

THE GREY & GREY REPORT

Published by:

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ABOUT GREY & GREY ...

Grey & Grey, L.L.P. was established in 1967 by David Grey to represent injured workers before the Workers' Compensation Board. His father, Arthur Grey, joined the firm in 1971 after 41 years of service with the Board. After Arthur retired in 1982, Robert Grey became the third generation to practice law in 1990 and joined the firm. The firm has maintained an office in Farmingdale, New York since 1967, and now serves its clients at additional offices in Manhattan, Queens, and Suffolk County. Since 1988, the firm has handled Social Security Disability and personal injury cases as well as workers' compensation claims. Brian O'Keefe joined the firm in 1994, and is now a partner in the firm, which now has a total of 15 attorneys in addition to a highly capable and well-trained legal support staff.

The firm has earned a reputation as a leader in its fields of practice. Our attorneys have handled thousands of workers' compensation and social security disability claims, prosecuting dozens of appeals in the New York State and Federal courts on important legal issues. The firm's attorneys have lectured on numerous occasions to bar association groups throughout the metropolitan area, and have published numerous articles in legal journals, including multiple appearances on the front page of the New York Law Journal.

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GREY & GREY IN THE COURTS ...

Grey & Grey's attorneys have once again been in the forefront of legal activity in the field of workers' compensation in 2004, winning victories both before the Workers' Compensation Board and in the courts.

The highlight of the year was the firm's success in winning a decision from the Appellate Division that the Workers' Compensation Board could not require permanently disabled workers to look for work in order to preserve their entitlement to workers' compensation benefits. The Board's decisions on this subject had resulted in loss of benefits to many injured workers across the state, making this an important legal victory for all injured workers. Jiminez v. Waldbaum's.

Earlier in the year the firm won a decision from the Appellate Division ruling that an unexplained on-the-job death entitled the widow to workers' compensation benefits. This was also an important advance in the law, which previously gave the claimant the benefit of a presumption where the death was unwitnessed, but not where it was unexplained. Koenig v. State Insurance Fund.

The decision in Koenig was the firm's second victory in two years on the issue of the injured worker's entitlement to a presumption that an on-the-job injury was caused by the work. In 2003, the firm obtained benefits for a teacher who had twisted her knee at work after the Board had denied benefits on the grounds that there was no proof that her job had caused her injury. On appeal, the court held that the claimant was entitled to a presumption that her work was the cause of her injury. Keevins v. Farmingdale UFSD. In other 2003 decisions, the firm went to the Appellate

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Division to defend an award of permanent disability benefits for a volunteer firefighter who could not return to his usual work (Donlin v. W. Babylon Fire Dist.); and to obtain seventeen years of retroactive benefits for a client whose case was improperly closed in 1987 (Jansch v. Sagamore Children's Ctr.); and went to the New York Court of Appeals to establish the first case in New York history for a work-related Hodgkin's disease (Gandolfo v. MTK Electronics).

GREY & GREY AT THE BOARD

Of course, not every case requires an appeal to the courts; in fact, only a tiny percentage of the Workers' Compensation Board's decisions result in appeals to the Appellate Division. The reason so few cases are appealed is that the Board's decisions are final on issues of fact; only cases involving questions of law or cases where there is no factual support for the Board's decision can be successfully appealed.

Grey & Grey also obtained exceptional results for many clients at the Board this year. In a recent decision upholding a judge's award of benefits to an injured worker, the Board agreed with the firm's contention that the insurance company's conduct in appealing the case was "inhumane, abusive, irrational and frivolous" and penalized the insurance company for filing a meritless appeal.

In another of the firm's recent cases, a judge who denied benefits to a claimant on the grounds that he was an illegal immigrant was reversed by the Board, which reminded the judge that "an illegal alien does not lose the right to benefits because of the illegal status."

One insurance company tried to suspend payments to a permanently

disabled injured worker because he would not settle his case, and duped him into signing and sending back a questionnaire that they then used in an application to the Board. The Board agreed with the firm's argument that the "claim was reopened based upon the carrier's improper communication with the claimant," refused to consider the questionnaire, and continued the award of benefits.

The firm's strong record in obtaining death benefits continued in 2004, with an award of \$250,000 in retroactive benefits plus continuing payments of \$800 per week to the widow of a volunteer firefighter in a hotly contested claim, an award of more than \$100,000 plus continuing weekly payments to the widow of a City of New York employee who was found dead at work (a case in which the firm won three separate appeals to the Board), and a permanent award of \$400 per week to the widow of a truck driver who suffered a heart attack while driving after the firm obtained a Board decision reversing a judge's decision which denied benefits until further evidence was produced.

The firm was also very active in claims involving victims of the September 11th tragedy. After a judge denied the claim of a 9/11 victim on the grounds that she was not at the 9/11 site even though she saw the events, knew that her co-workers had been killed, tried to get to the site at the instruction of her supervisor, and then had to process paperwork for their families, the firm appealed to the Board. The Board held that "the claimant's attorneys' contention that the case should be established is correct," and went on to award benefits. In addition to this case and others the firm handled at the Workers' Compensation Board, the firm also represented a number of its clients before the federal September 11th Victim Compensation Fund, obtaining awards in excess of \$1 million for the clients and their families. For more about the firm's work on September 11th issues, see Grey & Grey in the News on Page 3.

The firm also had its usual success in winning hundreds of contested and uncontested claims for all manner of on-the-job accidents and occupational

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diseases, including claims for carpal tunnel syndrome,

heart attacks, strokes, post-traumatic stress disorder, occupational hearing loss, vision loss, and traumatic injuries to the neck, back, and limbs.

GREY & GREY IN THE NEWS ...

As always, our attorneys have contributed a substantial amount of their time to educate the legal profession and the public about workers' compensation issues. In January, 2004 Robert Grey was a featured speaker for the Injured Workers Bar Association on how to take a successful appeal to the Appellate Division in a workers' compensation case. When the IWBA joined another attorney's appeal on the issue of "independent" medical exam companies fraudulently altering medical reports, it turned to Robert and Grey & Grey attorney Joan O'Brien to write its legal brief, which is now pending in the Appellate Division. Robert also lectured for the Brooklyn Bar Association, the Bronx County Bar Association, and the Suffolk County Bar Association. Brian O'Keefe, who is the co-chair of the Bronx County Bar Association's Insurance, Negligence, and Compensation Committee, also lectured in Brooklyn and served as moderator at the Bronx seminar.

Members of the firm have also conducted seminars for several unions, where they were asked to speak on the subjects of workers' compensation and Social Security Disability so that the members would be aware of their rights and how best to protect themselves in the event of an on-the-job or off-the-job injury or disability.

In October, 2004 the firm was featured on the front page of the New York Law Journal in connection with its representation of the children of

September 11th victims. A law was enacted in August of 2002 which retroactively provided benefits to the "domestic partners" of 9/11 victims, effectively making a domestic partner a "spouse" for workers' compensation purposes. While the intent of the law was a worthy one (and the firm feels that death benefits should be extended to domestic partners in all cases) the effect of this particular statute has been to substantially reduce the benefits paid to the children of some 9/11 decedents, in some cases cutting their payment from \$400 per week down to \$180 per week. The firm has filed an appeal contending that the law is unconstitutional because it does not treat the children of 9/11 victims as fairly as the children in any other workers' compensation death claim. Although the case is now proceeding through the New York courts, it may well end in the United States Supreme Court. For a copy of the Law Journal article, please feel free to call the office.

GREY & GREY AT SOCIAL SECURITY ...

The Grey & Grey Social Security department represented hundreds of claimants in all phases of Social Security Disability claims in 2004, from initial applications through Federal Court appeals. The department has continued to see the impact of the September 11th tragedy on disability claims and has been successful in obtaining benefits for both physical and psychological injuries stemming from 9/11. The area of psychological injuries is a dynamically developing area of Social Security law at this time, and the firm is making certain that it stays on the cutting edge of the legal and regulatory developments.

An interesting recent case handled by the department involved a New York City EMT who was forced to retire because of an arthritic knee. When an Administrative Law Judge (ALJ) denied the claim because he did not credit the claimant's testimony about the extent of his symptoms, Grey & Grey appealed the case to Federal Court, obtaining an order that the claimant be given a second hearing. At the second hearing, the ALJ found the claimant to be

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credible and decided the claim in his favor.

We are also scheduled to argue before the United States Court of Appeals for the Second Circuit on the issue of whether the Social Security Administration gave proper weight to the opinion of a disabled claimant's treating doctor. We are optimistic that we will be as successful in this appeal as we have been in our representation of many other injured and disabled persons.

A LOOK AHEAD ...

We at Grey & Grey, LLP are excited about the opportunity to continue to serve our clients throughout the metropolitan area in the years ahead. We now have offices in Manhattan, Queens, Nassau, and Suffolk, and we are appearing daily at the Workers' Compensation Board, in the courts, and before the Social Security Administration at locations from Riverhead to the Bronx. We intend to continue to lead the legal field in obtaining justice for injured workers, filing appeals to the Appellate Division when necessary while fighting for our clients' legal rights at the Workers' Compensation Board on a daily basis. New York's injured workers are entitled to an increase in the weekly workers' compensation benefit rate, which has remained unchanged since 1992, and we will continue to work with the New York Committee on Occupational Safety and Health (NYCOSH) and other organizations with which we are associated to bring about this much-needed change. We remain committed to providing full legal service to all of our clients in matters involving both on-the-job and off-the-job injury and disability. This includes workers' compensation, Social Security Disability, personal injury, long-term disability, disability retirement and Longshore Harbor Workers' compensation claims. As many of our clients have suffered ill effects from taking Vioxx for their injuries and disabilities, we are also now accepting claims involving heart attacks and strokes for clients who were prescribed Vioxx for their conditions.

While all of us at Grey & Grey, LLP wish you health and happiness, we stand ready to help if you or those close to you should suffer an on-the-job or off-the-job injury or disability. Please feel free to call us at any of our office locations if we can be of assistance.

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