

# THE GREY & GREY REPORT

Published by:

**GREY & GREY, L.L.P.**

**WORKERS' COMPENSATION – SOCIAL SECURITY DISABILITY – PERSONAL INJURY**

**NASSAU:** (516) 249-1342  
360 Main Street  
Farmingdale, NY 11735

**MANHATTAN:** (212) 964-1342  
277 Broadway, Ste 400  
New York, NY 10007

**QUEENS:** (718) 268-5300  
118-21 Queens Blvd, Ste 618  
Forest Hills, NY 11375

[www.grevandgrey.com](http://www.grevandgrey.com)

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

At Grey & Grey, representing our clients and winning their cases is always the top priority. However, we also try to serve the interests of working men and women in a broader way by joining organizations that allow us to work for positive legal and social change. As a result, we often find ourselves in positions of leadership.



Robert Grey now serves as the Treasurer of the New York Committee for Occupational Safety and Health (NYCOSH). He continues to serve as a technical advisor on the New York State September 11<sup>th</sup> Worker Protection Task Force and as the Chairman of the Labor Outreach Committee for the Advisory Board of the Mount Sinai – Irving J. Selikoff Center for Occupational and Environmental Medicine, which named him its Man of the Year for 2008. Transport Workers Union Local 100 also honored Robert and the firm for contributions to its Widows & Orphans Fund.



## In this issue (Summer, 2009):

	Page
What's New at Grey & Grey.....	1
What's New in Workers' Compensation.....	2
Recent Workers' Compensation Decisions .....	3
What's New in Personal Injury .....	4

Brian O'Keefe is now the president of the Chaminade Lawyers Alumni Association, the president of the Brehon Society of Suffolk County and the vice president of the Brehon Law Society of Nassau County.

Robert, Brian, and our other attorneys continue to lecture regularly to a variety of audiences, including bar associations, unions, and community groups. Recent appearances of note include Robert's lecture to hundreds of newly admitted lawyers for the New York State Bar Association and Brian's groundbreaking lecture on conflict resolution lessons from the Northern Ireland peace process.



In keeping with the continued growth of our practice, we also welcome attorney James Durgana to the firm.



## **WHAT'S NEW IN WORKERS' COMPENSATION ...**

As we have reported in previous newsletters, New York's workers' compensation system is in the middle of radical change. Major changes were made to the law in early 2007 and the effects of that change are still being felt. Some of the things that we have seen so far are an increase in weekly benefit rates for workers with accidents after July 1, 2007 and widespread insurance company use of pharmacy and diagnostic testing networks.



The law also now calls for time limits, or "caps" on permanent partial disability benefits. So far none of our clients has been affected by this change, but it is only a matter of time before employers and insurance companies begin to raise the argument.



In addition to the changes in the law, there are also changes in the process and procedure of the Workers' Compensation Board. Under the circumstances, we thought that it would be a good idea to use this issue of the Grey & Grey Report for some "do and don't" advice.



## **IF YOU GET HURT AT WORK:**

- **Tell your employer** as soon as you can, in writing if possible.
- **See a doctor** who accepts workers' compensation cases as soon as possible. Do not rely on the emergency room or your family doctor to file the proper medical reports.
- **Call Grey & Grey** for the papers you need to file your claim. We will send you C-3 claim forms to fill out and return to us for filing and a C-4 form for your doctor to fill out. Be sure to fill out the C-3 completely and honestly.
- **Do not** speak to insurance company investigators, "rehab nurses," or claim examiners without checking with us first.

## **WHILE YOUR CASE IS GOING ON:**

- **See a doctor** at least once every six weeks while you are out of work, or if you are earning less money because of your injury.
- **Keep copies** of your out-of-pocket expenses for things like prescriptions, crutches, bandages, and travel to and from doctors.
- **Notify** Grey & Grey and the insurance company if you go back to work, and keep copies of your pay stubs if you do.
- **Tell your doctor** and the insurance company doctors about any other accidents involving the same body parts you injured in your accident. If you don't you may be accused of fraud later.
- **Make a folder** where you keep copies of the papers about your case.

## **WHEN YOU CALL GREY & GREY:**

- **Have your WCB Case #** available.
- **Know your question** when you call. If you are calling because your payments have been stopped or reduced, we need to know that so that we can ask for a hearing. If the problem is getting medical treatment approved, we will need to know what your doctor asked for, when the request was sent to the insurance company, and whether the insurance company sent you to one of its doctors after it got the request.

## RECENT WORKERS' COMPENSATION DECISIONS ...

Employers and insurance companies often refuse to pay benefits or try to stop payments by arguing that the injured worker has “voluntarily withdrawn from the labor market.” What this really means is that they are claiming that the person is out of work for some reason other than their injury, and therefore is not entitled to benefits.

Although a number of things can trigger a “voluntary withdrawal” defense, two of the most common are (1) putting in retirement papers and (2) a medical report giving a partial disability.

If you are out on compensation and intend to retire, it is best to consult with your doctor first. If the doctor advises you that you are not going to be able to return to work, that will help defeat a “voluntary withdrawal” argument based on the retirement decision.

If you are partially disabled, however, the Workers’ Compensation Board may allow the insurance company to suspend your payments if you do not look for work within your restrictions. Partial disability means that even if you cannot do your job, there is some work that you are able to do. If you are partially disabled, the Board will expect you to look for light duty work or go for vocational retraining, and if you do not your payments may be stopped.

In one recent case, our client was working on light duty because of his injuries, and eventually retired due to pain from those injuries. The insurance company refused to make any payments, arguing that the client “voluntarily withdrew from the labor market” by retiring. After a long trial, a judge denied benefits, and accepted the insurance company’s argument that the decision to retire meant that no benefits were due. On appeal, however, the Board reversed the judge’s decision and made an award of over

\$120,000, with payments to continue at the maximum rate of \$400 per week.



Another defense used by insurance companies is “apportionment.” In these cases, the insurance company argues that the worker has a pre-existing condition and that as a result the worker is not entitled to the full award for the injury.

We have always had great success in defeating this argument. In one recent case, the insurance company argued that although the worker had a 50% loss of use of his leg, 90% of that loss was because of pre-existing arthritis. A judge agreed, and made an award for a 5% loss of use (ten percent of a 50% loss of use). On appeal the Workers’ Compensation Board reversed the judge and awarded the full 50% - a tenfold increase in the award.

We also recently won a case for a volunteer firefighter with lung disease. Although the Volunteer Firefighter Benefit Law has a legal presumption that lung disease is caused by firefighting, the insurance company insisted on contesting the case, and hired a doctor who denied that our client’s problems were caused by his volunteer firefighter activities. After we had that doctor’s report thrown out, the insurance company insisted on questioning every one of our client’s doctors. In the end, the judge ruled in our favor, found our client to be permanently totally disabled, and awarded over \$70,000 in retroactive benefits as well as continuing payments of \$400 per week. The award was upheld on appeal, and as we go to press the case is being scheduled for a hearing on the question of whether the insurance company should be penalized for its conduct.

## WHAT'S NEW IN PERSONAL INJURY...

Our personal injury department continues to win significant victories as well. Sherman Kerner recently settled a case for \$450,000 for a 63 year old nurse's aide with neck and back injuries, disabling him from work. Our client slipped and fell on wet plywood that had been left by a company that was doing construction at his place of employment.

In another case, we won summary judgment (a ruling that the defendant was entirely responsible) for a longshoreman who ruptured his bicep tendon when his glove got caught on a steel reinforcement bar as he tried to lower himself from one concrete beam to another, leaving him dangling in mid-air. The defendants appealed the decision in our client's favor, and on appeal it was upheld.

We also won summary judgment for a sheetrock carpenter who fell from a ladder while spackling the area around a skylight. Our client testified that to reach the area where he needed to work, he needed a baker's scaffold. Although he was given one to use the day before, when he asked for it on the day of the accident he was told to use a ladder instead because someone else was using the scaffold. The defendant produced witnesses who said that they had seen a baker's scaffold in the area where our client was working. A judge ruled in favor of the defendants and dismissed the case, but on appeal the court reversed that decision and instead ruled in favor of our client because the defendant's witnesses had not proved that the scaffold was in the plaintiff's area at the time he was doing his work.

Our personal injury department was also able to obtain a settlement of \$85,000 for a child who fell from poorly designed monkey bars at school and ruptured his spleen, as well as many other favorable results for clients who were injured because of the negligence or lack of care of others, whether at work or otherwise.

---

Grey & Grey, LLP  
360 Main Street  
Farmingdale, New York 11735