THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
AUGUST 2019 AT A GLANCE

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SUBROGATION/ HEART AND LUNG BENEFITS/ MOTOR VEHICLE FINANCIAL RESPONSIBILITY LAW

- The employer was barred by Motor Vehicle Financial Responsibility Law against subrogation against the recovery that the claimant, a Police Officer, obtained at the result of liability action filed following his motor vehicle accident, where the claimant was paid Heart and Lung benefits by the employer notwithstanding the fact the employer might have had a commercial insurance carrier that issued an NCP accepting liability for Claimant's injury and paid workers' compensation indemnity payments to Claimant that were signed over to Employer.

  This is because under the Motor Vehicle Financial Responsibility Law Claimant is precluded from recovering the amount of benefits paid or payable under the Heart and Lung Act from the responsible tortfeasor.

- Act 44 of 1993 repealed Sections 1720 and 1722 Motor Vehicle Financial Responsibility Law insofar as they pertained to subrogation rights against workers' compensation benefits but Act 44 did not repeal the statutory prohibition against subrogation with respect to Heart and Lung benefits contained in the Motor Vehicle Financial Responsibility Law.

  Accordingly, Section 1722 precludes the claimant who received Heart and Lung benefits from recovering the amount of benefits paid under the Heart and Lung Act from the responsible tortfeasors and there can be no subrogation out of an award that does not include these benefits as an item of damages.

- The mere acknowledgement in an NCP of a work injury and the specification of the amount of benefits to which an injured employee would be entitled under the Workers' Compensation Act, does not transform an injured employee's Heart and Lung benefits into Workers' Compensation Benefits under the Motor Vehicle Financial Responsibility Law.

- The use of the repricing formula set forth in the Workers' Compensation Act does make the Heart and Lung medical payments workers' compensation. This is because medical care is required under the Heart and Lung Act, and those payments constitute Heart and Lung Act benefits, regardless of the pricing scheme used.

Kenney v. WCAB(Lower Pottsgrove Township and Delaware Valley Workers' Compensation Trust), No. 845 C.D. 2018 (Decision by Judge Leavitt, August 2, 2019) 8/19

FEE REVIEW/ COMPROMISE AND RELEASE AGREEMENT

- The employer was not able to use a no admission of liability C&R to argue the Hearing Office did not have jurisdiction to decide upon a pending Fee Review where the C&R provided that there was an outstanding Fee Review and that the Fee Review for Pharmacy would continue

  Therefore, the Hearing Office had jurisdiction to rule upon the pending Fee Review and its ruling that it lacked jurisdiction because the employer denied liability in the C&R Agreement and Employer had not been adjudicated liable for the work injury was vacated and remanded.

- An employer may deny liability for a work injury in a C&R agreement but voluntarily agree to pay the claimant's medical expenses. In such a case, the employer cannot thereafter contest a Fee Review Determination based on its denial of liability for the work injury.
  Accordingly where a C&R agreement establishes an employer's responsibility for medical bills, a fee review application is not premature on the ground that liability had not yet been established or accepted.

Workers First Pharmacy v. Office (Cincinnati Insurance Company), No. 1619 C.D. 2018 (Decision by Judge Leavitt, August 7, 2019) 8/19