

Why is New Jersey Workers' Compensation So Slow

There are many reasons why New Jersey workers' compensation litigation appears sluggish. One of the primary reasons – claims are filed earlier than needed. The major reason for this is because the employee's counsel wants to secure the client even though all benefits are being appropriately and promptly provided.

After the filing of the claim petition, the claim may lag due to ongoing medical treatment. The claim cannot proceed to permanency (their ultimate goal) and resolution until treatment is completed. Then medical records need to be gathered and permanency evaluations need to take place. As there are less employees' experts, their evaluations and reports may take months. Once the reports are received, some attorneys only want to discuss settlement in court. They may want the judges input or an opportunity to review the details in person. Alternatively, the demand may be untenable and the Judge's input is needed to reach the compromise.

A second reason that cases are considered slow are that it may take months for the court to list a claim for an initial hearing, or the tentative listing date gets pushed back due to a schedule backlog. Once you get to court, many judges readily grant adjournments requested by the employee's counsel. Since the prejudiced party is the employee whom the judge seeks to protect (tell that to the actuaries and pending reserves!), the judges readily grant most requests.

We also continue to have the Medicare dilemma. Conditional payment lien searches are required in every case when the employee is Medicare eligible. With the changes implemented in October 2015, where the carrier requests the conditional payment lien, this has somewhat sped up the process. However, the Medicare Set-aside process continues to be time consuming. It seems that Medicare is requesting more information, including unrelated medical records and prescription print-outs which are far more difficult and time consuming to obtain.

Many times I am asked, what can be done to help avoid these delays? We suggest providing a quick, but thorough, summary of the file upon referral; promptly providing medical records to defense counsel upon the conclusion of treatment and promptly scheduling permanency evaluations/authority for defense counsel to schedule. Defense counsel can help by following up for the employee's permanency details (yes, we have to diary THEIR file) and filing motions to dismiss when appropriate. It is our job to make sure the case is moving along and that our adversaries don't delay the resolution but we need everyone rowing in the same direction.

Disclaimer: The contents of this post are for informational purposes only, are not legal advice and do not create an attorney-client relationship.

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