

Workers' Compensation



Weber Gallagher defends employers in Pennsylvania, Delaware, New York, and New Jersey in workers' compensation matters in union and non-union settings. We also routinely recover subrogation liens, institute fraud prosecutions, prepare and file amicus briefs and assist with legislative lobbying. Chambers USA: America's Leading Lawyers for Business recognized the firm's Workers' Compensation practice in Pennsylvania and New Jersey in 2019. Our clients include public and private employers, insurers, self-insured entities and third-party administrators, from small businesses to Fortune 100 companies. We appear before workers' compensation judges and appellate panels, state courts and agencies, and at all federal court levels. Our work in the field includes:

- Counseling clients on managing risk and averting litigation
- Assisting with the design and implementation of return-to-work programs
- Helping coordinate workers' compensation policies for multistate businesses
- Handling matters related to the Longshore and Harbor Workers' Compensation Act, Merchant Marine Act (the Jones Act), and Mine Safety and Health Administration

Our Pennsylvania Workers' Compensation Group attorneys have been closely following the *Protz v WCAB (Derry Area School District)* ruling and how it will affect employers. The unexpected decision by the Pennsylvania Commonwealth Court held that Impairment Rating Evaluations (IRE) are unconstitutional if they were performed using any edition of the AMA Guides of Permanent Impairment beyond the 4th Edition. [Click here](#) to review our detailed materials about this decision.

Experience

- Received a favorable decision on August 1, from a Workers' Compensation Judge. The Judge denied the Claimant's Petition who was seeking disability and medical benefits for hypertension and anxiety allegedly caused by a confrontation with his supervisor over a lack of requested documentation to support a bereavement leave. The Workers' Compensation Judge concluded the claimant failed to sustain his burden of proving the existence of abnormal working conditions and that he failed to sustain his burden of proving a work-related injury. In reaching this result, the Judge found the testimony of the supervisor more credible than that of the employee. The Judge also credited the reported opinions of the employer's psychiatric and medical experts over the employee's treating nurse practitioner.
- Received a favorable decision from a Workers' Compensation Judge denying and dismissing an employee's Petition for Review of a June 2019 Utilization Review Determination that found the therapy treatment unreasonable and unnecessary on and after February 2018. The Judge credited the opinion of the UR Reviewer over that of claimant that the treatment was unreasonable and unnecessary because he relied upon medical literature and treatment protocols, despite extensive treatment the employee's complaints and examination findings have remained the same, but the treatment has not changed and the claimant's report regarding body parts treated, including the cervical spine, was not consistent with the testimony about treatment only to the right shoulder. The Judge found the employer's contest reasonable and because the employee did not prevail litigation costs were not awarded. The employer need not pay for the treatment on or after February 20, 2018.
- Successfully defended Claim and Penalty Petitions. The employee filed the petitions against a family-owned packaging company. The Workers' Compensation Judge rejected the employee's credibility based on significant inconsistencies *Ventre* established relative to the employee's testimony, and that of her co-workers and contents of medical records. The Workers' Compensation Judge also credited the testimony of the IME doctor, who, like The Judge, found the employee to be evasive. This was a significant win for the employer as the employee was pursuing a claim for very serious injuries, including alleged multi-level lumbar and cervical disc herniations and radiculopathy with a reported need for

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surgery. As a result of the decision, the client avoids liability for wage loss and medical benefits, which could have eclipsed six figures. The employer has no liability for penalties or reimbursement of the employee's litigation costs.

- Received a positive decision in an appeal before the Workers' Compensation Appeal Board where the Appeal Board agreed with the earlier decision from the Workers' Compensation Judge. In this case, the Judge found that chiropractic/physical therapy treatments three times per week from December 9, 2016, through June 14, 2017, were necessary, but treatments given after June 14, were not necessary and should not be covered.
- Successful in defeating claimant's Reinstatement and Review Petitions. Claimant tripped and fell at work, injuring her right knee. She treated briefly with employer's panel physicians and was released to full duty work. A few weeks later, the claimant was terminated after engaging in a verbal altercation with her supervisor. Claimant sought to have her indemnity benefits reinstated, and also filed a Review Petition, alleging that in addition to a knee contusion, she also suffered from internal derangement of her right knee, a right ankle injury, and a low back injury. The Judge found claimant and her medical experts incredible and accepted the testimony of the employer's medical expert and two employer fact witnesses (claimant's supervisor and the HR Generalist). The Judge found that claimant's termination for cause was unrelated to her work injury, and did not warrant reinstatement of benefits. The Judge also did not believe claimant sustained injuries to her low back or right ankle. Claimant filed a timely Appeal, arguing that the Judge's decision was not based on substantial evidence. The Appeal Board disagreed, and affirmed the Decision. Claimant's benefits are now terminated, and no further payments after her termination for cause were due, saving the employer significant money.
- Successfully tried a Motion for lack of coverage. In this matter, petitioner alleged injuries sustained in a MVA. The claim was denied as petitioner, the owner of the company, had excluded himself from coverage under the policy. Nonetheless, following the accident, petitioner claimed that he did not know that he specifically excluded himself from coverage. Emails were submitted to the court indicating that petitioner was given information about different policy premiums for coverage and non-coverage. The emails further indicated that he had previously excluded himself on an earlier policy. The motion was tried and testimony was taken both from the insurance broker and of the petitioner. The Judge did not find the petitioner credible noting that he frequently changed his answers when confronted with documents that contradicted his assertions. As such, the Judge granted our dismissal with prejudice. Respondent avoided being on the hook for payment of medical treatment for multiple injuries and temporary disability benefits.
- Successfully prosecuted a termination petition and obtained a termination of benefits. In that matter, the claimant sustained a groin injury and underwent surgery, although, continued to have ongoing complaints and pursued medical treatment. The WCJ opted to terminate compensation in accordance with an IME opinion of full recovery. In this regard, the WCJ found the IME physician to be more knowledgeable and informed in terms of claimant's condition as compared to claimant's medical expert, who recently commenced treatment. The WCJ specifically took note that IME physician reviewed more of claimant's medical records, was more familiar with the medical history, treatment and details regarding claimant's work injury and employment history. Most crucial was the fact the WCJ was persuaded by IME physician's explanation for the claimant's ongoing complaints, which he attributed to an unrelated urological condition, something discounted by claimant's treating physiatrist. As a result of the decision, the client is able to avoid liability for claimant's ongoing medical treatment, including medications, and is not responsible for reimbursement of counsel's litigation costs which total nearly \$3,000. Once the decision is final, the client will be able to pursue a sizable supersedeas reimbursement sum for medical benefits paid out over the last year.

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- Successfully defended against an appeal filed by the Claimant. In this matter, the Claimant sustained an injury to her face and eye. WCJ terminated compensation in accordance with an IME of full recovery. In response to Claimant's appeal, the WCAB reviewed the evidence of record, and concluded that the WCJ did not err, and his decision was supported by his credibility determinations of the witnesses involved. The WCAB also highlighted that the Claimant bore the burden of establishing a causal relation between her work and additional alleged injuries by unequivocal medical evidence, which was unable to be met by virtue of the WCJ's rejection of her medical experts' testimony. The WCAB went on to conclude that there was adequate evidence to support the WCJ's findings, and rejected Claimant's assertion of error from a substantial evidence perspective. Once the decision is final, the client will be able to pursue a sizable supersedeas reimbursement sum, which is expected to exceed \$40,000.