



# WC News

Newsletter of the Workers' Compensation Section of the Philadelphia Bar Association  
March 2002

## EMPLOYERS MAY OFFSET SETTLEMENTS WITH PENSION BENEFITS

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Among the issues arising when a workers' compensation claim is settled is whether an employer may fund the settlement from the worker's pension benefits. Under certain circumstances, this process, in which the employee essentially "self-funds" the own settlement, is legal.

For example, for many years, Septa has funded workers' compensation settlements by reducing the employee's vested pension benefits by the settlement amount. In other words, if a Septa employee had a vested pension worth \$150,000, and she settled her workers' comp claim for \$60,000, the amount in her pension plan would be reduced by \$60,000, leaving only \$90,000 in the pension plan. Unfortunately, this offset is permissible, and consistent with existing statutes and judicial decisions.

In *Alessi vs. Raybestos-Manhattan, Inc.*, 101 S. Ct. 1895 (1981), a unanimous Supreme Court, in a decision by Justice Thurgood Marshall, holds that (1) the use of workers' compensation benefits to offset pension benefits does not violate ERISA, (2) the U.S. Department of Treasury regulation that permits the integration of pension benefits with other benefits provided by federal and state law is not inconsistent with ERISA, and (3) a state law that attempts to prohibit this offset is preempted by ERISA. In *Alessi*, the Court rejects a New Jersey law prohibiting workers' compensation benefits from being used to offset pension benefits

was being violated by their former employer. The employees/retirees had unsuccessfully alleged that this offset violated their rights under the Employee Retirement Income Security Act (ERISA), 29 U.S.C.A. §1053, *et seq.*

Of particular interest is the fact that nowhere in ERISA is there a provision permitting an employer to offset a workers' compensation settlement with pension benefits. Rather, according to the *Alessi* Court, ERISA leaves the question of what benefits can be forfeited, even if vested. Because private parties, and not the government, control the level of benefits, it is up to the parties to define those rights that are forfeitable and those that are not.

In this context, the U.S. Department of Treasury regulations refer specifically to those benefits provided "under the Social Security Act or under any other federal or state law which are taken into account in determining plan benefits." 26 C.F.R. §1.411(a)-(4)(a)(1980). Thus, the practice by SEPTA (and other employers) of reducing an employee's vested pension benefits by the amount of a workers' compensation settlement is permissible.

Of course, in order for an offset to be legal, it must fall under and ERISA plan, and the language of the offset must comply with the Treasury Department regulations. An employer cannot take offset in any other circumstances.

## SUPREME COURT ESTABLISHES RULE FOR VOLUNTARY PAYMENT OF MEDICAL EXPENSES

BY DANIEL V. DiLORETTO, ESQUIRE  
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In 1919, the Pennsylvania Supreme Court held in *Paolis v. Tower Hill Connellsville Coke Co.* that payment of medical expenses does not constitute compensation for purposes of the tolling the statute of limitations. *Paolis* was hailed as encouraging employers to pay medical expenses voluntarily without fear that they would be penalized by tolling the limitations period. Since then, voluntary payment of medical expenses has continued for work-related and non work-related injuries. In fact, under the current Regulations, compensation agreements need not be filed for "medical only" claims.

There have been several revisions to the statute of limitations provisions of the Workers' Compensation Act since *Paolis*. Currently, "payments of compensation," or "payments in lieu of compensation," toll the statute of limitations. These amendments were intended to assure that injured workers are not lulled into a false sense of security. At the same time, the Court held in *Berwick Industries v. WCAB (Spaid)*, that "compensation" may include medical expenses, although payment of medical bills does not, in and of itself, toll the three year statute of limitations. The rationale is intended to protect employers from having to defend against stale claims/stale evidence.

*Berwick* does not specify a standard of proof to determine whether payment of medical expenses is "compensation" or who has the burden to prove that an employer's voluntary payments are compensation for a compensable injury. Those issues have now been clarified by the recent Pennsylvania Supreme Court decision in *Schreffler v. WCAB (Kocher Coal Co.)*.

In *Schreffler*, the claimant, a coal miner, injured his back in 1979, and

received total disability benefits under a Notice of Compensation Payable ("NCP"). Prior to the injury, there was a flood in one of the employer's mines that killed some of claimant's co-workers. Following this incident, claimant experienced nightmares and flashbacks, requiring psychological care. Although the 1979 NCP only lists the back injury, the employer voluntarily paid medical bills for psychiatric care.

In 1993, the employer's insurer stopped paying for the psychological treatment. In 1996, claimant filed a Petition to Review, alleging psychiatric and emotional problems. Employer's Answer asserted that the petition was time barred. Because the psychiatric condition occurred prior to the back injury, the WCJ treated the Review Petition as a Claim Petition, and bifurcated proceedings to determine whether the psychiatric claim was time-barred. The only evidence presented was claimant's testimony, which the WCJ assumed as fact for the limited purpose of determining whether the claim was time-barred. The employer was not given an opportunity to present any rebuttal evidence.

After taking claimant's testimony, the WCJ concluded that the petition was time barred, that claimant's estoppel theory fails, that payment of medical expenses did not toll the limitations period, and that the employer would be prejudiced if the claim proceeded after 15 years of delay. The Workers' Compensation Appeal Board affirmed. The Commonwealth Court reversed, holding that claimant's testimony that he had to retrieve the decomposing bodies of his co-workers causing him to suffer nightmares and flashbacks requiring psychiatric care, was sufficient for a reasonable mind to conclude that the

## SUPREME COURT ESTABLISHES RULE FOR VOLUNTARY PAYMENT OF MEDICAL EXPENSES (CONT'D)

payments were in lieu of compensation. The Court held further that claimant created an inference that the employer intended to compensate him for his psychiatric injury; and, therefore, the burden was on the employer to present evidence showing its intent in paying the bills. The Supreme Court affirms, albeit on different grounds.

The Court holds that voluntary payment of medical expenses may be deemed "payments of compensation," or "payments in lieu of compensation" depending upon the facts and circumstances surrounding employer's intent in making the payments. In reaching this conclusion, the Court specifically overrules *Paolis*, holding that its decision is consistent with *Berwick*, which held that, although mere payment of medical expenses does not toll the statute of limitations, the facts and circumstances surrounding those payments could determine that the payments were, in effect, "compensation" for an injury.

The Court also states that a claimant has the burden of proving payment of medical expenses is "payment of compensation." To meet this burden, a claimant **must** establish that (1) the injury is work-related, and (2) payments were made with the **intent** that they be in lieu of compensation. A claimant **cannot** meet this burden by merely showing that payments were made, but, rather, must present additional evidence about the employer's **intent** for making the payments. Thereafter, the employer may rebut claimant's evidence by demonstrating that the injury is not work-related, or that the payments were not made in lieu of workers' compensation.

The Court also holds that, if an employer makes medical payments when a claimant is totally disabled from a work injury, *there arises a rebuttal presumption that the payments are in lieu of workers'*

*compensation*. In that situation, an **employer must** rebut the presumption or the factfinder is *required* to rule that the payments, *alone*, are "in lieu of workers' compensation." If employer produces this evidence, the burden of persuasion returns to claimant.

In a concurring opinion, Chief Justice Zappala opines that, in evaluating evidence of employer's intent, a factfinder may employ a standard of what a reasonable person would deduce from the evidence. In a dissent, Justice Saylor, joined by Justice Castille, agrees that the burden is on claimant, but disagrees with the manner in which to judge the "in lieu of compensation exception." Justice Saylor states that any voluntary or informal compensation paid with intent to compensate for a work-related injury is sufficient to meet claimant's burden. Under Justice Saylor's standard, only two elements require proof: (1) actual payment of compensation, and (2) intent to redress the loss in relation to a specific work injury. He believes this is an appropriate, workable standard consistent with the Act.

The Supreme Court offers a clear, common sense approach to determine whether voluntary payment of medical expenses constitutes "payments in lieu of compensation." I believe this decision can lead to a proliferation of paperwork, *e.g.*, filing NCPs for medical benefits only, which would could overburden the Bureau's ability to track compensable injuries. Likewise, I anticipate that more employers may challenge/refuse to pay medicals not "on all fours" with the compensable injury, because payment for unrelated conditions may create a "rebuttable presumption" that they are in lieu of compensation. Finally, the days when an employer's payment of medical bills is not an admission of liability may be coming to an end, closing the door to what had once been a praiseworthy feature of the Act.

## WORKERS' COMPENSATION SECTION -- 2002 MEETING SCHEDULE

All Meetings Are Held At the Philadelphia Bar Association or, 1101 Market Street

### March 20, 2002

"A Brief Introduction To The Philadelphia Bar Foundation"  
Heather Bendit, Esquire

"An Update On Subrogation" (Focusing on the Recent Decision in *Thompson*)  
Brian Calistri, Esquire

### April 17, 2002

"Neurology and the Law"  
Robert Knobler, M.D.

### May 15, 2002

"Uses of the Temporary Notice of Compensation Payable"  
David Greene, Esquire and a Claimant's Attorney

### June 12, 2002

"Medicare and Social Security Offset Issues"

### July 17, September 11 & October 16, 2002

To Be Announced

### November 20, 2002

"An Update on the Commonwealth Court and Issues From Cases on the Current Docket"  
President Judge Joseph T. Doyle

### ABOUT THE WORKERS' COMPENSATION SECTION

Membership in the Workers' Compensation Section of the Philadelphia Bar Association is \$20.00 per year for all members of the Association. Section meetings are generally held monthly at the Bar Association Headquarters, 11th Floor, 1101 Market Street, in Philadelphia. The Section sponsors both educational and social activities for its members and guests.

### WORKERS' COMPENSATION SECTION CO-CHAIRS (2002)

**Honorable Donald Poorman**  
**Joseph DeRita, Esquire**  
**Peter Weber, Esquire**

### WC News

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### NEWSLETTER COMMITTEE

**CHAIRS: Daniel Siegel, Esquire & Daniel DiLoretto, Esquire**