



NEW JERSEY SELF INSURERS' ASSOCIATION

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JANUARY 2010 NEWSLETTER

SAVE THE DATE **SPRING MEETING & VENDOR FAIR**

Dates: May 6 & 7, 2010

Place: Harrah's Casino Hotel
Atlantic City, NJ

The New Jersey Self Insurers Association will return to the beautiful venue of Harrah's Casino Hotel in Atlantic City for its two-day Workers' Compensation Spring Seminar and Vendor Fair on May 6-7, 2010.

This event will provide members, non-members, seminar attendees and vendors with a special opportunity to participate in what promises to be an exciting and engaging workers' compensation seminar.

VENDORS: This year vendor booths will be located inside the Seminar Ballroom to maximize marketing exposure and networking. Ten foot Booths will be available for \$500 for members and \$800 for non-members.

An Ad Book will also be distributed to all attendees and will feature our many members, sponsors and supporters. Prices for ads are as follows: full page - \$300; half page - \$200, quarter page - \$100; business card - \$50.

In addition, there will be exciting opportunities for seminar sponsors! Sponsors are needed for the President's Reception on May 6th, Breakfast on May 6th and 7th, and Lunch on May 6th. Sponsors will receive an Vendor booth with up to two attendees at the vendor's fair, a company poster or banner behind the speaker table, a full page ad in the seminar brochure, and the opportunity to present attendees with appropriate company

marketing materials like writing pads and mugs. The fee for seminar sponsors will be \$2,500 and the number of sponsors will be limited.

Regina Lamptey, Chair of the Association's Program Committee, and her Committee have been busy assembling a star-studded cast to present an array of topics sure to be of interest to your Workers' Compensation professionals.

On Thursday, May 6, 2010, the day will begin with breakfast and registration at 8:00 a.m. followed by a full day of cutting edge presentations on workers' compensation and related issues, featuring leading physicians, nurses, attorneys, and employer representatives. The Program will resume on May 7, with breakfast at 8:00 a.m. and conclude at 12 Noon.

The beautiful venue of Harrah's Casino Hotel will provide a fantastically reduced hotel rate of \$97.00 per night for Seminar attendees.

Among the Topics to be presented are:

- **WORKERS' COMPENSATION, FRAUD AND SURVEILLANCE**
- **PROVEN COST CUTTING TECHNIQUES**
- **ORTHOPEDIC INJURIES**
- **WHAT CAN YOUR BROKER DO FOR YOU?**
- **OCCUPATIONAL DISEASES IN THE WORKPLACE**
- **MEDICARE SET ASIDE UPDATE: PANEL DISCUSSION**

• **CASE LAW/LEGISLATION UPDATE**

• **BEST PRACTICES – AROUND THE HORN**

• **TANGLED WEB (WC/ADA/FAMILY LEAVE)**

A formal Program will be forthcoming. In the meantime attached is a Registration Form with detailed information. **RESERVE THE DATE: May 6 and 7, 2010.**

News from the NJ Division of Workers Compensation-

In a January 14, 2010 Notice to Judges and Attorneys, Director Calderone advises that the New Jersey Senate confirmed eight (8) new judges of compensation during the last two weeks of the legislative session. The current case distributions, office space, support staff and geographical locations of the new judges create serious administrative problems. Reassignments concerning current judges will be as limited as possible as we accommodate the additional Judges.....[read full memo](#).

New Workers' Compensation Schedules –

Attached is a schedule of disabilities and maximum benefits exclusive of amputation and enucleation effective January 1, 2008 compiled by New Jersey Manufacturers Insurance Company. We wish to express our gratitude to that organization for providing this material and trust you will find the same useful in your day to day handling of cases.

From the Desk of Larry Holt, National Council of Self Insurers

The United States Supreme Court decided **not** to review the ruling of the U.S. Court of Appeals (Sixth Circuit) related to the Cassens Transport Company.

In October 2008, the Sixth Circuit decided that six employees of Cassens Transport could proceed with their Racketeer Influenced and Corrupt Organizations Act (RICO) suit, alleging that Cassens, its TPA for workers' compensation, and a doctor, engaged in an illegal scheme to deny the employees benefits for workplace injuries. Cassens subsequently petitioned the Supreme Court to review the decision of the Court of Appeals.

The National Council of Self-Insurers, along with the Illinois and Ohio Self-Insurers Associations, filed an Amicus brief with the Supreme Court in support of Cassens. The brief stated that if the appellate decision holds, employees, who say they are injured at work, will be able to prosecute RICO actions in state and federal courts as well as actions in workers' compensation courts.

The National Council will be monitoring the effect of the Sixth Circuit ruling on workers' compensation strategy and decisions. The Council will be giving a report at its 2010 annual meeting.

To enable us to give as complete a report as possible, the Executive Committee is asking for your help in the following ways:

1. To please inform me of any law suit, of which you become aware, that has been motivated by the Sixth Circuit's decision regarding Cassens.
2. To please inform me of any development or information, of which you learn, that may be interpreted as a threat to the exclusive remedy of workers' compensation and has been caused by the Cassens decision of the Sixth Circuit.

National Council's Annual Meeting:

The 2010 annual meeting will be at the [Don CeSar Beach Resort](#) in St. Pete Beach, FL from Sunday, May 23 to Wednesday, May 26.

***Courtesy of John Geaney, Capehart & Scatchard –
Appellate Division Holds That
Carrier Was Not Estopped by Eight
Year Communication Delay From
Collecting One Half of Medical
Costs As Previously Agreed***

In *Patry v. West Jersey Health Systems*, A-0843-08T1, (App. Div. January 8, 2010), two carriers were engaged in a dispute over the obligation to pay medical bills. The case went back to an accident which occurred on November 4, 1991. At that time, West Jersey Health System was insured by New Jersey Manufacturers. One year later, petitioner was reinjured on October 20, 1992, when West Jersey had become self-insured as administered by Scibal Associates. Eventually all parties agreed that petitioner was 100% totally and permanently disabled.

The pivotal event in this case was an Order entered on March 31, 1999. The Order acknowledged that petitioner was totally disabled from prior causes, as well as the two accidents with NJM and Scibal. The Order further provided that NJM would manage petitioner's continuing medical care and Scibal would reimburse NJM for one half of the costs of continuing medical care.

NJM wrote a letter dated April 2, 1999 to Scibal's counsel asking for the name of the person that NJM should contact at Scibal if there are problems in getting reimbursement for medical costs. Thereafter there was no communication between NJM and Scibal for almost eight years. During that period of time, Scibal never reimbursed any costs to NJM, having not received any bills.

On April 10, 2007, NJM's counsel wrote to Scibal requesting reimbursement of approximately 50% of \$850,000 or \$425,000. According to the Appellate Court decision, there was no response to

this letter. On January 18, 2008, NJM moved to enforce the 1999 Order. Scibal opposed the motion and raised the defense of laches. The judge of compensation granted NJM's motion and ordered Scibal to pay one half of the medical costs. However, the judge did not require Scibal to pay any interest to NJM. A letter from NJM to Scibal dated November 19, 2008, later sought reimbursement of one half of \$1,141,258.

On appeal Scibal argued that NJM's claim should be barred under the doctrine of equitable estoppel. That doctrine is one of fundamental fairness. The court noted that NJM had not explained its delay for eight years in requesting reimbursement. Nonetheless, the court ruled against Scibal because it believed that NJM did not engage in any concealment or misrepresentation of the costs. The court said the key element in proving equitable estoppel was reliance. It said that Scibal has not shown that it relied on NJM's silence to its own detriment.

The court further held that NJM's claim for reimbursement was not barred under the doctrine of laches or inexcusable failure to timely assert rights. The court distinguished between one situation where there is an Order for reimbursement but no agreement between the parties and this situation where there is an agreement between the respondent parties and an Order to pay of a continuing nature. It suggested that if there had been no agreement between the parties, the laches defense might have been persuasive. It also said that the doctrine only applied when the delaying party had sufficient opportunity to assert its rights and the prejudiced party had a legitimate belief that the right had been abandoned. It said, Scibal has not offered any facts to prove that it was prejudiced by NJM's eight-year silence.

In response, Scibal argued that the eight-year hiatus in communication from NJM took away Scibal's potential right to manage the file. The court said, "This argument is speculative as Scibal

does not proffer any evidence to prove NJM was negligent in managing the case or that it could have managed the case better, in either event reducing costs.”

In the end, the court rested its decision on its belief that Scibal had not been prejudiced by the nearly eight-year delay. If anything, Scibal obtained a benefit by retaining its share of Patry’s medical costs since 1999 and thereby having the use of those funds. The court reached this conclusion despite Scibal’s argument that the excess carrier might not provide coverage. The court countered there was no proof at the time of the Appellate argument that excess had denied the claim.

The situation here, namely a cost sharing agreement between carriers or third party administrators, is one that occurs from time to time in New Jersey. This decision illustrates that it is advisable where medical costs are shared between carriers to include in the Order clear reporting timelines, particularly where one carrier is managing the entire claim and the other is not. Without such reporting timelines, the party not managing the case has no information at all about the value of incurred medical costs.

Legislation in New Jersey –

The following is a list of pending Workers Compensation Bills. The Association’s Legislative Committee proactively works with State legislators and regulators to support sound workers’ compensation policy, laws and regulations.

- [A292](#) Excludes certain illegal aliens from workers' compensation and temporary disability benefits.
- [A374](#) Transfers management, administration and duties of "the workers' compensation security fund" to the New Jersey Property-Liability Insurance Guaranty Association.
- [A1250](#) "Thomas P. Canzanella Twenty First Century First Responders Protection Act"; concerns workers' compensation for public safety workers.
Includes services performed by

- [A1478](#) professional musicians or persons otherwise engaged in performing arts as employment for purposes of unemployment insurance and workers' compensation benefits.
- [A1566](#) Concerns workers' compensation for firefighters with cancer.
- [A1575](#) Changes calculation of average weekly wage for TDI benefits.
- [A1595](#) Grants workers' compensation coverage to volunteer firefighters going to or returning from their stations when called to a fire.
- [A1689](#) Concerns certain workers' compensation supplemental benefits.
- [S109](#) Excludes certain illegal aliens from workers' compensation and temporary disability benefits.
- [S229](#) Concerns repayment of workers' compensation by pension recipients.
- [S231](#) Permits workers' compensation judges to close workers' compensation courts in times of severe weather.
- [S676](#) Increases workers' compensation for loss of hand or foot.

NOTE: Board of Manager Opportunities.

Any representative of a self insured member company interested in serving on the Board of Managers should contact Jim Knicos for more information at 609-587-4304. Please also note that your company does not have to be a self-insured employer to be a member of the Association. As a matter of fact, that’s the case for many of our member companies who fund their workers compensation obligations using various insurance mechanisms. What our member companies do have in common is the desire to keep their workers’ compensation programs on the cutting edge and to keep abreast of various legislative changes and court decisions that can impact their programs – and their bottom lines.

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