

**THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
NOVEMBER 2012 AT A GLANCE
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SUPERSEDEAS/ SUBROGATION

- The Pa. Supreme Court affirms the Commonwealth Court and holds that where the parties executed a Third-Party Settlement Agreement, which obliged the employer to pay its pro rata share of attorney fees and costs, and the WCJ subsequently granted the employer's Petition for Modification, the employer was entitled to reimbursement from the Supersedeas Fund for the monies paid to the claimant following the execution of the Third-Party Settlement Agreement in the form of its pro rata share of attorney fees and costs over the resulting grace period in addition to the unreimbursed balance of benefits the paid to the claimant.
- The court reasoned that there is no language in either Section 443 or Section 319 that would transform the unreimbursed portion of these weekly compensation benefit payments into something other than compensation merely because that portion was deducted in order to compensate the Claimant for the costs of recovering the Third-Party Settlement Agreement.

Accordingly, the Unreimbursed Pre-Settlement Payments constitute compensation later determined not to have been payable for purposes of reimbursement from the Supersedeas Fund under Section 443.

- Court further concluded that given that the statute credits the employer with paying future weekly installments of compensation via the excess recovery, the weekly amount actually paid by the employer during the grace period may also be considered reimbursable "compensation" for purposes of the Supersedeas Section 443.
- Under Section 443(a) an employer must meet the following five criteria to obtain reimbursement from the Supersedeas Fund: (1) supersedeas was requested; (2) the request for supersedeas was denied; (3) the request was made in a proceeding under Section 413 or 430 of the WCA; (4) payments were continued because of the order denying supersedeas; and (5) in the final outcome of the proceedings, it was determined such compensation was not, in fact, payable.

*Department of Labor and Industry, Bureau of Workers' Compensation v. WCAB
(Exelsior Insurance) No. 46 MAP 2011 (November 21, 2012, Decision by Justice Baer) 11/12*