



NJSIA NEWSLETTER | FALL 2017

SERVING NEW JERSEY'S WORKERS' COMPENSATION COMMUNITY SINCE 1918

NEW JERSEY SELF INSURERS' ASSOCIATION
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A MESSAGE FROM THE PRESIDENT

As you may be aware, New Jersey Self Insurers' Association has been hosting members-only events for the past year, as a way to enhance the benefits provided to our members for choosing to join and support the organization. In addition to the educational breakfast seminars, we hosted a members-only barbecue themed event at the Mercer County Boathouse. The venue was beautiful, with a wonderful view of the lake. Despite the fact that the weather did not cooperate with us, and many individuals had to drive through significant rain, the event was well attended and based on the feedback we received, everyone enjoyed themselves. We are hoping this was the beginning of a new tradition and look forward to hosting future social events.

Our third members-only breakfast seminar was held on September 22 at the Double Tree in Mt. Laurel, with great success. The topics and speakers were interesting and educational. Based on the positive comments I received, I think that those in attendance felt the same way.

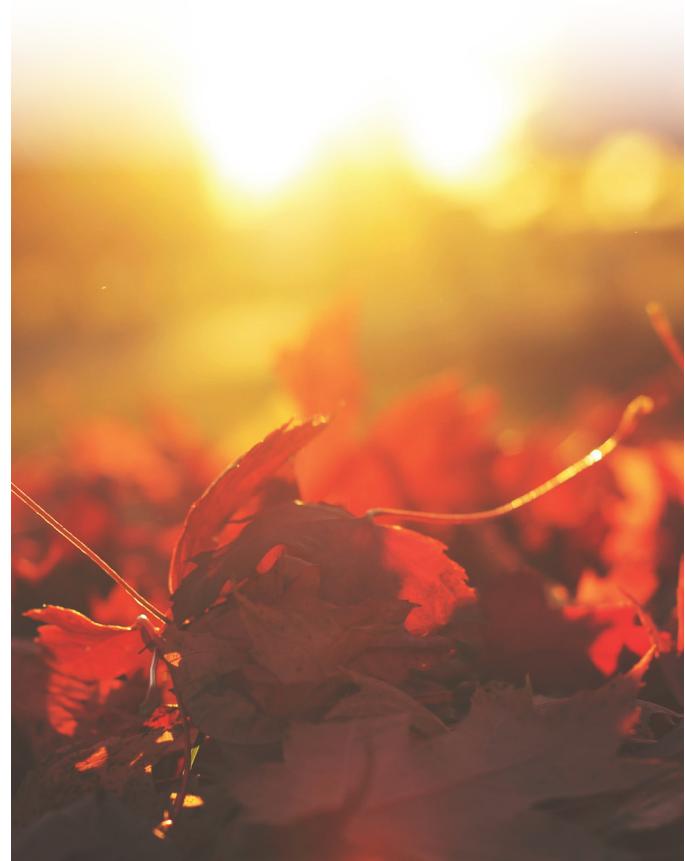
The program committee is also putting the final touches on our **Fall Meeting and Seminar that will be held November 3, 2017 at the Crowne Plaza in Jamesburg**. The official announcement will be sent out shortly. We hope that you are all able to attend.

Of course, planning for the **2018 Annual Conference and Vendor Fair in Atlantic City** has been ongoing for months. The program committee is diligently working to develop another stellar program with interesting and pertinent topics presented by our expert speakers and colleagues from many different fields relating to workers' compensation. As always, the education is the focus, but the committee is also working on the other aspects of the conference that we all enjoy such as the conference theme and vendor contest and the President's reception. More information will be forthcoming in the upcoming months.

Once registration is open for our **Fall Meeting and our Annual Conference**, you will receive information; you will also be able to obtain information and register through our website, www.njselfinsurers.com

We hope you can join us for these upcoming events. Don't miss out on our members-only events. Consider joining NJ Self Insurers' Association today so you can take full advantage of everything our organization has to offer!

Donna Wrobel
President & Membership Committee Chairperson



UPCOMING EVENTS

The Program Committee had another wonderful lineup for our **Breakfast Meeting for Members Only on September 22, 2017 at the DoubleTree in Mt. Laurel, NJ**, where Jeff Newby, Esq. from Weber Gallagher, shared everything you wanted to know in his presentation “Workers’ Compensation 101 – With A Spin”, and Steven Clune from Digi-Stream Investigations shared ways to conduct an effective investigation by “pulling back the curtain” and showing us some of the secrets of the trade.

Please mark your calendar and join us for our **Annual Business Meeting on November 3, 2017 at the Ramada Plaza Hotel & Conference Center** (formerly the Crowne Plaza), Monroe, NJ for more great information and lively discussion to help you with further developing your workers’ compensation program and HR Policies.

We have scheduled, what we know will be a great panel discussion about **Medical Marijuana/ADA/Drug Testing** interactions and how it will be worked into the many companies with zero tolerance ‘drugs in the workplace” policies. Hear how this panel of employer, HR, medical and legal representatives will bring out some of the issues and concerns that many of us have and where you will have an opportunity to weigh in and share your thoughts/views on this controversial topic.

The Association is pleased to welcome back Mark Pew from PRIUM who will give us the **“411 on Tapering” aka How to #Clean Up the Mess** made by narcotics overuse.

How about Anthony V. Petrosini, MD, from Orthopedic Institute of Central Jersey, who will engage us in a presentation about **“Injuries to the Biceps”?** Can’t wait to hear that!

The Association is honored to have the Honorable Russell Wojtenko, Jr., Chief Judge/Director – New Jersey Division of Workers’ Compensation give us an update on the state of the Division.

Esther Omoloyim, Esq, from Goldberg Segalla Law offices will present the **Case Law and Legislative Update** and Ashley L. Toth, Esq. from Marshall Dennehey will give us an update on OSHA reporting.

A program you will not want to miss!

Regina K. Lamptey

Program Chairperson



DIVISION NEWS

In 2018 Compensation weekly benefits will increase to a maximum of \$903 and a minimum of \$241.

LEGISLATIVE UPDATE

Both House of the legislature are up for re-election as well as the office of the Governor. Our lobbyist Jon Bombardieri does not anticipate the legislature will meet prior to the election, then go into Lame Duck session in mid-November. These are the bills that we will be monitoring in November.

S-325 (Scutari) Expands workers comp coverage to parking areas provided by employer. Current law provides that employment commences when the employee arrives at the place of employment and ends when they leave that location. No movement since introduction. No assembly version.

S-777 (Sarlo) Increases workers' compensation for loss of hand or foot. The calculation for the loss of function of a hand is increased from 245 weeks to 300 weeks and the loss of a foot is moved from 230 weeks to 275 weeks. No movement. No assembly version.

S-1691 & A-3069 (Bucco/Bucco) This bill revises the definition of "employer" in the workers' compensation law, R.S.34:15-1 et seq., to exempt certain partnerships from the requirements of that law. No movement. This legislation introduced last session.



A-1845 (Cunningham/Giblin) This bill permits, but does not require, groups of employers establishing or participating in Taft-Hartley trust funds to purchase workers' compensation insurance as a group or to apply to the Commissioner of Banking and Insurance for approval to enter into agreements to pool their workers' compensation liabilities for the purpose of qualifying as members of a group plan for self-insurance. The legislation was referred to the Assembly Labor Committee, where there has been no movement. The Senate version was recently withdrawn by the sponsor. It is unlikely that the Governor would sign this legislation.

S-3426 (Rible) This bill requires that in cases in which a workers' compensation petitioner has received compensation from an insurance company prior to any judgment or award, the reasonable allowance for attorney fees will be based upon the total award. Last session this legislation was vetoed by the Governor. No assembly version this year.

S-2148 (Sweeney) This bill provides for an annual cost of living adjustment (COLA) in the weekly workers' compensation benefit rate for any worker who has become totally and permanently disabled at any time after December 31, 1979 and for the surviving dependents of any worker who died from a workplace injury after December 31, 1979. At the last session, the Governor vetoed this legislation. No assembly version.

A-3401/S-2136 (Greenwald/Oroho) This bill concerns the electronic submission of workers' compensation claims. Provides the following:

- (1) All health care providers submit medical bills for payment on standardized forms;
- (2) Employers, workers' compensation insurance carriers of employers, and third-party administrators are required to accept electronic claims for the payment of medical services;
- (3) Confidentiality of medical information submitted on electronic claims for payment of medical services pursuant to the "Workers' Compensation Medical Information Confidentiality Act," P.L.2001, c.326 (C.34:15-128.1 et seq.) is law.
- (4) Payment for medical services provided or prescribed by the health care provider shall be made by the employer, workers' compensation insurance carrier, or third-party administrator to the health care provider within 15 working days after electronic receipt of an itemized electronic billing. (Passed both houses, no action by the Governor to date.)

S-109 (Pennachio/Madden) This bill provides, from July 1, 2011 forward, an annual cost of living adjustment (COLA) in the weekly workers' compensation benefit rate for any surviving dependents of any public safety worker who died in the line of duty after December 31, 1979. No movement. No Assembly version.

Thank you to Jon Bombardieri for his contributions to the newsletter

LEGAL DECISIONS

In the case of **Detres v. Workforce Logistics Corp., No. A-4963-15T1 (App. Div. August 25, 2017)**, an insurance company appealed an Order from the Judge finding the company had coverage for an injury the Petitioner suffered while working for the Respondent. Workforce Logistics Corp., a provider of temporary labor for the automotive industry, sent Petitioner to do work for Buy Wise, a parts distributor, at Buy Wise's Jersey City warehouse. On October 18, 2013, Petitioner was injured at that facility when he was hit by a truck. He filed claims against Workforce and Buy Wise. Prior to the accident, the insurance company issued a WC policy to Workforce that only covered two New York locations, based on their representation that it did not do business in any other states. After the accident, Workforce added two New Jersey locations to the policy, including the Jersey City facility. The amended policy was issued on January 8, 2014. The insurer denied that it provided coverage to the Jersey City location at the time of the accident. The trial judge found that the insurer was required to provide coverage because the amended policy listed the same policy period as the original policy, which time included the worker's accident. The insurance company argued that the parties did not intend for the amendments to the policy to be applied retroactively to cover this accident, based on emails exchanged between the parties and the additional premium charged. Nevertheless, the Appellate Division agreed with the Judge that the language of the amended policy unambiguously showed that the coverage included the New Jersey locations for the term of the original policy. In addition, the Appellate Division found that the Judge properly declined to consider the emails and the premium charged as extrinsic evidence. The insurance company argued that Workforce was not entitled to coverage because it made material misrepresentations that it only did business in New York. However, the court stated that fraudulent statements made in an application for a WC policy cannot be the basis for voiding the policy. Finally, the insurer argued that New York law should apply to the contract dispute, but the court disagreed.

In **University Physicians Associates v. Transport Drivers, Inc., A-3350-15T2 (App. Div. August 22, 2017)**, the medical provider appealed an Order dismissing its claim with prejudice for failure to sustain the burden of proof. The case originated from an accident which resulted in the worker being taken to University Hospital, a Level I trauma center in Newark. There, Dr. David Livingston, a general surgeon, completed a hip relocation procedure on the worker with conscious sedation. Two days later, Dr. Mark Adams, an orthopedic surgeon, performed open reduction and internal fixation surgery, under general anesthesia, to repair the worker's acetabular fracture. Dr. Livingston billed \$10,343.00 for his services (\$952.00 for consultation and \$9,391.00 for the hip relocation). Additionally, Dr. Adams billed \$71,374.00 for his services. Both doctors billed at the 95th percentile. Respondent's workers' compensation carrier paid for \$3,688.98 for the services of Dr. Livingston and \$24,234.50 for the services of Dr. Adams. The payments were made at the 75th percentile, which the insurer considered to be the industry standard. The medical provider argued that the 75th percentile payments were not reasonable based on the fact that the treatment was rendered at a Level I trauma center. Essentially, the medical provider argued that Level I and II trauma centers should be treated

differently when it comes to billing for workers' compensation injuries, similar to the treatment they receive under the fee schedule for no-fault automobile policies. However, the Appellate Division found that while the no-fault regulation exempts trauma services at Level I and II trauma centers from the fee schedule, such charges must still be usual, customary and reasonable. The court agreed that the compensation judge based her determination on the usual fees and charges that prevail in New Jersey for similar physicians' and surgeons' services.

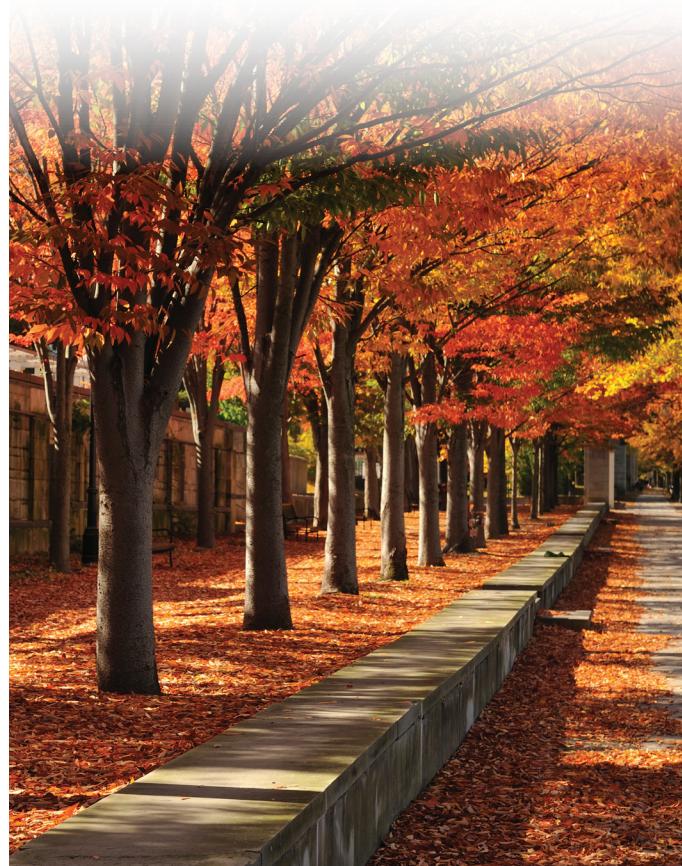
Thank you to James Santomauro, Esq of the Biancamano & DiStefano firm for his contribution to the newsletter

WELCOME TO NEW MEMBERS

Bergen Pain Management, Gerard M. Brennan, Esq. Joe Koenig, Key Scripts, QuickChek Corporation, Shore Medical Center, Support Claims Services, United Airlines, United Parcel Services

NOTICE OF COMPLIANCE

The Employers' Liability Insurance Law Title 24, Chapter 15, Article 5, Section 8o provides that employers who qualify to carry their own liability (self-Insurers) must post and maintain a Notice of Compliance in the employers' work places. The Association can provide the notice to our members.



JOIN NJSIA

For the past 99 years, the New Jersey Self Insurers' Association has represented the interests of New Jersey's employers in worker's compensation. Membership in the Association is open to all employers, law firms, third party administrators and medical groups. Visit our website njselfinsurers.com for more information. You can complete a membership application and pay the annual dues thru PayPal.

MEMBERSHIP DUES

2017 dues need to be paid no later than September 22nd. You can forward a check or go to njselfinsurers.com and pay thru PayPal. If you have any questions regarding your dues status contact us at Kappa59@aol.com or 609-587-4304.

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