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WORKERS' COMPENSATION REFORM: LEGISLATIVE UPDATE

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I. INTRODUCTION

Since it was enacted in 1915, the Pennsylvania Workers' Compensation Act has been amended on many occasions over the years.

Perhaps the most comprehensive changes occurred in the early 1970s when workers' compensation became mandatory for all employers and transformed the compensable event from the "accident" to the "injury." Charged by the Legislature to expand workers' compensation coverage to as many employees as possible, the Bureau of Workers' Compensation greatly increased the number of referees, as they were known then, and came to oversee what has become a very large area of practice for lawyers, claims handlers, health care providers and vocational specialists.

Nearly twenty-five years later, faced with what were viewed as unreasonably high workers' compensation medical costs, the Pennsylvania Legislature enacted Act 44 of 1993, legislation that introduced a series reforms under the general heading of "Medical Cost Containment," including medical fee caps, utilization review and physician self-referral prohibitions.

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The passage of Act 44 foreshadowed the enactment three years later of Act 57, legislation reform that targeted various indemnity provisions that the business community viewed as unfairly favorable to injured workers. Spearheaded by the insurance lobby and other Pennsylvania business groups, Act 57 was motivated by a consensus that the cost of work injuries in Pennsylvania had become so exorbitant that it was becoming impractical for many employers to conduct business or to maintain an employment base in the Commonwealth. See Township of Lower Merion v. Workers' Compensation Appeal Board (Tansey), 783 A.2d 878 (Pa. Cmwlth. 2001); Kramer v. Workers' Compensation Appeal Board (Rite-Aide Corp.), 794 A.2d 953 (Pa. Cmwlth. 2002) *reversed on appeal on other grounds*, ___ Pa. ___, ___ A.2d ___ (2005).

The 1996 legislation sought to reduce indemnity costs through the introduction of new average weekly wage calculations, "Compromise & Release" settlements, prohibitions on wage loss "double recoveries" and, perhaps most intriguing of all, the transformation of the Pennsylvania Act from a pure "wage loss" statute to a "mixed" statute, fusing the traditional wage loss assessment of disability with the pure impairment methodology that has been adopted in other jurisdictions throughout the United States.

Nearly ten years after the enactment of Act 57, calls for new reform are being heard once again in Harrisburg from the business community, organized labor and the plaintiffs' bar.

On June 15, 2004, the House of Representatives passed Resolution 660 directing its Legislative Budget and Finance Committee to undertake a comprehensive comparison of Pennsylvania's workers' compensation system to the systems of other

states including California, Connecticut, Florida, Illinois, Indiana, Louisiana, Massachusetts, North Carolina, Tennessee, Texas, and Wisconsin.

In its report "Pennsylvania's Workers' Compensation System Compared to Nearby States" published in February 2005, the Legislative Budget and Finance Committee assessed "Employee Benefits Payments", "Employer Costs", "Administrative Costs and Performance Measures", and "Insurance Industry Reserving Practices and Profitability."

On the basis of that assessment, the Report issued a series of recommendations: (1) amend the methodology for calculating the workers' compensation medical fee schedule; (2) on a regulatory basis, develop treatment guidelines for chiropractors, physical therapists, and occupational therapists; (2) reduce disputes between employees and employers by insisting upon prompt payment of benefits and by establishing ombudsman programs; (3) eliminate "serial hearings" in favor of a uniform "one day/one trial" system; (4) establish mandatory mediation prior to the convening of formal workers' compensation hearings; (5) reduce the attorney contingent fee percentage from 20%; (6) eliminate the Supersedeas Reimbursement Fund and (7) eliminate the Workers' Compensation Appeal Board.

By the end of June 2005, twenty-five Bills seeking to amend the Workers' Compensation Act had been introduced in the General Assembly.

On September 13-14, 2005, the House Labor Relations Committee conducted hearings designed to create a dialogue and hopefully a consensus on workers' compensation reform. During the two-days of hearings a series of existing legislative proposals and a series of new proposals were advanced by representatives from the Department of Labor & Industry, the Pennsylvania Chamber of Commerce, the

Pennsylvania Bar Association, the Pennsylvania Defense Institute, the Pennsylvania Trial Lawyers' Association, the Pennsylvania AFL-CIO and a number of Pennsylvania employers.

This article provides an overview of the conclusions drawn by the Legislative Budget and Finance Committee, those legislative proposals pending in Harrisburg and the results of the September 13-14, 2005 House Labor Relations Committee hearings.

It also includes a series of suggestions aimed at improving the efficiency of the Pennsylvania workers' compensation system.

II. LEGISLATIVE BUDGET AND FINANCE COMMITTEE REPORT - PENNSYLVANIA'S WORKERS' COMPENSATION SYSTEM COMPARED TO OTHER STATES

A review of the February 2005 Legislative Budget and Finance Committee Report reveals a number of findings that some might find surprising.

For example: (1) in terms of "Average Benefit Payment Per Claim" Pennsylvania is well-below the twelve-state median figure and, lower than that of New York, Delaware, Maryland, New Jersey, North Carolina, and Virginia²; (2) Pennsylvania's "Average Overall Incurred Benefit Payments" are second lowest among those states³; (3) Pennsylvania's "Average Total Incurred Benefits" for claims with more than seven days of lost time, falls below the twelve-state median figure; (4) only 16% of Pennsylvania's workers' compensation claims involve injuries where the employee misses more than seven days of work, meaning that **84% of all claims** in Pennsylvania are either "medical only" claims or claims involving less than eight days of missed work following the work

² Pennsylvania Workers' Compensation System Compared to Nearby States, February 2005 at p. 4

³ Pennsylvania Workers' Compensation System Compared to Nearby States, February 2005 at pp. 4-5.

injury at issue⁴; (5) Pennsylvania's "Average Indemnity Benefit Per Claim" for claims with more than seven days of lost time, ranks sixth out of the twelve states compared and is only slightly higher than the median figure for those states⁵; (6) Pennsylvania's "Average Medical Payment Per Claim" for claims with more than seven days of lost time, is ninth out of the twelve states and is well-below the twelve-state median figure, meaning that on a case-by-case basis, the Pennsylvania system incurs relatively low medical benefit costs⁶; (7) Pennsylvania ranks sixteenth out of forty-five states compared in terms of premium cost and (8) Pennsylvania has a relatively high "Benefit Delivery Expense" or cost of managing claims, including litigation, as well as medical-legal and medical cost containment expenses.⁷

An issue that has gained some traction over the last year is the manner in which Pennsylvania continues to administer its Medical Fee Caps.

It will be recalled that under Act 44, Pennsylvania's Medical Cost Containment fee schedule initially capped payment for most services at 113% of the 1994 Medicare Reimbursement Rate. The fee schedule has since increased annually based upon changes in the Pennsylvania Statewide Average Weekly Wage, without considering the

⁴ Pennsylvania Workers' Compensation System Compared to Nearby States, February 2005 at p. 8.

⁵ Pennsylvania Workers' Compensation System Compared to Nearby States, February 2005 at pp. 8-9.

⁶ The Report explains that Pennsylvania pays more in terms of medical benefits for physical medicine services, including chiropractors, physical therapists, and occupational therapists than the twelve-state median figure, but pays significantly lower medical benefits for physicians and hospitals. The Report indicates that its relatively low fee schedules probably explain why Pennsylvania has been successful in reducing medical costs arising out of work-related injuries.

⁷ Pennsylvania Workers' Compensation System Compared to Nearby States, February 2005 at pp. 29-30.

refinements in the structure and levels of Medicare Reimbursement Rates that have evolved over twelve years⁸.

In other words, Pennsylvania’s Medical Fee Caps bear little resemblance to the current Medicare Reimbursement Rates⁹ - a phenomenon that some in the business community believes has prevented a reduction in certain Pennsylvania medical costs.

III. LEGISLATIVE ACTION

Since January 2005, the following House Bills have been introduced:

Bill No.	Date Introduced	Explanation
House Bill No. 30	January 25, 2005	This Bill seeks to amend Section 307 of the Act by specifying death benefits payable to children and/or widows in various circumstances following a fatal work-related injury.
House Bill No. 70	January 25, 2005	This Bill seeks to amend Section 303(b) of the Act (the “exclusive remedy provision”) by exposing the claimant’s employer to civil liability to a third-party, for damages, contribution, or indemnity where the death of the claimant is caused by a “violent attack” committed by a third-party and the employer knew or reasonably should have known that the attack was likely to occur, or where the injury to the employee is deemed “permanent”.
House Bill No. 171	February 2005	This Bill seeks to amend Section 108(m.1) of the Act to include Hepatitis C as a designated “occupational disease” when it is contracted by Commonwealth and County Probation and Parole Officers, employees from the Department of Environmental Protection, exposed to the disease through the course of their work in a field environment.
House Bill No. 352	February 8, 2005, as	This Bill seeks to amend Section 108(m.1)

⁸ See Section 127.152 et seq. of the Medical Cost Containment Regulations.

⁹ Pennsylvania Workers’ Compensation System Compared to Nearby States, February 2005 at p. 15.

	amended March 29, 2005	to include Hepatitis C as it pertains to "Capital Police employed by the Department of General Services, Bureau of Narcotics Investigators employed by the Office of Attorney General, Liquor Control Enforcement officers employed by the Pennsylvania State Police, Sheriffs and Deputy Sheriffs.
House Bill No. 560	February 15, 2005	This Bill seeks to amend Section 417 of the Act by authorizing the taking of discovery depositions of either party prior to the first hearing conducted in connection with a litigated petition.
House Bill No. 590	February 16, 2005	This Bill seeks to amend Section 308 of the Act for the purpose of expediting payments to claimants. It establishes a violation where a payment is not delivered to the claimant within 7 days of the recognized payment date. It requires that payments owed pursuant to a WCJ final order be made within 30 days of the issuance of the order. It establishes an administrative mechanism for investigating and resolving late payments and for imposing administrative penalties against employers and insurers, at a rate of between \$25.00 and \$100.00 for each day of any violation, where the violation was flagrant or where there has been a history of repeat violations on the same claim; where there was an attempt to pressure a claimant into settlement, or where the employer or insurer acted in bad faith.
House Bill No. 668	March 1, 2005	A comprehensive piece of legislation introduced by Representative Michael Turzai of Allegheny County, this Bill has many components that have been fairly well-publicized. First, the Bill seeks to amend Section 306(a.1)(1) in order to require the claimant to participate, at the employer's request, in an Impairment Rating Examination "at any time" upon the expiration of 104 weeks of the injured workers' receipt of total disability benefits. Second, the Bill seeks to amend

		<p>Section 306(f.1)(1) to enlarge the panel physician treatment period from 90 to 180 days from the date of the first visit. Third, the Bill seeks to amend Section 306(f.1)(6)(iv) of the Act to create a rebuttable presumption with respect to findings set forth in a Utilization Review report, once the UR Determination is appealed to a WCJ. The findings would only be subject to reversal by the WCJ where there is found to be substantial, competent medical evidence supporting such a ruling. Fourth, the Bill would amend Section 311.1(a) of the Act to require an injured worker to report his or her receipt of Unemployment Compensation benefits, Social Security "old age" benefits, severance and pension benefits which post-date the compensable injury at issue. Fifth, the Bill would reduce the time period within which an injured employee must report new employment, self-employment or receipt of collateral indemnity benefits from 30 to 14 days. Sixth, the Bill would create Section 324 of the Act, which would grant an employer the right to recoup overpayment of compensation made to an employee either by deduction from benefits payable or by recoupment in a civil action. Finally, the Bill would amend Section 406.1(2)(ii) to expand the employer's right to pay temporary compensation benefits for a maximum period from 90 days to 120 days.</p>
House Bill No. 699	March 1, 2005	<p>This Bill would amend Section 108(m.1) to include Hepatitis C as an occupational disease in a series of occupations as well as created a rebuttable presumption that Hepatitis C is an "occupational disease." The presumption could be rebutted provided the employer demonstrates the existence of an employment screening program that demonstrates that the employee developed the Hepatitis C virus prior to any job-related exposure.</p>

House Bill No. 701	March 1, 2005	This Bill would amend Section 108 to establish cancer as an occupational disease after four years or more of service in a fire-fighting capacity for the benefit or safety of the public caused by exposures to heat, smoke, fumes, or gases arising directly out of the employment of any such fire-fighter. The Bill would also eliminate the 300-week limitations period set forth in Section 301(c)(2) of the Act in cases where a fire-fighter claims to have developed cancer while in the course of his or her employment, and would require the employer to meet its burden of proving that the fire-fighters' occupation was not a major contributing cause of the fire-fighter's lung carcinoma.
House Bill No. 961	March 15, 2005	The Bill would amend Section 306(f.1)(1)(i) of the Act to expand the panel provider medical treatment from 90 days to 180 days.
House Bill No. 1215	March 30, 2005.	A piece of legislation that has received a great deal of attention during informal discussions with legislators in Harrisburg. This Bill would amend Section 110 of the Act to include a comprehensive definition of "independent contractor," based upon certain criteria, in order to relieve such entities from having to procure workers' compensation insurance. In addition, the Bill would amend Section 302(a) of the Act in order to relieve a contractor, subcontractor, and/or their insurer from any workers' compensation liability to a retained independent contractor. The Bill would further amend Section 302 to relieve independent contractors from having to present proof of insurance. Finally, the Bill would amend Section 304 of the Act to relieve a person or insurer from liability for benefits under the Act to an independent contractor who performs the services for the person, and would authorize the Department of

		Labor and Industry to promulgate regulations establishing a registration program for independent contractors, which would create a rebuttable presumption that the individual in question is, in fact, an independent contractor.
House Bill No. 1360	April 13, 2005	This Bill would amend Section 302 of the Act to eliminate the "statutory employer" liability for a contractor where its subcontractor has certified that it does not employ other individuals, but operates as an independent contractor.
House Bill No. 1484	May 2, 2005	This Bill would create the "State Workers' Insurance Appeal Board" and would permit a subscriber aggrieved by an audit or premium finding to obtain a review hearing before the Appeal Board.
House Bill No. 1548	May 9, 2005	This Bill would amend Section 1111(a) to increase civil penalties awardable in the context of workers' compensation insurance fraud to \$10,000.00 for the first violation, \$20,000.00 for the second violation, and \$30,000.00 for each subsequent violation.
House Bill No. 1549	May 9, 2005	This Bill would amend Section 447 of the Act to facilitate the elimination of the Workers' Compensation Appeal Board in favor of original appellate jurisdiction with the Commonwealth Court of Pennsylvania.
House Bill No. 1823	June 30, 2005	This Bill would enact Section 308.2 of the Act, in order to provide injured workers and survivors of deceased employees with annual "cost of living" increases for applicable indemnity rates.

In addition to the foregoing, the following Senate Bills have been proposed:

Senate Bill No. 98	January 31, 2005	This Bill is consistent with House Bill 701.
Senate Bill No. 160	February 7, 2005	This Bill is consistent with House Bill No. 701.
Senate Bill No. 616	May 10, 2005	This Bill is consistent with House Bill No. 1823
Senate Bill No. 643	June 28, 2005	This Bill is similar to House Bill No. 1215.

IV. HOUSE LABOR RELATIONS COMMITTEE HEARINGS - SEPTEMBER 13-14, 2005

The House Labor Relations Committee is co-chaired by Bob Allen, a Republican from Schuylkill County and Bob Belfanti, a Democrat from Northumberland County.

On September 13, 2005, the Committee convened on two days of informal hearings in order to facilitate discussion aimed at “improving” the Pennsylvania workers’ compensation system.

During the first day of hearings, representatives from the Pennsylvania business community appeared before the Committee including Darlene Robbins, President of the Northeast PA Manufacturers and Employers Association, Adam Levine, Operations Manager for Jacobson Companies, Harry Vinton, Safety Manager at Shop-Vac, Donald J. Liskay, President & CEO of CompServices, Inc., Sam Marshall, President & CEO of the Insurance Federation of PA, Dr. M. James Moses of the Pennsylvania Orthopedic Society, Len Ewing, HR Manager at Lehigh Cement Company, Tonia Gordon, Vice-President of Human Resources at Windber Medical Center, and Annette Etchberger, Safety and Workers’ Administrator at Schoeneman Beauty Supply, Inc.

In addition, Bill George, President of the Pennsylvania AFL-CIO testified on behalf of organized labor.

During the course of his appearance, Mr. Liskay, who was involved in the development of what ultimately became Act 57, urged the Committee to consider many of the legislative proposals set forth above, including permitting Impairment Rating Evaluations to be performed at any time following the conclusion of the employee’s receipt of 104 weeks of total disability, increasing the panel provider treatment period from 90 to 180 days, revising the Medical Cost Containment schedule to include a

greater percentage of current Medicare reimbursement rates, creating a rebuttable presumption for URO Determinations appealed to WCJ, establishing procedures to enable employers to recoup overpayment of workers' compensation benefits from injured workers, strengthening the ability of an independent contractor to avoid workers' compensation liability, and strengthening the outside income reporting requirements now required under Section 311.1 of the Act.

Many of those who testified before the Committee offered microcomplaints regarding the manner in which individual decisions are formulated by WCJs.

For example, Tonia Gordon, Vice President of Human Resources at Windber Medical Center complained that WCJs do not seriously consider surveillance evidence in adjudicating cases.

Dr. Moses of the Orthopedic Society of Pennsylvania urged the Committee to maintain the present fee cap regime. He did support, however, the promulgation of regulations designed to limit the number of physical therapy and chiropractic visits that workers' compensation should be permitted in the absence of some form of oversight. He indicated that an expansion of the current 90-day panel provider treatment period to 180 days would prove detrimental to the care of injured workers. He suggested the creation of a select committee of board-certified specialty physicians to make recommendations in regard to treatment protocols for workers' compensation matters. Finally, he encouraged the establishment of mandatory education for WCJs in learning about the treatment and outcomes for common work-related disorders.

Sam Marshall, President & CEO of the Insurance Federation of PA joined with Mr. Liskay in urging that Pennsylvania revise its medical fee cap regime to reflect present Medicare Reimbursement Rates. He also endorsed the concept of creating a

rebuttable presumption for all Utilization Review Determinations on appeal before workers' compensation judges.

Darlene Robbins, President of the Northeast PA Manufacturers and Employers Association encouraged the Committee to consider eliminating the present 90-day panel provider treatment period so it is no longer possible for claimants to, as she put it, "game the system."

Bill George, President of the Pennsylvania AFL-CIO urged the Committee to consider the following recommendations: (1) provide a cost of living adjustment for indemnity payments; (2) eliminate the 50% impairment rating standard necessary to establishing a continued entitlement to total disability benefits; (3) eliminate "phantom jobs" with "fictional income"; (4) create a fairer means of calculating pre-injury average weekly wage; (5) create a statutory procedure for compelling employers and insurers to provide immediate benefits in cases involving obvious work-related injuries or deaths; and (6) reconsider whether Compromise & Release settlements should continue to exist under the Act.

On September 14, 2005, the Committee heard from the following representatives, Jerry M. Lehocky, Esquire, on behalf of the Pennsylvania Trial Lawyers Association; John McTiernan, Esquire, Robert Keenan, Esquire and Peter Pokorny, Esquire on behalf of the Pennsylvania Bar Association, Workers' Compensation Section; Brian D. Walters, Esquire and me, Andrew E. Greenberg, Esquire, on behalf of the Pennsylvania Defense Institute and Elizabeth Crum, Deputy Secretary for Compensation and Insurance, Department of Labor and Industry.

During the course of his appearance, Mr. McTiernan encouraged the Committee to consider the following reforms: (1) professionalize the Workers' Compensation

Appeal Board by requiring Commissioners to be attorneys; (2) improve the efficiency of the Appeal Boards by allowing the circulation of three-member "panel opinions"; (2) require mandatory mediation for all cases unless the case involves a Claim Petition, a Reinstatement Petition or a Petition to Set Aside Final Receipt - in other words, mandatory mediation only where the claimant is receiving compensation benefits; (3) establish "Self-Insured Guarantee Fund" in order to provide insurance protection for injured employees of insolvent self-insured employers.

Jerry Lehocky, joined with Mr. McTiernan in urging the Committee to consider requiring Appeal Board Commissioners to be attorneys and by permitting "panel opinions." He also urged that mandatory mediation be adopted in all cases in which the employee is receiving benefits and that a Self-Insured Guarantee Fund be created for injured employees of insolvent self-insured employers. Finally, he urged the Committee to establish mandatory a "one-day/one-trial" hearing system throughout Pennsylvania.

On behalf of the Pennsylvania Defense Institute, Mr. Walters and I encouraged the Committee to create legislation permitting employers and insurers to administer minor work injuries on an informal basis as originally contemplated by the Workers' Compensation Act. We also encouraged the Committee not to adopt a mandatory "one-day/one-trial" hearing regime since such a system does not expedite cases and would eventually require the establishment of a full "discovery practice" that would delay litigation and increase litigation costs. Finally, we encouraged the Committee to consider a series of measures designed to reduce the cost of workers' compensation litigation including the possibility of imposing caps on independent medical examinations and expert medical depositions and by increasing the use of electronic communication between the Bureau, WCJs and attorneys.

During her appearance before the Committee, Elizabeth Crum concluded there is no workers' compensation "crisis" in Pennsylvania. She explained that since the mid-1990, dramatic improvements have been seen in the adjudication system. She reported, for example, that in the mid-1990's, it took, on average, 12.7 months for a Petition to be fully adjudicated, but now takes on average only 8.4 months. She also reported that the "one-day/one-trial system", has never shown to be a system that expedites the disposition of cases any better than does the serial hearing regime. In fact, she reported that the serial hearing system is actually slightly more efficient than any of the other methods that have been employed in Pennsylvania over the past few years. She also cautioned against the implementation of mandatory mediation reasoning that the voluntary mediation program that has been in place since 1996 has been successful precisely because it is a voluntary program - that if the program were converted into mandatory one, the good will that normally attends to such proceedings would likely evaporate, thereby making settlements more difficult to achieve.

At the conclusion of the September 14, 2005 hearing, Chairman Allen announced the formation of an "Ad Hoc Sub-Committee that will continue to meet with stakeholders over the next few months in order to continue the process of improving the workers' compensation system.

On October 3, 2005 Department of Labor & Industry Secretary Stephen Schmerin spoke to the Pennsylvania Association for Government Relations ("PAGR") about a series of issues facing the Department. With respect to the Pennsylvania workers' compensation system, he observed, on a global basis, that the cost of workers' compensation for Pennsylvania employers must be reduced and that the speed with which the system operates must be increased. With respect to specific issues, he offered

the following observations: (1) the Bureau has recently instructed WCJs to adhere to all time deadlines applicable in litigated cases; (2) he indicated that the panel provider treatment period should not be increased from 90 to 180 days because a 180-day period would unfairly penalize injured workers and because less than 50% of all Pennsylvania employers have panel lists of providers and (3) although it currently takes 8.4 months for a litigated case to be adjudicated – the shortest litigation period in twenty years – the employer and employee are entitled to an even more efficient litigation timetable.

It appears, therefore, that the Rendell Administration and the Pennsylvania Legislature are equally reticent about pushing for significant reform in the Act. Rather, it appears that the Bureau will be encouraged to enforce already-existing time deadlines in order to improve the system's efficiency.

V. ADDITIONAL LEGISLATIVE REFORM CONSIDERATIONS

Since the primary concerns that have been expressed by members of the executive and legislative branches of government in Harrisburg have focused upon the goals of improving the efficiency of the workers' compensation system and of reducing the cost of workers' compensation litigation, I have spent a great deal of time considering what steps could perhaps be taken in order to achieve both goals.

I believe that the following ideas should be studied very carefully: (1) the administration/litigation of claims should be accomplished to the extent possible through electronic transmission – the Legislature should direct the Bureau to take all steps necessary to allow and encourage workers' compensation claimants, administrators and litigants to file information with and obtain information from the Bureau via the internet. In addition, a regime should be created to allow and encourage communication between WCJs, parties and attorneys via the internet. A fully functional

electronic system would reduce the need for hearings, would reduce the time needed for making filings, would reduce the cost of mailing notices, briefs, discovery and the like. A model system has been created for the Federal District Court for the Eastern District – a similar model should be created for the Pennsylvania workers’ compensation system.

In addition, the Legislature should amend Section 406.1 of the Act in order to make clear that in cases where the employer or insurer is administering a work injury that has either not resulted in any lost time or seven or less days of lost time, the claim be administered on an informal basis without the need for filing documents with the Bureau. First, such an adjustment in the law would precipitate conformity of every day claims practice with the strict legal requirements that a series of Commonwealth Court decisions have imposed. Second, it would reduce the temptation by claimants’ counsel to file needless Claim Petitions simply for the purpose of recovering fees and penalties. And, third a fully sanctioned informal means of administering minor claims would encourage the expedited payment of medical bills without concern for possible attorney-inspired litigation.

Finally, though it would be viewed as a very provocative change in the Act that would reduce cost and expedite the disposition of cases, consideration perhaps should be given to re-enacting the “automatic supersedeas” provision of the Act that was eliminated pursuant to the Baksalary cases – the employer or insurer would be entitled to an automatic supersedeas provided it file a Termination Petition accompanied by a Physician’s Affidavit of Recovery within twenty-one days of the supporting physical examination.

The new “automatic supersedeas” provision could be modified in certain ways to accommodate concerns raised by the claimants’ bar or organized labor, but the mechanism would certainly speed up the process and perhaps reduce litigation.

Other ideas would include eliminating quantum meruit counsel fees, imposing fees on claimants and/or claimants’ counsel who file frivolous petitions or appeals with either the Appeal Board or Commonwealth Court, and requiring a filing fee for appeals filed with the Workers’ Compensation Appeal Board.

V. CONCLUSION

There appears to be little interest in Harrisburg these days for bringing about fundamental reform to the Pennsylvania workers’ compensation. Rather, it appears that the Governor and legislators are more interested in “pruning the branches” than in “chopping down the tree.” In the short term employers and employees will likely find the Bureau and WCJs more willing to enforce those Regulations and Judges Rules that seek to streamline the litigation process. In the long term, the process of reducing the cost of administering workers’ compensation claims in Pennsylvania will be best facilitated by precise, logical and defensible legislative enactment.

As stakeholders in the system, employers and defense attorneys have a role to play in facilitating fair and reasonable workers’ compensation reform – hopefully they will take advantage of whatever opportunities are presented in the next year to participate in the process.