



NEW JERSEY SELF INSURERS' ASSOCIATION

1 Joseph Drive, Lincroft, NJ 07738

Phone: 732-219-0319 . Fax: 732-219-9248 . E-mail: info@njselfinsurers.com

AUGUST 2009 NEWSLETTER

MARK YOUR CALENDAR **ANNUAL MEETING**

Date: Thursday, October 22, 2009

Place: CROWNE PLAZA

390 Forsgate Drive

Monroe Township, NJ

Exit 8A off the N.J. Turnpike

Time: 8:00 a.m. – 3:00 p.m.

Our Fall Meeting will return to the Crowne Plaza in Jamesburg. **Regina Lamptey**, Chair of the Association's Program Committee and her Committee members have planned yet another outstanding program.

Among the topics to be presented:

- **Occupational Claims Panel:** John H. Geaney, Esq., Ralph Angelo and Ronald J. Mack, M.D., will examine the legal, employer and medical perspectives of occupational claims in the current economy, return to work and restrictions under the workers' compensation system.
- **Occupational Infectious Diseases:** In layman's terms, Dr. Cadell will lecture on Influenza (Swine, Avian and Seasonal) Tuberculosis, Insect Infections (Lymes, Bed-Bugs), Non-respiratory Contagious Diseases (Scabies, Head Lice, Conjunctivitis, Diarrhea), and Vaccine Preventable Illnesses (Hepatitis A and B), Chickenpox/Shingles, and Measles/Mumps/Rubella.
- **An Effective Safety Program:** Chris Hansen of Walmart will present the nuts and bolts of an effective Safety Program.
- **Medicare Set Aside:** Louis Porrazzo of Crowe Paradis will update attendees on MMSEA and SCHIP Compliance.

➤ **Appellate and Supreme Court Decisions:** Matthew Gitterman, Esq., will review recent Appellate and Supreme Court decisions.

➤ **Appellate Court Procedures:** Presented by Richard Williams, Esq.

➤ **State of the State:** Director Peter Calderone will update the audience on pending legislation and current topics affecting workers' compensation in New Jersey.

H. R. 635- National Commission on State Workers' Compensation Laws Act of 2009

The Association strongly opposes H.R. 635, a proposal that would create a National Commission to study State workers' compensation laws introduced by Representative Joe Baca of California. The responsibility for our State's workers' compensation system has always rested in the hands of state government – its legislative, judicial and administrative branches. The federal government has never and should not now interfere in the operation of a system that has served our State well for decades. We encourage you to write your Representative expressing opposition to the bill.

Courtesy of Winson Fung – Port Authority of NY/NJ

[International Schools Services, Inc. v. NJ Dept. of Labor & Workforce Dev.](#)

(App. Div. 2009) *Unpublished Decision*
Decided July 10, 2009

The Appellate Division reversed and remanded the declaratory judgment of the Superior Court judge who held that the petitioner must obtain workers' compensation insurance coverage for its overseas employees despite the fact that they

work entirely overseas and never work in New Jersey. The Appellate court directed the trial court to expand the factual record and apply a Connolly/Larson analysis to determine whether the overseas employees had sufficient contacts with New Jersey to justify application of New Jersey's workers' compensation coverage law

Legislation in New Jersey –

Attached is a list of pending Workers Compensation Bills. The Association's Legislative Committee proactively works with State legislators and regulators to support sound workers' compensation policy, laws and regulations.

[A192](#) Creates presumption regarding disability pension and workers compensation eligibility for public employees and emergency personnel participating in World Trade Center operations; requires Commissioner of Health and Senior Services to develop health registry and screenings.

[A290](#) Excludes certain illegal aliens from workers' compensation and temporary disability benefits.

[A873](#) Extends TDI to provide family leave benefits for workers caring for sick family members, newborn and newly adopted children.

[A911](#) Concerns workers' compensation for firefighters with cancer.

[A920](#) Changes calculation of average weekly wage for TDI benefits.

[A948](#) Excludes gratuities from calculation of workers' compensation and employers' liability insurance premiums for limousine or livery services.

[A1163](#) Provides family leave insurance.

[A1172](#) Establishes a cause of action for intentional failure of employer to

follow or correct known health or safety violations or standards.

[A1174](#) Provides benefits for family temporary disability leave.

[A1330](#) "Thomas P. Canzanella Twenty First Century First Responders Protection Act"; concerns workers' compensation for public safety workers.

[A1484](#) Concerns certain workers' compensation supplemental benefits.

[A1581](#) Increases workers' compensation for loss of hand or foot.

[A1802](#) Concerns certain workers' compensation survivor benefits and certain supplemental benefits.

[A2058](#) Provides surviving spouses of certain fire and police personnel who die in line of duty with workers' compensation for entire period of survivorship.

[A2080](#) Extends TDI to provide family leave benefits for workers caring for sick family members, newborn and newly adopted children.

[A2251](#) Expands coverage under "New Jersey Horse Racing Injury Compensation Board Act" to thoroughbred hot walkers, grooms, and assistant trainers under certain circumstances.

[A2482](#) Prevents intoxicated employees from receiving workers' compensation.

[A2498](#) Increases workers' compensation benefits for dependents.

[A2499](#) Increases certain workers' compensation benefits.

[A2501](#) Concerns jurisdiction over claims for reimbursement of certain payments or services related to workers' compensation injuries and illnesses.

[A2503](#) Establishes Workers' Compensation Review Commission.

[A2724](#) Provides jurisdiction to Division of Workers' Compensation to adjudicate certain employment discrimination claims arising from workplace injury or disease.

[A2787](#) Repeals law providing benefits for family temporary disability leave.

[A2846](#) Concerns certain workers' compensation supplemental benefits.

[A2966](#) Increases power of judges of compensation to enforce workers' compensation law.

[A2967](#) Strengthens enforcement against employers for failure to provide workers' compensation coverage.

[A2968](#) Concerns emergent medical care under workers' compensation.

[A2970](#) Requires Insurance Fraud Prosecutor to establish liaison with DOLWD and authorizes its investigation of cases of failure to provide workers' compensation coverage. **

[A3059](#) Requires proof of workers' compensation coverage with certain legally required annual reports of employers.

[A3286](#) Grants workers' compensation coverage to volunteer firefighters going to or returning from their stations when called to a fire.

[A3353](#) Authorizes establishment through collective bargaining of alternative workers' compensation programs and group self-insurance plans.

[A3421](#) Delays implementation of paid family leave for one year.

[A3438](#) Creates Review Commission on Workers' Compensation.

[A3466](#) Delays implementation of paid

family leave for two years.

[A3569](#) Concerns stop-work orders and certain violations of workers' compensation requirements.

[A3669](#) Concerns court actions against uninsured employers for non-payment of workers' compensation.

[S81](#) Excludes certain illegal aliens from workers' compensation and temporary disability benefits.

[S386](#) Provides for residency requirement for administrative law and workers' compensation judges.

[S554](#) Concerns certain workers' compensation supplemental benefits.

[S560](#) Extends TDI to provide family leave benefits for workers caring for sick family members, newborn and newly adopted children.

Workers' Compensation Bills Recently Signed Into Law –

P.L.2009, c.87. -see [A3569](#) and [S2498](#)

Concerns stop-work orders and certain violations of workers' compensation requirements.

You may read Director Calderone's comments under his July 14, 2009 - NOTICE TO JUDGES AND ATTORNEYS [Memo from Director/Chief Judge Calderone...re: Amendments to N.J.S.A 34:15-79](#)

As you may be aware, Governor Jon S. Corzine signed into law Assembly, No. 3569 and Senate, No. 2498 which amend [N.J.S.A. 34:15-79](#). Of primary interest is the new section of the statute that allows the Director to issue stop-work orders in certain situations.....[read full memo.](#)

New Members –

We are pleased to announce and welcome the following new members:

The Chartwell Law Offices, LLP
970 Rittenhouse Road, Suite 300
Eagleville, PA 19403

Courtesy of Abbey R. Lacheen, The Chartwell Law Offices, LLP

alacheen@chartwelllaw.com

STOMP OUT SMOKING...STOMP OUT CLAIMS...

Over the last few years, Pennsylvania, New Jersey, and Delaware have passed laws banning smoking in public places. While the exact provisions of the law differ among the states, several provisions are similar. One of the overlapping issues deals with the potential link between smoking, more importantly secondhand smoke, and workers' compensation claims.

Why have all three states passed smoke free laws? Why did New Jersey and Pennsylvania delay the establishment of such a law compared to New York and Delaware? Why have specific industries, such as gaming halls, fought feverishly against inclusion in the law?

States passed the laws for a simple reason; smoking, as well as secondhand smoke, kills. This is a well established point. According to the American Lung Association, secondhand smoke is responsible for approximately 3,400 lung cancer deaths and 46,000 heart disease deaths in adult nonsmokers annually in the United States.¹

New Jersey and Pennsylvania's delay in the establishment of a ban was mostly tied to legal provisions concerning the detailed list of included and excluded establishments. Our

¹ American Lung Association, "Secondhand Smoke and Your Family," September, 2008.
<http://www.lungusa.org/site/pp.asp?c=dvLUK9O0E&b=39858#4>

citizens wanted to protect themselves; the delay was created by approval of the structure. Actually, 93 percent of New Jersey adults support restricting smoking in casinos, including three out of four smokers.²

Secondhand smoke has received the same level of health concern. In June 2006, the Surgeon General of the United States declared that there was no safe level of secondhand smoke. Secondhand smoke is a carcinogen classified in the same league with asbestos, formaldehyde and radon.³

The concern for workers' compensation claims related to secondhand smoke is growing. Research has found that servers are almost 4 times more likely to die of lung cancer compared to workers in other fields, and bartenders face a fifty percent (50%) greater risk of dying from lung cancer, other cancers, and heart disease than other workers.⁴

Gaming facilities also benefit from smoke-free indoor environments. Gaming industry workers typically suffer higher occupational exposure to secondhand smoke, putting them at greater risk for lung and heart disease.⁵

From a business perspective, many companies have concern that prohibiting smoking will force smokers to find other establishments to take their business. This concern is increased in specific industries where local competition allows smoking. While the economics of potential lost revenue is a motivating force, we should not lose sight of the cost of additional claims. While Atlantic City voted unanimously to ban smoking entirely in all resort casinos in April of 2008, the

² "State Should Protect People's Health in the Workplace," News Transcript, December 10, 2008.

³ The Pennsylvania Smoking Ban, www.nodivisions.com, July 25, 2007.

⁴ Supra.

⁵ "The Effects of Secondhand Smoke on Worker Health," American Cancer Society, August, 2007.

implementation of the ban was delayed almost 6 months later.⁶

Without a ban, we should be prepared for an increase in secondhand smoking claims. It is well established in most states that a worker may receive compensation benefits for injuries caused by exposure to secondhand smoke in the workplace.

For example, the New Jersey Superior Court affirmed the decision of the Judge of Compensation that the petitioner established a nexus between his tonsil cancer and his place of employment. However, the only connection between the petitioner, a physical education teacher, and smoking was his co-worker, with whom he shared an office for 26 years during which time he was exposed to secondhand smoke on a continuous basis. The Judge found that it was probable that petitioner's cancer arose out of and in the course of his employment and was due in a material degree to causes and conditions which were characteristic of or peculiar to his particular place of employment. Magaw v. Middletown Board of Education, 731 A.2d 1196, (N.J. Super 1999).

This case is just one example of a secondhand smoke claim and what should be a wake-up call for all employers. Although workers' compensation cases only affect employees who have already been injured, successful claims will raise an employer's insurance premiums; thus, encouraging employers to voluntarily adopt smoking restrictions before further claims are filed.

Yes, the casino industry is very important to the success of Atlantic City. However, it should be noted that more than two dozen states nationwide regulate smoking inside casinos, eight ban smoking altogether inside the gambling halls, and two others were scheduled to impose a total ban just last year, according to

Karen Blumenfeld, policy director of the New Jersey Group Against Smoking Pollution.⁷

Yes, some level of business may be lost given the current economic conditions and the growth of New York and Pennsylvania slot parlors. However, we must keep in mind that with smoking comes the dangers of secondhand smoke and the cost of associated claims by workers.

NOTE: Board of Manager Opportunities.

Any representative of a self insured member company interested in serving on the Board of Managers should contact Jim Knicos for more information at 609-587-4304. Please also note that your company does not have to be a self-insured employer to be a member of the Association. As a matter of fact, that's the case for many of our member companies who fund their workers compensation obligations using various insurance mechanisms. What our member companies do have in common is the desire to keep their workers' compensation programs on the cutting edge and to keep abreast of various legislative changes and court decisions that can impact their programs – and their bottom lines.

⁶ "12 Months Later, Smoking Ban No Longer Hot Topic in Atlantic City," Press of Atlantic City, April 19, 2009.

⁷ "No Smoking in Atlantic City Casinos," The Associated Press, April 23, 2008.

BOARD OF MANAGERS -

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CHRIS HANSEN, ARM
Walmart Stores, Inc.
TEL: 479-586-8133
FAX
Email: cchansen@optonline.net

Treasurer:

DONNA M. WROBEL, ARM
ARCHDIOCESE OF NEWARK
TEL: 973-497-4044
FAX: 973-497-4031
Email: wrobeldo@rcan.org

A. WAYNE KLOKIS
JOHNSON & JOHNSON
TEL: 732-524-3222
FAX: 732-524-2196
Email: wklokis@corus.jnj.com

THAD FRANKLIN
OWENS-ILLINOIS, INC.
TEL: 419-247-2064
FAX: 419-247-5364
Email: Thad.Franklin@o-i.com

JUNE MILLS
MERCK & CO., INC.
TEL: 215-652-1420
FAX: 215-993-6028
Email: june_mills@merck.com

TRUDY MANDIA
ATLANTICARE
TEL: 609-407-2381
FAX: 609-
Email: Gertrude.Mandia@atlanticare.org

WINSOM FUNG
PORT AUTHORITY NY/NJ
TEL: 212-435-5849
FAX: 212-435-5861
Email: wfung@panynj.gov

Vice President:

JAMES T. STRAHAN
GERRESHEIMER GLASS, INC.
TEL: 856-794-7127
FAX: 856-507-5993
Email: jstrahan@gerresheimer.com

Executive Secretary:

JAMES C. KNICOS
TEL: 609-587-4304
FAX: 609-915-3246
Email: kappa59@aol.com

Program Chair:

REGINA K. LAMPTEY
Email: rlamptey@msn.com

BARBARA MARSHALL
FIRST ENERGY
TEL: 330-384-5270
FAX: 330-384-5265
Email: marshallb@firstenergycorp.com

DENNIS MCGINN
HILTON
TEL: 212-261-5833
FAX: 212-261-5836
Email: dennis_mcginn@hilton.com

RALPH ANGELO
PSEG
TEL:
FAX:
Email: ralph.angelo@pseg.com

DANA VERONICA
WEGMAN'S FOOD MARKETS, INC.
TEL: 856-488-2742
FAX:
Email: dana.veronica@wegmans.com