



NJSIA NEWSLETTER ❖ SUMMER 2023

SERVING NEW JERSEY'S WORKERS' COMPENSATION COMMUNITY SINCE 1918

NEW JERSEY SELF INSURERS' ASSOCIATION
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A MESSAGE FROM THE PRESIDENT

Hard to believe Summer is here!

We were so excited to welcome everyone back to Atlantic City for our Spring 2023 NJSIA Workers' Compensation Conference & Vendor Fair. It was so nice to be back at Harrah's and hope that everyone enjoyed the conference.

I would like to thank the program committee for all of their hard work in putting together a fabulous conference. Also, a big thank you to all the speakers. The conference would not be successful without all of you.

Once again, this year we are pleased to report we have maintained our support of New Jersey Kids' Chance and are sponsoring two students with partial scholarships. It is such a wonderful opportunity for us to be able to support an organization such as this.

During the year, we are continuing to grow our membership. The membership committee is hard at work getting information out to current members as well as potential new ones.

Lastly, don't forget to look out for the members only barbecue scheduled for Wednesday, August 2, 2023, at the Boathouse at Mercer Lake. It is such a beautiful venue where members can relax and collaborate.

I know I am looking forward to seeing each one of you in August!

Erika Graham, President, NJSIA



PROGRAM REPORT

The votes are in!! Thank you for confirming what the Program Committee planned for as the Spring Conference and Vendor Fair – it was an amazing time! We were back at Harrah's and it felt like coming home.

The location of the program, in the Waterfront Conference Center highlighted what was intended: A venue that showcased a group of incredible professionals who shared their knowledge of workers' compensation laws/statutes, human resources and the relationship to workers' compensation, mental health and workers' compensation, and ensuring that we do our best to provide optimum service to our clients.

Our medical presenters were clear and concise, ensuring that we understood conditions, treatment and expected outcomes.

The feedback from our attendees regarding the Cyber Security panel was without a doubt enough that I can tell you, there will be a "Cyber Security Part 2"! Kudos to each of them.

Our vendors did not disappoint! So many of you did a great job representing our theme, but I would certainly be remiss if I didn't congratulate the team at Ivy Rehab, who won the prize and the title of "Best Representative of the Theme"! Great job team Ivy!

One of the best parts of facilitating this conference is getting to see and spend time with old friends and make new ones. We know that there are many ways to "spend money and time", but we are so glad that you choose to do both at the New Jersey Self-Insurers' Association events.

Just so you know, the Program Committee has been working on the program for the Annual meeting scheduled for November 9, 2023 at the Holiday Inn in East Windsor, NJ. There may be an opportunity for our vendors to purchase an exhibitor table if they choose to do so. Stay tuned!

Regina K. Lamptey, Program Chairperson

MEMBERSHIP REPORT

It was wonderful to see so many of you in Atlantic City for our annual conference. I hope that you enjoyed both the educational sessions as well as the activities.

For those of you who attended as our guests and are not currently members of New Jersey Self-Insurers' Association, I hope that you will take the opportunity to join us as a member and take advantage of what that has to offer. By now, you know that I am definitely a cheerleader of the organization, and with good reason. We have been serving the workers' compensation community for over 100 years. To still be a vital, active organization for that long, we must be doing something right!

I know that non-members enjoy some of the same benefits as members, and we certainly welcome our members and non-members alike. That said, you are missing out on our members-only event(s). For those of you who are self-insured/high deductible employers, you are also missing out on having full voting rights and an opportunity to be a member of our board. Additionally, and perhaps more importantly from your employers' perspective, you are missing out on the discounts provided to members for our seminar and conference. With costs continuing to escalate, we are pleased to announce that our dues for 2023 have remained stable, and have done so for several years, and the discounts you receive just about negate the cost of membership. Unlike many other organizations, the dues are for your company, not an individual. Any individual working for the company enjoys the benefits of membership. For these reasons, we really hope that one of the opportunities for you in 2023 will be to join us. As always, of course, whether a member or not, we welcome you to join our seminar and conference. We hope to see you all at our November Meeting in East Windsor!

Donna Wrobel, Membership Chair

BARBEQUE REPORT

Mark your calendars!

The NJSIA 7th Annual Members Only Summer Outing will take place on August 2, 2023 from 5:30 to 9:30pm at The Boat House at Mercer Lake Boathouse (boathouseatmercerlake.com). We look forward to a wonderful evening of food, drinks and fun. This is a social outing, with a buffet dinner served. Please RSVP no later than July 29, 2023 to kappa59@aol.com.

LEGISLATIVE UPDATE

A4469 (Kennedy)/S2965 (Lagana) Provides workers' compensation benefits for certain public safety workers who developed illness or injury as result of responding to the September 11, 2001 terrorist attacks. This bill creates a presumption that any injury, illness, or death from any World Trade Center-related health conditions certified by the Centers for Disease Control is compensable under the workers' compensation law for public safety workers who participated in the response to the September 11, 2001 attacks and are being treated or monitored through the World Trade Center Health Program established by the Centers for Disease Control.

While certain workers may be covered under other criteria for workers' compensation benefits, there remain workers who acted heroically on September 11th, who have become ill, and remain ineligible for benefits. This bill eliminates any statutes of limitations issues for workers who have not yet filed for their conditions, and limits treatment to those individuals who are participating in the World Trade Center Health Program, established by the Centers for Disease Control, and one of the centers of operations is Rutgers University.

There is no question that the individuals receiving treatment and monitoring in the program participated in the response to September 11th attacks, and this bill provides benefits for these who have endured serious health consequences as a result of that participation.

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LEGISLATIVE UPDATE contd.

The **Assembly Bill** was approved by the Labor committee & referred to the Assembly Homeland Security and State Preparedness Committee. The **Senate Bill** passed by the Senate Labor Committee was referred to the Senate Budget Committee.

A4832 (Mukherji)/S3309 (Stack) Raises maximum workers' compensation fees for evaluating physicians for claimants for the written reports at \$1,000. The maximum fee of \$1,000 represents an increase of \$400 over the current maximum of \$600, in the case of a claimant's evaluating physician.

The bill provides that a psychologist, nurse practitioner, or licensed clinical social worker who provides psychological treatment may be paid a fee for a report or testimony concerning that provider's course of treatment of the injured worker in that provider's role as a provider of treatment as permitted by law.

The **Assembly Bill** was approved by the Labor Committee and referred to the General Assembly. The **Senate Bill** was approved by the labor Committee and was referred to the floor of the Senate.

Thank you to Jon Bombardieri of CLB Partners.

LITIGATION REPORT

Supreme Court Decision Provides Overview Of NJ Insurance Fraud Prevention Act and the NJ Workers' Compensation Fraud Act

Liberty Insurance v. Techdan, LLC, 9A-52-21) (086219), decided on February 15, 2023, is a case that practitioners, employers, third party administrators and insurance carriers should be aware of. It is the only New Jersey Supreme Court case which provides a comprehensive analysis of the New Jersey Insurance Fraud Prevention Act (IFPA) and the New Jersey Workers' Compensation Fraud Act.

The main allegation in the case filed by Liberty Insurance was that Techdan LLC and Exterior Erecting Services, Inc. misrepresented the relationship between their two companies and provided fraudulent payroll records in order to lower their workers' compensation premiums. Techdan was indicted for second degree theft by deception, and

LITIGATION REPORT contd.

one of the company's principals entered a guilty plea on Techdan's behalf.

The fraud took place many years ago. Liberty Insurance issued a workers' compensation policy to Techdan from March 12, 2004 to March 12, 2007. During its underwriting and audit process, Liberty alleged that the defendant companies misrepresented their relationship between Techdan and Exterior and provided Liberty's auditors with fraudulent payroll records in order to reduce the premiums charged by Liberty Insurance.

After the criminal matter resolved with a plea agreement for second degree theft by deception, Liberty Insurance pursued a civil action under the IFPA and under the NJ Workers' Compensation Fraud Act. Liberty Insurance argued that the Court should pierce Techdan's corporate veil and Exterior's limited liability company veil to impose personal liability on the officers and directors of the companies.

The trial court ultimately found that all defendants should be jointly and severally liable for treble damages under the IFPA. The result was that an award of \$756,990 was trebled to \$2,270,970, as the IFPA (unlike the New Jersey Workers' Compensation Fraud Act) provides for treble damages. The trial court also entered judgment for trebled attorney fees in the amount of \$2,768,018. Costs were also trebled in the amount of \$290,048.

In the Supreme Court opinion, several aspects of the decision were appealed, one of which was whether joint and several liability should apply under the New Jersey Comparative Liability Law. Those aspects of the case are not relevant to the focus of this blog and will not be addressed here. Suffice to say that the Supreme Court found that the trial court should have charged the jury to allocate percentages of fault among the various defendants.

The two fraud acts have different primary emphasis but one key area of overlap. The Insurance Fraud Prevention Act found at N.J.S.A. 17:33A focuses on alleged fraudulent written and oral statements made by businesses to obtain a policy of insurance or in connection with a claim made to the Unsatisfied Claim and Judgment Fund.

The New Jersey Workers' Compensation Fraud Act, found at N.J.S.A. 34:15-57.4, focuses mostly on an individual's false or misleading statements

LITIGATION REPORT contd.

concerning any fact that is material to a claim for workers' compensation benefits for the purpose of wrongfully obtaining those benefits.

The area of overlap involves the kind of fraud alleged in Liberty Insurance. Both laws prohibit misclassification of employees for the purpose of evading the full payment of benefits or premiums under the New Jersey laws.

It is interesting to compare the two laws in terms of remedies. Both allow civil actions, but the New Jersey Workers' Compensation Fraud Act allows the Judge of Compensation to make findings on fraud, order the dismissal of a case or a particular claim for fraud, and order repayment of benefits plus simple interest. The IFPA provides for treble damages to the prevailing party but treble damages are not available in the NJ Workers' Compensation Fraud Act. *Both the IFPA and the NJ Workers' Compensation Fraud Act provide for an award of reasonable costs and attorney fees to the prevailing party.*

The New Jersey Workers' Compensation Fraud Act states in Section 34:15-57.4 b. *"Any person*

who wrongfully obtains benefits or evades the full payment of benefits or premiums by means of a violation of the provisions of subsection a. of this section shall be civilly liable to any person injured by the violation for damages and all reasonable costs and attorney fees of the injured person."

The Workers' Compensation Fraud Act also adds that if a person receives benefits *"to which the person is not entitled, he is liable to repay that sum plus simple interest to the employer or carrier or have the sum plus simple interest deducted from future benefits payable to that person, and the division shall issue an order providing for the repayment or deduction."*

The burden of proof in a fraud case brought by an employer, third party administrator or carrier is on the moving party. When an employer brings a motion for a potential find misrepresentation, false statement or submission was made for the purpose of wrongfully obtaining workers' compensation benefits.

**Thank you to John Geaney, Esq.
of Capehart Scatchard.**



ANNUAL MEETING

Will be held on November 9, 2023 at the National Conference Center, Holiday Inn of East Windsor.

MEMBERSHIP DUES

Our dues are \$350 a year for all members. Forward your check to our office or visit njselfinsurers.com and pay thru PayPal. If you have any questions on your membership status, please call the office.

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