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WORKERS' COMPENSATION NEWS

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Pennsylvania Commonwealth Court Rules That Workers' Compensation Settlements Cannot Bar Medical Provider From Being Paid Without Notice

In a precedential decision that could potentially impact every Compromise & Release Settlement Agreement under the Pennsylvania Workers' Compensation Act, the Commonwealth Court in the case *Armour Pharmacy v. Bureau of Workers' Compensation Fee Review Hearing Office (National Fire Insurance Company of Hartford) (No. 1613 C.D. 2017)* (decided August 7, 2018), has ruled that "The parties to a Compromise and Release Agreement can bind each other, but they cannot release themselves from liability to a person who is not a party to the C&R agreement and who has been given neither notice nor opportunity to be heard on the C&R Agreement."

The case involved a Fee Review Petition filed by Pharmacy for medications and compound creams that it had dispensed to Mark Kraayenbrink (Claimant). The Pharmacy filed a Petition for Review of an adjudication of the Bureau's Fee Review Hearing Office when a Fee Review Officer vacated a Fee Review Determination by the Bureau's Medical Fee Review Section that Pharmacy was entitled to \$6,644.30 plus interest. The Fee Review Hearing Officer had released the Employer from liability for payment of this treatment based upon language contained in a C&R Agreement.

The Court concluded that "A C&R Agreement cannot be employed to avoid the procedures in the Act for challenging a provider's invoice or a fee review determination that the invoice must be paid. To hold otherwise would eviscerate Section 301(f.1)(5) and (6) of the Act and violate the due process of law guaranteed to providers."

This case impacts that handling of outstanding medical bills throughout the settlement negotiation process leading up to a final agreement of terms for the C&R Agreement between the parties since the Court rejected Employer's argument that the language of C&R Agreement precludes liability for payment of the treatment. The Court explained that the specific language obligated Employer to pay for "reasonable and necessary" medical treatment, including compound creams, which were "incurred" before the hearing date. The Court finally reasoned that Pharmacy could not be deprived of its rights under the PA WC Act in accordance with due process of the law. Moving forward, the parties must ensure to obtain all outstanding medical bills and determine how the bills will be specifically reimbursed or not pursuant to the terms of the C&R Agreement.

Zachary M. Rubinich is a partner in our Philadelphia office. He focuses his practice on the defense of insurance carriers, self-insured entities and third-party administrators against workers' compensation claims in Pennsylvania. Based on his extensive experience, the Pennsylvania Bar Association Workers' Compensation Law Section has certified him as



Specialist in the practice of workers' compensation law. Zach has handled all aspects of litigation before workers' compensation judges, the Workers' Compensation Appeal Board, the Commonwealth Court and the Pennsylvania Supreme Court. He routinely counsels employers, insurance carriers and third party administrators on claims management, workplace safety, return-to-work programs, employment practices and risk management. Zach has been appointed the Chair of the American Bar Association's Tort Trial and Insurance Practice (TIPS) Workers' Compensation and Employers' Liability Law Committee for 2018-2019. He served as Vice-Chair of the ABA TIPS Workers' Compensation and Employers' Liability Law Committee for 2015-2016, 2016-2017 and 2017-2018. In addition, Zach has been appointed as Vice-Chair of the 2017-2018 American Bar Association Standing Committee for Diversity and Inclusion. Zach has been rated AV Preeminent by Martindale-Hubbell for the sixth consecutive year in 2018. He has been selected as a Pennsylvania Rising Star by Super Lawyers from 2010 to 2014.

Zach can be reached directly at: (215) 575-4340 • zrubinich@rawle.com

Workers' Compensation Section

CHAIR: Claudio J. DiPaolo

PARTNERS: Zachary M. Rubinich; J. Brendan O'Brien; Delia A. Clark; Anthony D. Luis

OF COUNSEL: Christian M. Stein, Richard B. Polner

ASSOCIATES: Mary Bergmann; Jennifer F. Schwartz; Erica M. Wicas; Corrine E. Williams

Rawle & Henderson LLP

1339 Chestnut St., 16th Fl., Philadelphia, PA 19107

215-575-4200 • FAX 215-563-2583 • www.rawle.com

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