

THE GREY & GREY REPORT

Published by:

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WHAT'S NEW AT GREY & GREY ...

With the return of former Grey & Grey attorney John Hamberger and the addition of attorney Steven Rhoads to the personal injury department, our firm is now 17 attorneys strong, with staff divided among the Manhattan, Queens, and Farmingdale offices. Of course, all of our offices are linked by a common computer and telephone system, allowing us to have almost all client information available at all times in all offices.



We thank those of you who have referred your friends and family members over the years. We appreciate the confidence you have shown in us and we work hard every day to justify your faith in us. You are truly the foundation of our progress.



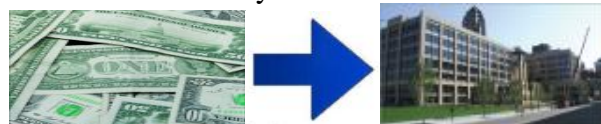
In this issue:	Page
What's New at Grey & Grey	1
Current Events in Workers' Compensation.	1
Grey & Grey at the Board.	3
Grey & Grey in the News	4
Educational Outreach	4

CURRENT EVENTS IN WORKERS' COMPENSATION...

In our last newsletter, we reported that claims indexed by the Workers' Compensation Board have declined 27% over the past ten years. Not surprisingly, data now indicates that indemnity claims (money) paid by workers' compensation insurance carriers have declined about 32% over the same time period.



Meanwhile, the National Council on Compensation Insurance (a collection of workers' compensation insurance companies) has reported that "the workers' compensation insurance industry had another excellent year in 2005" with "the best results in recent memory." In other words, workers' compensation insurance companies can't remember the last time they made so much money.



It would seem obvious from this

information that if there are fewer claims made by injured workers, and if insurance companies are paying less money on those claims (and making windfall profits), then insurance premiums should go down. In fact, according to Governor Pataki, workers' compensation insurance premiums have gone down over 20% in the past 10 years – and the insurance companies are still reporting that 2005 was a “banner year” for them.

All of this insurance company profit comes at the expense of New York's injured workers. The maximum weekly workers' compensation rate in New York is \$400 per week, and that figure has not been raised since 1992 (fourteen years and counting). In other states in our area, the rates range from a low of \$691 per week in New Jersey to \$1,005 per week in Connecticut. Where employer premiums are down and insurance company profits are up, it would seem time to do something to help those injured on the job.

**SEND
HELP**

Instead, with the support of the Business Council, the Governor has proposed a bill that would raise the maximum rate from \$400 per week to \$500 per week (in 2009) while cutting benefits for permanent injury 40% or more for every injured worker in every income class. Those who are permanently disabled from work would have their benefits capped on a “sliding scale” depending on their level of disability, with a 500 week maximum for receipt of benefits. In addition, the bill would give insurance companies even greater control over the medical treatment of injured workers.



Needless to say, if it were approved by the Legislature, the Governor's bill would be a catastrophe for New York's injured workers. Grey & Grey has been a leader in the fight to preserve and improve the workers' compensation system. In March, 2006 Robert Grey was a featured speaker at a conference held at Cornell University School of Industrial and Labor Relations and sponsored by the New York Committee for Occupational Safety and Health (NYCOSH). The title of the conference was “Injured on the Job: Protecting our Right to Fair Workers' Compensation.” The main subject was the importance of defeating the Governor's bill and moving forward with legislation to improve worker protections and benefits.



Since that time, our attorneys have given many lectures and attended many meetings on the subject. Among our efforts, Robert Grey wrote articles for various publications including the New York Law Journal opposing the Governor's bill and proposing legislation that would increase the benefit rate, give injured workers more control over their medical treatment, and require insurance companies to disclose how much profit they really earn on workers' compensation insurance. Brian O'Keefe, the vice-chair and chair-elect of the Workers' Compensation Committee of the Nassau County Bar Association was instrumental in having the Bar Association issue a resolution denouncing the Governor's bill.



GREY & GREY AT THE BOARD...

Of course, our efforts to improve the workers' compensation system begin with our commitment to representing our clients. An interesting recent case involved an ironworker who was exposed to argon gas while welding beams.



Because he was working in an enclosed area, the argon gas caused a lack of oxygen, resulting in damage to the part of the brain that controls balance. As a result, the man now suffers from vertigo and is permanently disabled from work. The insurance company contested the case, denying that the argon gas exposure caused brain damage, and claiming that the man's problems were the result of head injuries 20 years ago. After litigation, the Workers' Compensation Law Judge found in favor of our client and awarded him \$50,000 in back payments plus continuing payments at the maximum rate of \$400 per week. Our trial work was so convincing that the insurance company paid the award without an appeal.



Another case of interest involved a volunteer firefighter who suffered pulmonary and psychiatric problems as a result of volunteering at Ground Zero. After paying benefits for a period of time, the insurance company refused to make further payments, contending that the man had no loss of "earning capacity," which is the test for

volunteer firefighter benefits. One basis of the insurance company's defense was that the client had written a book about his experience as part of his therapy. After extended litigation, a judge found that the man was permanently partially disabled and entitled to \$268 per week (a rate fixed by law for moderately disabled volunteer firefighters and ambulance workers). The award was upheld on appeal. While you may be surprised that an insurance company would deny benefits to a Ground Zero volunteer, it is unfortunately not an unusual occurrence.

Because we are so vigorous in asserting our client's rights, it is not unusual for our attorneys to break new legal ground.



One of our recent groundbreaking cases raised the issue of how to properly calculate loss of earnings for a self-employed individual. People who are injured at work and are not able to return to their old job, but who can do other work for a lower salary are entitled to compensation for some of the lost income. Those who are self-employed, however, often become entangled in arguments about what business deductions are "legitimate" and which ones should really be counted as "earnings." Grey & Grey had a sweeping victory on this issue which may result in an insurance company appeal to the Courts.



The Appellate Division, Third Department, hears appeals from decisions of the Workers' Compensation Board.

GREY & GREY IN THE NEWS...

In May, 2006 our work gained national attention with articles in the New York Times, New York Post and the Daily News and reports on Fox News, Channel 4 News, NY 1, and other media outlets. The matter involved a high-ranking official of the City of New York who was directly involved in the events of September 11 and the City's response in the following weeks. Like many 9/11 victims, this individual did not file a claim for workers' compensation within the two-year time limit. Normally this would result in the claim being time-barred and denial of benefits for time out of work and medical expenses. In this case, however, our attorneys were able to prove that the City paid the man for time out of work with knowledge that his disability was due to the 9/11 exposure. A WCL Judge found that this "advance payment" excused the late filing. Although the City filed an appeal of this decision, it later withdrew the appeal and agreed to accept responsibility for the claim.

EDUCATIONAL OUTREACH ...

We have learned that many people do not know what their rights are in the event of an on-the-job injury or occupational illness. Some do not know where to turn for help; others assume that they have more rights than they actually do. Many think that it is the employer's obligation to make sure that their claims are filed and that their rights are protected. The simple fact is that in most cases it is not the employer's responsibility to protect the injured worker's right to benefits. In addition, most workers (especially non-unionized workers) have fewer rights than they think. This makes it all the more important for people to be educated about their rights before they are injured, so that they know what to do in case of an accident. Our attorneys work tirelessly mornings, evenings, and weekends educating union and non-union groups about their rights. Please feel free to call us if your group would like to schedule a presentation.

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