



EPL CORNER

For the Third Quarter of 2011, the MEL reports that a total of 15 cases resolved across 8 JIFs, for a total of \$1,458,213.00.

On behalf of the Atlantic JIF, three claims resolved for a total of \$527,412.

In an EPL case filed against Sea Isle City, a public works employee alleged gender and sexual harassment and retaliation in violation of CEPA. The employee sought monetary, punitive and compensatory damages. Allegations included improper touching and gender-based work assignments. Ultimately, the claim settled for \$205,000. Total legal on this case was \$35,000.00.

In an EPL case filed against the City of Wildwood, an employee alleged harassment, retaliation and violation of civil rights. The employee police officer alleged that he was assigned to investigate a complaint filed against another officer. He then alleges he became the victim of ongoing retaliation through the filing of unsubstantiated claims against him by the then police officer and continuing through the officer's tenure as Mayor. The claim settled for \$105,000. Total legal fees amounted to \$75,000.00.

Finally in a case filed against the Borough of Longport, a wheel-chair bound claimant alleged inadequate access to the beach, municipal hall and the library in violation of LAD. Investigation found Longport to be quite proactive in this area. The case settled for \$25,000.00. Total legal paid was \$28,000.

SECTION 20 SETTLEMENTS: WHAT ARE THEY?

In many PARs presented, settlement of a worker's compensation claim under a Section 20 settlement is sometimes recommended. Section 20 settlements under the Workers' Compensation statute are very different than typical awards or "settlements".

Section 20 settlements do not concede "compensability"; they do not entail any admission at all by the employer. They do limit the petitioner's ability to reopen their claim regarding the *same* injury. A Section 20 settlement is (typically) only allowed in cases where there is (1) an issue of jurisdiction, (2) an issue of liability, (3) an issue of causal relationship and (4) an issue of dependency. The Workers' Compensation Judge has absolute discretion in allowing a claim to settle under a Section 20 settlement. Most cases cannot be settled under a Section 20 because they do not raise issues that justify a Section 20. Where these issues are present, Section 20 settlements are especially effective in resolving questionable claims of retiring or former employees. We have utilized Section 20 settlements to resolve claims involving alleged occupational exposures of many years and other difficult compensability claim issues.

A non-Section 20 settlement of a Claim Petition allows the injured employee the right to "reopen" an injury claim within two years of the last payment on that injury.

TITLE 59 AND SUBROGATION

By definition, Subrogation is the substitution of one person in the place of another with reference to a lawful claim, demand, or right, so that the one who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies, or securities. Title 59 or the Tort Claims Act governs claims filed against public entities. Under section 59:9-2e, "No subrogation claim may be brought against a public entity". To the extent that a third party action against a public entity or a public employee represents a

subrogation claim, it is barred. However, if it represents an uninsured excess and/or deductible, it is not barred. In claims where a claim must be made against a public entity, subrogation cannot be pursued. Likewise, where the public entity is involved in an at-fault automobile accident, the claimant's personal automobile collision insurance availability must be disclosed and utilized to pay for the claimant's collision damage. The claimant can collect the deductible from the public entity, as this amount is not an insured interest.

Where payment is made on behalf of the public entity, as a result of an accident, an attempt is made to subrogate against the culpable party. Contracts and Certificates of Insurance are reviewed to identify whether the other party has agreed to indemnify the public entity. Property ownership is identified and homeowners are placed on notice of the intent to subrogate. Background checks are initiated to identify assets, income or other means of satisfying the subrogation action, including court-ordered restitution. Due to the legal costs involved in pursuing a subrogation action, the decision not to pursue a subrogation action is usually based upon a finding that the other party is not employed, own property or has any other attachable assets.



Happy Thanksgiving!

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