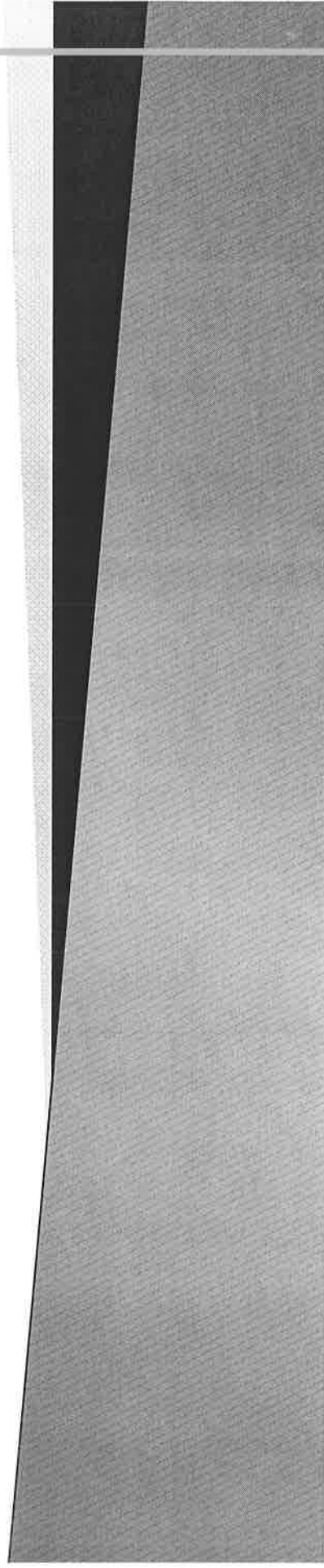


Hot Topics in Workers' Compensation Law

Group 9 Presentation



Procedural Trends

- ▶ *Zuniga v. Delaware Siding Co.*, I.A.B. No 12392207, Aug. 25, 2016
 - Certified mail required for petitions to determine additional compensation due
- ▶ *Alexander v. Severn Management*, I.A.B. No. 1429645
 - *Petition for permanency not a petition for review*
 - *Permanency and/or disfigurement cannot be added to Pretrial Memorandum on a petition for review*



Contractor Liability - 19 Del. C. § 2311

- ▶ *Otter v. Green-Light Solutions, LLC, et. al.*, I.A.B. No. 1385184, 1390163 and 1392097, June 3, 2013
- ▶ *Trujillo v. Atlantic Building Associates, et. al.*, I.A.B. No. 1419959 and 1419958, April 15, 2016
 - Out of state workers' compensation policy which doesn't cover work done in Delaware



Displaced Worker

- ▶ *Watson v. Wal-Mart Associates*, 30 A.3d 775 (Del. 2011)
 - Legal developments in the 5 years since this landmark case was decided
- ▶ *Roos Foods v. Magdalena Guardado*, C.A. No. S15-05-002 ESB, January 26, 2016
 - Are illegal immigrants *per se* displaced due to their immigration status
 - Pending before the Supreme Court of the State of Delaware



Medical Marijuana

- ▶ *Mary McKinny v. Labor Ready and Essis, Inc.*, File No. 5005302, Iowa Worker's Compensation Commissioner, November 14, 2002
 - Claimant was injured in 2000 in a compensable work injury in Iowa. There after she moved to Oregon she was prescribed different pain medications, leading her doctor to prescribe medical marijuana
 - In Oregon at the time, medical marijuana was legal
 - In Iowa, a petition can be made for an award of "alternate medical care"
 - In this case, which was not appealed according to the attorney on the case, Iowa comp carriers are reasonable for the payment of any reasonable treatment, including medical marijuana. What matters is that the treatment is legal where the claimant is, not what is legal in Iowa
- ▶ *Maez v. Riley Indus.*, 2015-NMCA-049, 347 P.3d 732, 2015 N.M. App. LEXIS 7 (N.M. Ct. App. 2015)
 - New Mexico's Marijuana program is much like Delaware's in that a doctor is required to fill out the paperwork to get a card but thereafter the doctor is not involved in renewing a prescription
 - In fact, in this case the doctor testified that all he did was sign the claimant up, he did not dispense or advocate the use of medical marijuana
 - This point was somewhat contradicted by the fact that the doctor's records clearly indicated that a failure of other pain medications are what led him to sign claimant up for the medical marijuana program
 - On the grounds that the claimant was the one pushing for the course of treatment, the Worker's Compensation Administration found for the employer, stating that medical marijuana was not reasonable and necessary care
 - The Court of Appeals overturned that decision because the overwhelming evidence showed that all other treatments had failed and that medical marijuana use was reasonable and necessary to treat claimant's pain
- ▶ New Mexico Worker's Compensation Fee Schedule, page 11
 - New Mexico set their fee schedule at no more than 230 grams a quarter (3 months) at \$12.02 a gram
- ▶ *Bourgoin v. Twin Rivers Paper Co., LLC*, 2016 ME Wrk. Comp. LEXIS 30 (Maine Workers Comp. Board 2016)
 - Appellate Board found that comp carrier had to reimburse claimant for medical marijuana use
 - Employer tried to argue that since it is illegal under federal law they did not have to. The Board rejected that argument
 - The Independent Medical Examination had found that medical marijuana wasn't necessary and that the claimant should instead be on narcotics. Since claimant had been on narcotics since the 90s and had spent time addicted to them, this suggestion was rejected
- ▶ *Noll v. Lepage Bakeries, Inc.*, 2016 ME Wrk. Comp. LEXIS 29 (Maine Workers Comp. Board 2016)
 - Same body finds once again that medical marijuana is compensatory
 - Argument about being against federal law once again fails, this time by pointing out that they do not see how reimbursing the claimant is in any way against federal law
 - Also found that even though the employer
- ▶ *United States v. McIntosh*, 2016 U.S. App. LEXIS 15029 (9th Cir. Cal. Aug. 16, 2016)
 - The Department of Justice is prohibited from spending money to go after marijuana providers following state law

When is there a Voluntary Removal from the Workforce?

- ▶ *Chrysler Corp. v. Kaschalk*, 1999 WL 458792, (Del. Super., June 16, 1999)
- ▶ *General Motors Corp. v. Willis*, 2000 WL 1611067, (Del. Super., Sept. 5, 2000)
- ▶ *Jackson v. Genesis Health Ventures*, 2011 WL 141164, (Del. Super., Jan. 6, 2011)
- ▶ *Popken v. State of Delaware*, I.A.B. No.1266150, Aug. 25, 2011
- ▶ *Cale v. Kraft Foods, Inc.*, I.A.B. No. 1278553, May 3, 2012



Amending the Pretrial Memorandum

- ▶ *Kirkland v. Terminix*, I.A.B. No. 1419447, May 27, 2015 and Aug. 17, 2015
 - Amending the Pretrial Memorandum to add additional issues
 - Affirmed – *Kirkland v. Terminix*, C.A. N15A-08-003 AML, (Del. Super. June 17, 2016)
 - Pending argument in the Supreme Court of the State of Delaware



A Hearing Officer and Board Member's Perspective

- ▶ *Eure v. Delaware Park*, I.A.B. 1125400, Sept. 13, 2016
 - Compelling Non-Binding Mediation
- ▶ *Curtis-Howett v. Tecot Electric*, I.A.B. No. 1072218, Sept. 18, 2014 and March 6, 2015 (Affirmed C.A. No. 15A-04-001 JAP (Del. Super. Nov. 16, 2015))
 - DIGA Diversion
- ▶ Bonus Case
 - Pennies From Heaven – Attorney *in absentia*
- ▶ Procedural Pointers – Stipulation of Facts

