

RAWLE & HENDERSON LLP

~The Nation's Oldest Law Office~

www.rawle.com

WORKERS' COMPENSATION NEWS

June 27, 2018

PA Supreme Court Excludes Future Medical Expenses from the Grace Period for Subrogation Recovery

The Pennsylvania Supreme Court has issued a landmark decision regarding workers' compensation subrogation rights that will drastically affect the future benefits of plaintiffs whose injuries have a third party settlement. On June 19, 2018, the Supreme Court ruled, in *Whitmoyer v. Workers' Compensation Appeal Board (Mountain Country Meats)*, (Pa. No. 52 MAP 2017), that future credits cannot be applied to medical treatment, only wage loss benefits, citing a very strict interpretation of Section 319 of the Pennsylvania Workers' Compensation Act. This Supreme Court Decision is contrary to underlying opinions issued by the Commonwealth Court.

In *Whitmoyer*, the Supreme Court determined that the subrogation grace period allowing a credit against ongoing workers' compensation benefits does not apply to future medical expenses. The Supreme Court found that Section 319 permits the credit against future "installments of compensation," which can only be construed to mean wage loss benefits, not medical expenses. Therefore, in dealing with the execution of Third Party Settlement Agreements moving forward, the Supreme Court determined there should not be any credit asserted by the workers' compensation carrier against the future medical expenses to be paid.

The Supreme Court reasoned that unlike disability benefits, which are known amounts paid at established intervals, future medical expenses are unknown at the time of settlement. Interestingly, this case does not address whether any credits taken in the past are now recoverable. Additionally, this case does not address what the outcome will be in cases where the parties have already signed and executed a Third Party Settlement Agreement. Finally, the Supreme Court did not address whether this change in subrogation law will be applied retroactively.

We recommend workers' compensation carriers continue to assert a credit against future indemnity benefits, specific loss benefits and dependency payments in Third Party Settlement Agreements.

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-Elect of the American Bar Association's Tort Trial and Insurance Practice (TIPS) Workers' Compensation and Employers' Liability Law Committee for 2018-2019. He is currently Vice-Chair of the ABA TIPS Workers' Compensation and Employers' Liability Law Committee for 2017-2018. He also served as Vice-



Chair in 2015-2016 and 2016-2017. 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

Philadelphia • Pittsburgh • Harrisburg • New Jersey • New York City • Long Island • Delaware • West Virginia

If you wish to be removed from our email list, please email sdavis@rawle.com with REMOVE in the subject line.