

# THE GREY & GREY REPORT

Published by:

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## WHAT'S NEW AT GREY & GREY ...

Let's start with what's not new – the firm's continuing commitment to providing the best legal representation possible for those who are the victims of on-the-job and off-the-job injury or disability. We have held true to that goal since the firm was founded in 1967, and one thing that we have learned in our years of experience is that the only constant is change.



The law (and the way it is applied) are both constantly changing, and as lawyers we have to stay on top of the changes in order to protect the interests of our clients. Each week, our attorneys read the latest decisions made by the Workers' Compensation Board, the Social Security Administration and the courts to see how the law has changed and what we can do to make sure that our clients get the benefits to which they are entitled. The results of our hard work in keeping up with new developments are seen in the favorable decisions we obtain for our clients. Some of those decisions are discussed in this edition of the Grey & Grey Report; others are reviewed in previous editions. Our prior newsletters and court decisions are available online at

our website, [www.greyandgrey.com](http://www.greyandgrey.com).

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The Grey & Grey main conference room.

## WHAT'S NEW (continued)

We have recently completed updating and upgrading our customized computer database. While many law firms use "off-the-shelf" software designed around the "one-size-fits-all" philosophy, we feel that it is important to have a system that is specifically designed for our practice areas. In addition to recording basic client information, our system allows us to keep every active case on diary at all times. We print and review those diaries on a weekly basis, making certain that no case gets "lost in the system."

Also on the computer front, we have recently updated and improved our website with additional information and links to helpful web sites. If you know of any other web sites that you think would be helpful to injured and disabled persons, please let us know. Soon to come are photographs of our attorneys and our four offices!



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## WHAT'S NEW (continued)

Although technology is an important tool in our work, the heart of our successful representation of clients is our outstanding legal staff. We are pleased to report the May, 2005 addition of attorney Alissa Gardos to the firm. Ms. Gardos has been representing injured workers for ten years and is currently assigned to the firm's workers' compensation department.

We now have sixteen lawyers devoted to fighting for our clients in all manner of injury and disability claims. We thank our clients for their confidence in us, which we see every day as both old and new clients recommend their friends and family members to us for representation.

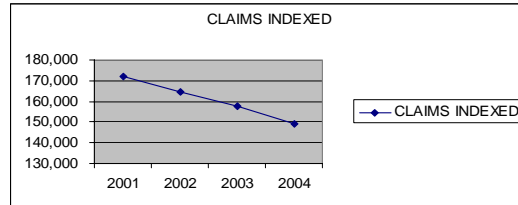


## CURRENT EVENTS IN WORKERS' COMPENSATION

A workers' compensation claim starts when the Workers' Compensation Board "indexes" the case and assigns it a case number. While employers are required by law to report on-the-job accidents to the Board, the injured worker is also required to file a C-3 form with the Board to protect the right to benefits. The time limitation for filing a claim is two years from the date of the accident.

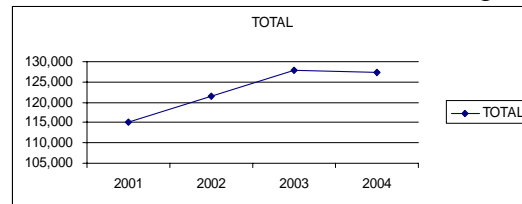
Recent data from the Workers' Compensation Board about claim filing is troubling, and suggests that workers are not taking the necessary steps to

protect their rights. In 2001, the Board indexed (set up files) for 172,098 workers' compensation claims. That number has declined every year since 2001, and in 2004 only 149,034 claims were filed – a reduction of about 14%.

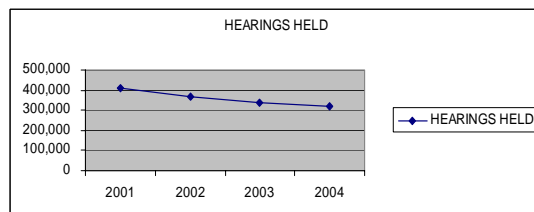


Since we have yet to see any data showing that workplaces are becoming safer, we fear that the shrinking number of claims filed means that workers are losing their rights by not filing C-3 forms when injured on the job. The injured worker is always better protected when armed with proper legal advice, rather than assuming that "everything will be taken care of."

The Workers' Compensation Board has also increased its use of "Administrative" and "Proposed" decisions, which decide cases without a hearing.



Not surprisingly, the increase in these types of decisions has been matched by a 22% reduction in the number of hearings held by the Board in 2004 as compared to 2001.



Why should the injured worker be concerned about these trends? If he or she is our client, there's no need for concern – if the Administrative or Proposed decision is incorrect, we will object and have it fixed, and if a hearing is needed to address a problem, we will ask the Board to schedule one. For the unrepresented person, however, rights and benefits may be lost if they don't take action. To succeed in a

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workers' compensation claim, the injured worker must take affirmative steps to protect their rights. If you know someone who has a workers' compensation claim and doesn't have an attorney, tell them to call us – they will thank you later.

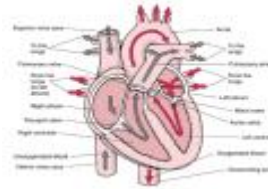
### **GREY & GREY AT THE BOARD**

The first half of 2005 continued to bring interesting cases to our door and ground-breaking success to our clients.

In one recent case, our client suffered a serious injury to his hand while at work as a gravedigger. After missing many months from work, he was able to return to his job, and the question in the case was the percentage loss of function (called a "schedule loss") of his hand. [In cases involving injuries to limbs (hands, feet, arms, legs, fingers or toes), if there is a permanent loss of function of the limb the client may be entitled to a money award in addition to payment for time out of work.] Our client's doctor reported and testified that there was a 47.5% loss of use of the hand, and the insurance company's doctor claimed it was only a 20% loss. The judge awarded the 47.5% figure, which most lawyers would have considered a victory. Not Grey & Grey. Having studied the Board's guidelines for schedule loss, we appealed the decision and argued that both doctors had been too low in their evaluations. On the appeal the Board agreed, and made an award for a 75% schedule loss – almost double the treating doctor's report and almost quadruple the insurance company's doctor's opinion.



Of course, cases involving injuries to limbs don't always result in schedule loss awards. While the general rule is that an injury to a limb is given a percentage loss figure, there are cases in which the injury requires continued medical care and prevents the person from returning to work. In these cases, the client and the attorney have to fight the general rule to obtain continued weekly payments. In one recent case, the firm defeated the insurance company's argument that a shoulder injury should be given a schedule loss award and closed, and obtained continued weekly payments of \$400 per week (the maximum rate) on a permanent basis for our client.



Probably the most hotly contested workers' compensation claims involve heart attacks and strokes, which often result in death. Year in and year out, Grey & Grey litigates these claims against determined resistance by the insurance companies, winning many cases against the odds. One such case involved a man who worked as an auto repair mechanic for 32 years, in which he was exposed to asbestos and chemical fumes. Although he had a heart attack in 1990, he did not know that it was work-related until 2000 – by which time the two-year time limitation to file an accident claim had expired. Grey & Grey took the case anyway, arguing that the client's heart and lung problems were due to his occupational exposure, and that in an occupational disease case the time limit should run from when he learned that his work was the cause of his problem. After hearing testimony from the client and four cardiologists and pulmonary specialists, the WCL Judge decided in favor of the claimant on all grounds, awarding him \$400 per week for the rest of his life.

### **GREY & GREY AT SOCIAL SECURITY...**

The firm's Social Security disability department has continued its outstanding record of success before the Social Security Administration and the Federal Courts

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in 2005. The firm recently won a decision from the United States Court of Appeals for the Second Circuit (one level below the United States Supreme Court) that the Social Security Administration had improperly rejected the opinion of the treating physician that the claimant was disabled because the administrative law judge chose to disbelieve the claimant. We successfully argued that even if the ALJ had a valid reason to disbelieve our client (and we thought that he did not have a valid reason), the medical evidence (including Social Security's own doctors) still established that the man was disabled. After the Second Circuit's decision, the Federal District Court judge sent the case back to the Administration for a new determination, and we are optimistic that our client will now receive the benefits he deserves.

### **A LOOK AHEAD ...**

Injured workers are not the only people who call on us for help and advice: we are also sought out by doctors and lawyers who have questions about the workers' compensation and Social Security systems. We recently completed a book entitled "The Grey & Grey Guide to Workers' Compensation for the Health Care Provider," which is being printed as this newsletter goes to press. If your doctor or chiropractor seems unfamiliar with the workers' compensation system, or has mentioned that he or she is having trouble with their bills, tell them to call us for a free copy of the Guide. Trust us – they'll thank you for the advice. Our next project will be the Grey & Grey Guide to Workers' Compensation for the Shop Steward, which will include all of the information we present at our union educational seminars and more. If you are a union member and would like us to speak to your local about workers' compensation issues, please feel free to call. We work evenings and weekends to educate workers about their rights in the case of on-the-job injury.

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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