



NJSIA NEWSLETTER ❖ SUMMER 2024

SERVING THE NEW JERSEY'S WORKERS' COMPENSATION COMMUNITY SINCE 1918

NEW JERSEY SELF INSURERS' ASSOCIATION

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A MESSAGE FROM THE PRESIDENT

Happy Summer, I hope you have had an opportunity to get out and enjoy the wonderful weather.

Thank you to all who made our Annual Spring Conference and Vendor Fair a success. We appreciate your engagement and support and hope you found it time well spent. The program committee worked hard to curate informative and engaging programming with opportunities to network and reconnect with vendors and colleagues. We would welcome your feedback and thoughts on the new programming that looked at “Hot Topics” beyond the Workers’ Compensation area. If you have suggestions for programming topics, speakers or the conference in general, please reach out and share your ideas.

A priority for the Board this year is to grow our membership. We would ask our current members to be ambassadors for the organization in our efforts. Full membership is open to all New Jersey employers who are either self-insured or who maintain a large deductible workers’ compensation policy. Our membership committee is also working on creative ways to engage new members, if you have suggestions we would love to hear them.

Mark your calendar for our Annual Members Only Barbecue at the Boathouse at Mercer Lake on Wednesday August 7, 2024. This is a fun social outing, dress casually! Weather permitting, there will be lawn games and the canoes and paddle boats will be available for rental. There will be a BBQ buffet with a 3-hour Open Bar of beer and wine, plus fountain drinks, lemonade and iced tea.

Missy McGinn , NJSIA President



PROGRAM COMMITTEE REPORT

In spite of the April date and the Tuesday to Thursday time frame, you made the New Jersey Self-Insurers’ Association’s Spring Conference and Vendor Fair a success!

Our speakers and presenters were outstanding, and we are always grateful for their willingness to participate in our programs. We strive to present some of the most innovative information in the area of laws/statutes, human resources, medical treatment and their relationship to workers’ compensation.

Thank you for completing our survey.

The results were overwhelmingly positive and very complimentary, confirming that we are presenting what the industry is looking for in an educational workers’ compensation program.

The “Cyber Security Part 2” presentation was outstanding. Our doctor, adjuster, and risk management panels all exceeded all of our expectations.

Thank you to our exhibitors for ensuring our “Three Ring Circus” theme was carried out so well. So many of you did such a great job representing this year’s theme. But the Ring Master, Strong Man, Lion Tamer and Circus Security team at WCPN took the center ring and the prize! Congratulations to Dr. Kezmarsky and her team for being voted the “Best Representative of the Theme”! Great job team WCPN!

For me, 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 8, 2024, 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 COMMITTEE REPORT

Thank you to all who joined us in Atlantic City for our Annual Conference! I think I speak for many of us when I say those were some of the best topics and speakers we have had to date. I personally enjoyed the open mic panel and I look forward to that becoming a more regular segment going forward. I am certain the Annual Meeting scheduled for November 8th will not be one miss.

While there is no denying the Annual Conference was amazing, we at NJSIA are always striving to outdo ourselves year after year. In order to do so, we feel as though increasing our membership is paramount to our continued success. Many workers' compensation professionals working in and around New Jersey do not realize NJSIA membership does not only apply to self-insured employers and we also welcome high deductible employers, so it is important to get the word out.

One way we will try to increase NJSIA membership is by reaching out to our vendors for assistance. We are very fortunate to have some of the best vendors in the business and we are hopeful they will be willing to help us add new self-insured and/or large deductible employers to our roster by sharing information about NJSIA with their clients or perhaps providing us with their clients' contact information so we can reach out directly.

For those who have attended one of our Annual Members Only Summer Outings in the past, you know it is a great time and it is certainly one of the many perks of being a NJSIA member. In another attempt to grow our membership, we will allow members to bring a non-member guest to the Summer Outing scheduled for August 8th so long as the non-member is an employer eligible for full NJSIA membership. In order to take advantage of this wonderful offer, please email dwrobel1026@outlook.com.

I hope to see you all at The Boathouse at Mercer Lake on August 8th!

Brittany Patterson
Membership Committee Chairperson

LEGISLATIVE REPORT

A3986 (Verrilli)/S2822 (Lagana) Revises workers' compensation law to increase contingency attorney fee cap in contingency case from 20 percent to 25 percent.

This bill revises the workers' compensation law to increase the cap in contingency fee matters from 20 percent to 25 percent. Attorneys for injured workers are often compensated on a contingency fee basis, and the original cap of 20 percent does not consider additional duties that workers' compensation attorneys are required to handle since the cap's establishment.

This legislation passed the Senate by a vote of 27-9 on May 13, 2024. The Assembly Labor Committee passed the Legislation on May 16, 2024, and awaits full consideration of the General Assembly.

A2100 (Kennedy)/S1470 (Lagana) Provides workers' compensation benefits for certain public safety workers who developed illness or injury as result of responding to September 11, 2001, terrorist attacks.

This bill provides that a public safety worker who participated in the response to the September 11, 2001 attacks and is treated or monitored through the World Trade Center Health Program established by the Centers for Disease Control is presumed to be compensable under the State workers' compensation law without respect to when the worker files his claim for compensation, except that the claim is required to be filed within two years after the effective date of the bill. A worker is deemed ineligible for the benefits if the worker is eligible for benefits for the same injury, illness, or death under workers' compensation programs of other states or the federal government.

The bill requires the Division of Archives and Records Management in the Department of State, and each county, municipality, regional or joint public safety entity, or other agency involved in the public safety, to notify all active and retired personnel and next-of-kin, if the personnel are deceased, of the presumption of compensability within three months of the effective date of the bill.

Fiscal Impact - The Office of Legislative Services estimate that this bill will result in a combined annual State and local cost increase ranging from \$0.6 million to \$2.3 million in the first year the bill is implemented, \$1.8 million to \$6.6 million in the second year, and \$3.0 million to \$10.8 million in the third and subsequent years. The estimate is based

LEGISLATIVE REPORT contd.

on data contained in the World Trade Center Health Program, a comprehensive registration vehicle for all responders, survivors, and victims of the September 11, 2001, attacks.

In the Assembly, the legislation has been referred to the Assembly Labor Committee. The Senate version passed out of the Senate State Government, Wagering, Tourism and Historic Preservation Committee on January 25, 2024, and was referred to the Senate Budget and Appropriations Committee to consider the fiscal impact.

S2278 (Scutari) Concerns submission of testimony in workers' compensation claims.

This bill authorizes a judge of compensation, in the resolution of a workers' compensation claim pursuant to R.S.34:15 or R.S.34:15-22, to permit the submission of testimony of the petitioner and other witnesses by means of video or telephonic conferencing, prior deposition testimony, or sworn affidavit of the petitioner or witness, in lieu of appearance in open court for good cause and with the consent of the parties.

This legislation was referred to the Senate Labor Committee.

S1923 (Amato) Prevents intoxicated employees from receiving workers' compensation.

This bill amends the workers' compensation law to provide that if an employee was intoxicated when the injury or death occurred, it is presumed that the injury or death was caused by the intoxication and the employee will be barred from receiving workers' compensation.

This bill is, in part, a response to the 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. In its decision, the Court stated that its role is to "effectuate the will of the Legislature" and concluded that any changes to the workers' compensation system must be done through legislation. Moreover, the Court noted that the workers' compensation law was created in 1911 and "may no longer comport with current policies."

This legislation was referred to the Senate Labor Committee.

Thank you to Jon Bombardieri of CLB Partners

LITIGATION REPORT

I am pleased to report on a winning case for an employer! In *Bjourn Avery v. Next Mile LLC/DSP*, the New Jersey Appellate Division affirmed the findings of Judge Robert Thuring of the NJ Division of Workers' Compensation finding Petitioner's injury not compensable. Petitioner was an employee of respondent, Next Mile, a subcontractor for Amazon. As part of his duties, Petitioner was required to report to a parking lot where he would meet a dispatcher wearing Amazon apparel and provide Petitioner with delivery assignments. On August 27, 2020, Petitioner reported to the parking lot approximately an hour early, and approximately 30 minutes later while Petitioner was seated on his bumper, he looked up to see an individual wearing Amazon apparel and a ski mask who then shot Petitioner before fleeing without taking anything from Petitioner or injuring anyone else. After Petitioner was discharged from the hospital, he testified he went to Massachusetts as he feared for his life. Petitioner reported returning to NJ for two days that December, at which time he reported being followed by two men in ski masks while grocery shopping. Petitioner believed these men were trying to kill him, so he again fled to Florida. Significantly, it was also established that a week or two prior to the shooting, Petitioner became involved in a dispute with a former coworker at Next Mile. Petitioner and this coworker, CJ Blocker, were found to not have any prior issues with one and other, until Petitioner had "purchased credit cards" from Mr. Blocker without fully paying for them. As documented in text messages, at the time of the shooting, Petitioner still owed Mr. Blocker \$80-\$100. Judge Thuring found Petitioner's credibility at issue due to several inconsistencies and body language, and without requiring Respondent to present their case, he dismissed Petitioner's Claim Petition as although the injury occurred during Petitioner's employment, the Judge determined it did not arise out of his employment as it was a targeted act just as likely to have occurred outside of the workplace. Judge Thuring found it more likely the shooting was connected to the credit card purchases from Blocker, however, even if there was no evidence of Blocker's involvement, Judge Thuring found there was no evidence connecting the event to Petitioner's employment with Respondent.

The NJ Appellate Division cited *Howard v. Harwood's Rest. Co.*, 25 N.J. 72, 83 (1957) and *Ramos v. M & F Fashions, Inc.*, 154 N.J. 583, 591 (1998), in

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applying a “but for” or a “positional-risk” test to decide “whether it is more probably true than not that the injury would have occurred during the time and place of employment rather than elsewhere.” If an attack is just as likely to have occurred outside the workplace, the incident is not compensable. *Marky v. Dee Rose Furniture Co.*, 241 N.J. Super. 207, 212 (App. Div. 1990). In considering this test, the Court also looked to *Martin v. J. Lichtman & Sons*, 42 N.J. 81, 84 (1964), which found that workplace assaults are compensable when they are “not motivated by personal vengeance stemming from contact with the employee outside of the employment . . . [or] from a purely private relationship entered into by them during the course of their employment.” Furthermore, when an assault on an employee is purely the product of a personal relationship with his attacker; that attacker is not an employee; and there is no further connection to his employment other than it occurring at work, then recovery is prohibited. *Pittel v. Rubin Bros. Bergen, Inc.*, 59 N.J. Super. 531, 536 (1960).

As part of Petitioner’s appeal, he claimed the NJ Division of Workers’ Compensation incorrectly placed the burden of proof on Petitioner to demonstrate the event was not personal in nature. The Court easily dismissed this contention due to the fact that in Worker’s Compensation, the burden is always on Petitioner to prove all aspects of their case, and there is nothing to shift that burden to Respondent either here or elsewhere. *Bird v. Somerset Hills Country Club*, 309 N.J. Super. 517, 521 (App. Div. 1998). In support of his argument, Petitioner cited *Spindler v. Universal Chain Corp.*, 11 N.J. 34 (1952), *Verge v. County of Morris*, 272 N.J. Super. 118, 128 (App.

Div. 1994), and *Shaudys v. IMO Industries, Inc.*, 285 N.J. Super. 407 (App. Div. 1995). However, those cases dealt with claims where a Petitioner alleged that a knee injury arose out of and in the course of employment and the Respondent disputed this claiming it was something other than being work-based in cause. In considering this argument, the NJ Appellate Division found these cases addressed the disputed medical causation of the physical injury, and as a result, when it is then alleged the injury was the result of the physical condition of Petitioner, the burden is in fact on Respondent to show cause. However, those were determined inapplicable to the present claim as the physical cause of Petitioner’s injury was not disputed.

Petitioner’s final contention was that he did not know the true identity of his assailant, and the name of CJ Blocker was only raised by Respondent on cross-examination. However, the NJ Appellate Division found the identity of the assailant was not at issue based upon Judge Thuring’s reasoning that even if there was no evidence to connect the shooting to Blocker, the record was devoid of evidence causally relating the shooting to Petitioner’s employment with Respondent. In addition to issues of credibility, Judge Thuring also cited the nature of the shooting as being targeted to Petitioner as it was not a robbery and no one else was harmed and therefore, it was just as likely to have occurred outside of the workplace. The NJ Appellate Division found there was nothing in the prior ruling that was inconsistent with the evidence or offensive to the interest of justice, and they therefore found no reason to intrude on the well-reasoned decision.

**Thank you Christopher Harris, Esq. of
Biancamano & DiStefano, P.C.**

MARK YOUR CALENDAR FOR UPCOMING EVENTS

August 7 – Members Only Barbecue
November 8 – Annual Meeting & Seminar

CONNECT WITH US!



MEMBERSHIP DUES

Our dues are \$350 for all members. Members are the entity and all employees enjoy the benefits of membership. You can apply for membership on-line at www.njselfinsurers.com, or contact Donna Wrobel at dwrobel1026@outlook.com for an application. Payment can be made via check or PayPal. If you have questions regarding your membership status, please contact the NJSIA office.

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