

## **CASELAW UPDATE**

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### **Worker's Compensation cases:**

#### ***First State Orthopaedics v. Sedgwick*, IAB Hearing No. 1362536 (June 9, 2011) (Order)**

First State Orthopaedics filed a motion to compel against Sedgwick seeking full payment of various medical bills that had been partially paid by Sedgwick. First State argued that because the bills were partially paid, there could be no legal defense to its claim that the remainder must be paid in accordance with Delaware's Health Care Payment System, 19 *Del. C.* §§ 2322B and 2322F. Sedgwick argued that it may have a good faith defense based on a preferred provider agreement that allowed it to pay less than the full charges. Further, Sedgwick asserted that First State needed to proceed by filing a formal petition for compensation rather than requesting a legal hearing before the Board. The Board initially postponed the matter for two weeks to allow Sedgwick additional time to investigate the claims. However, when the Board reconvened, Sedgwick was unable to produce a copy of the alleged preferred provider agreement.

The Board held that First State Orthopaedics did not need to file a formal petition for payment of the medical expenses because having made partial payments, Sedgwick accepted the reasonableness, necessity and causal relationship of the treatment. It noted that there was no dispute as to the amount of the charges as that is controlled by the fee schedule established by the Health Care Payment System. Further, Sedgwick had not produced a copy of the alleged preferred provider agreement or otherwise alleged a claim of improper billing, which could have given rise to an actual factual dispute. Accordingly, the Board ordered Sedgwick to pay the remainder of the partially paid medical bills in accordance with the fee schedule; interest on the unpaid invoices at the rate of 1% per month; a fine in the amount of \$1,000 for each of the four partially paid bills; and an attorney's fee in the amount of \$2,000.

#### ***Sean Emory v. J.R.'s Truck Co., Inc.*, IAB Hearing No. 1295612 (March 31, 2011)**

Claimant alleged that he sustained an injury, a partial finger amputation, while working for Employer on November 8, 2006. On November 16, 2006, he filed a Petition to Determine

Compensation Due with the Industrial Accident Board seeking acknowledgement of his injury. On February 29, 2008, the Petition was dismissed without prejudice. On May 10, 2010, Claimant re-filed the Petition to Determine Compensation Due and filed a Petition to Determine Additional Compensation seeking payment of outstanding medical expenses. Employer did not have workers' compensation insurance at the time of the work accident. However, Employer paid Claimant's wages while he was out of work for several weeks immediately following the injury. Employer also paid some medical expenses for treatment incurred from November 8, 2006 through January 11, 2007. The claim forms corresponding to the medical expenses that were paid, clearly noted the treatment was related to a work injury. Although there was no formal Agreement as to Compensation filed with the Board within two years of the work accident, the Board held that there was an implied agreement since Employer "felt compelled" to make payments to Claimant under the Workers' Compensation Act. Accordingly, the Board held that the statute of limitations was extended to five years from the date of the last payment made by Employer, January 11, 2007, and the 2010 petitions were filed in a timely manner.

**Civil cases:**

*Smith v. Christina School District*, 2011 WL 5924393 (Del. Super.).

The Delaware Superior Court denied defendant, Christina School District's Motion for Summary Judgment. Parent brought suit on behalf of a minor plaintiff alleging that defendant and its staff were negligent in their supervision of plaintiff. Plaintiff suffered an injury to his finger while riding a tricycle at school. Defendant argued it was immune from suit under the Tort Claims Act. The Court explained that defendant, as a public school district, has immunity from liability under the Act. In order to overcome the immunity, plaintiff must show that the state waived the defense of sovereign immunity for the actions mentioned in the complaint and that the Act does not bar the action. The Court found that defendant waived sovereign immunity because it had insurance. However, plaintiff was also required to establish the absence of the following elements under the Act: the action was discretionary in nature, the action was done in good faith and the action was done without gross or wanton negligence. Although plaintiff's complaint only alleged ordinary negligence, the Court denied summary judgment because the record established during discovery created a genuine issue of fact as to whether defendant's acts were discretionary, done in good faith and done without gross and wanton negligence.

*Pfeiffer v. State Farm Mutual Automobile Insurance Co., et al.*, Del. Super., C.A. No. N10C-12-006 JRS, December 20, 2011.

The Superior Court affirmed the decision of the Court of Common Pleas granting defendants' motions for summary judgment. This was a case of mistaken identity. After obtaining a default judgment against plaintiff, defendants pursued a suspension of her license. Defendants later discovered they had suspended the incorrect individual's license and immediately took steps to remedy the situation. Plaintiffs filed suit in the Court of Common Pleas alleging defendants

committed abuse of process and malicious prosecution when they mistakenly suspended plaintiff's license in an attempt to recover a judgment. The Court agreed with the lower court's finding that the facts did not support plaintiffs' claims, as there was no evidence that the defendants acted with the required malice, improper motive or wanton disregard for the rights of plaintiffs.