INNS OF COURT CURRICULUM

Commencing October 2025

Compensable Occupational Exposures – an introduction to this year's curriculum.

This year's curriculum is designed to result in a better appreciation for the scope and complexity of occupational exposure claims by starting with a retrospective of some of the most significant historical decisions starting with pre 1980 amendment selections and followed by post 1980 selections. This is not intended to be an all inclusive or exhaustive undertaking. Our time constraints make that an impossibility. Instead we will primarily focus on a few select "classic" landmark decisions and delve into them by "mock" oral arguments (Bond and Dwyer) with the remaining cases "presented" by designated group members regarding their facts, relevant legal considerations and ultimately holdings. After each performance there will be questions and discussion. We will focus on the historical perspective, practical considerations and unique challenges that apply to these often fully contested types of claims, recognizing that the same workers' compensation benefits are potentially payable as those received in compensable accident claims.

It is expected that by the end of this year's curriculum we will have a better appreciation of how to effectively prosecute and defend an occupational exposure claim recognizing the significant disparity between certain medical conditions and their respective proofs. Hopefully we will also have a better grasp for the critical and practical elements of successfully handling occupational exposure claims together with a better understanding of how we got here and where we are we going. The selected cases will involve primarily conditions/issues regarding cardiac, pulmonary, internal diseases, psychiatric and orthopaedic conditions.

The year's group meetings will mostly involve each group leader making pre-assignments to facilitate optimizing each meeting's agenda. The success of our curriculum will be largely dependent on pre-review of assignments by all group members especially those who have presentation responsibilities. The agenda is case law analysis - centric. Again the selected cases for review are by no means exhaustive. It is selective in major part due to time considerations. The idea is quality over quantity.

In addition to a few "mock" oral arguments, we will also present other landmark decisions with a further consideration to facilitate post presentation discussion. The groups should feel free to modify this approach as may be appropriate to any relative topic or questions. All case assignments should be done as early as possible to assure everyone's optimal familiarity with the case which should result in an optimal educational result. The concept is to have each group as interactively engaged as possible. The overall approach will be somewhat historical in nature especially with respect to the impact of the 1980 amendments. We will briefly review the specific important 1980 amendments and their intended impact on workers' compensation exposure claims and/or exposure issues. We will also address important post 1980 legislation.

By using this general overall approach, we should facilitate a better understanding of the actual evolution of workers' compensation occupational exposure law with a better perspective of its development.

Introduction to Bond vs. Rose Ribbon and Carbon MFG Co.

The purpose of starting with Bond is that it is one of the most famous Workers' Compensation decisions in the area of New Jersey Workers' Compensation occupational claims. It is also one of the most misquoted. It is still often spoken about and cited as "last pays" in many contested occupational exposure claims with multiple carriers and/or respondents. Simply put, Bond addressed a very specific situation involving exposure and latent manifestation of disease on a latency basis only. It provided a "solution" for such circumstances in the absence of adequate medical guidance.

This assignment starts as a "Mock Appellate" presentation with a group member assigned to represent the petitioner, a member assigned to represent insurance company INA a member to represent NJM, and Appellate Judge. Following the "mock" arguments the Judge should basically make his or her findings, not "reading" the decision but basically addressing the ultimate outcome. There should be a post presentation dissection of the important facts and findings, giving rise to liability or lack thereof.

Materials relied upon are the two decisions which are in our materials.

This "mock" oral argument is regarding the Appellate decision only. Once the Appellate presentation is concluded the presenters collectively can "present" the Supreme Court decision and discuss its significance.

By way of further introduction, the basic facts involve the petitioner who claimed to have a compensable occupational exposure resulting in pulmonary tuberculosis while working for Rose Ribbon and Carbon MFG. Co. He received an award of 20% permanent partial total in addition to temporary disability benefits. The petitioner had been employed as an ink maker from approximately July 1950 through April 18, 1958. The Insurance Company of North America [INA] provided coverage from approximately 1955 through March 23, 1958 followed by NJM beginning March 24, 1958 until the petitioner's last date of employment on April 18, 1958.

The workers' compensation Judge found that INA responsibility for the petitioner's condition and an Appeal was taken by INA to the County Court which affirmed the Compensation Court's decision [there is no record attached of the County Court decision]. INA appealed to the Superior Court on the limited scope as to which carrier had liability for payment of the award. Neither carrier disputed the amount of the award nor did they dispute that the petitioner had a compensable condition. You will note at this time Workers' Compensation appeals first went to the County Court and from there to the Superior Court.

The attached Appellate Division decision sets forth a very detailed outline of the relevant facts which will not be repeated in this introduction. However the specific facts and the record created was clear and significant in terms of the petitioner's medical history, the findings of the treating physicians and the ultimate findings of the medical experts. The Appellate Court ultimately

reversed lower courts and decided that the Trial Judge and the County Court erred in finding sole liability upon INA and that NJM should be found solely liable.

After the presentation is made we will then have the participating Appellate panel to discuss findings of the Supreme Court, the reason(s) for their affirmance of the Appellate Court's decision and the significance of the same.

The Supreme Court was clearly concerned with providing direction where there is a definite "latent manifestation" and an absence of adequate definitive medical support for relative contribution of exposures. The Court ultimately provided direction by holding "where, as here, an employee is exposed to work conditions that activate or cause a progressive occupational disease, and the existence of such disease remains undisclosed and unknown over a period of time, it is impossible upon ultimate revelation of its existence by medical examination, work incapacity, or manifest loss of physical function, to pinpoint in retrospect, the triggering date of such activation or inception. It is also impossible to reconstruct the daily rate of progress of the disease from its genesis to recovery through one of the above- mentioned means, where such an employee continues to be exposed to work conditions which aggravate the existing disease in unascertainable stages. It follows that where the employment under such work conditions was under the aegis of successive employers or insurance carriers, from initial infection or activation to discovery or manifestation, it is impossible to accurately determine the inception and the rate of progress of the disease during such respective periods of employment or insurance coverage. Therefore, any apportionment of compensation liability between the successive employments or insurance coverages, must of necessity be speculative and arbitrary. To avoid the morass into which litigation would be pitched or apportionment required, and to eliminate the recognized unsatisfactory nature of any such attempted ascertainment, we conceive that the most workable rule and the most consistent with the philosophy and public policy of the Workmen's Compensation Act is to hold liable that employer or carrier during whose employment or coverage of the disease was disclosed as above described, i.e., by medical examination, work incapacity where manifest loss of physical function. Although this test is admittedly arbitrary and may on occasion cause some apparently unfair results, over the years it should result in an equitable balancing of liability. Under the circumstances we conceive it to be the fairest and most workable thesis."

Interestingly the Supreme Court was critical of the failure of the lower courts to compel payment of the award and counsel fees given the unusual limited nature of the appeal. It commented that the original petition had been filed November 19, 1958 and the amended petition in March of 1959, both indicating only NJM as the carrier. Based on an application by NJM, North America INA was joined as a respondent on June 16, 1960. There was an original award of October of 1961 against North America and a further limited Appeal was made without either of the carriers disputing that the petitioner was entitled to both temporary and permanency benefits. There was compensability for the award with the only issue being what each carrier was going to pay. There was no stay of the Judgment on Appeal. The Supreme Court indicated where the "sole

dispute" is between two insurance carriers, it should not be the petitioner's application to force payment of the Judgment on Appeal and that "failure to pay the petitioner any compensation for approximately two and half years after his award in the Division is inexcusable and he is entitled to interest upon the past due payments". The Supreme Court also directed that counsel fees and costs to the petitioner on the appeals in the County Court, Appellate Division and the Supreme Court to be assessed against NJM. This was a 7-0 decision.

Post Presentation Discussion Issues and Considerations

Bond is a "latent manifestation" case only. It sought fully to address the issue establishing liability between multiple carriers when science and medicine did not allow for a clear definitive apportionment of contributing responsibility for the ultimate overall medical condition. The Court was most focused on reaching a practical and fair solution to these types of issues where outcome would be consistent and predictable thereby saving court time and expense. It was admittedly a "rule of "convenience" based on pragmatism and fairness recognizing the deficiencies of medical opinion regarding certain medical issues concerning certain diseases and medical conditions.

1. If you were on the Supreme Court would you have found the way they did. If not, why not.

2. All factors considered, had the first diagnostic studies on INA's risk demonstrated unequivocal tuberculosis how, if at all, would the outcome been different?

3. What if anything would be the outcome if the same exact facts where brought now. Do you think there was sufficient manifestation on INA's coverage based on the record?

4. What if any different arguments might be made to the Judge of Compensation if Bond was brought now.

5. What is the definition of "de minimis" exposure regarding a possible last exposure not being inculpatory?

6. What is a "last injurious exposure"?

Dwyer v. Ford Motor Co. 36 N.J. 487 [1962]

Introduction

This will be a "mock" oral argument of the New Jersey Supreme Court presentation with a team of 3 people to role play the petitioner's attorney, respondent's attorney and the Judge(s) (collectively).

The attorneys should focus on the specific relevant facts and make the legal arguments and policy arguments based on the relevant controlling legal standards at the time and the unusual circumstances of the case in question. Once the oral arguments are concluded the Judge will outline the majority decision, its reasoning and reference the concerns set forth in the two additional opinions. The three participants will then discuss their opinions regarding the decision and open the discussion to the group for questions and further discussion.

Dwyer is an important case since it is not only the pre 1980 cardiac claim but it also focuses [not unlike Bond] on the challenges presented by a liberal construction statute, a then low threshold effort for causation, and the absence of consensus of authoritative medical literature opinion regarding etiology and quantum of stress.

Decision of Dwyer

The decision contains a full review of significant cardiac precedent prior to the 1962 decision. Post Dwyer, it took almost 18 years for the statute to be amended by way of N.J.S.A. 34:15-7.2 which states **"in any claim for compensation for injury or death from cardiovascular or cerebrovascular causes, the claimant shall prove by a preponderance of the credible evidence that the injury or death was produced by the work effort or strain involving a substantial condition, event or happening in excess of the wear and tear of the claimant's daily living and in reasonable medical probability caused in a material degree the cardiovascular or cerebrovascular injury or death resulting therefrom".**

Material degree means an appreciable degree or a degree substantially greater than de minimis.

Later in the curriculum we will be exploring post 1980 amendment cardiac stress cases.

Question:

1) If you were on the Supreme Court at the time of Dwyer, how would you have ruled and why.
2) Given the holding of Dwyer is it surprising that statutory amendments to the law took 18 years?

It should also be noted that N.J.S.A. 34:15-7.3 has since been enacted regarding cardiac injury death occurring while responding to law enforcement, public safety and/or medical emergency. See attached statutory provisions specifically 34:15-7.3. Even in 7.3 the presumption of compensability "shall be rebuttable by use of causal factors such as horse play, skylarking, self-infliction, voluntary intoxication and illegal drug use. Rebuttable of the presumption based upon medical causation shall require clear and convincing medical evidence that the work experience was not a substantial cause of the cardiovascular or cerebrovascular injury" [N.J.S.A. 34:15-7.3 d].

Close v. Kordulak Bros 44 N.J. 589 (1965)

Close is significant because it is the case which finally memorialized the full scope of Appellate review of a Workers' Compensation judicial decision which mandated affirmance of the Workers' Compensation Court decision provided the findings of the Compensation Court "… could reasonably have been reached on sufficient credible evidence present in the record, considering "the proofs as a whole," with due regard to the opportunity of the one who heard the witnesses to judge their credibility … with due regard to the agency's expertise where such expertise is a pertinent factor."

This resulted in an affirmance of the Trial Judge's finding of a compensable cardiac death which happened almost 2 years following a compensable myocardial infarction.

The important takeaway is that generally about an abuse of discretion or clear error of law, the Compensation Judge has the presumptive power regarding the ultimate outcome of every Workers' Compensation case. Unquestionably occupational cases are prone to significant differences of opinion regarding etiology, compensability, value and the like … But given the power of Close, all practitioners would be well served to defer to the opinion of a well informed Judge regarding "probable" outcome and/or viability of many of the contested claims that come before the Court. This case also contains an interesting review regarding previous comp de novo appeals which is worth briefly discussing. Comp appeals were substantial undertakings.

Also attached is the Decision of Falcon vs. American Cyanamid 221 N.J. Super. 252 [App. Div. March 1987]. This is where the petitioner worked for three respondents for three separate periods of time beginning 1941 through February 6, 1980. The main two respondents were Research Cottrell where the petitioner was employed from 1941 until March 16, 1979 and In Corporation where he was employed from May 30, 1979 until February 6, 1980. You will note that he had 27 days of employment. Under the 1980 revisions of the Court further found that Aim Corporation [insured by National Union] was solely responsible for the entire award. The petitioner was awarded a 90% permanency award apportioned 75% for the physical residuals of bladder cancer and for which he had underwent partial cystectomy with significant residuals together with 15% psychiatric disability. The Judge determined the petitioner's disease not to have manifested itself until February 13, 1980 which therefore meant it was a "latent

manifestation" and he was awarded 540 weeks at $185.00 per week and is now $1159 per week totaling $99,900.00 vs. a pre-1980 award of $19,800. The Court went on to conclude that 1980 amendments did not allow for new rates unless there was occupational disease characterized by latent manifestation as set forth in "RS 34:15-34" which then was the purpose of making certain that there was "non-retroactivity" for increased rates except in this occupational diseases with latent manifestations where only pre-1980 exposures had occurred.

3rd Meeting Introduction

1980 amendments impact

Section 20 impact

"Top 10"/Bring a Case

Prior to the 1980 amendments the occupational exposure law had a certain significant limitations as compared to accident disabilities since there was occupational recognition in the original statute which was followed by only a few specific diseases being recognized. As things developed most of the earliest workers' compensation occupational exposure protection involved serious exposure situations where liability would only be recognized where there was total incapacity from work whenever the last employment occurred regardless of its overall contribution. See Textile Leather Corporation v. Great American Indemnity 108 NJL 121 [E+A 1931]. However slowly a process began where the Courts began looking at "manifestation" of certain significant occupational conditions as being "akin" to an accident related condition even if the claimant was not permanently and totally disabled. By 1950 there was Supreme Court support for compensable chrome poisoning compensability by this analysis [see Calabria v. Liberty Mutual Insurance Company 4 N.J. 64 [1950]] which began determining other conditions which compensable exposures even though there was no definitive impairment of earning power or work capacity. The notion of apportionment to accident cases did not occur until approximately 1944. See Silverman v. National Egg and Poultry Co. 131 NJL 286 [Sup. Ct 1944] and Quinn v. Automatic Sprinkler, 50 N.J. Super. [App. Div. 1958] in these cases the medical proofs were critical in determining any allocation of responsibility in these cases.

At the time of the Quinn decision the Appellate Division found in Bucuk v. Edward A. Zusi Brass Foundry, 49 N.J. Super. 187 [App. Div. 1958] "an employer, or insured, where a disease originates, is liable for later injuries or conditions which are exclusively the result of the natural progression of the disease, even if becoming manifest and resulting in a disability to work at a later employment." It is within this context that the Supreme Court in Bond addressed liability with latent manifestation in terms of apportionment.

The intent of adding the 1980 amendments to the curriculum is to better understand and appreciate the scope and depth of our occupational exposure practice [and indeed the entire practice of NJ Workers' Compensation as we know it]. There has never been a more sweeping revision of the approximate 115 year old Workmen's Compensation Act than the January 1980 revisions. While the basic concepts of Workers' Compensation benefits were retained, there was a significant statutory overhaul to provide more significant benefits to injured New Jersey workers. At the time of it passage New Jersey was one of the lowest paying states in the United States in terms of indemnity benefits. The revised statute not only intended to correct this issue, but implemented our sliding scale statute so that more significantly injured workers would receive substantially increased benefits. The revisions were also designed to provide for cost

containment in certain areas such as eliminating permanency for "minor" injuries and making cardiovascular and cerebral vascular claims more challenging. Last year's potential petitioners attorney's fees increase to 25% was a significant change, however, it pales in comparison to the 1980 amendments which fundamentally altered the heretofore static $40.00 per week permanent partial disability rate to a sliding scale when the 1980 rate became $185.00 per week is now $1159. The indemnity values of cases have skyrocketed as has the cost and exposures for medical treatment. Indemnity benefits are based on a maximum rate which is 75% of the state average weekly wage. As the average weekly wage rises so does the compensation rates for all indemnity purposes.

N.J.S.A. 34:15-31 regarding the definition of compensable occupational decisions was revised to include

a.) For the purpose of this article, the phrase "compensable occupational disease" shall include all diseases arising out of and in the course of employment, which are due in material degree and conditions which are characteristic of or peculiar to a particular trade, occupation, process or place of employment.

b.) Deterioration of a tissue, organ or part of the body in which the function of such tissue, organ or the body is diminished due to the natural aging process thereof is not compensable.

Focusing on certain potential issues including "jurisdiction, liability, causal relationship of dependency", the 1980 revisions also provided for the first time a mechanism for "settling" such contested claims by way of a monetary lump sum settlement in return for a full and final dismissal designated by N.J.S.A. 34:15-20 [a/k/a "Section 20"] which would include bonafide contested occupational claims. While such dismissals are now routine (especially in occupational claims), they have become increasingly complex due to collateral considerations including liens for New Jersey State Disability, Social Security Disability, SSI; Medicare; Medicare, ERISA and the list goes on. Occupational exposure claims by definition involve "older" workers [relative to accident claims] since occupational exposure by nature usually requires a significant period of exposure for the condition to manifest itself.

Top 10/"Bring A Case"

This curriculum section will focus on the group leader getting volunteers for real stories and observations from individual members of the group to discuss a case issue that was particularly informative, interesting and/or simply "entertaining" relevant to our main discussion regarding the evolvement of our "occupational" practice over the years. It could be related to a Section 20, medical lien, Medicaid lien, Medicare/Medicaid lien, SSD/SSI; causal relationship, or interesting argument, a "pet peeve" just for starters.

Many of us have been involved in some significant situations including important decisions of which have a "back story" which often is as informative and/or entertaining as a published decision itself often some of the most interesting and challenging cases never make it to the Appellate process. It is often said "hard cases make bad law." It is suggested that each group leader encourage "volunteers" early so that many people as possible can potentially think about contributing their best material when they "bring a case". Such contributions are completely discretionary and should be not longer than 10 minutes each. Our Inns are designed in part to encourage collegiality and civility. Each of us probably has some great material to share. Hopefully the meeting will be as entertaining as they will be informative.

Hypo example "Top 10"

A petitioner successfully filed a med temp motion and began receiving court ordered back and psychiatric treatment "until further order of the court".

Two years elapsed with ongoing conservative management when the carrier discovered the petitioner had an ongoing out of state third-party MVA alleging the same body parts and was receiving treatment while also receiving his NJ Comp benefits.

The respondent's attorney notified his adversary of the development and filed a motion to terminate benefits and for "such other and further relief the Court deems appropriate."

The petitioner's attorney commenced a section 20 discussion but no agreement was reached. The petitioner then discharged his attorney and filed an ethics complaint against the respondent attorney in part alleging threatening a criminal action to effectuate a civil settlement.

The respondent attorney felt this created a "conflict" for him and voluntarily withdrew as counsel for the respondent for which there was a substitution of counsel.

In the interim a new Judge was assigned and the petitioner, new counsel and the judge reached a Section 20 resolution based on additional proofs and paid the petitioner a lump sum with waiver of any retroactive claim for repayment of benefits. All of this was placed on the record with a conclusion that the settlement was "knowingly and voluntarily" agreed upon (the petitioner had a PHD in chemistry), the petitioner "fully understood all of his options inclusive of obtaining new counsel" and the issues presented met the prerequisites of Section 20.

Nine months later, the petitioner hired new counsel and filed an application to vacate the Section 20 on the basis that he was not represented by counsel at the time of the Section 20 and therefore it was void as a matter of law.

If you were the Judge how would you rule as and why.

What percentage of cases are typically resolved annually on a Section 20 basis.