



NJSIA NEWSLETTER | SUMMER 2019

SERVING NEW JERSEY'S WORKERS' COMPENSATION COMMUNITY SINCE 1918

SAVE THE DATES:

MEMBERS ONLY Barbeque

AUGUST 7, 2019

The Boat House at Mercer County Park

NEW JERSEY SELF INSURERS' ASSOCIATION

PO Box 3455, Mercerville, NJ 08619

Tel: 609-587-4304

Email: Kappa59@aol.com

www.njselfinsurers.com



A MESSAGE FROM THE PRESIDENT

It is always my pleasure to be able to communicate with you through this newsletter and share with you some accomplishments, as well as some plans.

For those of you who were able to join us at the Atlantic City conference and vendor fair, thank you for the positive feedback. As we have each year since our Atlantic City conference began, we broke our attendance record. I never get tired of being able to report that information! NJSIA, as I know I have said in the past, is happy and proud that so many recognize our educational sessions, both in Atlantic City and at the fall meeting, as premier events worthy of your time and resources. Our Program Committee works tirelessly throughout the year to arrange the top quality topics and speakers we have at each session, and there are no words that can express how thankful we are that these individuals are so dedicated.

Of course, while the Program Committee is the committee that you hear about most often, and are singularly responsible for these wonderful educational sessions, I would be remiss in not mentioning the many others involved in NJSIA. Our legislative committee, together with our lobbyist, continually reviews pending legislation that could affect worker's compensation in New Jersey. Each individual on our membership committee continually promotes NJSIA whenever the occasion arises. They have successfully introduced New Jersey employers to the organization, resulting in new companies becoming active members. Whether a membership committee member or not, all of our board and committee members, as well as many of you, our vendor members and general members, have introduced new companies who have joined the organization. Thank you!

Finally, of course, is our Board of Managers, many of whom serve on one or more of our committees. This core group plays an integral role in keeping the organization current and relevant, ensuring that the goal and purpose of NJSIA is at the forefront of all we do, and so much more.

Our first Kids' Chance sponsored student graduated this year. We are honored to have played a small role in helping Sara reach this goal. We wish her the best of luck as she continues with the other goals and plans she has expressed, and hope that she will keep in touch with us to let us know of her future achievements. We look forward to meeting and supporting our new student and helping them begin this same journey.

Our members-only summer outing this year is August 7 at the Mercer County Boathouse. Those who have attended in the past, I am sure will agree that it is a beautiful venue and a relaxing, enjoyable evening of fun, with no purpose other than to reconnect with each other. We hope our members will be able to join us.

If you are not a member, please consider joining. As you can see, NJSIA has a lot to offer!

I hope to see many of you at our August 7 event, as well as our Fall Seminar on November 1.

Enjoy your summer!

Donna Wrobel

President & Membership Committee Chair

NJSIA



“HONORING THE PAST, TREASURING THE PRESENT, SHAPING THE FUTURE”

What a wonderful time we had living up to our theme. The program committee did it again, with a great mix of informational/educational segments that fit right with our theme. We Honored the Past, by looking at an age-old problem, and trying to figure out how to “Develop a Comprehensive Treatment Plan for Multiple Injuries”. The Panel did an excellent job bringing their expertise to the conversation. We Treasured the Present by looking at how we can continue to keep our employees safe, with our excellent “Safety” presentation and by allowing Board Members to sound off during “Employers Unplugged”.

There is no doubt that we are excited about Shaping the Future. This was evident by the wonderful discussions involving “Medical Marijuana” and the “Multi-Generational Workforce” presentations.

THANK YOU to all our vendors who spared no expense in decorating their booths/tables in accordance with our theme. I want to especially recognize this year’s winner of our Vendor contest, AmeriHealth’s Denise Hall aka “Foxy Brown/Pam Greer”. She was the true embodiment of the character. Great job Denise!!!

Thank you also to the staff at Harrah’s Resort and Casino. We have had our Spring Conference and Vendor Fair there for the past 10 years and many of the same staff members have patiently, loyally and professionally served us since 2009. Great job everyone; the Association is very appreciative of you.

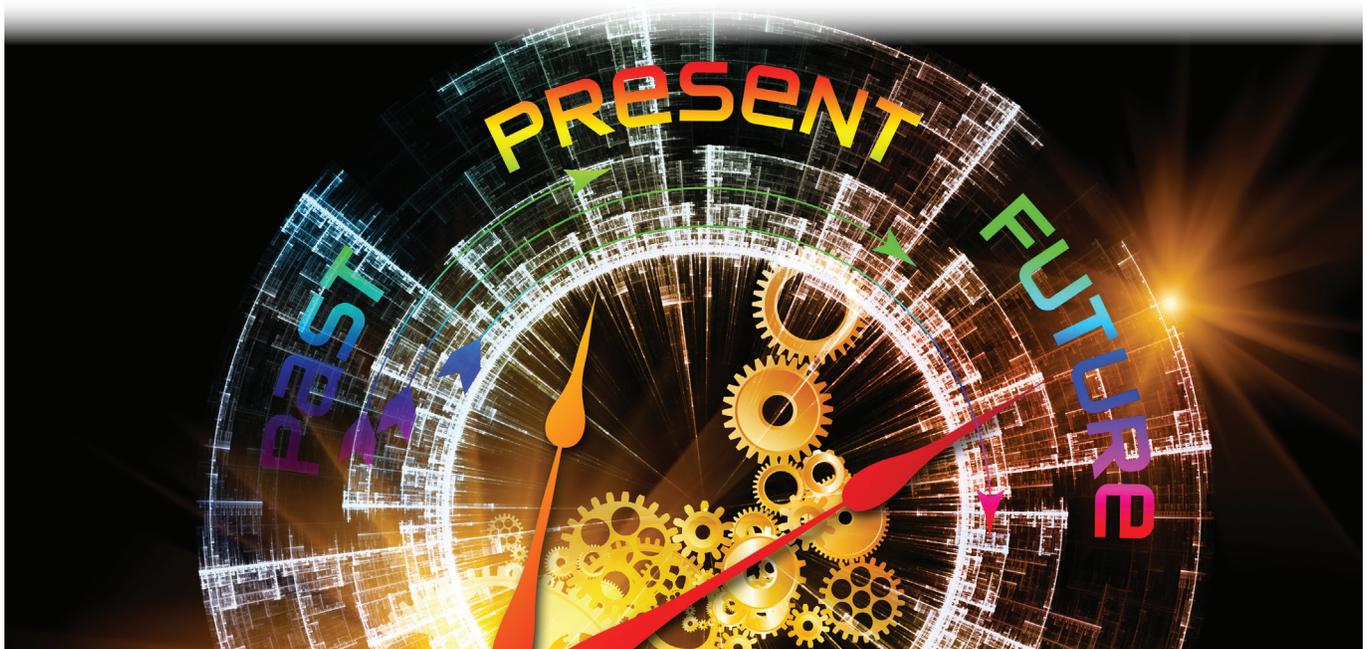
For additional information and photos of the event, please check out our Website <http://www.njselfinsurers.com>.

We are so looking forward to seeing you at the Annual Meeting – November 1, 2019 at the Holiday Inn in East Windsor, NJ. We promise another NJSIA program that you will not want to miss.

We know there are many claims’ Associations in NJ and are so glad you find the time to spend a few days with us.

Regina K. Lamptey, Program Chairperson

Regina K. Lamptey
Program Chairperson



LEGISLATIVE UPDATE

A-926 Giblin – Permits group self-insurance plans for, and collective bargaining agreements improving the provision of, workers' compensation. This bill permits, 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 qualify as members of a group plan for self-insurance. **This legislation has not moved in committee.**

A-965 Rumpf/S-1420 Connors – Prevents intoxicated employees from receiving workers' compensation. This bill is a response to the recent New Jersey Supreme Court case of Tlumac v. High Bridge Stone, 187 N.J. 567 (2006), in which the Court reaffirmed a long standing rule that held intoxication must be the "sole cause" of an accident in order to deprive an employee of workers' compensation benefits. **This legislation has not moved in either house.**

A-1110 Downey/S-782 Sarlo – Increases workers' compensation for loss of hand or foot; requires Commissioner of Labor and Workforce Development to study effectiveness of workers' compensation program. This legislation increases the amount of workers' compensation paid in certain cases for the loss of a hand, or thumb and first and second fingers (on one hand) or four fingers (on one hand) or a foot. The bill prohibits an award of permanent total disability from barring an additional award for certain amputations and provides the amount of the additional reward is not subject to subrogation, as it is not considered to be a payment of compensation except for rating purposes. The bill increases the maximum amount payable for burial and funeral expenses from \$3,500 to \$5,000.

The bill also requires the Commissioner of Labor to study, in consultation with the Commissioner of Banking and Insurance, the State's workers' compensation system and make recommendations that will help foster and maintain an efficient, effective and well-balanced workers' compensation program. The Commissioner will submit a study, with recommendations, to the Governor and the Legislature not later than one year after the effective date of this bill and every five years thereafter.

This bill passed the full senate on December 17, 2018 by a vote of 27-8, but has yet to move in the assembly, however, I anticipate that this bill will move during Lane Duck Session (November/December).

A-2412 Quijano/S-764 Cunningham – Concerns disputed medical fees in workers' compensation claims. Requires that a medical fee dispute shall be filed with the Division of WC not later than 18 months after the date payment was received if the services were rendered on or before the effective date of the bill, and not later than 12 months after the date payment was received if the services were rendered after the effective date of the bill. The bill does not change the law that the fees not be charged against, or collectible from, the injured worker and that there be no delay in treatment because of a claim by a medical provider. **This legislation has not moved in either house.**

A-2510 DeAngelo/S-2145 Scutari – Concerns attorney fees for workers' compensation awards. Provides that in cases in which a petitioner has received compensation from a Carrier to any judgment or award, the allowance for attorney fees will be based upon the sum of the amount of compensation received by the petitioner prior to any judgment, but after the establishment of an attorney-client relationship pursuant to a written agreement, and the amount of the judgment or award in excess of the amount of compensation already received by the petitioner. **This legislation was signed in law on August 24, 2019. P.L.2018, c.105.**

A-3635 Jasey/S-1967 Sweeney – Concerns certain workers' compensation supplemental benefits. This legislation was Conditionally Vetoed by Governor Murphy and accepted by the legislature on June 10, 2019. **Waiting for final signature from the Governor**

For the purposes of this section, "public safety worker" means a member, employee, or officer of a paid, partially paid, or volunteer fire or police department, force, company or district, including the State Police or a first aid or rescue squad.

In determining the aggregate annual surcharge for the Second Injury Fund to be levied for calendar year 2020, the Commissioner of Labor shall include the anticipated additional amounts, including administrative costs, required for the payment of supplemental benefits which shall begin on January 1, 2020.

A-4764 Mazzeo/S-3230 Sweeney - Creates rebuttable presumption in WC cases of respiratory disease of casino employees working in smoking areas. Any condition or impairment of health of a casino employee which may be caused by any disease of the respiratory system shall be presumed to be an occupational disease compensable under the provisions of the State's WC law, if the employee is working, or has worked, in a smoking area of a casino. This may be rebutted by clear and convincing evidence that the disease did not arise out of and in the course of the employment.

This legislation has not moved in either house.



S-818 Scutari – Expands Workers' Compensation coverage to parking areas provided by employer. Provides that an injury occurring at a parking area provided by an employer for use by an employee or occurring when an employee is traveling directly between the parking area and the place of employment, is a compensable injury covered by the workers' compensation law. **This legislation has not moved in the senate and has not been introduced in the assembly.**

Thank you to Jon Bombardieri of CLB Partners, LLC for the legislative news.

LITIGATION UPDATE

Frank Caraballo v. City of Jersey City Police Department (A-71-17) (080467) Decided March 35, 2019

The Supreme Court of New Jersey's recent decision in *Caraballo v. City of Jersey City Police Department* held that Frank Caraballo's failure to adequately use his Workers Compensation remedies to obtain knee replacement precluded his action under the New Jersey Law Against Discrimination. The petitioner, Frank Caraballo, was injured in a motor vehicle accident in 1999. His claim consisted of severe bilateral knee injuries and occurred during the course of his police work duties. Prior to his workers compensation claim settlement, the petitioner was recommended for a total knee replacement. He was evaluated by a surgeon chosen by Jersey City Police Department, who, according to treatment records, told Mr. Caraballo to pick a date for his bilateral knee replacement surgery. However, Mr. Caraballo never called the doctor's office to schedule a date for the surgery. Instead, on March 4, 2013, he settled his workers' compensation claim without undergoing the procedure.

Shortly after the settlement, Mr. Caraballo filed a complaint against the Police Department asserting, inter alia, a cause of action under the LAD. Following the close of discovery, the trial court granted the Department's motion for summary judgment, agreeing with their argument that the former detective could not bring a failure-to-accommodate claim under the LAD because he was unable to perform the essential functions of his job. On appeal, the Appellate Division panel reversed, concluding that Mr. Caraballo had in fact established a prima facie failure-to-accommodate case. Their decision turned on their belief that Mr. Caraballo raised a genuine issue of fact as to whether he would have been able to perform his job if he received a total knee replacement surgery. Ultimately, the Supreme Court reversed the holding of the Appellate panel. Their decision rested on the exclusivity of the Workers' Compensation statute, stating that "Caraballo's failure to utilize the Act's administrative remedies to obtain knee replacement surgery preclude[d] his failure-to-accommodate claim under the LAD." In so holding, the Court unequivocally confirmed the importance of the statute's exclusivity over the treatment of workplace injuries, regardless of any potential overlap with statutes covering employment matters.

Jennifer Kocanowski v. Township of Bridgewater (A-55-17) (080510) Decided February 19, 2019

The Supreme Court of New Jersey held that a volunteer firefighter injured in that capacity is entitled to temporary disability benefits. The plaintiff, Jennifer Kocanowski, was a volunteer firefighter for seventeen years. During the course of her tenure as a firefighter with the Finderne Fire Department, she also held paid employment as a nanny and home health care aide. Around 2013, she was forced to leave her paid employment positions in order to care for her ailing father. In late 2013, Kocanowski lost her father and brother. While she spent time coping with her family issues, she took a leave of absence from volunteering. Moreover, her home health aide license lapsed during the course of her leave. Approximately one year after returning to her volunteer firefighter duties, Kocanowski sustained injuries to her right leg and ankle while responding to a multi-alarm fire in Franklin Township.

Kocanowski eventually underwent multiple surgeries followed by a long course of physical therapy. Unfortunately, she continued to suffer from residual problems with her back, legs and feet. Her workers compensation claim alleged that these residual problems restricted her ability to hold gainful employment or volunteer. In 2016, Kocanowski's application for temporary benefits was denied. The judge of compensation in her case found the statute intended to provide temporary disability benefits as a wage replacement. Therefore, her status as an unpaid volunteer, without outside pay, prevented her from receiving such benefits. The Appellate Division went on to affirm the judge of compensation's decision, stating that in the case of a volunteer firefighter, outside employment is a prerequisite to an award for temporary disability benefits. The Supreme Court held that it had to go beyond the plain language of the statute and thus incorporated the legislative history. Ultimately, the Court ruled that N.J.S.A. 34:15-75, interpreted liberally, requires that all injured volunteer firefighters must be provided the maximum compensation rate irrespective of whether he or she also has paid outside employment. This decision corrected what the court saw as a potentially absurd result, stating that "defendant's interpretation [of the statute] would allow a volunteer firefighter who completes work for a nominal salary, say \$5 weekly to deliver newspapers, to automatically receive the maximum compensation authorized while a volunteer firefighter like Kocanowski, who had no outside compensation at the time of her injury, would receive no temporary disability benefits."

Thank you to Brian Butler of **Biancamano & DiStefano** for the litigation update.

NEWS FROM THE DIVISION OF WORKERS' COMPENSATION

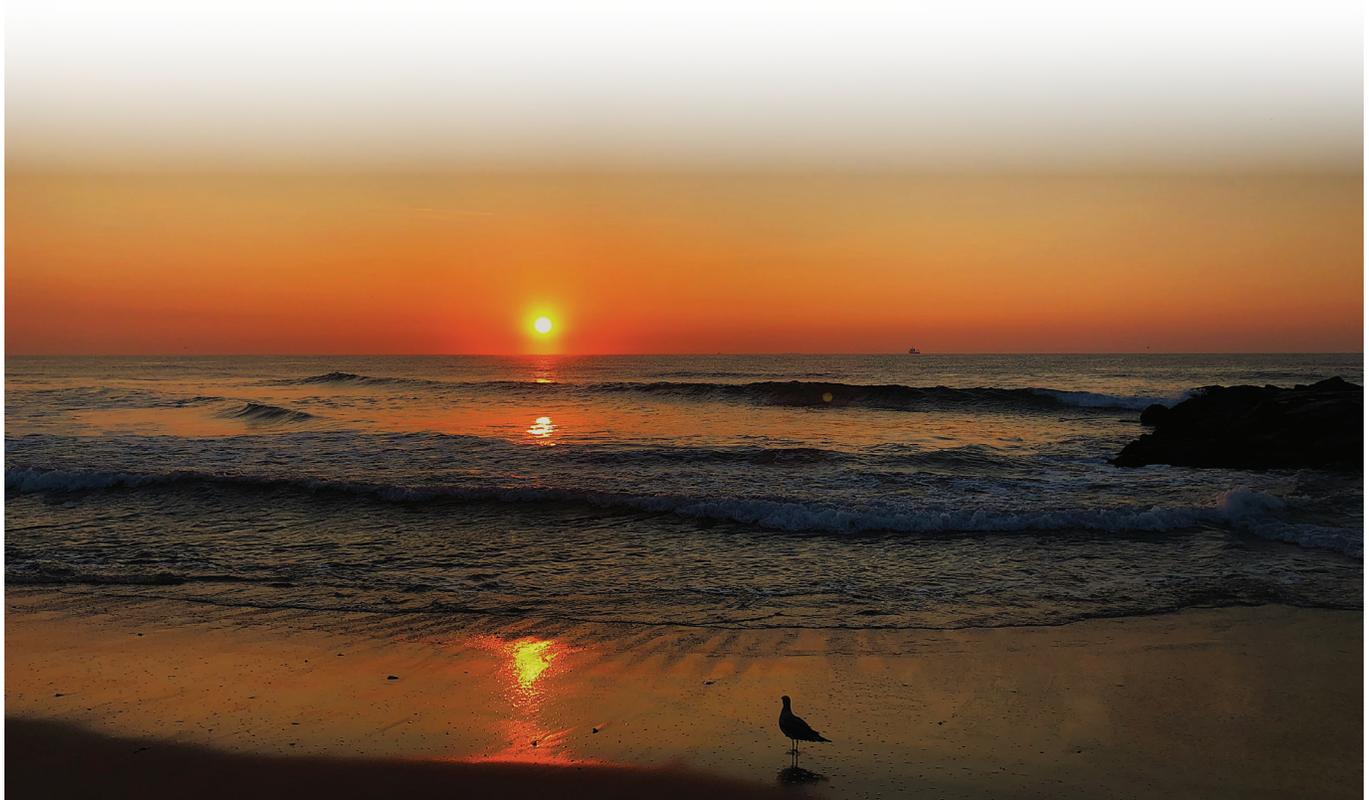
There are presently 98, 151 open claims. The top 3 Vicinages are Newark, New Brunswick & Hackensack. As of April 30, 2019, The Division received 9,505 new claim petitions, 2,579 Medical Provider Claims, 68 Dependency Claims, 2,502 Re-Openers and 8 applications for Informal Hearings. There are 3,515 open Second Injury Fund cases. Judge Marchand supervises Bridgeton, Atlantic City and Toms River. Judge French supervises Camden, Mt. Holly and Trenton. Judge Hutchinson supervises New Brunswick, Lebanon and Mt. Arlington. Judge Simon supervises Freehold, Jersey City and Plainfield. Judge Tornetta supervises Newark, Hackensack and Paterson. Presently there are 45 full time judges (including the Director) and 8 recall Judges.

WELCOME TO NEW MEMBERS

Alliant Insurance Services, Bay Oaks Group, Carpenter, McCadden & Lane LLP, CityMD, James Jones LLC, Marker28, Optum, Pain Medicine Physicians, ShoreView Network Services, Work Comp Bundled Payments.

NOTICE OF COMPLIANCE

The Employers' Liability Insurance Law Title 4, Chapter 15, Article 5, Section 8o provides that employers who qualify to carry their own liability (self- insurer) must post and maintain a Notice of Compliance in the employer's workplace. NJSIA can provide the notice to our members.



JOIN NJSIA

For the past 100 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.

MEMBERSHIP DUES

You can complete a membership application and pay the annual dues thru PayPal. Dues are \$350 per year, if you have any questions regarding your membership status contact us at Kappa59@aol.com or 609-587-4304.

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Janah Rodriguez – E.I. DuPont Company
janah.rodriquez@dupont.com

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James C. Knicos
P.O. Box 3455 Mercerville, NJ 0869
Office 609-587-4304
Kappa59@aol.com

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