

**WORKERS' COMP 2020
Tips and Trends to Manage
Workplace Safety**

Presented by:



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A Brief Review of WC in 2019

- Democratic Governor
- Democratic Legislature
- WILG's Influence
- L.D. 756
- New Executive Director
- New General Counsel



Bourgoin v. Twin Rivers Paper Co. ***2018 ME 77***

- Controlled Substances Act pre-empts Maine Medical Use of Marijuana Act
- L.D. 942



Looking Ahead to 2020

- Aging Workforce and Pre-Existing Conditions
- Mental Stress Injuries on the Rise
- Coordination of Benefits/Offsets
- Changed Economic Circumstances
- Gig Economy
- Medical and Recreational Marijuana



Looking Ahead to 2020

- First Responders and Presumptions
- IMEs and Health Care Consolidation
- Single Payer Healthcare
- New Coordination of Benefits/PTO/FMLA



Lessons from the 2019 Appellate Division

- *Boulanger v. S.D. Warren*- Apportionment is permissible for self-insured employers
- *Weiss v. Maine Soapstone Co., Inc.*- There is no real penalty for failure by a Section 312 examiner to produce his/her report within 14 days of the examination
- *Gurney v. Mercy Hospital and VNA Health Hospice*- It is possible to have repeated gradual injuries to the same body part
- *Estate of Micheal Deyone v. ITG Brands*- Ultimate burden of showing when a “mistake of fact” ended on a Notice defense rests with the employer

Lessons from the 2019 Appellate Division

- *Eaton v. S.D. Warren Co.*- Sometimes the decree is junk, so seek clarification for ambiguity or contradiction
- *Mowrer v. Genesis Healthcare, L.L.C.*- If successive injuries cause lowered AWW, earlier AWW will be used to calculate benefits
- *Capitan v. Newpage Paper*- Employer must show Employee “terminated active employment” for retirement presumption to be overcome

Lessons from the 2019 Appellate Division

- *Dumont v. AT & T Mobility Services*- Train supervisors to recognize when a vague pain complaint is a report of work-related injury
- *Dube v. Twin Rivers Paper Company*- Clear evidence to support inability to accommodate and reinstate when told to do so by the Board or lose right to suspend at durational limit
- *Pratt v. S.D. Warren Co.*- Employee only has to “make application” for SSI, but can defer to later age for higher benefit and delay 50% offset

Lessons from the 2019 Appellate Division

- *Butler v. City of Portland*- Section 221 SSI offset is not limited to the employer who paid the SSI taxes
- *O'Leary v. Northern Maine Medical Center*- Restrictions, alone, will not meet burden of proof of earning incapacity
- *Santiago v. County of Penobscot*- Gig economy, on-demand worksites, and traveling workers may be at home and still suffer a work-related injury
- *Morrison v. City of Sanford*- First responder presumption is going to be hard to overcome, especially with enumerated cancers

Lessons from the 2019 Appellate Division

- *Stella v. Cintas Corporation*- Always produce a labor market survey if there is any work capacity
- *Flesher v. Inland Hospital*- Decree based upon inferred knowledge will not be enough to overcome Notice defense absent real evidence of knowledge
- *Moscone v. Millinocket Regional Hospital*- Date of injury for gradual injury can be slippery and employees can take advantage of “better” benefits depending on when Notice is triggered

Lessons from the 2019 Appellate Division

- *Ouellette v. Ouellette Funeral & Memorial Service*- Plain language of the Act permits the injured owner of a corporation to give himself timely Notice even if he fails to notify the insurer in a timely manner
- *St. Louis v. Acadia Hospital Corporation*- Get bona fide offer of suitable employment out as soon as there is work capacity that can be accommodated
- *Sawyer v. S.D. Warren*- Employee can have both an acute and gradual injury to the same body part and at roughly the same time

Lessons from the 2019 Appellate Division

- *Estate of Timothy J. Flaherty v. City of Portland*- Another presumption case, but issue was mistake of fact versus mistake of law
- *Labbe v. Eastern Maine Medical Center*- If ongoing restrictions exist supporting partial incapacity, subsequent non-occupational disability won't necessarily eliminate right to partial benefits
- *Sapranova v. Marriott Hotels*- Employee only needs to produce evidence that might support PI over the cap for ultimate burden to fall to employer

Lessons from the 2019 Appellate Division

- *Wallace v. Cooke Aquaculture USA, Inc.*- Subject matter jurisdiction cannot be waived and voluntary payments are not a determination that the waive for maritime employees does not apply
- *Potter v. Cooke Aquaculture USA, Inc.*- Facts drive issue of whether Jones Act, Longshore Act or State WC apply
- *Hopkins v. Verso Paper and International Paper*- Economic factor argument must have evidence of under-employment or other support to succeed

Lessons from the 2019 Appellate Division

- *Knox v. Irving Forest Products, Inc.*- Analysis of a date of injury and question of timely Notice for gradual injury is a two-step process
- *Stein v. Inland Hospital*- Offset for wage continuation in the context of a severance payment must show that wages were paid for period of earning disability
- *Scott v. Bodwell Chrysler Dodge, Inc.*- “Positional Risk”/ “But for”, while not allowed in Maine, may seek into the ultimate analysis on “arising out of” cases

Looking Forward to the Year Ahead

- What initiatives will the Executive Director push?
- How will the New ALJ balance the system?
- What impact will recreational and medical marijuana have on the workplace?
- How will OSHA safety initiatives impact Maine?

