 - 450 Weeks, Plus Additional Benefits as Set Forth in R.S. 34:15-12(b)

TEMPORARY DISABILITY - 70% of Wages - Maximum $666.00 - Minimum $178.00 - Maximum 400 Weeks

DEATH BENEFITS - 70% of Wages - 450 Weeks Plus Spouse's Statutory Benefits - Maximum Rate $666.00

FUNERAL ALLOWANCE - Not to Exceed $3,500.00

SCHEDULE OF DISABILITIES AND MAXIMUM BENEFITS EXCLUSIVE OF AMPUTATION AND ENUCLEATION

EFFECTIVE 1/1/2004

PER-CENT	HAND 245 WEEKS	ARM 330 WEEKS	FINGERS - SEE FOOTNOTE					LEG 315 WEEKS	FOOT 230 WEEKS	TOES		EYE 200 WEEKS	HEARING		PARTIAL TOTAL BASED ON 600 WEEKS	PER-CENT
			THUMB 75 WEEKS	FIRST 50 WEEKS	SECOND 40 WEEKS	THIRD 30 WEEKS	FOURTH 20 WEEKS			GREAT TOE 40 WEEKS	OTHER TOE 15 WEEKS		1 EAR 60 WEEKS	2 EARS 200 WEEKS		
1	2.4500 423.85	3.3000 570.90	0.7500 129.75	0.5000 86.50	0.4000 69.20	0.3000 51.90	0.2000 34.60	3.1500 544.95	2.3000 397.90	0.4000 69.20	0.1500 25.95	2.0000 346.00	0.6000 103.80	2.0000 346.00	6.0000 1,038.00	1
1 1/2	3.6750 635.78	4.9500 856.35	1.1250 194.63	0.7500 129.75	0.6000 103.80	0.4500 77.85	0.3000 51.90	4.7250 817.43	3.4500 596.85	0.6000 103.80	0.2250 38.93	3.0000 519.00	0.9000 155.70	3.0000 519.00	9.0000 1,557.00	1 1/2
2	4.9000 847.70	6.6000 1,141.80	1.5000 259.50	1.0000 173.00	0.8000 138.40	0.6000 103.80	0.4000 69.20	6.3000 1,089.90	4.6000 795.80	0.8000 138.40	0.3000 51.90	4.0000 692.00	1.2000 207.60	4.0000 692.00	12.0000 2,076.00	2
2 1/2	6.1250 1,059.63	8.2500 1,427.25	1.8750 324.38	1.2500 216.25	1.0000 173.00	0.7500 129.75	0.5000 86.50	7.8750 1,362.38	5.7500 994.75	1.0000 173.00	0.3750 64.88	5.0000 865.00	1.5000 259.50	5.0000 865.00	15.0000 2,595.00	2 1/2
3	7.3500 1,271.55	9.9000 1,712.70	2.2500 389.25	1.5000 259.50	1.2000 207.60	0.9000 155.70	0.6000 103.80	9.4500 1,634.85	6.9000 1,193.70	1.2000 207.60	0.4500 77.85	6.0000 1,038.00	1.8000 311.40	6.0000 1,038.00	18.0000 3,114.00	3
3 1/2	8.5750 1,483.48	11.5500 1,998.15	2.6250 454.13	1.7500 302.75	1.4000 242.20	1.0500 181.65	0.7000 121.10	11.0250 1,907.33	8.0500 1,392.65	1.4000 242.20	0.5250 90.83	7.0000 1,211.00	2.1000 363.30	7.0000 1,211.00	21.0000 3,633.00	3 1/2
4	9.8000 1,695.40	13.2000 2,283.60	3.0000 519.00	2.0000 346.00	1.6000 276.80	1.2000 207.60	0.8000 138.40	12.6000 2,179.80	9.2000 1,591.60	1.6000 276.80	0.6000 103.80	8.0000 1,384.00	2.4000 415.20	8.0000 1,384.00	24.0000 4,152.00	4
5	12.2500 2,119.25	16.5000 2,854.50	3.7500 648.75	2.5000 432.50	2.0000 346.00	1.5000 259.50	1.0000 173.00	15.7500 2,724.75	11.5000 1,989.50	2.0000 346.00	0.7500 129.75	10.0000 1,730.00	3.0000 519.00	10.0000 1,730.00	30.0000 5,190.00	5
7 1/2	18.3750 3,178.88	24.7500 4,281.75	5.6250 973.13	3.7500 648.75	3.0000 519.00	2.2500 389.25	1.5000 259.50	23.6250 4,087.13	17.2500 2,984.25	3.0000 519.00	1.1250 194.63	15.0000 2,595.00	4.5000 778.50	15.0000 2,595.00	45.0000 7,785.00	7 1/2
10	24.5000 4,238.50	33.0000 5,709.00	7.5000 1,297.50	5.0000 865.00	4.0000 692.00	3.0000 519.00	2.0000 346.00	31.5000 5,449.50	23.0000 3,979.00	4.0000 692.00	1.5000 259.50	20.0000 3,460.00	6.0000 1,038.00	20.0000 3,460.00	60.0000 10,380.00	10
12 1/2	30.6250 5,298.13	41.2500 7,136.25	9.3750 1,621.88	6.2500 1,081.25	5.0000 865.00	3.7500 648.75	2.5000 432.50	39.3750 6,811.88	28.7500 4,973.75	5.0000 865.00	1.8750 324.38	25.0000 4,325.00	7.5000 1,297.50	25.0000 4,325.00	75.0000 12,975.00	12 1/2
15	36.7500 6,357.75	49.5000 8,563.50	11.2500 1,946.25	7.5000 1,297.50	6.0000 1,038.00	4.5000 778.50	3.0000 519.00	47.2500 8,174.25	34.5000 5,968.50	6.0000 1,038.00	2.2500 389.25	30.0000 5,190.00	9.0000 1,557.00	30.0000 5,190.00	90.0000 15,570.00	15
17 1/2	42.8750 7,417.38	57.7500 9,990.75	13.1250 2,270.63	8.7500 1,513.75	7.0000 1,211.00	5.2500 908.25	3.5000 605.50	55.1250 9,536.63	40.2500 6,963.25	7.0000 1,211.00	2.6250 454.13	35.0000 6,055.00	10.5000 1,816.50	35.0000 6,055.00	105.0000 19,215.00	17 1/2
20	49.0000 8,477.00	66.0000 11,418.00	15.0000 2,595.00	10.0000 1,730.00	8.0000 1,384.00	6.0000 1,038.00	4.0000 692.00	63.0000 10,899.00	46.0000 7,958.00	8.0000 1,384.00	3.0000 519.00	40.0000 6,920.00	12.0000 2,076.00	40.0000 6,920.00	120.0000 22,362.00	20
22 1/2	55.1250 9,536.63	74.2500 12,845.25	16.8750 2,919.38	11.2500 1,946.25	9.0000 1,557.00	6.7500 1,167.75	4.5000 778.50	70.8750 12,261.38	51.7500 8,952.75	9.0000 1,557.00	3.3750 583.88	45.0000 7,785.00	13.5000 2,335.50	45.0000 7,785.00	135.0000 25,845.00	22 1/2
25	61.2500 10,596.25	82.5000 14,272.50	18.7500 3,243.75	12.5000 2,162.50	10.0000 1,730.00	7.5000 1,297.50	5.0000 865.00	78.7500 13,623.75	57.5000 9,947.50	10.0000 1,730.00	3.7500 648.75	50.0000 8,650.00	15.0000 2,595.00	50.0000 8,650.00	150.0000 29,640.00	25
27 1/2	67.3750 11,655.88	90.7500 15,706.50	20.6250 3,568.13	13.7500 2,378.75	11.0000 1,903.00	8.2500 1,427.25	5.5000 951.50	86.6250 14,986.13	63.2500 10,942.25	11.0000 1,903.00	4.1250 713.63	55.0000 9,515.00	16.5000 2,854.50	55.0000 9,515.00	165.0000 33,774.00	27 1/2
30	73.5000 12,715.50	99.0000 18,045.00	22.5000 3,892.50	15.0000 2,595.00	12.0000 2,076.00	9.0000 1,557.00	6.0000 1,038.00	94.5000 16,389.00	69.0000 11,937.00	12.0000 2,076.00	4.5000 778.50	60.0000 10,380.00	18.0000 3,114.00	60.0000 10,380.00	180.0000 38,220.00	30
33 1/3	81.6667 14,128.34	110.0000 20,228.00	25.0000 4,325.00	16.6667 2,883.34	13.3333 2,306.66	10.0000 1,730.00	6.6667 1,153.34	105.0000 19,215.00	76.6667 13,263.34	13.3333 2,306.66	5.0000 865.00	66.6667 11,533.34	20.0000 3,460.00	66.6667 11,533.34	200.0000 60,600.00	33 1/3
35	85.7500 14,834.75	115.5000 21,385.50	26.2500 4,541.25	17.5000 3,027.50	14.0000 2,422.00	10.5000 1,816.50	7.0000 1,211.00	110.2500 20,280.00	80.5000 13,926.50	14.0000 2,422.00	5.2500 908.25	70.0000 12,110.00	21.0000 3,633.00	70.0000 12,110.00	210.0000 63,630.00	35
37 1/2	91.8750 15,911.25	123.7500 23,205.75	28.1250 4,865.63	18.7500 3,243.75	15.0000 2,595.00	11.2500 1,946.25	7.5000 1,297.50	118.1250 21,955.13	86.2500 14,921.25	15.0000 2,595.00	5.6250 973.13	75.0000 12,975.00	22.5000 3,892.50	75.0000 12,975.00	225.0000 78,075.00	37 1/2
40	98.0000 17,854.00	132.0000 25,116.00	30.0000 5,190.00	20.0000 3,460.00	16.0000 2,768.00	12.0000 2,076.00	8.0000 1,384.00	126.0000 23,712.00	92.0000 15,934.00	16.0000 2,768.00	6.0000 1,038.00	80.0000 13,840.00	24.0000 4,152.00	80.0000 13,840.00	240.0000 83,280.00	40
45	110.2500 20,280.00	148.5000 29,250.00	33.7500 5,838.75	22.5000 3,892.50	18.0000 3,114.00	13.5000 2,335.50	9.0000 1,557.00	141.7500 27,515.25	103.5000 18,916.50	18.0000 3,114.00	6.7500 1,167.75	90.0000 15,570.00	27.0000 4,671.00	90.0000 15,570.00	270.0000 105,300.00	45
50	122.5000 22,924.50	165.0000 33,774.00	37.5000 6,487.50	25.0000 4,325.00	20.0000 3,460.00	15.0000 2,595.00	10.0000 1,730.00	157.5000 31,669.50	115.0000 21,277.00	20.0000 3,460.00	7.5000 1,297.50	100.0000 18,236.00	30.0000 5,190.00	100.0000 18,236.00	300.0000 129,900.00	50
55	134.7500 25,784.25	181.5000 34,994.50	41.2500 7,136.25	27.5000 4,757.50	22.0000 3,806.00	16.5000 2,854.50	11.0000 1,903.00	173.2500 36,180.75	126.5000 23,829.00	22.0000 3,806.00	8.2500 1,427.25	110.0000 20,228.00	33.0000 5,709.00	110.0000 20,228.00	330.0000 157,080.00	55
60	147.0000 28,860.00	198.0000 59,994.00	45.0000 7,785.00	30.0000 5,190.00	24.0000 4,152.00	18.0000 3,114.00	12.0000 2,076.00	189.0000 57,267.00	138.0000 26,574.00	24.0000 4,152.00	9.0000 1,557.00	120.0000 22,362.00	36.0000 6,228.00	120.0000 22,362.00	360.0000 187,200.00	60
65	159.2500 32,154.25	214.5000 74,431.50	48.7500 8,433.75	32.5000 5,622.50	26.0000 4,498.00	19.5000 3,373.50	13.0000 2,249.00	204.7500 62,039.25	149.5000 29,510.00	26.0000 4,498.00	9.7500 1,686.75	130.0000 24,648.00	39.0000 6,747.00	130.0000 24,648.00	390.0000 219,570.00	65
66 2/3	163.3333 33,297.32	220.0000 76,340.00	50.0000 8,650.00	33.3333 5,766.66	26.6667 4,613.34	20.0000 3,460.00	13.3333 2,306.66	210.0000 63,630.00	153.3333 30,536.66	26.6667 4,613.34	10.0000 1,730.00	133.3333 25,439.99	40.0000 6,920.00	133.3333 25,439.99	400.0000 242,400.00	66 2/3
70	171.5000 35,664.50	231.0000 80,157.00	52.5000 9,082.50	35.0000 6,055.00	28.0000 4,844.00	21.0000 3,633.00	14.0000 2,422.00	220.5000 76,513.50	161.0000 32,639.00	28.0000 4,844.00	10.5000 1,816.50	140.0000 27,076.00	42.0000 7,266.00	140.0000 27,076.00	420.0000 254,520.00	70
75	183.7500 55,676.25	247.5000 98,525.00	56.2500 9,731.25	37.5000 6,487.50	30.0000 5,190.00	22.5000 3,892.50	15.0000 2,595.00	236.2500 81,978.75	172.5000 35,959.50	30.0000 5,190.00	11.2500 1,946.25	150.0000 29,640.00	45.0000 7,785.00	150.0000 29,640.00	450.0000 292,500.00	75
80	196.0000 59,388.00	264.0000 102,960.00	60.0000 10,380.00	40.0000 6,920.00	32.0000 5,536.00	24.0000 4,152.00	16.0000 2,768.00	252.0000 98,280.00	184.0000 55,752.00	32.0000 5,536.00	12.0000 2,076.00	160.0000 32,362.00	48.0000 8,304.00	160.0000 32,362.00	480.0000 312,000.00	80
85	208.2500 63,099.75	280.5000 121,456.50	63.7500 11,028.75	42.5000 7,352.50	34.0000 5,882.00	25.5000 4,411.50	17.0000 2,941.00	267.7500 104,422.50	195.5000 59,236.50	34.0000 5,882.00	12.7500 2,205.75	170.0000 35,222.00	51.0000 8,823.00	170.0000 35,222.00	510.0000 331,500.00	85
90	220.5000 76,513.50	297.0000 128,601.00	67.5000 11,677.50	45.0000 7,785.00	36.0000 6,228.00	27.0000 4,671.00	18.0000 3,114.00	283.5000 122,755.50	207.0000 62,721.00	36.0000 6,228.00	13.5000 2,335.50	180.0000 38,220.00	54.0000 9,342.00	180.0000 38,220.00	540.0000 351,000.00	90
95	232.7500 80,764.25	313.5000 149,226.00	71.2500 12,326.25	47.5000 8,217.50	38.0000 6,574.00	28.5000 4,930.50	19.0000 3,287.00	299.2500 129,575.25	218.5000 75,619.50	38.0000 6,574.00	14.2500 2,465.25	190.0000 57,570.00	57.0000 9,861.00	190.0000 57,570.00	570.0000 370,500.00	95
100	245.0000 95,550.00	330.0000 157,080.00	75.0000 12,975.00	50.0000 8,650.00	40.0000 6,920.00	30.0000 5,190.00	20.0000 3,460.00	315.0000 149,940.00	230.0000 79,810.00	40.0000 6,920.00	15.0000 2,595.00	200.0000 60,600.00	60.0000 10,380.00	200.0000 60,600.00	600.0000 XXXXXXX	100

Footnote: Hand or Thumb and First and Second Fingers (on 1 Hand) or 4 Fingers (on 1 Hand)

EXPLANATION: The percent columns on the outside of the chart represent percentage of disability. The remaining columns show this percentage in terms of weeks and total benefits. The top figure in each box represents weeks, and the lower figure is dollar benefits.

NEW JERSEY MANUFACTURERS INSURANCE COMPANY

WCC-231 (8/03) **301 SULLIVAN WAY, WEST TRENTON, N.J. 08628**

WEEKS	90	90	97	103	109	115	121	127	133	139	145	151	157	163	169	175			
		96	102	108	114	120	126	132	138	144	150	156	162	168	174	180			
MAX. DOLLAR AMT.	15,570	17,472	18,618	19,812	21,060	22,362	23,712	25,116	26,574	28,080	29,640	31,254	32,916	34,632	36,402	38,220			
90 20% of SAWW	173																		
91 TO 96 21% of SAWW	173	182																	
97 TO 102 22% of SAWW	182	182	191																
103 TO 108 23% of SAWW	182	182	191	199															
109 TO 114 24% of SAWW	182	182	191	199	208														
115 TO 120 25% of SAWW	182	182	191	199	208	217													
121 TO 126 26% of SAWW	182	182	191	199	208	217	225												
127 TO 132 27% of SAWW	182	182	191	199	208	217	225	234											
133 TO 138 28% of SAWW	182	182	191	199	208	217	225	234	243										
139 TO 144 29% of SAWW	182	182	191	199	208	217	225	234	243	251									
145 TO 150 30% of SAWW	182	182	191	199	208	217	225	234	243	251	260								
151 TO 156 31% of SAWW	182	182	191	199	208	217	225	234	243	251	260	269							
157 TO 162 32% of SAWW	182	182	191	199	208	217	225	234	243	251	260	269	277						
163 TO 168 33% of SAWW	182	182	191	199	208	217	225	234	243	251	260	269	277	286					
169 TO 174 34% of SAWW	182	182	191	199	208	217	225	234	243	251	260	269	277	286	295				
175 TO 180 35% of SAWW	182	182	191	199	208	217	225	234	243	251	260	269	277	286	295	303			
181 TO 210 35% of SAWW												-	-	-	-	-	303		
211 TO 240 40% of SAWW												-	-	-	-	-	-	347	
241 TO 270 45% of SAWW												-	-	-	-	-	-	-	390
271 TO 300 50% of SAWW												-	-	-	-	-	-	-	-
301 TO 330 55% of SAWW												-	-	-	-	-	-	-	-
331 TO 360 60% of SAWW												-	-	-	-	-	-	-	-
361 TO 390 65% of SAWW												-	-	-	-	-	-	-	-
391 TO 420 70% of SAWW												-	-	-	-	-	-	-	-
421 TO 600 75% of SAWW												-	-	-	-	-	-	-	-

SAWW $866.36
Maximum Rate $650.00
Maximum Rate Chart
Permanent Partial Disability
Compensation Rate - 70% of Wage
Minimum Rate $35.00 per week
Amputation - 30% of Award - Added
no counsel fee
25 Weeks Additional for Enucleation of Eye

433																										
-	476																									
-	-	520																								
-	-	-	563																							
-	-	-	-	606																						
-	-	-	-	-	650																					

1/1/2004
TOTAL PERMANENT DISABILITY - 70% of Wages - Maximum $650.00 - Minimum $173.00 - 450 Weeks, Plus Additional Benefits as Set Forth in R.S. 34:15-12(b)
TEMPORARY DISABILITY - 70% of Wages - Maximum $650.00 - Minimum $173.00 - Maximum 400 Weeks
DEATH BENEFITS - 50% of Wages for 1 Dependent, 55% for 2, 60% for 3, 65% for 4, 70% for 5 or more - 450 Weeks Plus Spouse's Statutory Benefits - Maximum Rate $650.0(
FUNERAL ALLOWANCE - Not to Exceed $3,500.00

SCHEDULE OF DISABILITIES AND MAXIMUM BENEFITS EXCLUSIVE OF AMPUTATION AND ENUCLEATION

EFFECTIVE 1/1/2003

PER-CENT	HAND 245 WEEKS	ARM 330 WEEKS	FINGERS - SEE FOOTNOTE					LEG 315 WEEKS	FOOT 230 WEEKS	TOES		EYE 200 WEEKS	HEARING		PARTIAL TOTAL BASED ON 600 WEEKS	PER-CENT
			THUMB 75 WEEKS	FIRST 50 WEEKS	SECOND 40 WEEKS	THIRD 30 WEEKS	FOURTH 20 WEEKS			GREAT TOE 40 WEEKS	OTHER TOE 15 WEEKS		1 EAR 60 WEEKS	2 EARS 200 WEEKS		
1	2.4500 416.50	3.3000 561.00	0.7500 127.50	0.5000 85.00	0.4000 68.00	0.3000 51.00	0.2000 34.00	3.1500 535.50	2.3000 391.00	0.4000 68.00	0.1500 25.50	2.0000 340.00	0.6000 102.00	2.0000 340.00	6.0000 1,020.00	1
1 1/2	3.6750 624.75	4.9500 841.50	1.1250 191.25	0.7500 127.50	0.6000 102.00	0.4500 76.50	0.3000 51.00	4.7250 803.25	3.4500 586.50	0.6000 102.00	0.2250 38.25	3.0000 510.00	0.9000 153.00	3.0000 510.00	9.0000 1,530.00	1 1/2
2	4.9000 833.00	6.6000 1,122.00	1.5000 255.00	1.0000 170.00	0.8000 136.00	0.6000 102.00	0.4000 68.00	6.3000 1,071.00	4.6000 782.00	0.8000 136.00	0.3000 51.00	4.0000 680.00	1.2000 204.00	4.0000 680.00	12.0000 2,040.00	2
2 1/2	6.1250 1,041.25	8.2500 1,402.50	1.8750 318.75	1.2500 212.50	1.0000 170.00	0.7500 127.50	0.5000 85.00	7.8750 1,338.75	5.7500 977.50	1.0000 170.00	0.3750 63.75	5.0000 850.00	1.5000 255.00	5.0000 850.00	15.0000 2,550.00	2 1/2
3	7.3500 1,249.50	9.9000 1,683.00	2.2500 382.50	1.5000 255.00	1.2000 204.00	0.9000 153.00	0.6000 102.00	9.4500 1,606.50	6.9000 1,173.00	1.2000 204.00	0.4500 76.50	6.0000 1,020.00	1.8000 306.00	6.0000 1,020.00	18.0000 3,060.00	3
3 1/2	8.5750 1,457.75	11.5500 1,963.50	2.6250 446.25	1.7500 297.50	1.4000 238.00	1.0500 178.50	0.7000 119.00	11.0250 1,874.25	8.0500 1,368.50	1.4000 238.00	0.5250 89.25	7.0000 1,190.00	2.1000 357.00	7.0000 1,190.00	21.0000 3,570.00	3 1/2
4	9.8000 1,666.00	13.2000 2,244.00	3.0000 510.00	2.0000 340.00	1.6000 272.00	1.2000 204.00	0.8000 136.00	12.6000 2,142.00	9.2000 1,564.00	1.6000 272.00	0.6000 102.00	8.0000 1,360.00	2.4000 408.00	8.0000 1,360.00	24.0000 4,080.00	4
5	12.2500 2,082.50	16.5000 2,805.00	3.7500 637.50	2.5000 425.00	2.0000 340.00	1.5000 255.00	1.0000 170.00	15.7500 2,677.50	11.5000 1,955.00	2.0000 340.00	0.7500 127.50	10.0000 1,700.00	3.0000 510.00	10.0000 1,700.00	30.0000 5,100.00	5
7 1/2	18.3750 3,123.75	24.7500 4,207.50	5.6250 956.25	3.7500 637.50	3.0000 510.00	2.2500 382.50	1.5000 255.00	23.6250 4,016.25	17.2500 2,932.50	3.0000 510.00	1.1250 191.25	15.0000 2,550.00	4.5000 765.00	15.0000 2,550.00	45.0000 7,650.00	7 1/2
10	24.5000 4,165.00	33.0000 5,610.00	7.5000 1,275.00	5.0000 850.00	4.0000 680.00	3.0000 510.00	2.0000 340.00	31.5000 5,355.00	23.0000 3,910.00	4.0000 680.00	1.5000 255.00	20.0000 3,400.00	6.0000 1,020.00	20.0000 3,400.00	60.0000 10,200.00	10
12 1/2	30.6250 5,206.25	41.2500 7,012.50	9.3750 1,593.75	6.2500 1,062.50	5.0000 850.00	3.7500 637.50	2.5000 425.00	39.3750 6,693.75	28.7500 4,887.50	5.0000 850.00	1.8750 318.75	25.0000 4,250.00	7.5000 1,275.00	25.0000 4,250.00	75.0000 12,750.00	12 1/2
15	36.7500 6,247.50	49.5000 8,415.00	11.2500 1,912.50	7.5000 1,275.00	6.0000 1,020.00	4.5000 765.00	3.0000 510.00	47.2500 8,032.50	34.5000 5,865.00	6.0000 1,020.00	2.2500 382.50	30.0000 5,100.00	9.0000 1,530.00	30.0000 5,100.00	90.0000 15,300.00	15
17 1/2	42.8750 7,288.75	57.7500 9,817.50	13.1250 2,231.25	8.7500 1,487.50	7.0000 1,190.00	5.2500 892.50	3.5000 595.00	55.1250 9,371.25	40.2500 6,842.50	7.0000 1,190.00	2.6250 446.25	35.0000 5,950.00	10.5000 1,785.00	35.0000 5,950.00	105.0000 18,894.00	17 1/2
20	49.0000 8,330.00	66.0000 11,220.00	15.0000 2,550.00	10.0000 1,700.00	8.0000 1,360.00	6.0000 1,020.00	4.0000 680.00	63.0000 10,710.00	46.0000 7,820.00	8.0000 1,360.00	3.0000 510.00	40.0000 6,800.00	12.0000 2,040.00	40.0000 6,800.00	120.0000 21,984.00	20
22 1/2	55.1250 9,371.25	74.2500 12,622.50	16.8750 2,868.75	11.2500 1,912.50	9.0000 1,530.00	6.7500 1,147.50	4.5000 765.00	70.8750 12,048.75	51.7500 8,797.50	9.0000 1,530.00	3.3750 573.75	45.0000 7,650.00	13.5000 2,295.00	45.0000 7,650.00	135.0000 25,404.00	22 1/2
25	61.2500 10,412.50	82.5000 14,025.00	18.7500 3,187.50	12.5000 2,125.00	10.0000 1,700.00	7.5000 1,275.00	5.0000 850.00	78.7500 13,387.50	57.5000 9,775.00	10.0000 1,700.00	3.7500 637.50	50.0000 8,500.00	15.0000 2,550.00	50.0000 8,500.00	150.0000 29,130.00	25
27 1/2	67.3750 11,453.75	90.7500 15,434.25	20.6250 3,506.25	13.7500 2,337.50	11.0000 1,870.00	8.2500 1,402.50	5.5000 935.00	86.6250 14,726.25	63.2500 10,752.50	11.0000 1,870.00	4.1250 701.25	55.0000 9,350.00	16.5000 2,805.00	55.0000 9,350.00	165.0000 33,189.00	27 1/2
30	73.5000 12,495.00	99.0000 17,745.00	22.5000 3,825.00	15.0000 2,550.00	12.0000 2,040.00	9.0000 1,530.00	6.0000 1,020.00	94.5000 16,105.50	69.0000 11,730.00	12.0000 2,040.00	4.5000 765.00	60.0000 10,200.00	18.0000 3,060.00	60.0000 10,200.00	180.0000 37,554.00	30
33 1/3	81.6667 13,883.34	110.0000 19,890.00	25.0000 4,250.00	16.6667 2,833.34	13.3333 2,266.66	10.0000 1,700.00	6.6667 1,133.34	105.0000 18,894.00	76.6667 13,033.34	13.3333 2,266.66	5.0000 850.00	66.6667 11,333.34	20.0000 3,400.00	66.6667 11,333.34	200.0000 59,600.00	33 1/3
35	85.7500 14,577.50	115.5000 21,025.50	26.2500 4,462.50	17.5000 2,975.00	14.0000 2,380.00	10.5000 1,785.00	7.0000 1,190.00	110.2500 19,941.00	80.5000 13,685.00	14.0000 2,380.00	5.2500 892.50	70.0000 11,900.00	21.0000 3,570.00	70.0000 11,900.00	210.0000 62,580.00	35
37 1/2	91.8750 15,635.63	123.7500 22,812.75	28.1250 4,781.25	18.7500 3,187.50	15.0000 2,550.00	11.2500 1,912.50	7.5000 1,275.00	118.1250 21,584.63	86.2500 14,662.50	15.0000 2,550.00	5.6250 956.25	75.0000 12,750.00	22.5000 3,825.00	75.0000 12,750.00	225.0000 76,500.00	37 1/2
40	98.0000 17,556.00	132.0000 24,690.00	30.0000 5,100.00	20.0000 3,400.00	16.0000 2,720.00	12.0000 2,040.00	8.0000 1,360.00	126.0000 23,310.00	92.0000 15,658.00	16.0000 2,720.00	6.0000 1,020.00	80.0000 13,600.00	24.0000 4,080.00	80.0000 13,600.00	240.0000 81,600.00	40
45	110.2500 19,941.00	148.5000 28,747.50	33.7500 5,737.50	22.5000 3,825.00	18.0000 3,060.00	13.5000 2,295.00	9.0000 1,530.00	141.7500 27,044.25	103.5000 18,600.00	18.0000 3,060.00	6.7500 1,147.50	90.0000 15,300.00	27.0000 4,590.00	90.0000 15,300.00	270.0000 103,410.00	45
50	122.5000 22,536.50	165.0000 33,188.00	37.5000 6,375.00	25.0000 4,250.00	20.0000 3,400.00	15.0000 2,550.00	10.0000 1,700.00	157.5000 31,122.00	115.0000 20,919.00	20.0000 3,400.00	7.5000 1,275.00	100.0000 17,932.00	30.0000 5,100.00	100.0000 17,932.00	300.0000 127,500.00	50
55	134.7500 25,344.50	181.5000 34,087.00	41.2500 7,012.50	27.5000 4,675.00	22.0000 3,740.00	16.5000 2,805.00	11.0000 1,870.00	173.2500 35,549.25	126.5000 23,425.00	22.0000 3,740.00	8.2500 1,402.50	110.0000 19,890.00	33.0000 5,610.00	110.0000 19,890.00	330.0000 154,440.00	55
60	147.0000 28,365.00	198.0000 59,004.00	45.0000 7,650.00	30.0000 5,100.00	24.0000 4,080.00	18.0000 3,060.00	12.0000 2,040.00	189.0000 56,322.00	138.0000 26,118.00	24.0000 4,080.00	9.0000 1,530.00	120.0000 21,984.00	36.0000 6,120.00	120.0000 21,984.00	360.0000 183,660.00	60
65	159.2500 31,598.00	214.5000 72,930.00	48.7500 8,287.50	32.5000 5,525.00	26.0000 4,420.00	19.5000 3,315.00	13.0000 2,210.00	204.7500 61,015.50	149.5000 29,002.50	26.0000 4,420.00	9.7500 1,657.50	130.0000 24,230.00	39.0000 6,630.00	130.0000 24,230.00	390.0000 215,670.00	65
66 2/3	163.3333 32,720.66	220.0000 74,800.00	50.0000 8,500.00	33.3333 5,666.66	26.6667 4,533.34	20.0000 3,400.00	13.3333 2,266.66	210.0000 62,580.00	153.3333 30,009.99	26.6667 4,533.34	10.0000 1,700.00	133.3333 25,007.33	40.0000 6,800.00	133.3333 25,007.33	400.0000 238,400.00	66 2/3
70	171.5000 35,043.50	231.0000 78,540.00	52.5000 8,925.00	35.0000 5,950.00	28.0000 4,760.00	21.0000 3,570.00	14.0000 2,380.00	220.5000 74,970.00	161.0000 32,074.00	28.0000 4,760.00	10.5000 1,785.00	140.0000 26,612.00	42.0000 7,140.00	140.0000 26,612.00	420.0000 250,320.00	70
75	183.7500 54,757.50	247.5000 94,792.50	56.2500 9,562.50	37.5000 6,375.00	30.0000 5,100.00	22.5000 3,825.00	15.0000 2,550.00	236.2500 80,325.00	172.5000 35,332.50	30.0000 5,100.00	11.2500 1,912.50	150.0000 29,130.00	45.0000 7,650.00	150.0000 29,130.00	450.0000 287,100.00	75
80	196.0000 58,408.00	264.0000 101,112.00	60.0000 10,200.00	40.0000 6,800.00	32.0000 5,440.00	24.0000 4,080.00	16.0000 2,720.00	252.0000 98,516.00	184.0000 54,832.00	32.0000 5,440.00	12.0000 2,040.00	160.0000 31,802.00	48.0000 8,160.00	160.0000 31,802.00	480.0000 306,240.00	80
85	208.2500 62,058.50	280.5000 119,212.50	63.7500 10,837.50	42.5000 7,225.00	34.0000 5,780.00	25.5000 4,335.00	17.0000 2,890.00	267.7500 102,548.25	195.5000 58,259.00	34.0000 5,780.00	12.7500 2,167.50	170.0000 34,610.00	51.0000 8,670.00	170.0000 34,610.00	510.0000 325,380.00	85
90	220.5000 74,970.00	297.0000 126,225.00	67.5000 11,475.00	45.0000 7,650.00	36.0000 6,120.00	27.0000 4,590.00	18.0000 3,060.00	283.5000 120,487.50	207.0000 61,686.00	36.0000 6,120.00	13.5000 2,295.00	180.0000 37,554.00	54.0000 9,180.00	180.0000 37,554.00	540.0000 344,520.00	90
95	232.7500 79,135.00	313.5000 146,718.00	71.2500 12,112.50	47.5000 8,075.00	38.0000 6,460.00	28.5000 4,845.00	19.0000 3,230.00	299.2500 127,181.25	218.5000 74,290.00	38.0000 6,460.00	14.2500 2,422.50	190.0000 56,620.00	57.0000 9,690.00	190.0000 56,620.00	570.0000 363,660.00	95
100	245.0000 93,835.00	330.0000 154,440.00	75.0000 12,750.00	50.0000 8,500.00	40.0000 6,800.00	30.0000 5,100.00	20.0000 3,400.00	315.0000 147,420.00	230.0000 78,200.00	40.0000 6,800.00	15.0000 2,550.00	200.0000 59,600.00	60.0000 10,200.00	200.0000 59,600.00	600.0000 XXXXXXX	100

Footnote: Hand or Thumb and First and Second Fingers (on 1 Hand) or 4 Fingers (on 1 Hand)

EXPLANATION: The percent columns on the outside of the chart represent percentage of disability. The remaining columns show this percentage in terms of weeks and total benefits. The top figure in each box represents weeks, and the lower figure is dollar benefits.

NEW JERSEY MANUFACTURERS INSURANCE COMPANY
301 SULLIVAN WAY, WEST TRENTON, N.J. 08628

WCC-231 (8/02)

WEEKS		90	90	97	103	109	115	121	127	133	139	145	151	157	163	169	175			
			96	102	108	114	120	126	132	138	144	150	156	162	168	174	180			
MAX. DOLLAR AMT.		15,300	17,184	18,306	19,482	20,706	21,984	23,310	24,690	26,118	27,600	29,130	30,714	32,346	34,032	35,766	37,554			
90	20% of SAWW	170																		
91 TO 96	21% of SAWW	170	179																	
97 TO 102	22% of SAWW	179	179	187																
103 TO 108	23% of SAWW	179	179	187	196															
109 TO 114	24% of SAWW	179	179	187	196	204														
115 TO 120	25% of SAWW	179	179	187	196	204	213													
121 TO 126	26% of SAWW	179	179	187	196	204	213	221												
127 TO 132	27% of SAWW	179	179	187	196	204	213	221	230											
133 TO 138	28% of SAWW	179	179	187	196	204	213	221	230	238										
139 TO 144	29% of SAWW	179	179	187	196	204	213	221	230	238	247									
145 TO 150	30% of SAWW	179	179	187	196	204	213	221	230	238	247	255								
151 TO 156	31% of SAWW	179	179	187	196	204	213	221	230	238	247	255	264							
157 TO 162	32% of SAWW	179	179	187	196	204	213	221	230	238	247	255	264	272						
163 TO 168	33% of SAWW	179	179	187	196	204	213	221	230	238	247	255	264	272	281					
169 TO 174	34% of SAWW	179	179	187	196	204	213	221	230	238	247	255	264	272	281	289				
175 TO 180	35% of SAWW	179	179	187	196	204	213	221	230	238	247	255	264	272	281	289	298			
181 TO 210	36% of SAWW												-	-	-	-	-	298		
211 TO 240	40% of SAWW												-	-	-	-	-	-	340	
241 TO 270	45% of SAWW												-	-	-	-	-	-	-	383
271 TO 300	50% of SAWW												-	-	-	-	-	-	-	-
301 TO 330	55% of SAWW												-	-	-	-	-	-	-	-
331 TO 360	60% of SAWW												-	-	-	-	-	-	-	-
361 TO 390	65% of SAWW												-	-	-	-	-	-	-	-
391 TO 420	70% of SAWW												-	-	-	-	-	-	-	-
421 TO 600	75% of SAWW												-	-	-	-	-	-	-	-

SAWW $850.73
Maximum Rate $638.00
Maximum Rate Chart
Permanent Partial Disability
Compensation Rate - 70% of Wage
Minimum Rate $35.00 per week
Amputation - 30% of Award - Added
no counsel fee
25 Weeks Additional for Enucleation of Eye

425																											
-	468																										
-	-	510																									
-	-	-	553																								
-	-	-	-	596																							
-	-	-	-	-	638																						

1/1/2003
TOTAL PERMANENT DISABILITY - 70% of Wages - Maximum $638.00 - Minimum $170.00 - 450 Weeks, Plus Additional Benefits as Set Forth in R.S. 34:15-12(b)
TEMPORARY DISABILITY - 70% of Wages - Maximum $638.00 - Minimum $170.00 - Maximum 400 Weeks
DEATH BENEFITS - 50% of Wages for 1 Dependent, 55% for 2, 60% for 3, 65% for 4, 70% for 5 or more - 450 Weeks Plus Spouse's Statutory Benefits - Maximum Rate $638.00
FUNERAL ALLOWANCE - Not to Exceed $3,500.00

SCHEDULE OF DISABILITIES AND MAXIMUM BENEFITS EXCLUSIVE OF AMPUTATION AND ENUCLEATION

EFFECTIVE 1/1/2002

PER-CENT	HAND 245 WEEKS	ARM 330 WEEKS	FINGERS - SEE FOOTNOTE					LEG 315 WEEKS	FOOT 230 WEEKS	TOES		EYE 200 WEEKS	HEARING		PARTIAL TOTAL BASED ON 600 WEEKS	PER-CENT
			THUMB 75 WEEKS	FIRST 50 WEEKS	SECOND 40 WEEKS	THIRD 30 WEEKS	FOURTH 20 WEEKS			GREAT TOE 40 WEEKS	OTHER TOE 15 WEEKS		1 EAR 60 WEEKS	2 EARS 200 WEEKS		
1	2.4500 411.60	3.3000 554.40	0.7500 126.00	0.5000 84.00	0.4000 67.20	0.3000 50.40	0.2000 33.60	3.1500 529.20	2.3000 386.40	0.4000 67.20	0.1500 25.20	2.0000 336.00	0.6000 100.80	2.0000 336.00	6.0000 1,008.00	1
1 1/2	3.6750 617.40	4.9500 831.60	1.1250 189.00	0.7500 126.00	0.6000 100.80	0.4500 75.60	0.3000 50.40	4.7250 793.80	3.4500 579.60	0.6000 100.80	0.2250 37.80	3.0000 504.00	0.9000 151.20	3.0000 504.00	9.0000 1,512.00	1 1/2
2	4.9000 823.20	6.6000 1,108.80	1.5000 252.00	1.0000 168.00	0.8000 134.40	0.6000 100.80	0.4000 67.20	6.3000 1,058.40	4.6000 772.80	0.8000 134.40	0.3000 50.40	4.0000 672.00	1.2000 201.60	4.0000 672.00	12.0000 2,016.00	2
2 1/2	6.1250 1,029.00	8.2500 1,386.00	1.8750 315.00	1.2500 210.00	1.0000 168.00	0.7500 126.00	0.5000 84.00	7.8750 1,323.00	5.7500 966.00	1.0000 168.00	0.3750 63.00	5.0000 840.00	1.5000 252.00	5.0000 840.00	15.0000 2,520.00	2 1/2
3	7.3500 1,234.80	9.9000 1,663.20	2.2500 378.00	1.5000 252.00	1.2000 201.60	0.9000 151.20	0.6000 100.80	9.4500 1,587.60	6.9000 1,159.20	1.2000 201.60	0.4500 75.60	6.0000 1,008.00	1.8000 302.40	6.0000 1,008.00	18.0000 3,024.00	3
3 1/2	8.5750 1,440.60	11.5500 1,940.40	2.6250 441.00	1.7500 294.00	1.4000 235.20	1.0500 176.40	0.7000 117.60	11.0250 1,852.20	8.0500 1,352.40	1.4000 235.20	0.5250 88.20	7.0000 1,176.00	2.1000 352.80	7.0000 1,176.00	21.0000 3,528.00	3 1/2
4	9.8000 1,646.40	13.2000 2,217.60	3.0000 504.00	2.0000 336.00	1.6000 268.80	1.2000 201.60	0.8000 134.40	12.6000 2,116.80	9.2000 1,545.60	1.6000 268.80	0.6000 100.80	8.0000 1,344.00	2.4000 403.20	8.0000 1,344.00	24.0000 4,032.00	4
5	12.2500 2,058.00	16.5000 2,772.00	3.7500 630.00	2.5000 420.00	2.0000 336.00	1.5000 252.00	1.0000 168.00	15.7500 2,646.00	11.5000 1,932.00	2.0000 336.00	0.7500 126.00	10.0000 1,680.00	3.0000 504.00	10.0000 1,680.00	30.0000 5,040.00	5
7 1/2	18.3750 3,087.00	24.7500 4,158.00	5.6250 945.00	3.7500 630.00	3.0000 504.00	2.2500 378.00	1.5000 252.00	23.6250 3,969.00	17.2500 2,898.00	3.0000 504.00	1.1250 189.00	15.0000 2,520.00	4.5000 756.00	15.0000 2,520.00	45.0000 7,560.00	7 1/2
10	24.5000 4,116.00	33.0000 5,544.00	7.5000 1,260.00	5.0000 840.00	4.0000 672.00	3.0000 504.00	2.0000 336.00	31.5000 5,292.00	23.0000 3,864.00	4.0000 672.00	1.5000 252.00	20.0000 3,360.00	6.0000 1,008.00	20.0000 3,360.00	60.0000 10,080.00	10
12 1/2	30.6250 5,145.00	41.2500 6,930.00	9.3750 1,575.00	6.2500 1,050.00	5.0000 840.00	3.7500 630.00	2.5000 420.00	39.3750 6,615.00	28.7500 4,830.00	5.0000 840.00	1.8750 315.00	25.0000 4,200.00	7.5000 1,260.00	25.0000 4,200.00	75.0000 12,600.00	12 1/2
15	36.7500 6,174.00	49.5000 8,316.00	11.2500 1,890.00	7.5000 1,260.00	6.0000 1,008.00	4.5000 756.00	3.0000 504.00	47.2500 7,938.00	34.5000 5,796.00	6.0000 1,008.00	2.2500 378.00	30.0000 5,040.00	9.0000 1,512.00	30.0000 5,040.00	90.0000 15,120.00	15
17 1/2	42.8750 7,203.00	57.7500 9,702.00	13.1250 2,205.00	8.7500 1,470.00	7.0000 1,176.00	5.2500 882.00	3.5000 588.00	55.1250 9,261.00	40.2500 6,762.00	7.0000 1,176.00	2.6250 441.00	35.0000 5,880.00	10.5000 1,764.00	35.0000 5,880.00	105.0000 18,579.00	17 1/2
20	49.0000 8,232.00	66.0000 11,088.00	15.0000 2,520.00	10.0000 1,680.00	8.0000 1,344.00	6.0000 1,008.00	4.0000 672.00	63.0000 10,584.00	46.0000 7,728.00	8.0000 1,344.00	3.0000 504.00	40.0000 6,720.00	12.0000 2,016.00	40.0000 6,720.00	120.0000 21,824.00	20
22 1/2	55.1250 9,261.00	74.2500 12,474.00	16.8750 2,835.00	11.2500 1,890.00	9.0000 1,512.00	6.7500 1,134.00	4.5000 756.00	70.8750 11,907.00	51.7500 8,694.00	9.0000 1,512.00	3.3750 567.00	45.0000 7,560.00	13.5000 2,268.00	45.0000 7,560.00	135.0000 24,993.00	22 1/2
25	61.2500 10,290.00	82.5000 13,860.00	18.7500 3,150.00	12.5000 2,100.00	10.0000 1,680.00	7.5000 1,260.00	5.0000 840.00	78.7500 13,230.00	57.5000 9,660.00	10.0000 1,680.00	3.7500 630.00	50.0000 8,400.00	15.0000 2,520.00	50.0000 8,400.00	150.0000 28,668.00	25
27 1/2	67.3750 11,319.00	90.7500 15,252.00	20.6250 3,465.00	13.7500 2,310.00	11.0000 1,848.00	8.2500 1,386.00	5.5000 924.00	86.6250 14,553.00	63.2500 10,626.00	11.0000 1,848.00	4.1250 693.00	55.0000 9,240.00	16.5000 2,772.00	55.0000 9,240.00	165.0000 32,667.00	27 1/2
30	73.5000 12,348.00	99.0000 17,448.00	22.5000 3,780.00	15.0000 2,520.00	12.0000 2,016.00	9.0000 1,512.00	6.0000 1,008.00	94.5000 15,912.00	69.0000 11,592.00	12.0000 2,016.00	4.5000 756.00	60.0000 10,080.00	18.0000 3,024.00	60.0000 10,080.00	180.0000 36,996.00	30
33 1/3	81.6667 13,720.01	110.0000 19,560.00	25.0000 4,200.00	16.6667 2,800.01	13.3333 2,239.99	10.0000 1,680.00	6.6667 1,120.01	105.0000 18,579.00	76.6667 12,880.01	13.3333 2,239.99	5.0000 840.00	66.6667 11,200.01	20.0000 3,360.00	66.6667 11,200.01	200.0000 58,800.00	33 1/3
35	85.7500 14,406.00	115.5000 20,579.00	26.2500 4,410.00	17.5000 2,940.00	14.0000 2,352.00	10.5000 1,764.00	7.0000 1,176.00	110.2500 19,610.25	80.5000 13,524.00	14.0000 2,352.00	5.2500 882.00	70.0000 11,760.00	21.0000 3,528.00	70.0000 11,760.00	210.0000 61,530.00	35
37 1/2	91.8750 15,450.00	123.7500 22,441.50	28.1250 4,725.00	18.7500 3,150.00	15.0000 2,520.00	11.2500 1,890.00	7.5000 1,260.00	118.1250 21,230.25	86.2500 14,490.00	15.0000 2,520.00	5.6250 945.00	75.0000 12,600.00	22.5000 3,780.00	75.0000 12,600.00	225.0000 75,375.00	37 1/2
40	98.0000 17,264.00	132.0000 24,288.00	30.0000 5,040.00	20.0000 3,360.00	16.0000 2,688.00	12.0000 2,016.00	8.0000 1,344.00	126.0000 22,932.00	92.0000 15,472.00	16.0000 2,688.00	6.0000 1,008.00	80.0000 13,440.00	24.0000 4,032.00	80.0000 13,440.00	240.0000 80,400.00	40
45	110.2500 19,610.25	148.5000 28,290.00	33.7500 5,670.00	22.5000 3,780.00	18.0000 3,024.00	13.5000 2,268.00	9.0000 1,512.00	141.7500 25,609.25	103.5000 18,289.50	18.0000 3,024.00	6.7500 1,134.00	90.0000 15,120.00	27.0000 4,536.00	90.0000 15,120.00	270.0000 101,790.00	45
50	122.5000 22,169.00	165.0000 32,667.00	37.5000 6,300.00	25.0000 4,200.00	20.0000 3,360.00	15.0000 2,520.00	10.0000 1,680.00	157.5000 30,630.00	115.0000 20,574.00	20.0000 3,360.00	7.5000 1,260.00	100.0000 17,632.00	30.0000 5,040.00	100.0000 17,632.00	300.0000 125,700.00	50
55	134.7500 24,934.25	181.5000 53,179.50	41.2500 6,930.00	27.5000 4,620.00	22.0000 3,696.00	16.5000 2,772.00	11.0000 1,848.00	173.2500 34,994.25	126.5000 23,045.00	22.0000 3,696.00	8.2500 1,386.00	110.0000 19,580.00	33.0000 5,544.00	110.0000 19,580.00	330.0000 152,130.00	55
60	147.0000 27,912.00	198.0000 58,014.00	45.0000 7,560.00	30.0000 5,040.00	24.0000 4,032.00	18.0000 3,024.00	12.0000 2,016.00	189.0000 55,377.00	138.0000 25,696.00	24.0000 4,032.00	9.0000 1,512.00	120.0000 21,824.00	36.0000 6,048.00	120.0000 21,824.00	360.0000 161,080.00	60
65	159.2500 31,099.00	214.5000 71,857.50	48.7500 8,190.00	32.5000 5,460.00	26.0000 4,368.00	19.5000 3,276.00	13.0000 2,184.00	204.7500 59,991.75	149.5000 28,542.00	26.0000 4,368.00	9.7500 1,638.00	130.0000 23,836.00	39.0000 6,552.00	130.0000 23,836.00	390.0000 212,550.00	65
66 2/3	163.3333 32,205.32	220.0000 73,700.00	50.0000 8,400.00	33.3333 5,599.99	26.6667 4,480.01	20.0000 3,360.00	13.3333 2,239.99	210.0000 61,530.00	153.3333 29,534.66	26.6667 4,480.01	10.0000 1,680.00	133.3333 24,801.33	40.0000 6,720.00	133.3333 24,801.33	400.0000 234,800.00	66 2/3
70	171.5000 34,495.50	231.0000 77,385.00	52.5000 8,820.00	35.0000 5,880.00	28.0000 4,704.00	21.0000 3,528.00	14.0000 2,352.00	220.5000 73,857.50	161.0000 31,598.00	28.0000 4,704.00	10.5000 1,764.00	140.0000 26,184.00	42.0000 7,056.00	140.0000 26,184.00	420.0000 246,540.00	70
75	183.7500 53,838.75	247.5000 93,307.50	56.2500 9,450.00	37.5000 6,300.00	30.0000 5,040.00	22.5000 3,780.00	15.0000 2,520.00	236.2500 79,143.75	172.5000 34,780.50	30.0000 5,040.00	11.2500 1,890.00	150.0000 28,668.00	45.0000 7,560.00	150.0000 28,668.00	450.0000 283,050.00	75
80	196.0000 57,428.00	264.0000 99,528.00	60.0000 10,080.00	40.0000 6,720.00	32.0000 5,376.00	24.0000 4,032.00	16.0000 2,688.00	252.0000 95,004.00	184.0000 53,912.00	32.0000 5,376.00	12.0000 2,016.00	160.0000 31,300.00	48.0000 8,064.00	160.0000 31,300.00	480.0000 301,920.00	80
85	208.2500 61,017.25	280.5000 117,529.50	63.7500 10,710.00	42.5000 7,140.00	34.0000 5,712.00	25.5000 4,284.00	17.0000 2,856.00	267.7500 100,941.75	195.5000 57,281.50	34.0000 5,712.00	12.7500 2,142.00	170.0000 34,068.00	51.0000 8,568.00	170.0000 34,068.00	510.0000 320,790.00	85
90	220.5000 73,867.50	297.0000 124,443.00	67.5000 11,340.00	45.0000 7,560.00	36.0000 6,048.00	27.0000 4,536.00	18.0000 3,024.00	283.5000 118,786.50	207.0000 60,651.00	36.0000 6,048.00	13.5000 2,268.00	180.0000 36,986.00	54.0000 9,072.00	180.0000 36,986.00	540.0000 339,660.00	90
95	232.7500 77,971.25	313.5000 144,523.50	71.2500 11,970.00	47.5000 7,980.00	38.0000 6,384.00	28.5000 4,788.00	19.0000 3,192.00	299.2500 125,386.75	218.5000 73,197.50	38.0000 6,384.00	14.2500 2,394.00	190.0000 55,670.00	57.0000 9,576.00	190.0000 55,670.00	570.0000 358,530.00	95
100	245.0000 82,365.00	330.0000 152,130.00	75.0000 12,600.00	50.0000 8,400.00	40.0000 6,720.00	30.0000 5,040.00	20.0000 3,360.00	315.0000 145,215.00	230.0000 77,050.00	40.0000 6,720.00	15.0000 2,520.00	200.0000 58,800.00	60.0000 10,080.00	200.0000 58,800.00	600.0000 XXXXXXXX	100

Footnote: Hand or Thumb and First and Second Fingers (on 1 Hand) or 4 Fingers (on 1 Hand)

EXPLANATION: The percent columns on the outside of the chart represent percentage of disability. The remaining columns show this percentage in terms of weeks and total benefits. The top figure in each box represents weeks, and the lower figure is dollar benefits.

NEW JERSEY MANUFACTURERS INSURANCE COMPANY
301 SULLIVAN WAY, WEST TRENTON, N.J. 08628

WCC-231 (10/01)

WEEKS	90	90	97	103	109	115	121	127	133	139	145	151	157	163	169	175									
		96	102	108	114	120	126	132	138	144	150	156	162	168	174	180									
MAX. DOLLAR AMT.	15,120	16,896	18,000	19,158	20,364	21,624	22,932	24,288	25,698	27,156	28,668	30,228	31,836	33,498	35,208	36,966									
90 20% of SAWW	168																								
91 TO 96 21% of SAWW	168	176																							
97 TO 102 22% of SAWW	176	176	184																						
103 TO 108 23% of SAWW	176	176	184	193																					
109 TO 114 24% of SAWW	176	176	184	193	201																				
115 TO 120 25% of SAWW	176	176	184	193	201	210																			
121 TO 126 26% of SAWW	176	176	184	193	201	210	218																		
127 TO 132 27% of SAWW	176	176	184	193	201	210	218	226																	
133 TO 138 28% of SAWW	176	176	184	193	201	210	218	226	235																
139 TO 144 29% of SAWW	176	176	184	193	201	210	218	226	235	243															
145 TO 150 30% of SAWW	176	176	184	193	201	210	218	226	235	243	252														
151 TO 156 31% of SAWW	176	176	184	193	201	210	218	226	235	243	252	260													
157 TO 162 32% of SAWW	176	176	184	193	201	210	218	226	235	243	252	260	268												
163 TO 168 33% of SAWW	176	176	184	193	201	210	218	226	235	243	252	260	268	277											
169 TO 174 34% of SAWW	176	176	184	193	201	210	218	226	235	243	252	260	268	277	285										
175 TO 180 35% of SAWW	176	176	184	193	201	210	218	226	235	243	252	260	268	277	285	293									
181 TO 210 35% of SAWW																	293								
211 TO 240 40% of SAWW																		335							
241 TO 270 46% of SAWW																			377						
271 TO 300 50% of SAWW																				419					
301 TO 330 55% of SAWW																					461				
331 TO 360 60% of SAWW																						503			
361 TO 390 65% of SAWW																							545		
391 TO 420 70% of SAWW																								587	
421 TO 600 75% of SAWW																									629

SAWW $838.52
Maximum Rate $629.00
Maximum Rate Chart
Permanent Partial Disability
Compensation Rate - 70% of Wage
Minimum Rate $35.00 per week
Amputation - 30% of Award - Added
no counsel fee
25 Weeks Additional for Enucleation of Eye

1/1/2002
TOTAL PERMANENT DISABILITY - 70% of Wages - Maximum $629.00 - Minimum $168.00 - 450 Weeks, Plus Additional Benefits as Set Forth in R.S. 34:15-12(b)
TEMPORARY DISABILITY - 70% of Wages - Maximum $629.00 - Minimum $168.00 - Maximum 400 Weeks
DEATH BENEFITS - 50% of Wages for 1 Dependent, 55% for 2, 60% for 3, 65% for 4, 70% for 5 or more - 450 Weeks Plus Spouse's Statutory Benefits - Maximum Rate $629.00
FUNERAL ALLOWANCE - Not to Exceed $3,500.00

SCHEDULE OF DISABILITIES AND MAXIMUM BENEFITS EXCLUSIVE OF AMPUTATION AND ENUCLEATION

EFFECTIVE 1/1/2001

PER-CENT	HAND 245 WEEKS	ARM 330 WEEKS	FINGERS - SEE FOOTNOTE					LEG 315 WEEKS	FOOT 230 WEEKS	TOES		EYE 200 WEEKS	HEARING		PARTIAL TOTAL BASED ON 600 WEEKS	PER-CENT
			THUMB 75 WEEKS	FIRST 50 WEEKS	SECOND 40 WEEKS	THIRD 30 WEEKS	FOURTH 20 WEEKS			GREAT TOE 40 WEEKS	OTHER TOE 15 WEEKS		1 EAR 60 WEEKS	2 EARS 200 WEEKS		
1	2.4500 387.10	3.3000 521.40	0.7500 118.50	0.5000 79.00	0.4000 63.20	0.3000 47.40	0.2000 31.60	3.1500 497.70	2.3000 363.40	0.4000 63.20	0.1500 23.70	2.0000 316.00	0.6000 94.80	2.0000 316.00	6.0000 948.00	1
1 1/2	3.6750 580.65	4.9500 782.10	1.1250 177.75	0.7500 118.50	0.6000 94.80	0.4500 71.10	0.3000 47.40	4.7250 746.55	3.4500 545.10	0.6000 94.80	0.2250 35.55	3.0000 474.00	0.9000 142.20	3.0000 474.00	9.0000 1,422.00	1 1/2
2	4.9000 774.20	6.6000 1,042.80	1.5000 237.00	1.0000 158.00	0.8000 126.40	0.6000 94.80	0.4000 63.20	6.3000 995.40	4.6000 726.80	0.8000 126.40	0.3000 47.40	4.0000 632.00	1.2000 189.60	4.0000 632.00	12.0000 1,896.00	2
2 1/2	6.1250 967.75	8.2500 1,303.50	1.8750 296.25	1.2500 197.50	1.0000 158.00	0.7500 118.50	0.5000 79.00	7.8750 1,244.25	5.7500 908.50	1.0000 158.00	0.3750 59.25	5.0000 790.00	1.5000 237.00	5.0000 790.00	15.0000 2,370.00	2 1/2
3	7.3500 1,161.30	9.9000 1,564.20	2.2500 355.50	1.5000 237.00	1.2000 189.60	0.9000 142.20	0.6000 94.80	9.4500 1,493.10	6.9000 1,090.20	1.2000 189.60	0.4500 71.10	6.0000 948.00	1.8000 284.40	6.0000 948.00	18.0000 2,844.00	3
3 1/2	8.5750 1,354.85	11.5500 1,824.90	2.6250 414.75	1.7500 276.50	1.4000 221.20	1.0500 165.90	0.7000 110.60	11.0250 1,741.95	8.0500 1,271.90	1.4000 221.20	0.5250 82.95	7.0000 1,106.00	2.1000 331.80	7.0000 1,106.00	21.0000 3,318.00	3 1/2
4	9.8000 1,548.40	13.2000 2,085.60	3.0000 474.00	2.0000 316.00	1.6000 252.80	1.2000 189.60	0.8000 126.40	12.6000 1,990.80	9.2000 1,453.60	1.6000 252.80	0.6000 94.80	8.0000 1,264.00	2.4000 379.20	8.0000 1,264.00	24.0000 3,792.00	4
5	12.2500 1,935.50	16.5000 2,607.00	3.7500 592.50	2.5000 395.00	2.0000 316.00	1.5000 237.00	1.0000 158.00	15.7500 2,488.50	11.5000 1,817.00	2.0000 316.00	0.7500 118.50	10.0000 1,580.00	3.0000 474.00	10.0000 1,580.00	30.0000 4,740.00	5
7 1/2	18.3750 2,903.25	24.7500 3,910.50	5.6250 888.75	3.7500 592.50	3.0000 474.00	2.2500 355.50	1.5000 237.00	23.6250 3,732.75	17.2500 2,725.50	3.0000 474.00	1.1250 177.75	15.0000 2,370.00	4.5000 711.00	15.0000 2,370.00	45.0000 7,110.00	7 1/2
10	24.5000 3,871.00	33.0000 5,214.00	7.5000 1,185.00	5.0000 790.00	4.0000 632.00	3.0000 474.00	2.0000 316.00	31.5000 4,977.00	23.0000 3,634.00	4.0000 632.00	1.5000 237.00	20.0000 3,160.00	6.0000 948.00	20.0000 3,160.00	60.0000 9,480.00	10
12 1/2	30.6250 4,838.75	41.2500 6,517.50	9.3750 1,481.25	6.2500 987.50	5.0000 790.00	3.7500 592.50	2.5000 395.00	39.3750 6,221.25	28.7500 4,542.50	5.0000 790.00	1.8750 296.25	25.0000 3,950.00	7.5000 1,185.00	25.0000 3,950.00	75.0000 11,850.00	12 1/2
15	36.7500 5,806.50	49.5000 7,821.00	11.2500 1,777.50	7.5000 1,185.00	6.0000 948.00	4.5000 711.00	3.0000 474.00	47.2500 7,465.50	34.5000 5,451.00	6.0000 948.00	2.2500 355.50	30.0000 4,740.00	9.0000 1,422.00	30.0000 4,740.00	90.0000 14,220.00	15
17 1/2	42.8750 6,774.25	57.7500 9,124.50	13.1250 2,073.75	8.7500 1,382.50	7.0000 1,106.00	5.2500 829.50	3.5000 553.00	55.1250 8,709.75	40.2500 6,359.50	7.0000 1,106.00	2.6250 414.75	35.0000 5,530.00	10.5000 1,659.00	35.0000 5,530.00	105.0000 17,421.00	17 1/2
20	49.0000 7,742.00	66.0000 10,428.00	15.0000 2,370.00	10.0000 1,580.00	8.0000 1,264.00	6.0000 948.00	4.0000 632.00	63.0000 9,954.00	46.0000 7,268.00	8.0000 1,264.00	3.0000 474.00	40.0000 6,320.00	12.0000 1,896.00	40.0000 6,320.00	120.0000 20,280.00	20
22 1/2	55.1250 8,709.75	74.2500 11,731.50	16.8750 2,666.25	11.2500 1,777.50	9.0000 1,422.00	6.7500 1,066.50	4.5000 711.00	70.8750 11,198.25	51.7500 8,176.50	9.0000 1,422.00	3.3750 533.25	45.0000 7,110.00	13.5000 2,133.00	45.0000 7,110.00	135.0000 23,451.00	22 1/2
25	61.2500 9,677.50	82.5000 13,035.00	18.7500 2,962.50	12.5000 1,975.00	10.0000 1,580.00	7.5000 1,185.00	5.0000 790.00	78.7500 12,442.50	57.5000 9,085.00	10.0000 1,580.00	3.7500 592.50	50.0000 7,900.00	15.0000 2,370.00	50.0000 7,900.00	150.0000 26,898.00	25
27 1/2	67.3750 10,645.25	90.7500 14,343.75	20.6250 3,258.75	13.7500 2,172.50	11.0000 1,738.00	8.2500 1,303.50	5.5000 869.00	86.6250 13,686.75	63.2500 9,993.50	11.0000 1,738.00	4.1250 651.75	55.0000 8,690.00	16.5000 2,607.00	55.0000 8,690.00	165.0000 30,654.00	27 1/2
30	73.5000 11,613.00	99.0000 16,359.00	22.5000 3,555.00	15.0000 2,370.00	12.0000 1,896.00	9.0000 1,422.00	6.0000 948.00	94.5000 14,962.50	69.0000 10,902.00	12.0000 1,896.00	4.5000 711.00	60.0000 9,480.00	18.0000 2,844.00	60.0000 9,480.00	180.0000 34,698.00	30
33 1/3	81.6667 12,903.34	110.0000 18,342.00	25.0000 3,950.00	16.6667 2,633.34	13.3333 2,106.66	10.0000 1,580.00	6.6667 1,053.34	105.0000 17,421.00	76.6667 12,113.34	13.3333 2,106.66	5.0000 790.00	66.6667 10,533.34	20.0000 3,160.00	66.6667 10,533.34	200.0000 55,200.00	33 1/3
35	85.7500 13,548.50	115.5000 19,393.50	26.2500 4,147.50	17.5000 2,765.00	14.0000 2,212.00	10.5000 1,659.00	7.0000 1,106.00	110.2500 18,389.25	80.5000 12,719.00	14.0000 2,212.00	5.2500 829.50	70.0000 11,080.00	21.0000 3,318.00	70.0000 11,060.00	210.0000 57,980.00	35
37 1/2	91.8750 14,529.38	123.7500 21,048.75	28.1250 4,443.75	18.7500 2,962.50	15.0000 2,370.00	11.2500 1,777.50	7.5000 1,185.00	118.1250 19,910.63	86.2500 13,627.50	15.0000 2,370.00	5.6250 888.75	75.0000 11,850.00	22.5000 3,555.00	75.0000 11,850.00	225.0000 70,875.00	37 1/2
40	98.0000 16,186.00	132.0000 22,786.00	30.0000 4,740.00	20.0000 3,160.00	16.0000 2,528.00	12.0000 1,896.00	8.0000 1,264.00	126.0000 21,510.00	92.0000 14,550.00	16.0000 2,528.00	6.0000 948.00	80.0000 12,640.00	24.0000 3,792.00	80.0000 12,640.00	240.0000 75,800.00	40
45	110.2500 18,369.25	148.5000 26,544.00	33.7500 5,332.50	22.5000 3,555.00	18.0000 2,844.00	13.5000 2,133.00	9.0000 1,422.00	141.7500 24,969.00	103.5000 17,149.50	18.0000 2,844.00	6.7500 1,066.50	90.0000 14,220.00	27.0000 4,266.00	90.0000 14,220.00	270.0000 95,850.00	45
50	122.5000 20,792.50	165.0000 30,654.00	37.5000 5,925.00	25.0000 3,950.00	20.0000 3,160.00	15.0000 2,370.00	10.0000 1,580.00	157.5000 28,740.00	115.0000 19,295.00	20.0000 3,160.00	7.5000 1,185.00	100.0000 16,532.00	30.0000 4,740.00	100.0000 16,532.00	300.0000 118,200.00	50
55	134.7500 23,395.75	181.5000 50,094.00	41.2500 6,517.50	27.5000 4,345.00	22.0000 3,476.00	16.5000 2,607.00	11.0000 1,738.00	173.2500 32,841.00	126.5000 21,616.50	22.0000 3,476.00	8.2500 1,303.50	110.0000 18,342.00	33.0000 5,214.00	110.0000 18,342.00	330.0000 142,890.00	55
60	147.0000 26,190.00	198.0000 54,648.00	45.0000 7,110.00	30.0000 4,740.00	24.0000 3,792.00	18.0000 2,844.00	12.0000 1,896.00	189.0000 52,164.00	138.0000 24,114.00	24.0000 3,792.00	9.0000 1,422.00	120.0000 20,280.00	36.0000 5,688.00	120.0000 20,280.00	360.0000 170,280.00	60
65	159.2500 29,181.00	214.5000 67,567.50	48.7500 7,702.50	32.5000 5,135.00	26.0000 4,108.00	19.5000 3,081.00	13.0000 2,054.00	204.7500 56,511.00	149.5000 26,780.00	26.0000 4,108.00	9.7500 1,540.50	130.0000 22,362.00	39.0000 6,162.00	130.0000 22,362.00	390.0000 199,680.00	65
66 2/3	163.3333 30,220.66	220.0000 69,300.00	50.0000 7,900.00	33.3333 5,266.66	26.6667 4,213.34	20.0000 3,160.00	13.3333 2,106.66	210.0000 57,960.00	153.3333 27,711.33	26.6667 4,213.34	10.0000 1,580.00	133.3333 23,082.66	40.0000 6,320.00	133.3333 23,082.66	400.0000 220,400.00	66 2/3
70	171.5000 32,372.00	231.0000 72,765.00	52.5000 8,295.00	35.0000 5,530.00	28.0000 4,424.00	21.0000 3,318.00	14.0000 2,212.00	220.5000 69,457.50	161.0000 29,622.00	28.0000 4,424.00	10.5000 1,659.00	140.0000 24,570.00	42.0000 6,636.00	140.0000 24,570.00	420.0000 231,420.00	70
75	183.7500 50,715.00	247.5000 67,862.50	56.2500 8,887.50	37.5000 5,925.00	30.0000 4,740.00	22.5000 3,555.00	15.0000 2,370.00	236.2500 74,418.75	172.5000 32,640.00	30.0000 4,740.00	11.2500 1,777.50	150.0000 26,898.00	45.0000 7,110.00	150.0000 26,898.00	450.0000 265,950.00	75
80	196.0000 54,096.00	264.0000 93,720.00	60.0000 9,480.00	40.0000 6,320.00	32.0000 5,056.00	24.0000 3,792.00	16.0000 2,528.00	252.0000 89,460.00	184.0000 50,784.00	32.0000 5,056.00	12.0000 1,896.00	160.0000 29,370.00	48.0000 7,584.00	160.0000 29,370.00	480.0000 283,680.00	80
85	208.2500 57,477.00	280.5000 110,517.00	63.7500 10,072.50	42.5000 6,715.00	34.0000 5,372.00	25.5000 4,029.00	17.0000 2,686.00	267.7500 95,051.25	195.5000 53,958.00	34.0000 5,372.00	12.7500 2,014.50	170.0000 31,970.00	51.0000 8,058.00	170.0000 31,970.00	510.0000 301,410.00	85
90	220.5000 69,457.50	297.0000 117,018.00	67.5000 10,665.00	45.0000 7,110.00	36.0000 5,688.00	27.0000 4,266.00	18.0000 2,844.00	283.5000 111,699.00	207.0000 57,132.00	36.0000 5,688.00	13.5000 2,133.00	180.0000 34,698.00	54.0000 8,532.00	180.0000 34,698.00	540.0000 319,140.00	90
95	232.7500 73,316.25	313.5000 135,745.50	71.2500 11,257.50	47.5000 7,505.00	38.0000 6,004.00	28.5000 4,503.00	19.0000 3,002.00	299.2500 117,904.50	218.5000 68,827.50	38.0000 6,004.00	14.2500 2,251.50	190.0000 52,440.00	57.0000 9,006.00	190.0000 52,440.00	570.0000 336,870.00	95
100	245.0000 86,975.00	330.0000 142,890.00	75.0000 11,850.00	50.0000 7,900.00	40.0000 6,320.00	30.0000 4,740.00	20.0000 3,160.00	315.0000 136,395.00	230.0000 72,450.00	40.0000 6,320.00	15.0000 2,370.00	200.0000 55,200.00	60.0000 9,480.00	200.0000 55,200.00	600.0000 XXXXXXXX	100

Footnote: Hand or Thumb and First and Second Fingers (on 1 Hand) or 4 Fingers (on 1 Hand)

EXPLANATION: The percent columns on the outside of the chart represent percentage of disability. The remaining columns show this percentage in terms of weeks and total benefits. The top figure in each box represents weeks, and the lower figure is dollar benefits.

NEW JERSEY MANUFACTURERS INSURANCE COMPANY

WCC-231 (10/00) **301 SULLIVAN WAY, WEST TRENTON, N.J. 08628**

WEEKS	90	90	97	103	109	115	121	127	133	139	145	151	157	163	169	175									
		96	102	108	114	120	126	132	138	144	150	156	162	168	174	180									
MAX. DOLLAR AMT.	14,220	15,840	16,878	17,964	19,098	20,280	21,510	22,788	24,114	25,482	26,898	28,362	29,874	31,434	33,042	34,698									
90 30% of SAWW	158																								
91 TO 96 31% of SAWW	158	165																							
97 TO 102 32% of SAWW	165	165	173																						
103 TO 108 33% of SAWW	165	165	173	181																					
109 TO 114 34% of SAWW	165	165	173	181	189																				
115 TO 120 35% of SAWW	165	165	173	181	189	197																			
121 TO 126 36% of SAWW	165	165	173	181	189	197	205																		
127 TO 132 37% of SAWW	165	165	173	181	189	197	205	213																	
133 TO 138 38% of SAWW	165	165	173	181	189	197	205	213	221																
139 TO 144 39% of SAWW	165	165	173	181	189	197	205	213	221	228															
145 TO 150 30% of SAWW	165	165	173	181	189	197	205	213	221	228	236														
151 TO 156 31% of SAWW	165	165	173	181	189	197	205	213	221	228	236	244													
157 TO 162 32% of SAWW	165	165	173	181	189	197	205	213	221	228	236	244	252												
163 TO 168 33% of SAWW	165	165	173	181	189	197	205	213	221	228	236	244	252	260											
169 TO 174 34% of SAWW	165	165	173	181	189	197	205	213	221	228	236	244	252	260	268										
175 TO 180 35% of SAWW	165	165	173	181	189	197	205	213	221	228	236	244	252	260	268	276									
181 TO 210 35% of SAWW																	276								
211 TO 240 40% of SAWW																		315							
241 TO 270 45% of SAWW																			355						
271 TO 300 50% of SAWW																				394					
301 TO 330 55% of SAWW																					433				
331 TO 360 60% of SAWW																						473			
361 TO 390 65% of SAWW																							512		
391 TO 420 70% of SAWW																								551	
421 TO 600 70% of SAWW																									591

SAWW $787.82
Maximum Rate $591.00
Maximum Rate Chart
Permanent Partial Disability
Compensation Rate - 70% of Wage
Minimum Rate $35.00 per week
Amputation - 30% of Award - Added
no counsel fee
25 Weeks Additional for Enucleation of Eye

1/1/2001
TOTAL PERMANENT DISABILITY - 70% of Wages - Maximum $591.00 - Minimum $158.00 - 450 Weeks, Plus Additional Benefits as Set Forth in R.S. 34:15-12(b)
TEMPORARY DISABILITY - 70% of Wages - Maximum $591.00 - Minimum $158.00 - Maximum 400 Weeks
DEATH BENEFITS - 50% of Wages for 1 Dependent, 55% for 2, 60% for 3, 65% for 4, 70% for 5 or more - 450 Weeks Plus Spouse's Statutory Benefits - Maximum Rate $591.00
FUNERAL ALLOWANCE - Not to Exceed $3,500.00

SCHEDULE OF DISABILITIES AND MAXIMUM BENEFITS EXCLUSIVE OF AMPUTATION AND ENUCLEATION

EFFECTIVE 1/1/2000

PER-CENT	HAND 245 WEEKS	ARM 330 WEEKS	FINGERS - SEE FOOTNOTE					LEG 315 WEEKS	FOOT 230 WEEKS	TOES		EYE 200 WEEKS	HEARING		PARTIAL TOTAL BASED ON 600 WEEKS	PER-CENT
			THUMB 75 WEEKS	FIRST 50 WEEKS	SECOND 40 WEEKS	THIRD 30 WEEKS	FOURTH 20 WEEKS			GREAT TOE 40 WEEKS	OTHER TOE 15 WEEKS		1 EAR 60 WEEKS	2 EARS 200 WEEKS		
1	2.4500 369.95	3.3000 498.30	0.7500 113.25	0.5000 75.50	0.4000 60.40	0.3000 45.30	0.2000 30.20	3.1500 475.65	2.3000 347.30	0.4000 60.40	0.1500 22.65	2.0000 302.00	0.6000 90.60	2.0000 302.00	6.0000 906.00	1
1 1/2	3.6750 554.93	4.9500 747.45	1.1250 169.88	0.7500 113.25	0.6000 90.60	0.4500 67.95	0.3000 45.30	4.7250 713.48	3.4500 520.95	0.6000 90.60	0.2250 33.98	3.0000 453.00	0.9000 135.90	3.0000 453.00	9.0000 1,359.00	1 1/2
2	4.9000 739.90	6.6000 996.60	1.5000 226.50	1.0000 151.00	0.8000 120.80	0.6000 90.60	0.4000 60.40	6.3000 951.30	4.6000 694.60	0.8000 120.80	0.3000 45.30	4.0000 604.00	1.2000 181.20	4.0000 604.00	12.0000 1,812.00	2
2 1/2	6.1250 924.88	8.2500 1,245.75	1.8750 283.13	1.2500 188.75	1.0000 151.00	0.7500 113.25	0.5000 75.50	7.8750 1,189.13	5.7500 868.25	1.0000 151.00	0.3750 56.63	5.0000 755.00	1.5000 226.50	5.0000 755.00	15.0000 2,265.00	2 1/2
3	7.3500 1,109.85	9.9000 1,494.90	2.2500 339.75	1.5000 226.50	1.2000 181.20	0.9000 135.90	0.6000 90.60	9.4500 1,426.95	6.9000 1,041.90	1.2000 181.20	0.4500 67.95	6.0000 906.00	1.8000 271.80	6.0000 906.00	18.0000 2,718.00	3
3 1/2	8.5750 1,294.83	11.5500 1,744.05	2.6250 396.38	1.7500 264.25	1.4000 211.40	1.0500 158.55	0.7000 105.70	11.0250 1,664.78	8.0500 1,215.55	1.4000 211.40	0.5250 79.28	7.0000 1,057.00	2.1000 317.10	7.0000 1,057.00	21.0000 3,171.00	3 1/2
4	9.8000 1,479.80	13.2000 1,993.20	3.0000 453.00	2.0000 302.00	1.6000 241.60	1.2000 181.20	0.8000 120.80	12.6000 1,902.60	9.2000 1,389.20	1.6000 241.60	0.6000 90.60	8.0000 1,208.00	2.4000 362.40	8.0000 1,208.00	24.0000 3,624.00	4
5	12.2500 1,849.75	16.5000 2,491.50	3.7500 566.25	2.5000 377.50	2.0000 302.00	1.5000 226.50	1.0000 151.00	15.7500 2,378.25	11.5000 1,736.50	2.0000 302.00	0.7500 113.25	10.0000 1,510.00	3.0000 453.00	10.0000 1,510.00	30.0000 4,530.00	5
7 1/2	18.3750 2,774.63	24.7500 3,737.25	5.6250 849.38	3.7500 566.25	3.0000 453.00	2.2500 339.75	1.5000 226.50	23.6250 3,567.38	17.2500 2,604.75	3.0000 453.00	1.1250 169.88	15.0000 2,265.00	4.5000 679.50	15.0000 2,265.00	45.0000 6,795.00	7 1/2
10	24.5000 3,699.50	33.0000 4,983.00	7.5000 1,132.50	5.0000 755.00	4.0000 604.00	3.0000 453.00	2.0000 302.00	31.5000 4,756.50	23.0000 3,473.00	4.0000 604.00	1.5000 226.50	20.0000 3,020.00	6.0000 906.00	20.0000 3,020.00	60.0000 9,060.00	10
12 1/2	30.6250 4,624.38	41.2500 6,228.75	9.3750 1,415.63	6.2500 943.75	5.0000 755.00	3.7500 566.25	2.5000 377.50	39.3750 5,945.63	28.7500 4,341.25	5.0000 755.00	1.8750 283.13	25.0000 3,775.00	7.5000 1,132.50	25.0000 3,775.00	75.0000 11,325.00	12 1/2
15	36.7500 5,549.25	49.5000 7,474.50	11.2500 1,698.75	7.5000 1,132.50	6.0000 906.00	4.5000 679.50	3.0000 453.00	47.2500 7,134.75	34.5000 5,209.50	6.0000 906.00	2.2500 339.75	30.0000 4,530.00	9.0000 1,359.00	30.0000 4,530.00	90.0000 13,590.00	15
17 1/2	42.8750 6,474.13	57.7500 8,720.25	13.1250 1,981.88	8.7500 1,321.25	7.0000 1,057.00	5.2500 792.75	3.5000 528.50	55.1250 8,323.88	40.2500 6,077.75	7.0000 1,057.00	2.6250 396.38	35.0000 5,285.00	10.5000 1,585.50	35.0000 5,285.00	105.0000 16,788.00	17 1/2
20	49.0000 7,399.00	66.0000 9,966.00	15.0000 2,265.00	10.0000 1,510.00	8.0000 1,208.00	6.0000 906.00	4.0000 604.00	63.0000 9,513.00	46.0000 6,946.00	8.0000 1,208.00	3.0000 453.00	40.0000 6,040.00	12.0000 1,812.00	40.0000 6,040.00	120.0000 19,536.00	20
22 1/2	55.1250 8,323.88	74.2500 11,211.75	16.8750 2,548.13	11.2500 1,698.75	9.0000 1,359.00	6.7500 1,019.25	4.5000 679.50	70.8750 10,702.13	51.7500 7,814.25	9.0000 1,359.00	3.3750 509.63	45.0000 6,795.00	13.5000 2,038.50	45.0000 6,795.00	135.0000 22,578.00	22 1/2
25	61.2500 9,248.75	82.5000 12,457.50	18.7500 2,831.25	12.5000 1,887.50	10.0000 1,510.00	7.5000 1,132.50	5.0000 755.00	78.7500 11,891.25	57.5000 8,682.50	10.0000 1,510.00	3.7500 566.25	50.0000 7,550.00	15.0000 2,265.00	50.0000 7,550.00	150.0000 25,896.00	25
27 1/2	67.3750 10,173.63	90.7500 13,709.25	20.6250 3,114.38	13.7500 2,076.25	11.0000 1,661.00	8.2500 1,245.75	5.5000 830.50	86.6250 13,080.38	63.2500 9,550.75	11.0000 1,661.00	4.1250 622.88	55.0000 8,305.00	16.5000 2,491.50	55.0000 8,305.00	165.0000 29,508.00	27 1/2
30	73.5000 11,098.50	99.0000 15,765.00	22.5000 3,397.50	15.0000 2,265.00	12.0000 1,812.00	9.0000 1,359.00	6.0000 906.00	94.5000 14,305.50	69.0000 10,419.00	12.0000 1,812.00	4.5000 679.50	60.0000 9,060.00	18.0000 2,718.00	60.0000 9,060.00	180.0000 33,390.00	30
33 1/3	81.6667 12,331.67	110.0000 17,674.00	25.0000 3,775.00	16.6667 2,516.67	13.3333 2,013.33	10.0000 1,510.00	6.6667 1,006.67	105.0000 16,788.00	76.6667 11,576.67	13.3333 2,013.33	5.0000 755.00	66.6667 10,066.67	20.0000 3,020.00	66.6667 10,066.67	200.0000 53,000.00	33 1/3
35	85.7500 12,948.25	115.5000 18,685.50	26.2500 3,963.75	17.5000 2,642.50	14.0000 2,114.00	10.5000 1,585.50	7.0000 1,057.00	110.2500 17,719.50	80.5000 12,155.50	14.0000 2,114.00	5.2500 792.75	70.0000 10,570.00	21.0000 3,171.00	70.0000 10,570.00	210.0000 55,650.00	35
37 1/2	91.8750 13,868.13	123.7500 20,274.75	28.1250 4,246.88	18.7500 2,831.25	15.0000 2,265.00	11.2500 1,698.75	7.5000 1,132.50	118.1250 19,181.63	86.2500 13,023.75	15.0000 2,265.00	5.6250 849.38	75.0000 11,325.00	22.5000 3,397.50	75.0000 11,325.00	225.0000 68,175.00	37 1/2
40	98.0000 15,596.00	132.0000 21,942.00	30.0000 4,530.00	20.0000 3,020.00	16.0000 2,416.00	12.0000 1,812.00	8.0000 1,208.00	126.0000 20,718.00	92.0000 13,908.00	16.0000 2,416.00	6.0000 906.00	80.0000 12,080.00	24.0000 3,624.00	80.0000 12,080.00	240.0000 72,720.00	40
45	110.2500 17,719.50	148.5000 25,555.50	33.7500 5,096.25	22.5000 3,397.50	18.0000 2,718.00	13.5000 2,038.50	9.0000 1,359.00	141.7500 24,039.00	103.5000 16,527.00	18.0000 2,718.00	6.7500 1,019.25	90.0000 13,590.00	27.0000 4,077.00	90.0000 13,590.00	270.0000 92,070.00	45
50	122.5000 20,028.50	165.0000 29,508.00	37.5000 5,662.50	25.0000 3,775.00	20.0000 3,020.00	15.0000 2,265.00	10.0000 1,510.00	157.5000 27,669.00	115.0000 18,591.00	20.0000 3,020.00	7.5000 1,132.50	100.0000 15,932.00	30.0000 4,530.00	100.0000 15,932.00	300.0000 113,700.00	50
55	134.7500 22,525.00	181.5000 48,097.50	41.2500 6,228.75	27.5000 4,152.50	22.0000 3,322.00	16.5000 2,491.50	11.0000 1,661.00	173.2500 31,607.25	126.5000 20,820.00	22.0000 3,322.00	8.2500 1,245.75	110.0000 17,674.00	33.0000 4,983.00	110.0000 17,674.00	330.0000 137,280.00	55
60	147.0000 25,215.00	198.0000 52,470.00	45.0000 6,795.00	30.0000 4,530.00	24.0000 3,624.00	18.0000 2,718.00	12.0000 1,812.00	189.0000 50,085.00	138.0000 23,214.00	24.0000 3,624.00	9.0000 1,359.00	120.0000 19,536.00	36.0000 5,436.00	120.0000 19,536.00	360.0000 163,440.00	60
65	159.2500 28,092.50	214.5000 64,993.50	48.7500 7,361.25	32.5000 4,907.50	26.0000 3,926.00	19.5000 2,944.50	13.0000 1,963.00	204.7500 54,258.75	149.5000 25,782.50	26.0000 3,926.00	9.7500 1,472.25	130.0000 21,534.00	39.0000 5,889.00	130.0000 21,534.00	390.0000 191,880.00	65
66 2/3	163.3333 29,091.33	220.0000 66,660.00	50.0000 7,550.00	33.3333 5,033.33	26.6667 4,026.67	20.0000 3,020.00	13.3333 2,013.33	210.0000 55,650.00	153.3333 26,679.33	26.6667 4,026.67	10.0000 1,510.00	133.3333 22,224.66	40.0000 6,040.00	133.3333 22,224.66	400.0000 212,000.00	66 2/3
70	171.5000 31,157.50	231.0000 69,993.00	52.5000 7,927.50	35.0000 5,285.00	28.0000 4,228.00	21.0000 3,171.00	14.0000 2,114.00	220.5000 66,811.50	161.0000 28,516.00	28.0000 4,228.00	10.5000 1,585.50	140.0000 23,654.00	42.0000 6,342.00	140.0000 23,654.00	420.0000 222,600.00	70
75	183.7500 48,693.75	247.5000 84,397.50	56.2500 8,493.75	37.5000 5,662.50	30.0000 4,530.00	22.5000 3,397.50	15.0000 2,265.00	236.2500 71,583.75	172.5000 31,414.50	30.0000 4,530.00	11.2500 1,698.75	150.0000 25,896.00	45.0000 6,795.00	150.0000 25,896.00	450.0000 255,600.00	75
80	196.0000 51,940.00	264.0000 90,024.00	60.0000 9,060.00	40.0000 6,040.00	32.0000 4,832.00	24.0000 3,624.00	16.0000 2,416.00	252.0000 85,932.00	184.0000 48,760.00	32.0000 4,832.00	12.0000 1,812.00	160.0000 28,274.00	48.0000 7,248.00	160.0000 28,274.00	480.0000 272,640.00	80
85	208.2500 55,186.25	280.5000 106,309.50	63.7500 9,626.25	42.5000 6,417.50	34.0000 5,134.00	25.5000 3,850.50	17.0000 2,567.00	267.7500 91,302.75	195.5000 51,807.50	34.0000 5,134.00	12.7500 1,925.25	170.0000 30,772.00	51.0000 7,701.00	170.0000 30,772.00	510.0000 289,680.00	85
90	220.5000 66,811.50	297.0000 112,563.00	67.5000 10,192.50	45.0000 6,795.00	36.0000 5,436.00	27.0000 4,077.00	18.0000 2,718.00	283.5000 107,446.50	207.0000 54,855.00	36.0000 5,436.00	13.5000 2,038.50	180.0000 33,390.00	54.0000 8,154.00	180.0000 33,390.00	540.0000 306,720.00	90
95	232.7500 70,523.25	313.5000 130,416.00	71.2500 10,758.75	47.5000 7,172.50	38.0000 5,738.00	28.5000 4,303.50	19.0000 2,869.00	299.2500 113,415.75	218.5000 66,205.50	38.0000 5,738.00	14.2500 2,151.75	190.0000 50,350.00	57.0000 8,607.00	190.0000 50,350.00	570.0000 323,760.00	95
100	245.0000 83,545.00	330.0000 137,280.00	75.0000 11,325.00	50.0000 7,550.00	40.0000 6,040.00	30.0000 4,530.00	20.0000 3,020.00	315.0000 131,040.00	230.0000 69,690.00	40.0000 6,040.00	15.0000 2,265.00	200.0000 53,000.00	60.0000 9,060.00	200.0000 53,000.00	600.0000 XXXXXXX	100

Footnote: Hand or Thumb and First and Second Fingers (on 1 Hand) or 4 Fingers (on 1 Hand)

EXPLANATION: The percent columns on the outside of the chart represent percentage of disability. The remaining columns show this percentage in terms of weeks and total benefits. The top figure in each box represents weeks, and the lower figure is dollar benefits.

NEW JERSEY MANUFACTURERS INSURANCE COMPANY
301 SULLIVAN WAY, WEST TRENTON, N.J. 08628

WCC-231 (9/99)

WEEKS	90	90	97	103	109	115	121	127	133	139	145	151	157	163	169	175										
		96	102	108	114	120	126	132	138	144	150	156	162	168	174	180										
MAX. DOLLAR AMT.	13,590	15,264	16,266	17,310	18,402	19,536	20,718	21,942	23,214	24,534	25,896	27,306	28,758	30,258	31,800	33,390										
90 30% of SAWW	151																									
91 TO 96 21% of SAWW	151	159																								
97 TO 102 22% of SAWW	159	159	167																							
103 TO 108 23% of SAWW	159	159	167	174																						
109 TO 114 24% of SAWW	159	159	167	174	182																					
115 TO 120 25% of SAWW	159	159	167	174	182	189																				
121 TO 126 26% of SAWW	159	159	167	174	182	189	197																			
127 TO 132 27% of SAWW	159	159	167	174	182	189	197	204																		
133 TO 138 28% of SAWW	159	159	167	174	182	189	197	204	212																	
139 TO 144 29% of SAWW	159	159	167	174	182	189	197	204	212	220																
145 TO 150 30% of SAWW	159	159	167	174	182	189	197	204	212	220	227															
151 TO 156 31% of SAWW	159	159	167	174	182	189	197	204	212	220	227	235														
157 TO 162 32% of SAWW	159	159	167	174	182	189	197	204	212	220	227	235	242													
163 TO 168 33% of SAWW	159	159	167	174	182	189	197	204	212	220	227	235	242	250												
169 TO 174 34% of SAWW	159	159	167	174	182	189	197	204	212	220	227	235	242	250	257											
175 TO 180 35% of SAWW	159	159	167	174	182	189	197	204	212	220	227	235	242	250	257	265										
181 TO 210 36% of SAWW																	265									
211 TO 240 40% of SAWW																		303								
241 TO 270 45% of SAWW																			341							
271 TO 300 50% of SAWW																				379						
301 TO 330 55% of SAWW																					416					
331 TO 360 60% of SAWW																						454				
361 TO 390 65% of SAWW																							492			
391 TO 420 70% of SAWW																								530		
421 TO 600 75% of SAWW																									568	

SAWW $757.08
Maximum Rate $568.00
Maximum Rate Chart
Permanent Partial Disability
Compensation Rate - 70% of Wage
Minimum Rate $35.00 per week
Amputation - 30% of Award - Added
no counsel fee
25 Weeks Additional for Enucleation of Eye

1/1/2000
TOTAL PERMANENT DISABILITY - 70% of Wages - Maximum $568.00 - Minimum $151.00 - 450 Weeks, Plus Additional Benefits as Set Forth in R.S. 34:15-12(b)
TEMPORARY DISABILITY - 70% of Wages - Maximum $568.00 - Minimum $151.00 - Maximum 400 Weeks
DEATH BENEFITS - 50% of Wages for 1 Dependent, 55% for 2, 60% for 3, 65% for 4, 70% for 5 or more - 450 Weeks Plus Spouse's Statutory Benefits - Maximum Rate $568.00
FUNERAL ALLOWANCE - Not to Exceed $3,500.00

APPENDIX E

IMPORTANT ADDRESSES AND TELEPHONE NUMBERS

MAIN OFFICE

New Jersey Department of Labor
Division of Workers' Compensation
P.O. Box 381
Trenton, NJ 08625-0381
(609) 292-2515

DISTRICT OFFICES

Atlantic and Cape May Counties
1333 Atlantic Avenue
3rd Floor
Atlantic City, NJ 08401
(609) 441-3160

Cumberland and Salem Counties
40 East Broad Street Suite 203
Bridgeton, NJ 08032-2880
(856) 453-3930

Burlington County
851 Old York Road
Burlington, NJ 08016
(609) 386-3256

Camden and Gloucester Counties
1 Port Center, 3rd Floor
2 Riverside Drive
Camden, NJ 08103
(856) 614-2852

Union County
210 Commerce Place
Elizabeth, NJ 07201-2398
(908) 820-3062

Hunterdon, Lower Warren & Somerset Counties
Hunterdon Hills Plaza
1390 Route 22 West
Lebanon, NJ 08833
(908) 236-8026

Monmouth County
1 East Main Street
Hall of Records Annex
Freehold, NJ 07728-0738
(732) 462-9321

Bergen County
60 State Street
Hackensack, NJ 07601-5427
(201) 996-8930

Hudson County
438 Summit Avenue 3rd Floor
Jersey City, NJ 07306-0603
(201) 217-7205

Morris, Sussex & Upper Warren Counties
100 Valley Road Bldg. 3
Suite 100
Mt. Arlington, NJ 07856
(973) 770-4480

Essex County
124 Halsey Street 2nd Floor
Newark, NJ 07101-0226
(973) 648-2663

Middlesex County
506 Jersey Avenue
New Brunswick, NJ 08901-3502
(732) 937-6333

Passaic County
100 Hamilton Plaza 8th Floor
Clark Street
Paterson, NJ 07505
(973) 977-4526

Ocean County
954 Route 166
Toms River, NJ 08753-7331
(732) 349-9592

Mercer County
Station Plaza 4
P.O. Box 958
Trenton, NJ 08625-0958
(609) 292-2508

Second Injury Fund
(609) 292-2606

Uninsured Employers Fund
(609) 292-6020