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CASELAW UPDATE

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Christiana Care Health Services v. Palomino; Timber Products v. Avila-Hernandez;
Berger Brothers v. Munoz, Del. Supr. Nos. 56, 2012; 62, 2012; 63, 2012 (Consolidated) (April 11, 2013).

Delaware Workers' Compensation Administrative Regulation establishing a 45-day appeal time period for Utilization Review Determinations is invalid, the 5-year statute of limitations applies.

The named claimants each suffered compensable injuries. Each claimant received medical treatment that was submitted to Utilization Review by the respective carriers. The Utilization Review determinations all concluded that at least some of the treatment at issue did not comply with the Healthcare Practice Guidelines. Each of the claimants attempted to appeal the Utilization Review determinations after the expiration of the 45-day time limit imposed by Department of Labor Administrative Regulation 5.1.1. In each instance the Board held that the 45-day time limit controlled and dismissed the claimants' appeals.

The claimants appealed their respective cases to the Superior Court, wherein their appeals were consolidated. The Superior Court determined that the administrative regulation establishing the 45-day time limit for the appeal of a Utilization Review determination was invalid. The Court found that the workers' compensation statute (19 Del. C. §2361) expressly and exclusively governed the limitations for claims under the workers' compensation system. The Court ruled that an administrative regulation could not abbreviate a statutory time period.

The Superior Court's decision was appealed and affirmed by the Delaware Supreme Court. The Supreme Court (in a 3-2 ruling) held that the time limitation expressed in §2361 was unambiguous and could not be shortened by an administrative regulation. The Court noted that the workers' compensation amendments (establishing Utilization Review) did not prescribe any time-limitation for Board review of a Utilization Review determination. Accordingly, the Court concluded that the administrative regulation, establishing the 45-day time limitation, circumscribed the rights of claimants by precluding a claim for medical treatment after the expiration of the 45-day time limitation, as opposed to the 5-year statutory limitation prescribed in §2361.

Consequently, the **45-day time limit to appeal a Utilization Review determination is invalid**, the five-year limitation of §2361 governs.

Spellman v. Christiana Care Health Services, Del. Supr. No. 315, 2012 (April 8, 2013).

The Delaware Supreme Court holds that a motor vehicle accident, occurring after an employee had “clocked-out” from work, was not within the scope of the Claimant’s employment; further, the Court reevaluates the “going and coming rule” and its purpose in a proper course and scope analysis.

Claimant was a visiting home health aide. In this capacity she performed her employment duties in the homes of the patients. She traveled in her personal automobile from patient to patient. Claimant was paid for travel expenses, but not from her home to her first patient, nor from her last patient to her home. On the day of the accident, Claimant had “blocked off” time on her schedule in order to accommodate a personal doctor’s appointment. Thus, after leaving a patient’s home, she “clocked out” and was not en route to another patient’s home when she was involved in a car accident.

The Board denied Claimant’s Petition to Determine Compensation Due, finding that Claimant’s injuries were not sustained during the course and scope of her employment. The Board relied upon the well-recognized “going and coming rule” and held that the facts of Claimant’s case did not fit within any exception to that rule. (The going and coming rule excludes from the workers’ compensation system any injuries sustained while the employee is going to or coming from their place of employment). The Superior Court affirmed the Board.

Appeal was taken to the Supreme Court. The Court affirmed the Board’s denial of compensability. However, the Court offered guidance as to the application of the “going and coming rule” and its multitudinous exceptions. The Court explained that the rule, and its exceptions, is not a steadfast rule of statutory law, but rather an analytical tool to evaluate whether an injury was within the course and scope of employment. Thus, although the Board and the Superior Court were correct in holding that there was not an exception to the going and coming rule applicable to the instant facts, such an analysis was not critical to the determination. The Court explained that rather than utilizing a rote checklist with respect to the rule and its exceptions, a broader focus on the nature of the employment relationship and the facts of the alleged injury would be sufficient to resolve the course and scope inquiry. In the instant case the Court noted that it was abundantly clear that Claimant’s employment agreement did not encompass her travel to a personal doctor’s appointment and therefore, the injury was not within the course and scope of her employment with Christiana Care Health Services.

Michael Walters v. State Farm Mut. Auto. Ins. Co., N12C-01-019 JRJ (Del. Super. May 1, 2013)

Delaware Superior Court holds that evidence of Plaintiff’s misrepresentations on a lost wage claim is inadmissible as prejudicial in a UIM claim where the lost wages had been withdrawn from contention in the suit.

Plaintiff in a UIM claim filed a motion in limine to exclude evidence of taxes and tax returns from the jury under Delaware Rules of Evidence (D.R.E. 404 and 403). Following the motor vehicle accident Plaintiff filed a PIP claim with his insurer, State Farm, seeking lost wages

with a verification from his Pipefitters union that they had 100% job placement and that the standard rate of pay was \$31.86/hour and full benefits were \$69.13/hour. As a part of his PIP claim, Plaintiff received \$63,000.00 in lost wages. Plaintiff then filed a UIM claim against his insurer, State Farm, seeking personal injuries and lost wages in the amount of \$94,016.80.

In discovery on the UIM claim, Plaintiff produced tax returns dated from 2009 and 2010 dated the same day as his discovery responses. Those returns showed wages of \$23,350.00 (2009) and \$12,067.00 (2010). When questioned at a deposition Plaintiff acknowledged that the returns had not been filed, and he signed them because the Defendant had requested the returns. Plaintiff indicated he just had not gotten around to filing returns since 2007. Additionally Plaintiff acknowledged that he was not working for several months prior to the accident.

Plaintiff withdrew his lost wage claim and moved to exclude all evidence of the tax returns and wage information. The Court granted Plaintiff's motion to exclude the taxes because, having withdrawn the lost wage claim, there was no fact in issue for which the taxes would be relevant. The Court found that the information would be unduly prejudicial, even though it was probative of the Plaintiff's credibility as to his pain and suffering.

Bernal v. Feliciano, N12C-09-062 MJB (Del. Super. May 1, 2013)

Delaware Superior Court upholds a general release as validly barring personal injury suit when executed by the Plaintiff pre-suit in settlement with Defendant's insurer.

The Plaintiff filed a suit for personal injuries resulting from a motor vehicle accident with Defendant. Following the accident, the Plaintiff (Spanish-speaking) and Plaintiff's daughter (bilingual) negotiated a settlement amount of \$410.00 with Defendant's insurer, Erie Insurance. The Erie adjuster corresponded with Plaintiff's daughter regarding the amount of her lost wages and was faxed documents from Erie, including a general release, with a wage verification sheet.

The Plaintiff executed the general release and received the negotiated settlement amount that was marked as "Full Settlement All Claims-Reimbursement Lost Wages." Plaintiff then filed suit against Defendants, to which a motion to dismiss was filed based on the general release. The Plaintiff argued that the release was executed with misrepresentations that it was only for lost wages. Defendant denied any misrepresentation and relied on the language of the general release.

The Court held that a general release is enforceable where it is clear and unambiguous. The release could not be set aside based on a failure to read the release before signing. Case law supported that despite a plaintiff speaking Spanish, an English language document was not invalidated absent fraud or duress. A Plaintiff is charged with informing herself of the document that is signed. Plaintiff was not permitted to rely on statements of a defendant's agent.