

THE GREY & GREY REPORT

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WHAT'S NEW IN WORKERS' COMPENSATION ...

In our last newsletter, we reported on the changes that were made to the Workers' Compensation Law in March, 2007. Some of those changes were good for injured workers, some were not so good, and the effects of many of the changes have yet to be seen.

We have been hard at work trying to influence the way the 2007 "reform law" affects our clients (and injured workers throughout the State). The law created a large number of "Task Forces" to suggest regulations and changes in the way the Workers' Compensation Board operates. While the Task Forces were at work, we prepared and submitted a series of papers commenting on their proposals and making suggestions for improvement. Many of our suggestions were considered and adopted.

When the Task Forces issued their final reports in early 2008, we issued a new and comprehensive 196-page White Paper discussing their work, which is now available on our website.

WORKERS' COMPENSATION IN NEW YORK STATE: STATE OF THE SYSTEM 2008

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CURRENT EVENTS AT GREY & GREY ...

We are pleased to welcome attorneys Christopher Falconetti and Pierre Bazile to the firm, bringing our experienced and professional staff to 18 attorneys and more than 40 total employees, all dedicated to advancing the interests of our clients and the cause of occupational safety and health.



Partner Robert Grey continues to serve on the Board of Directors of the New York Committee for Occupational Safety and Health (NYCOSH), became Chair of the Labor Outreach Committee of the Mount Sinai Center for Occupational and Environmental Medicine, served as a technical advisory on the New York State September 11th Worker Protection Task Force, and became an adjunct professor at the Cornell University School of Industrial and Labor Relations.

Meanwhile, partner Brian O'Keefe is now the Chair of the Workers' Compensation Committee of the Nassau County Bar Association as well as the president of the Brehon Law Society of Suffolk County.

Attorney Steve Rhoads is a member of the Nassau County Open Space and Parks Advisory Committee. All of our attorneys are

active in professional and educational endeavors.

GREY & GREY TECHNOLOGY ...

Time does not stand still, and we know that we need to change with the times to serve our clients as efficiently as possible. As this newsletter goes to press, we are beginning a transition to a paperless system.



Our workers' compensation department will be the first to change over, and plans are on the drawing board for the Social Security and personal injury departments to follow.

We are confident that the new system will be good not only for the environment, but also for our clients, as our attorneys will be able to access and use our office computer system remotely from the courts and the Workers' Compensation Board.

RECENT WORKERS' COMPENSATION LAW & DECISIONS

As always, we use this space to report on changes in the law and recent decisions of interest.

In his role on the New York State September 11th Worker Protection Task Force, Robert Grey helped to shape legislation improving benefits for 9/11 responders. The bill was passed by the Legislature on June 24, 2008, and is expected to be signed by Governor David Paterson. You can read the June 20 press release on the Governor's web site at:

www.state.ny.us/governor/press/

Remember, if you were involved in rescue, recovery, or cleanup work after 9/11 you must file a registration form to

protect your rights. For workers' compensation, the form is a WTC-12 form, for members of the New York City Retirement System (NYCERS) the form is a 622 form, and for members of the New York State Retirement System the form is an RS-6047. You may have to file more than one form.



Not only do we fight hard to change the law, we also fight hard to make sure that our clients are protected by existing law. One of those clients is a cab driver who lost his eye when a battery exploded as he jump-started a car for a stranded motorist. The employer contested the case, taking the position that the driver was on his lunch break and that drivers were not permitted to make repairs to their vehicles. A judge disallowed the claim, and a Board Panel upheld the decision. After we filed a Notice of Appeal to the courts and requested review by the Full Board, the Board Panel reversed itself and found in favor of the driver. The employer then appealed to the Appellate Division, which upheld the Board's new decision in favor of the driver.

In another recent case, our client was severely injured in a one-vehicle accident on his way home from a holiday party. The employer contested the case, contending that it did not sponsor the party, that the accident was due solely to intoxication, and that travel to and from the party was not covered under the law. If the employer prevailed on even one of these defenses, the claim would have been dismissed. Although the employer claimed it contested the case in a timely fashion, we proved that it was not being truthful, won the case and the client was declared permanently totally disabled with a \$45,000 retroactive award and \$400 per week for life.

Of course, sometimes a good settlement is better than a good trial. In early 2008 we reached a ground-breaking agreement with the

County of Nassau to settle a group of workers' compensation claims – the first time the County had ever done so.

WHAT'S NEW IN PERSONAL INJURY

We continue to see an increasingly restrictive series of decisions from the Court of Appeals (the highest Court in New York), limiting the scope of job site protection for construction workers under the Labor Law. Sadly, this trend is occurring during a construction boom in which workers are injured more often as contractors cut corners on safety. These workers need more legal protection, not less.



Despite the negative trends in the law, however, our experienced team of personal injury attorneys continues to obtain victories for our clients.

In one case, a 38 year-old construction worker was injured when the ladder he was using to manually raise trusses into position tipped. As a result, he sustained injuries which left him unable to work. After three years of hard-fought litigation, we were able to negotiate a settlement of more than \$1.5 million dollars.

In another case, a 53 year-old worker was injured when he stepped off of a ladder and onto a piece of debris that had been left on the ground by a cleaning crew. We defeated a motion to dismiss the case, convincing the judge that the general contractor was required to keep the jobsite free from debris. The case later settled for \$275,000.

We also obtained a settlement of

\$95,000 for a 29 year-old worker who fell 20 feet during a construction project based on the defendant's failure to provide appropriate safety equipment.

In another case, a 32 year-old laborer was injured when a piece of concrete flew into his eye as he was breaking up a concrete curb. Before trial, the defendant offered \$2,500 to settle the case. After a jury found the defendant 65% at fault for the happening of the accident, the case settled for \$250,000.



Of course, we also tried and settled a variety of other cases, including a large number of motor vehicle accidents and "trip and fall" cases.

WHAT'S NEW IN SOCIAL SECURITY AND RETIREMENT ...

You may have heard recent news reports about the nationwide backlog in Social Security disability cases. The backlog of cases waiting for hearings before Administrative Law Judges (ALJs) has left hundreds of thousands of claimants in dire straits waiting for their day in court. In one case, our client (a stroke victim) was evicted from his apartment and forced to live in a homeless shelter – which according to a Social Security employee was not sufficient "financial hardship" to entitle him to an early hearing date. As a result of our call to the director's office suggesting that it should not be necessary to actually be living out on the street in order to be considered in dire need, we were able to obtain an expedited decision fully favorable to the claimant.

In another recent case, a United States District Court Judge ordered SSA to hold an expedited hearing before a different ALJ. The previous ALJ had denied the claim twice and

had failed to follow the orders of the U.S. Court of Appeals. The Judge wrote that the ALJ's actions "demonstrate serious negligence and could possibly even suggest bias".

Another case of interest involved a client who had experienced both the 1993 and 2001 terrorist attacks while working at the World Trade Center. Although an ALJ refused to accept strong evidence of post traumatic stress and denied the claim, we were successful on appeal to the Appeals Council of Social Security.

Government Disability Pensions

Our Pension Department has been busy aiding many clients with their New York City and New York State Retirement Pensions. We have been successful both on initial New York City disability pension applications as well as on appeal from an initial denial of benefits. In one case, NYCERS denied the claim of a client who suffered a fracture in his back when he was struck by a vehicle while responding to the scene of a fire. We filed a new application and convinced the Medical Board that the claimant was permanently incapacitated from his title.

We also recently reversed a denial of pension benefits on appeal to the full Board of Trustees of NYCERS. The Medical Board had found that falling down while sweeping a bus was not an "accident" within the meaning of the pension law. We were able to convince the full Board that this was a line of duty "accident" due to poor lighting in the yard.

Long Term Disability Benefits

Long Term Disability insurance policies usually provide benefits if a worker is disabled for 6 months or more. Some policies are part of an employee benefit package and are governed by a federal law known as ERISA, which requires the insurance company to provide an "intra-company appeal process" if the claim is denied before the worker can file a lawsuit. In a recent case, the insurance company denied an application based on complex regional pain syndrome (CRPS). We filed an intra-company appeal, and facing a federal lawsuit if it upheld the denial, the insurance company reversed itself and approved the claim.

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