

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. 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

- Successfully defended against a Claim and Penalty Petition for a significant low back injury wherein the claimant underwent surgery during the litigation and before the IME. The Workers' Compensation Judge denied the Claim and Penalty Petitions outright finding the claimant not credible. The judge relied heavily on the inconsistencies noted during cross-examination of the claimant and believed the employer's theory that this was an incident, not a disabling injury, which was supported by fact witness testimony. The judge also found the claimant's expert not credible, noting the expert's opinion was based upon an inaccurate understanding of the medical history. As a result, our client was not responsible for any wage loss benefits, medical bills including surgery, or litigation costs, resulting in savings of well over \$150,000.00 in back-due benefits.
- Secured a trial victory on behalf of a firm client and its insured in a case alleging severe injuries from a fall. Through investigation, we found that the claimant was working "under the table" for another construction company which raised Section 114(a) fraud. After the claimant's testimony, the Judge ruled that, without the need to view the surveillance footage, the claimant conceded to violating Section 114(a)(1) for a material misrepresentation to receive workers' compensation benefits. The claimant was given a permanent bar on receiving indemnity benefits and the matter was marked No Further Action, resulting in a major win for our client.
- Obtained a trial victory on behalf of a general building contractor before the NYS Workers' Compensation Board in a case where a claimant alleged he was assaulted by two coworkers. Based on the cross-examination, the Judge did not believe the claimant was actually physically contacted, and there was sufficient evidence that the claimant was the initial aggressor, therefore the case was disallowed.
- Defended against a Claim and Penalty Petition and prevailed on a Termination Petition involving an upper extremity injury, surgical treatment and serial bureau documents. The Workers' Compensation Judge found the claimant not credible, outright, noting the inconsistencies between the claimant's testimony on cross-examination and the objective medical and gym records. The Workers' Compensation Judge also found the claimant's expert not credible, outright, also noting that the expert's opinion was based upon inaccurate understanding of the medical history. As a result, our client was not

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responsible for any wage loss nor the surgery the claimant underwent and was able to avoid potentially significant medical exposure moving forward.

- Secured a dismissal after a trial on a case that dated back to a 2003 injury. The injured worker was involved in a motor vehicle accident and ultimately underwent a cervical fusion. She initially received an award of permanency of 25% of partial total for the injury to her neck. Upon reopening the case our psychiatric expert found depression and anxiety in addition to the physical injuries. The award was increased to 31% of partial total. The petitioner applied for and received Social Security Disability finding her totally permanently disabled. The petitioner then filed a second application to review her award contending that she was totally and permanently disabled. Following a trial with testimony of the petitioner, her orthopedic and psychiatric experts as well as surveillance evidence and our orthopedic and psychiatric experts, the judge dismissed the case and found no change in her disability. The case closed with prejudice saving the client approximately \$500,000.00 in future exposure.
- Obtained a significant victory on behalf of a structural steel fabricator before the NYS Workers' Compensation Board in a workers' compensation claim where the claimant alleged that he has fallen from 7 feet and injured his right knee, hips, and back at work. The claimant was found not credible due to the lack of medical evidence as well as evidence that the accident occurred, and the claim was disallowed.
- Successfully asserted the collateral source rule applied to prevent the admission of past medical bill damages that were paid by Medicaid, Medicare, or a workers' compensation carrier to the jury and successfully asserted the collateral source rule should also prevent the jury from seeing prospective medical treatment that will be paid by a workers' compensation carrier from unless the applicable Delaware Fee Schedule deductions are considered.
- Defended a workers' compensation claim requesting compensability for neurosurgery to alleviate a subdural hematoma by arguing a violation of the statutory notice requirement and by challenging the expert medical evidence
- Secured a rare victory on behalf of a general building contractor before the NYS Workers' Compensation Board in a claim for benefits where the claimant alleged that he has fallen from 20 feet and injured his back at work. Through a cross-examination of the claimant and the presentation of the employer witness, the claimant was found not credible, and the claim was disallowed.
- Secured a favorable claim petition decision on behalf of a specialty steel manufacturer denying an alleged low back injury and avoiding an estimated past wage loss exposure of \$50,000.00 plus associated past and future medical treatment expenses. In doing so, extensive employer testimony was offered regarding the claimant's work environment, as well as testimony from the employer offering rebuttal to the claimant's purported mechanism of injury. Our aggressive discovery efforts unearthed evidence of a long- standing pre-morbid low back condition.
- Obtained a decision on behalf of an industrial manufacturer denying and dismissing a claim petition seeking the award of past and future workers' compensation wage loss and medical benefits for an alleged plantar fasciitis injury. In doing so, the employer offered lay testimony rebutting the claimant's depiction of his work environment and confirming the employer's use of padded flooring in and around claimant's workstations, as well as an independent medical examination which refuted not only causation of the claimant's injury but the allegation that claimant's work-related standing and walking activities caused an aggravation of a pre-existing condition. The decision avoided substantial exposure for the payment of past wage loss and future wage loss benefits in excess of \$100,000.00.
- Obtained a denial of a first notice claim petition for a meniscus tear/knee injury by a waitress/short order cook for a national restaurant chain avoiding the imposition of surgical costs, and past and future wage loss benefits in excess of \$50,000.00. The use of social media surveys and hospital canvassing allowed

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a critical finding regarding claimant's complained of knee condition being inconsistent with her post-injury surgical presentation and a favorable IME opinion to contest causation.

- Successfully prosecuted a review petition to eliminate claimant's post-injury hip-related care as being non-work related, thereby facilitating a favorable settlement of the claim by eliminating treatment costs, potential hip replacement surgery and an injury upon which was alleging prohibited his ability to seek treatment for his accepted low back injury.
- Obtained an aggregated \$75,000.00 in Supersedeas Fund reimbursements for wage and medical benefits on behalf of various self-insured employers, third-party administrators and workers compensation insurance carriers.
- Represented a building company; Judge dismissed the case upon ruling that petitioner was an independent contractor and not an employee of the homeowner.
- Successfully represented a medical facility where the petitioner filed a dependency claim alleging that the decedent died from alleged occupational exposure to radiation and other deleterious substances which eventually caused a brain tumor. Upon investigation with the client, it was determined that the decedent's radiation exposure was well below the NJDEP guidelines. The matter was resolved for a minimal Section 20 settlement.
- Obtain a dismissal of the petitioner's claim. The petitioner sustained a compensable work injury to the shoulder, ankle, and arm. Two years post-loss petitioner fell on a trip (no accident reported) had emergency cervical spinal surgery. The petitioner claimed it was related to the work injury, and the health care carrier tried to assert a lien. The Judge dismissed that portion of the petitioner's claim. The remaining shoulder, ankle, and arm injuries settled for \$35K section 20.
- Successfully defended a claim where the petitioner underwent unauthorized surgical intervention. In this matter, petitioner sustained a compensable injury to her back, left shoulder and arm, neck, head, left hip, and leg. Following that loss, the petitioner was provided with a brief course of conservative medical treatment. The petitioner then sought unauthorized treatment and surgery. Through investigation and discovery, we were able to determine that the petitioner had a pre-existing history of injuries to the lumbar spine with prior lumbar surgery. The medical expert ultimately determined that the unauthorized surgery was not related to our work injury.
- Prevailed on a Motion for Temporary Disability benefits. The petitioner filed a Motion for Temporary Disability benefits where benefits were sought following the termination of the petitioner while working light duty due to the work accident. Following testimony of the petitioner and our witness, the petitioner's supervisor, the court denied the petitioner's motion and held that the petitioner was not entitled to temporary disability benefits while out of work.
- Successfully defended a Claim Petition, alleging a low back and right arm injuries with ongoing disability. The case involved factual, legal, and medical issues. The Workers' Compensation Judge denied the Claim Petition outright finding that the claimant was not credible and did not sustain a work injury. Specifically, the Judge found the claimant's allegations incredulous when considering the inconsistencies between his testimony and the fact witnesses as well as his evasiveness on cross-examination. As a result, the employer was not responsible for any wage loss benefits, medical bills, or litigation costs, resulting in savings of nearly \$100,000.00.
- Successfully represented a medical facility where the petitioner filed a dependency claim alleging that the decedent died from alleged occupational exposure to radiation and other deleterious substances which eventually caused a brain tumor. We were able to successfully argue that the decedent's radiation exposure was well below the NJDEP guidelines. The matter was resolved for a minimal Section 20 settlement.

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- The Pennsylvania Workers' Compensation Appeal Board affirmed the Workers' Compensation Judge's (WCJ) denial of the Claim Petition that alleged a work-related carpal tunnel syndrome from repetitive duties performed by an electrician. The Board agreed with the WCJ that the claimant's medical evidence was inadequate to support an award of benefits. The Board also determined that the Doctor's opinion was equivocal and legally incompetent because he reported contradictory causation opinions in different reports.
- Successfully defended a Claim Petition involving significant wage loss and medical exposure due to multiple trauma surgeries and post-surgical complications. The case was bi-furcated to address a course and scope issue. The Workers' Compensation Judge found that the claimant was not in the course and scope of employment and denied the Claim Petition. As a result, the employer was not responsible for over \$150,000.00 of hospital bills as well as significant ongoing medical and wage loss exposure.
- Successfully prosecuted a Termination Petition and defended against a Review Petition for a more expansive description of the injury and surgical treatment that the claimant underwent during the litigation. The Workers' Compensation Judge granted the Termination Petition and denied the Review Petition on the basis that the claimant was not credible and that employer's medical experts were more credible than the claimant's treating surgeon. The Workers' Compensation Judge stopped all medical and wage loss benefits related to the accepted injury and found that the employer was not responsible for any medical benefits related to the Review Petition including the surgery the claimant underwent during the course of the litigation. The employer obtained a sizeable supersedeas fund recovery and did not have to pay any of the outstanding medical bills.
- Successfully defended a Claim Petition, alleging a head injury and psychological injuries with ongoing disability. The Workers' Compensation Judge denied the Claim Petition finding that Claimant was not credible and did not sustain a work-related injury. As a result, the employer was not responsible for any of the medical bills or wage loss benefits.
- Successfully obtained multiple Petitions to Enforce Subpoenas of various pharmacies in the Court of Common Pleas in connection with various Penalty Petitions and Fee Reviews involving suspected physician self-referral issues. Enforcement of these subpoenas has often time led to various successful outcomes in those settings resulting in significant savings with respect to potential medical exposure.
- Represented a global insurer and real estate company in regards to a claim petition filed by a moderate-to-heavy duty maintenance worker, alleging ongoing, disabling back and head injuries, by presenting defense evidence to show the workers' compensation judge (WCJ) that work injury did not occur. Before the WCJ decision, the latest demand to settle was \$135,000 plus payment of medical expenses and costs. Based upon the defense evidence presented, including security footage, testimony from multiple fact witnesses and cross-examination of the claimant concerning his alleged story, symptoms, and treatment - the WCJ awarded no benefits.
- Prevailed in a carrier versus carrier case where Review and Joinder Petitions were filed by the Claimant's employer, a subcontractor, and its insurance carrier. The subcontractor sought reimbursement from, and a shifting of all or a pro-rata share of future liability to the general contractor and its insurance carrier pursuant to a "wrap-up" workers' compensation insurance policy. Under the policy, the general contractor agreed to provide workers' compensation benefits to employees of subcontractors, but only when injured on the project site. Any injuries occurring off the project site were to be covered by the subcontractor's workers' compensation policy. The case was complicated by the fact that both carriers utilized the same TPA, raising questions as to how coverage decisions were made. The subcontractor did not dispute that the Claimant's injury occurred off-site, but argued there may have been other instances in which general contractor paid for an injury that occurred off-site,

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thereby precluding the general contractor's denial of liability based on past practice. The subcontractor subpoenaed records from the general contractor, seeking a review of any and all claims paid. We objected to the subpoena as overly broad and unduly burdensome given the scale of the project at issue, and asserted that the subcontractor was estopped from denying liability based on the clear and unambiguous language of the underlying policies. The WCJ sustained our objection to the subpoena of general contractor's file and denied the subcontractor's Review and Joinder Petitions on the merits.

- Successfully defeated a claim petition for psychological injuries. The Claimant, a third-shift cashier at a convenience store, alleged that she sustained PTSD and anxiety following two armed robberies. While the medical experts in the case acknowledged that Claimant had evidence of work-related PTSD, the WCJ found that Claimant failed to provide timely and adequate notice of the work injury, and so denied the Claim Petition. Claimant appealed and the WCAB affirmed the WCJ's Decision.
- Successfully prosecuted a termination petition to a full recovery adjudication for a national retailer and its third-party administrator. The claimant had an accepted shoulder injury requiring surgery and then a resultant adhesive capsulitis. The claimant received total disability benefits. In defense of the termination petition, the claimant argued she needed to undergo another surgery. Before the Workers' Compensation Judge (WCJ) Decision, the claimant had presented a \$145,000 settlement demand. Using key emergency room records, diagnostic studies, and an intraoperative findings to persuade the WCJ to grant this employer relief in an otherwise unresolvable medical contest.
- Successfully defended a claim before the Appellate Division on a question of insurance coverage and whether the policy was in effect at the time of injury. The policy at issue was provided to a subcontractor hired by our insured. The claim was initially filed in Pennsylvania where the injured worker lived, and his employer was located. Based on Pennsylvania law, it appeared that the carrier canceled the workers' compensation insurance coverage for non-payment. The injured worker then chose to pursue his claim in New Jersey, where the injury occurred. He also received medical treatment in New Jersey totaling over \$1.3 million for an extended hospital stay due to his severe burns. The insurance carrier for the subcontractor attempted to argue that there was no coverage in place in New Jersey at the time of the accident as the insurance carrier did not operate nor write policies in New Jersey. The insurance carrier claimed cancellation of the Pennsylvania policy was transferable to New Jersey and, therefore, there was no need to show proper cancellation in New Jersey. However, the insurance carrier did not deny that New Jersey was not excluded under the policy. After briefs were submitted, and without oral argument, the Appellate Division denied the Motion for Leave to Appeal and dismissed the Notice of Motion for Appeal.
- Successfully defended a motion for medical treatment involving a claim where the petitioner had two work-related accidents within months of each other with alleged injury to the hip in both claims, among other injuries. The petitioner filed a Motion for Medical and Temporary Disability Benefits seeking hip surgery recommended by her expert for a labral tear. This contrasted with the respondent's expert who found no discrete tear from an accident and no need for treatment. After testimony by the petitioner and both experts, all conducted using Zoom, the Judge entered an Order denying the Motion for failure to sustain the burden of proof. While the Judge noted the petitioner was a credible individual, the issue turned on causation to which the Judge looked to the experts. The Judge found the respondent's expert to be more thorough in his explanations of his conclusions during testimony and in his ability to explain his review of the MRI study as well as being able to show the MRI during testimony.
- Successfully defended a claim before the Appellate Division affirming a Trial Court's decision that a Bihler operator did not suffer hearing loss during the course and scope of his employment. The Judge of Compensation found a lack of credible evidence to prove petitioner suffered physical injuries and hearing loss as a result of excessive noise exposure based on petitioner's inconsistent testimony, the

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records of the treating doctors, and petitioner's expert testimony, which provided no basis for the diagnosis, as well as an inconsistent narrative of the facts of the case. The Appellate Court held that the judge's factual and credibility findings were amply supported by sufficient credible evidence in the record, and there was no basis to disturb them.

- Successfully prosecuted an employer's Petition for Termination of all workers' compensation benefits. In reaching this decision, the Judge credited the testimony of the IME physician, that the claimant fully recovered, over that of the claimant and his treating physician regarding ongoing pain and disability.
- Successfully defended a Claim Petition, alleging a work-related aggravation of left knee arthritis necessitating a total knee replacement with various periods of disability. The employer was not responsible for medical expenses, disability benefits or litigation costs. The Workers' Compensation Judge (WCJ) concluded that the claimant failed to prove timely notice to the employer of the alleged injury from March 2017. The WCJ also concluded that the claimant failed to prove through medical evidence her left knee condition was caused or aggravated by a work incident or by general work activities.
- Resolved a complex, high-exposure lumbar spine injury requiring multiple surgeries in an expeditious manner resulting in minimal litigation costs and a prompt stoppage of ongoing payments of indemnity and medical benefits. In doing so, it protected a subrogation lien valued at over \$400,000.00, which the client recently fully recovered.
- Received a favorable decision from the Appeal Board affirming the denial of a Claim Petition alleging head injury resulting in nearly a million dollars in medical expenses and future care. Although Claimant testified the injury occurred when he was alone, multiple co-workers who were working with Claimant that day helped piece together the event to establish that no such injury occurred.
- 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 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.
- Successful in defending a Reinstatement and Review Petition of an employee who tripped and fell at work, injuring her knee. Claimant was terminated for cause post-injury, and alleged injuries to multiple body parts other than the knee. The Judge found claimant's injury to be limited to a knee contusion, that claimant's wage loss was not related to her work injury, and found her fully recovered from the knee contusion based on credible testimony of employer's medical expert.
- 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

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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.
- 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.