## I. INTRODUCTION

The purpose of this outline is to present an overview of the Workers' Compensation Act in New Jersey as set forth under N.J.S.A. 34:15-1 through 128. This is not meant to be a complete compilation of all of the various aspects of New Jersey workers' compensation law. The intent of this outline is to present a review of the most common aspects of the compensation statute. It is not designed to be, nor should it be considered, an in-depth analysis of the entire Act. The law is often subject to change through both court decisions and the legislature. Decisions affecting a claim should only be made after consultation with counsel.

The legislative intent has been to allow employees who have sustained injuries in the course of their employment to recover reasonable compensation while recovering from those injuries. To accomplish this purpose, the courts have interpreted the law liberally so as not to leave an employee or his family without benefits during his period of recuperation. Numerous decisions from the New Jersey Supreme Court and Appellate Division have defined the Compensation Act as "remedial social legislation" and have indicated compensation judges apply the statute to further that purpose.

Workers' compensation is a "no fault" system. As a result, an injured worker is entitled to benefits under the Act regardless of his own negligence or that of a co-employee. If the employee's injuries were intentionally self-inflicted, that may deny him benefits. In exchange for the right to collect benefits, regardless of fault, the employee waives his right to common law damages, except in limited circumstances, against the employer beyond the parameters of the Workers' Compensation Act.

In place of common law tort damages, the employee is entitled to three categories of benefits:

1. wage replacement benefits paid during periods of temporary total disability;
2. medical benefits as authorized by the employer; and
3. benefits for permanent disability, whether partial or total in nature.

**A. Compulsory Insurance**:

The Workers' Compensation Act applies to virtually all employees, including public employees of state, county, and local governing bodies, volunteer firefighters, first aid and rescue squad workers, as well as members of Boards of Education. (34:15-43). Employees may also include sole proprietors, partners in a partnership and/or sole shareholders in a limited liability corporation. This is only to the extent, however, these individuals have elected coverage through a standard compensation insurance policy.

Where a contractor has placed work with a subcontractor, the general contractor becomes liable for compensation benefits due an employee of the subcontractor in the event the subcontractor fails to carry workers' compensation insurance as required by the statute. The general contractor then has a right to file a civil action for reimbursement. (34:15-79). If the general contractor is required to pay benefits in this situation, he still may face civil liability from the employee or other parties.

Every contract of hire is presumed to have been made subject to the provisions of the law unless the employer and the employee have agreed, by express written contract prior to the occurrence of any accident, that the provisions of the law are not intended to apply. In the absence of any such contract, any employer who fails to provide the protections prescribed in the law is guilty of a crime of a second, third or fourth degree crime and subject to a fine up to

$5,000.00. When the period of non-coverage exceeds 20 days, an additional fine of up to $5,000.00 may be assessed for each additional 10-day period. (34:15-79).

If the parties expressly agree by written contract the Workers' Compensation Act and its provisions shall not bind the parties, then the injured employee may elect to pursue a civil action against the employer. (34:15-9); Brooks v. Dee Realty Co., 72 N.J.Super. 499, 178 A.2d 644 (App. Div. 1962).

**B. Jurisdiction**:

In determining whether the New Jersey workers' compensation statute is to apply, the courts have weighed three factors in determining whether sufficient contact exists to establish jurisdiction:

1. the situs of the formation of the contract of hiring;
2. the situs of the accident giving rise to the injury; and
3. the situs of the employment relationship.

A recent unreported Appellate Division case has held New Jersey residency alone is not enough to establish jurisdiction. This issue, however, has not yet been conclusively decided by our Courts in a reported case. Recently the Supreme Court issued a three-tier analysis in regard to deciding jurisdiction for an occupational disease claim. In order to invoke the jurisdiction of the New Jersey Division of Workers' Compensation in an occupational disease case, the petitioner must demonstrate: (1) there was a period of work exposure in New Jersey that was not insubstantial under the totality of circumstances and given the nature of the injuries; (2) the period of exposure was not substantial, but the materials were highly toxic; or (3) the disease for which compensation is sought was obvious or disclosed by medical examinations with work in capacity or manifest loss of physical function while working in New Jersey. Williams v. Port

Authority of New York and New Jersey, 175 N.J. 82 (2003).

**C. Insurance Carrier Reporting and Form Requirements:**

The workers' compensation statute requires that every employer carrying insurance must report, in accordance with the terms of its policy, the happening of any accident or the occurrence of any compensable occupational disease.

In July 2003, the Division of Workers' Compensation began requiring a "First Notice of Accident" report be prepared by the carrier and then electronically forwarded to the Division. A supplemental report is to be prepared and sent electronically to the Division after expiration of the seven-day waiting period. If the employee returns to work before the expiration of the seven-day waiting period, the report is to be sent upon his return. You may consult the Division's website for information on how to sign up for electronic reporting at http://lwd.dol.state.nj.us/labor/wc/wc_index.html.

The Division of Workers' Compensation also requires a Benefit Status Letter to be sent to petitioner in a workers' compensation case for both medical only and indemnity claims.

Please note, attached to this booklet are the following forms:

1. Workers' Compensation - First Report of Injury or Illness
2. Workers' Compensation - Subsequent Report
3. Instructions for use with the New Jersey Benefit Status Letter
4. New Jersey Benefits Status Letter - Medical Only
5. New Jersey Benefits Status Letter - Indemnity
6. Instructions and form for Employer Contact Person for medical and temporary disability issues.

Please note that this is not necessarily all of the forms that are required to be filed and, in

addition, certain forms are required to be filed electronically as noted above. Also, some of the forms attached appear on the Division website as interactive forms and can be completed online. Once again you are encouraged to visit the Division website as set forth above.

In addition, recently the legislature passed a requirement that every insurance carrier or self-insured employer set forth a "contact person" with the Division. The law requires that the carrier or self-insured employer, "shall designate a contact person who is responsible for responding to issues concerning medical and temporary disability benefits where no Claim Petition has been filed or a Claim Petition has not been answered." The law requires, "the full name, telephone number, address, e-mail address and fax number of the contact person" to be submitted to the Division utilizing a contact person form available on the Division's website as set forth above. Failure to comply with a requirement of that designated contact person can result in a $2,500 per day fine payable to the Second Injury Fund.

## II. DEFINITIONS

Basic definitions, as set forth in N.J.S.A. 34:15-36, are:

**Employer**:

Is synonymous with "master" and includes individuals, partnerships, and corporations.

**Employee**:

Is synonymous with "servant" and includes all persons, including officers of corporations, who perform services for another for financial consideration. Specifically excluded are employees eligible for benefits under the federal "Longshore and Harbors Workers' Compensation Act" and casual employment.

**Casual Employment**:

Casual employment can exist in two situations. First, if in connection with the

employer's business, the employment or work activity arises by chance or is purely accidental. Second, if not in connection with any business of the employer, the employment is not regular, periodic, or recurring. As indicated above, casual employees are not entitled to workers' compensation benefits.

**Permanent Partial Disability**:

A medical impairment caused by an accident or occupational disease which is based upon demonstrable objective medical evidence and whether there has been appreciable impairment of petitioner's working ability or in the ability to engage in "ordinary pursuits of life." Injuries such as minor lacerations, contusions, sprains, and scars which do not constitute significant permanent disfigurement, and occupational diseases such as mild dermatitis and bronchitis, shall not constitute permanent disability. *See Also* Perez v. Pantasote, Inc., 95 N.J. 105, 469 A.2d 22 (1984).

**Wilful Negligence**:

1. a deliberate act or deliberate failure to act;
2. such conduct as evidences reckless indifference to safety;
3. intoxication, operating as a proximate cause of the injury; or
4. unlawful use of a controlled dangerous substance.

**Caveat**: Intoxication can only be used as a defense if the employee's injuries or death flowed solely from that intoxication.

## III. COVERAGE

In order to establish a compensable claim, the claimant must prove the following:

1. an employment relationship;

2. an accident which arose out of and in the course of the employment; and

3. causal relationship of an injury to the accident.

**A. Employment Relationship**:

Control over the employee is the primary consideration in determining whether an employer/employee relationship exists.

Independent contractors are not considered employees under New Jersey law. The Courts, however, have strictly construed the meaning of an independent contractor in order to best serve the purposes of the Workers' Compensation Act to bring as many workers as possible under its umbrella of coverage. The Courts have established two tests to determine whether a particular individual is working as an employee or an independent contractor.

The first is known as the "traditional control test" in which the Court looks at whether the employer retains the right to control the means and methods by which an employee performs his work. A prerequisite to the existence of an employment status is there be financial consideration flowing between the employer and employee. Services rendered gratuitously do not constitute employment. Does the employer have the right to control the method and means of doing the act for which the employee was hired? The relationship is established where the employer has the right to hire, remove, and/or fire the employee, and to direct what work shall be done and the means and methods by which it shall be done. A true independent contractor is only responsible for the result of it's labors, and the person with whom he contracts has no control over the means and methods of how those results are reached. Some important factors of the traditional control test are the right of termination, method of payment and furnishing of equipment. Because of the liberal nature of the Act, a positive finding of any one of these factors may be indicative of an employee relationship.

Because the New Jersey Supreme Court was concerned a number of employers were trying to specifically contract around the traditional control test, the Court developed a more modern "relative nature of the work test." This does not replace the traditional control test, but is added to it as an additional hurdle to overcome before a particular worker will be considered an independent contractor. Under the relative nature of the work test, the Court will look to whether the worker is economically dependent upon the business he serves and if his work constitutes an intrical part of the regular and continuing functioning of that business. In essence, even though an individual may be called an independent contractor and is paid as such, if he is economically dependent upon the business he is providing services to and the work is an intrical part of the business of the individual or entity, he will be considered an employee. Some circumstances can be overlapping between and independent contractor and a "casual employee." A casual employee is also not considered an employee for workers' compensation purposes. The definition of what constitutes a casual employee can be found under the "Definitions" section on Page 4 of this book.

**B. Arise Out Of and During the Course of Employment**:

For an injury to be covered by the Workers' Compensation Act, it must arise out of and in the course of the worker's employment. In reviewing whether the injury arises out of the employment, it must be established the work was at least a contributing cause of the injury and the risk of the occurrence was reasonably incidental to the employment.

In assessing whether an accident arose out of the course of the employment, three categories of risk are identified. First are those that are "distinctly associated" with the employment and are easy to identify. An example would be a carpenter lacerating his hand while using a saw. The second category of risk are those cases described as "neutral." These are

uncontrollable circumstances which do not originate in the employment environment, but happen to befall the employee during the course of his employment. An example of this would be an individual who is struck by lightning while on the premises of the employment. In evaluating a neutral risk the courts utilize a "but for" test. This asks, but for the petitioner being at the place of the employment, would the accident have occurred. In the previous example, but for the individual being at the employment, he would not have been struck by lightning. Thus, neutral risks are considered compensable. The third category of risk are those cases which are purely personal to the employee. Under New Jersey law, these risks are not considered compensable. An example would be an individual who suffers an epileptic seizure while at his desk working. A personal risk may also be termed an "idiopathic" incident. An epileptic suffering a seizure is a personal risk to the petitioner and has no relationship to the employment, therefore, the effects of the seizure would not be compensable. If an individual, while suffering from an idiopathic event, suffers associated injuries, those injuries may be compensable. An example would be an individual working at his desk who has an epileptic seizure and falls off the back of his chair injuring his neck. Although the employer would not be responsible for the effects of the seizure, there is responsibility for the injuries associated with the neck due to the fall from the chair. *See* George v. Great Eastern Food, 44 N.J. 44 (1965).

Over the years, there have been many cases which define when an individual is in the course of employment. This particular issue is still widely litigated in New Jersey depending upon the facts presented. Generally, the law recognizes the "premises" rule. Under this rule, employment commences when the employee arrives at the employer's place of employment and excludes accidental injuries that occur beyond the premises. The premises of the employer is defined as areas in which the employer extends control. The concept of control, however, does

not relate solely to that associated with property law or contractual exclusive control or duties of maintenance. Rather, recent cases have concluded mere use by the employer of an area in the conduct of its business is sufficient to establish control.

Another term often associated with whether an accident arises out of the course of employment is the "going and coming" rule. This stands for the proposition that injuries sustained between home and the employer's premises are not compensable. Exceptions to this rule, however, do exist for employees sent on "special missions" by their employers. That is when the employee is required to be away from the conventional place of employment and is engaged in the direct performance of the employment duties. An example of this would be an individual who works at a particular location for the employer, but is sent by his superiors to a distant location for delivery. If an accident occurs during the direct performance of those duties, it will be considered compensable even though not contained within the premises of the employer.

Another exception to the going and coming rule is for travel time which may allow for door-to-door coverage for employees. Factors considered are whether the individual was paid for travel time to and from a distant job or if the employee was using an employer-authorized vehicle while on business for the employer.

As indicated above, there are numerous exceptions and clarifications concerning what constitutes the "premises" of the employer and "special missions." Any case involving injuries which do not occur on what would be considered the normal premises of the employer should be carefully considered and factually investigated before a reasonable decision can be made on compensability.

**C. Injury**:

1. Traumatic Events:

In New Jersey, an employer takes their employees as they come to them with all ailments and infirmities. As a result, benefits are payable in all cases regardless of the employee's previous physical condition as long as the injury occurs in the course of, and arises out of, the employment. Thus, compensable injuries include aggravations, exacerbations, and accelerations of pre-existing conditions, occupational diseases, and infections.

An important provision of the law gives a credit to the employer in situations where an aggravation, exacerbation, or acceleration of a pre-existing condition is claimed. The law provides that where previous loss of function has been diagnosed, manifested, and a degree of functional impairment can be determined, the employer will be entitled to a credit for that portion of the present award. The credit is at the rates applicable for the present injury, even if the pre-existing injury manifested years prior. *See* N.J.S.A. 34:15-12(d) and case of Abdullah v. S.B. Thomas, Inc., 190 NJ Super. 26 (App. Div. 1983).

Psychological disorders can be considered compensable when there is a credible diagnosis which causally relates the psychiatric impairment flowed from the compensable injury.

2. Occupational Diseases:

Compensable occupational diseases include all diseases arising out of and in the course of employment which are due in a material degree to conditions peculiar to the employment. This does not include deterioration of the body due to natural aging. In Fiore v. Consolidated Freightways, 140 NJ 452 (1995), the State Supreme Court reiterated the importance that compensation for occupational diseases only be awarded when objective, reliable, and scientific evidence has been provided to satisfy the "material degree" standard. Recently, however, the

Supreme Court held when the Division of Workers' Compensation and Appellate Court are called upon to decide if an occupational disease is causally related to a particular employment, they should utilize the original bargain rationale for workers' compensation and ergonomics to assist in their determination. In other words, the broad language in the occupational disease provisions of the Act represent a conscientious endeavor to maintain a liberally just line between occupational diseases which may have a work connection and those which may be unrelated to the employment. In essence, the Supreme Court advised that Trial Judges cannot be constrained to strict requirements of proven medical science to find a causal relationship between disease and work exposure. *See* Lindquist v. The City of Jersey City Fire Department, 175 N.J. 244 (2003).

If the petitioner can prove aggravation superimposed upon a previously undiagnosed condition, then the employer is responsible for the entire extent of the petitioner's present disability. The employer may receive an Abdullah credit if prior functional loss can be established.

3. Cardiovascular Injuries:

A claim for compensation for injury or death caused by a cardiovascular or cerebral vascular event or disease requires proof by a preponderance of the evidence that:

a. the injury was produced by the work effort or strain;

b. the condition, event, or happening was in excess of the wear and tear of the claimant's daily living; and

c. the condition, event, or happening, in all reasonable medical probability,

caused in a material degree the cardiovascular or cerebral injury or death.

While the requirement of "material degree" is not explained in any detail as it applies to occupational disease, 34:15-8 states that material degree, as used in connection with heart claims, means an appreciable degree or a degree substantially greater than *de minimus*.

In evaluating the heart attack case in order to determine causation, consideration should be given to the work effort or strain which is alleged to be the precipitating factor of the cardiovascular event, the time period between work efforts, the first physiological sign of problems, and petitioner's daily life activities.

4. Hearing Loss:

Compensable occupational hearing loss is a permanent bilateral loss of the sensorineural type due to prolonged, habitual exposure to hazardous noise in the work place.

N.J.S.A. 34:15-35.11 sets forth the following definitions:

Sensorineural hearing loss is due to damage to the inner ear which can result from numerous causes. Employment related hearing loss is distinguished from conductive hearing loss which results from disease or injury involving the middle or outer ear and is not caused by prolonged exposure to noise.

Prolonged exposure is exposure to a hazardous noise in employment for at least one year.

Habitual exposure is exposure to noise in excess of the permissible daily dosage as set forth in the statute for at least three days each week and for at least 40 weeks each year.

Hazardous noise is noise which exceeds the allowable daily exposure as set forth in subsection (e) of 34:15-35.11.

On the assumption that most occupational hearing loss occurs to both ears, the statute identifies only permanent bilateral loss of hearing as compensable. Hence, there can be no

recovery for a loss of hearing in only one ear.

Before a claimant is entitled to an award, the petitioner must prove by convincing objective medical evidence that he has satisfied the statutory requirement. One of those requirements is that he prove he has sustained a hearing loss in both ears after one deducts the 90dB (low fence) from the approved formula.

The formula, as set forth in 35:15-35.12 follows:

For each ear:

a. add hearing thresholds for 1,000, 2,000, and 3,000 Hertz;

b. divide by three.

Binaural calculation:

a. subtract 30dB from the average in each ear;

b. multiply each ear by 1.5;

c. multiply the % (smaller) of the better ear by 5;

d. add the % of the weaker ear;

e. divide by 6.

If the better ear has a hearing loss of 30dB or less, there is no compensable occupational binaural hearing loss. These calculations do not apply to traumatically induced hearing loss.

As with other occupational claims, the employer is not responsible for prior hearing loss, whether occupational or non-occupational in origin, and can receive credit for any pre-existing loss of hearing as long as that pre-existing hearing loss had been earlier diagnosed and assessed

as to the degree of functional impairment.

The statute supplies a defense for the employer in hearing loss claims "if it can be properly documented that despite repeated warnings, an employee wilfully fails to properly and effectively utilize suitable protective devices provided by the employer capable of diminishing loss of hearing due to occupational exposure to hazardous noise." (34:15-35.22).

5. Hernia:

Before an employee can receive benefits flowing from a traumatic hernia, he must first prove he gave notice to his employer within 48 hours of when he knew or should have known he suffered the same. Saturdays, Sundays, and holidays, if not normally worked days, are to be excluded from that 48 hours.

## IV. STATUTORY DEFENSES AND EXCEPTIONS TO COVERAGE

Both statute and case law have identified certain employment situations which would deny an injured employee benefits. It should be noted, however, any law which takes a worker outside of the coverage of the Act will be read narrowly and receive strict interpretation. The Act, as indicated previously, is designed to bring as many employees under its umbrella of coverage as possible and is interpreted liberally toward that goal.

### A. Self-Inflicted Injuries:

Where injury or death are intentionally self-inflicted by a worker, there can be no recovery of worker's compensation benefits. The burden of proving the injury was intentionally self-inflicted is upon the employer.

In death by suicide, however, where it may be shown the acts of the employee was the

result of becoming dominated by a disturbance of the mind directly caused by a work-related injury or consequence which overrides the petitioner's normal rational judgment, compensation will be allowed. *See* Kahle v. Polochman, Inc., 85 N.J. 359, 428 A.2d 913 (1981).

As indicated previously, worker's compensation is a "no fault" system. As a result, petitioner's acts of negligence or failure to work in a manner pursuant to the orders or rules of the employer will not lead to a denial of compensation, unless the deviation is so severe as to take him outside the sphere of his employment.

**B. Failure to Wear Protective Devices**:

Wilful failure to wear protective devices may avoid compensation. Five requirements are set forth in 34:15-7 for traumatic injuries and 34:15-30 for occupational claims which must be met before the employer can raise the defense the employee failed to use a protective device. They are:

1. the protective device must be a requirement of the employment;
2. the use of the protective device must be uniformly enforced;
3. the employer must document that repeated warnings have been given;
4. the employee has not utilized the protective device; and
5. the failure to use the device was the proximate cause of the accident or death.

**C. Social and Recreational Activities**:

Injuries sustained by an employee during his participation in recreational or social

activities will bar the employee from receiving compensation benefits unless those activities are a regular incident of employment and produce a benefit to the employer beyond improvement in employee health and morale. (34:15-7).

**D. Notice**:

Unless the employer has actual knowledge of the occurrence of an injury, or unless the employee or someone on his behalf gives notice to the employer within fourteen (14) days of the occurrence of the injury, no compensation is due until notice is given or knowledge is obtained. If notice is given or knowledge is obtained within thirty (30) days from the occurrence of the injury, no failure to notify or inadequacy of notice will bar compensation unless the employer can show prejudice. If notice is given or the employer receives knowledge of the incident within ninety (90) days of the injury and if the worker is able to show his failure to give prior notice was due to mistake, inadvertence, ignorance of law or fact, or due to fraud, misrepresentation, or deceit of another person, or to any other reasonable cause or excuse, then compensation will be allowed unless the employer is able to show he was prejudiced by lack of notice. If the employer gains no knowledge or notice of an accident within ninety (90) days after its occurrence, no compensation benefits will be forthcoming.

As the Act is considered by the courts as remedial social legislature, numerous cases have liberalized the notice requirement. The employer's mere knowledge that a petitioner is injured, regardless of the relationship to the employment, may suffice. Although notice should be considered in defending a claim, as the defense is difficult to utilize, denying a claim solely on that basis should be done with caution.

Notice is not required in occupational disease cases. The statute was amended in January

of 2004 to remove this defense.

**E. Statute of Limitations**:

In the case of injury or death from an accident, all claims for compensation will be barred unless a claim petition is filed within two years from the date of the accident or petitioner's last receipt of benefits, whichever is later. When utilizing receipt of medical benefits, it is the date the treatment is provided, and not when the carrier processes payment of the bill. Recently, however, the Supreme Court expanded, in limited circumstances, the statute of limitations in accident claims. The Court found that in certain limited circumstances when an individual is unaware of the fact he may have suffered injury as a result of an accident, the statute of limitations would not run until that individual became aware of the injury. This was applied in a case involving post-traumatic stress syndrome with delayed onset wherein the individual did not realize she had suffered a traumatic psychiatric injury until many years after the incident occurred. *See* Brunell v. Wildwood Crest Police Department, 176 N.J. 225 (2003).

With claims for injuries or death due to occupational exposure, the two-year time period to file a claim begins to run from the time the claimant knew the nature of his disability and the fact it was related to his employment. Employees may also have the right to file an occupational claim within two years from the date of last exposure.

**F. Fraud:**

The New Jersey Workers' Compensation Statute has a particular provision dealing with fraud committed both by an employer and an employee. In regards to provisions against the employee, N.J.S.A. 34:15-57.4 indicates that a person is guilty of a crime in the fourth degree if that person, "purposely or knowingly":

> makes, when making a claim for benefits pursuant to R.S. 34:15-1 et seq., a false or misleading statement, representation of submission concerning any fact that is material to that claim for the purpose of wrongfully obtaining the benefits;

The Statute goes on to note:

> if a person purposely or knowingly makes, when making a claim for benefits pursuant to R.S. 34:15-1 et seq., a false or misleading statement, representation or submission concerning any fact which is material to that claim for the purpose of obtaining the benefits, the Division may order the immediate termination or denial of benefits with respect to that claim and a forfeiture of all rights of compensation or payments sought with respect to the claim.
>
> Not withstanding any other provision of law, in addition to any other remedy available under law, if that person has received benefits pursuant to R.S. 34:15-1 et seq. to which the person is not entitled, he is liable to repay that sum plus simple interest to the employer or the carrier or have the sum plus simple interest deducted from future benefits payable to that person, and the Division shall issue an order providing for the repayment or deduction.

In analyzing whether an employee has committed fraud in the collection of workers' compensation benefits, it is important to see the first provision of the Statute which indicates the person must make a, false or misleading statement, for representation or submission concerning <u>any fact that is material to that claim for the purpose of wrongfully obtaining the benefits</u>. In other words it is the burden of the employer to demonstrate that petitioner did affirmatively make a false or misleading statement concerning a fact that is material to the claim. These are all terms which need to be further defined through case law. It is also important to note in the second provision of the Statute cited above that it is not mandatory that the Division order the immediate termination or denial of benefits with respect to a claim or the forfeiture of all rights for future compensation. Rather, this is in the discretion of the Division in which the Statute

says the Judge "may order" such a consequence. Interestingly, however, the third provision of the Statute cited above seems to give the Division no choice in ordering a person who wrongfully obtains benefits to repay those benefits plus simple interest indicating that the Division "shall issue an order providing for the repayment or deduction." Thus removing the "may" option.

As noted above N.J.S.A. 34:15-57.4 also provides for criminal and civil penalties against an employer who "makes a false or misleading statement" concerning the, "misclassification of employees, or engages in a deceptive leasing practice, for the purpose of evading the full payment of benefits or premiums". The Statute also notes that the person who evades the full payment of premiums pursuant to the Statute or improperly denies benefits is liable to pay the sum due and owing plus simple interest.

## V. BENEFITS

An injured employee is entitled to three categories of benefits under the Act. In each case, the burden of proof is upon the petitioner to establish entitlement to benefits. The three categories of benefits are:

1. medical treatment;
2. temporary disability benefits; and
3. permanent disability benefits either partial of the whole person or total.

### A. Medical Benefits:

The employer is obliged to furnish an injured worker with prescription, surgical, and other medical treatment as is necessary to cure and/or restore the loss of function affecting the injured body or part thereof.

Medical benefits are usually the first benefits due a petitioner. The claimant's right to

such benefits may continue beyond final judgment when the petitioner requires ongoing medical treatment or prescribed medications. The employer is usually not responsible to offer treatment which only acts to temporarily ease a medical condition.

In New Jersey, the respondent and/or its carrier has the right to select and authorize physicians as well as to monitor and discontinue medical care without court intervention. If the employer denies a claim or discontinues care, then it loses its right to select and control medical treatment.

N.J.S.A. 34:15-15 provides that all medical fees must be reasonable and based upon the usual fees and charges which prevail in the same community for similar physicians, surgeons, and hospital services. There is no statutory fee schedule or limit for medical benefits. If hospitalization is necessary, the petitioner is entitled to a semi-private room. (34:15-15.2).

If the respondent denies payment for medical charges, the Workers' Compensation Court may order reimbursement to any third-party provider who made payments for treatment found reasonable, necessary, and causally related to a work injury. (34:15-15.1).

The providing of medical benefits to the petitioner by the carrier is not construed to be an admission of liability. (34:15-15). As a result, the law allows the employer to take control of treatment and provide benefits while investigating the compensability of the claim.

The employee must submit to, at the request of his employer, a physical examination at some reasonable time and place within the state as often as is reasonably requested. An examination or treatment may be offered by a physician outside of the state of New Jersey if the petitioner agrees. The employee is entitled to request a physician of his own selection to be present at an examination. As long as a physician is chosen in reasonable proximity to

petitioner's home, mileage reimbursement or transportation are usually not required. Employees are entitled to request that their examination be conducted by a physician of their own sex, however, this is rarely done. (34:15-68). Should an employee refuse to submit to a reasonably requested examination, the employer may suspend payment of benefits during the period of refusal. (34:15-19). If an employee refuses medical treatment offered, the employer is permitted to file a motion with the Workers' Compensation Court and obtain an order to compel the treatment. Should the petitioner still refuse the treatment, the employer may request the Court consider the refusal when awarding disability.

An employer's right to control medical treatment is a significant advantage in New Jersey law which must be given consideration in claims handling and the acceptance or denial of a claim. Petitioner is required to request medical treatment from his employer in the event of a work-related injury. If petitioner, on his own, receives medical treatment without first requesting authorization, respondent has the ability under the statute to deny payment for that treatment. If, however, the request would have been futile, *i.e.*, the employer is factually denying the accident or occupational exposure, petitioner is then free to obtain treatment with a physician of his choice. The petitioner can then request the court order payment of any bills which are proven to be reasonable, necessary, and causally related. The requirement of the petitioner to obtain prior authorization of treatment is waived in emergent situations, however, a request must be made as soon as feasibly possible.

**B. Temporary Disability Benefits**:

Temporary disability benefits are paid to the injured worker for the period of time he is unable to work and under active medical treatment for work-connected injuries. The period of

temporary disability benefits has been defined as being provided until the employee is able to return to work or the injured condition is as far restored as a permanent character of the same will permit. This later element is sometimes referred to as "maximum medical improvement." When an employee is not absent from work, he cannot make a claim for temporary disability benefits.

An employer is able to discontinue temporary disability benefits if the injured employee is cleared for light-duty work and an offer for such work is made by the employer. If the employer is not able to meet the restrictions of the physician, then temporary disability benefits must continue. On the other hand, if the employee refuses to accept a light-duty position within the restrictions of the treating physician, temporary disability benefits can be discontinued.

Temporary disability benefits are paid according to the wage calculation noted in Section "H" of this outline. No compensation other than medical shall accrue or be payable to an employee until he has been disabled for seven days. The waiting period, however, is waived for authorized volunteer fire, rescue, and police personnel. Once the employee is unable to continue at work by reason of his accident beyond seven days, a payment of temporary disability is made back to the accident date. Temporary disability benefits are not payable for more than 400 weeks.

1. Penalty for Delay:

If an employer or carrier has actual knowledge of the occurrence of an injury, or has received notice that temporary disability benefits are due, and unreasonably or negligently delays or refuses to pay temporary disability benefits or unreasonably or negligently delays a denial of a

claim, it becomes liable to the petitioner for an additional 25 percent of benefits due, plus any reasonable legal fees incurred by the petitioner as a result of the delay or denial. A delay of thirty

(30) days or more gives rise to a rebuttable presumption or unreasonable and negligent conduct on the part of the employer or carrier. (34:15-28.1).

2. Motions for Medical and Temporary Disability Benefits

If a petitioner alleges he/she is not receiving adequate medical and/or temporary disability benefits they may file a Motion for Medical and Temporary Disability Benefits. Particular attention should be paid when such a Motion is received as there is a limited window of opportunity to answer these Motions. Recently the Division promulgated new Administrative Code provisions regarding legislation for Motion for Emergent Medical Care. When a Notice of Motion for Emergent Medical Care is appropriately filed pursuant to the Administrative Code and supported by adequate documentation, service on the insurance carrier is required by fax and/or one day delivery to the contact person filed with the Division. An Answer to this Motion for Emergent Medical Care must be filed with, "the district office no later than 5 calendar days after the date of service". As a result, upon receipt of a Motion for Emergent Medical Care, this must be immediately sent to counsel as there is only a 5 calendar day window upon which response can be made. Also a medical examination must be conducted, "within 15 calendar days of the date of service". This is difficult in regards to obtaining an independent medical evaluation. Motions for Emergent Medical Care, however, do have strict requirements different then ordinary Motion for Medical and Temporary Disability Benefits. The Motions must be supported by a statement from a physician that petitioner's need for Emergent Medical Care is

such, “that the dely in treatment will result in irreparable harm or damage to the petitioner and the specific nature of the irreparable harm or damage”.

Ordinary Motions for Medical and Temporary Disability Benefits are governed by Administrative Code provision 12:35-3.2. An ordinary Motion for Medical and Temporary Disability Benefits also must be given immediate attention although the answering period is longer. The employer must file an Answer within 21 days of service of the Motion or within 30 days after the service of the Claim Petition whichever time period is later. If respondent wishes to obtain a medical examination this must be completed within 30 days of receipt of the Motion and a report issued not more than 35 days from receipt of the Motion.

It is important to note that both in regular Motions and Emergent Motions for Medical and Temporary Disability Benefits a properly filed Motion, “may constitute a prima facie case and may be sufficient basis for the issuance of an Order compelling the respondent to provide the relief sought unless respondent files supporting affidavits or certifications to oppose said Motion on a legal or factual basis, or files medical reports if there is a medical basis to oppose said Motion”. If the respondent fails to answer the Motion timely, as noted above, they do face an order from the Court granting the relief sought by petitioner on the papers without a plenary hearing.

**C. Permanent Partial Disability Benefits**:

Permanent disability requires the showing of a medical impairment caused by an accident or occupational disease which is based upon demonstrable objective medical evidence and an appreciable impairment of petitioner’s working ability or ability to carry on the “ordinary pursuits of life.” Injuries such as minor lacerations, contusions, sprains, and scars which do not

constitute significant permanent disfigurement, and occupational diseases, such as mild dermatitis and bronchitis, do not normally constitute permanent disability. *See* Perez v. Pantasote, Inc., 95 N.J. 105, 469 A.2d 22 (1984).

N.J.S.A. 34:15-12 sets forth a schedule wherein the body and some of its members are evaluated and compensated based on a percentage of the state average weekly wage for the year of the accident. When an employee sustains an injury which results in a permanent partial impairment, the employee obtains benefits as per the schedule. The money value of injuries increases with the percentage of impairment associated with the injury. (See permanent disability charts provided separately). The value of the permanent disability may also be affected by petitioner's maximum entitlement based on his wage. For wage and rate calculations for permanent disability, see section "H" of this outline.

If an employee sustains numerous injuries flowing from a single compensable event, the weekly value of each permanently disabled body part is totaled and "stacked." If the employee sustains injuries from different accidents, those disabilities represent separate awards and will not be stacked unless the same body part has been reinjured.

A total loss of vision in an eye entitles a worker to 200 weeks of compensation, and for the enucleation of an eye, 25 additional weeks of compensation are paid.

When an injury has resulted in an amputation, an additional amount of 30 percent of the award is added to compute the total award. This additional award is not subject to an attorney's fee and does not apply to the loss of a finger or toe.

**D. Permanent Total Disability Benefits**:

Disability permanent in quality and total in character means a physical or

neuropsychiatric total permanent impairment caused by a compensable accident or occupational disease where no fundamental or marked improvement in such condition can be reasonably expected.

Factors such as educational or cultural background, advanced age, prior physical condition, mentality, or language ability are not taken into account unless the underlying physical or mental disability renders the person at least 75 percent disabled. (Odd Lot Doctrine: 34:15-36).

The loss of both hands, both arms, both feet, both legs, or both eyes, or any two thereof, as a result of any one accident, constitutes total and permanent disability and compensation is paid at the rate of 70 percent of the worker's average weekly wages. This compensation is paid for a period of 450 weeks after which time payments may be terminated unless the employee submits to physical re-examination or education rehabilitation.

If the worker cannot be rehabilitated to re-enter the work force, compensation benefits continue beyond the 450-week period. If he returns to work, then at the end of the 450 weeks, his benefits are reduced by whatever wages or earnings he is receiving, and if these wages or earnings are equal or exceed his wages at the time of the accident, then his benefit is reduced to $5.00 per week. (34:15-12b).

New Jersey is one of the few states which recognizes a reverse offset for payment of Social Security disability benefits. As a result, before any payment of permanent total disability is considered, it should be determined if the petitioner is receiving Social Security disability benefits. In that case, the employee's 80 percent average current earnings (ACE) and initial

entitlement to benefits must be obtained from the Social Security Administration. Mathematically, the petitioner cannot receive more than the 80 percent ACE when combining the receipt of his initial entitlement to monthly benefits, plus any auxiliaries, and worker's compensation. In the event these two amounts exceed the 80 percent ACE, the employer is entitled to an offset. It should be noted that at age 62, Social Security disability is changed to retirement benefits and the employer's offset, if any, is terminated.

**E. 26 Week Rule**:

Permanent disability, total or partial, is not to be determined or awarded until 26 weeks after the date of the worker's final active medical treatment or 26 weeks from the date of his return to work, whichever is earlier. If no time is lost from work or medical treatment rendered, then permanent disability may not be awarded until 26 weeks from the date of the accident with the exception of cases involving amputation, enucleation, or death.

An employer or his insurance carrier can make a voluntary offer toward permanent disability prior to the expiration of 26 weeks. (34:15-16). The petitioner's attorney will not be entitled to a fee for permanent disability benefits paid in good faith within 26 weeks from the employee's final active medical treatment or return to work (whichever is later). Attorney's fees are to be awarded only on that part of the final judgment in excess of the amount of compensation voluntarily paid during the 26-week period. (34:15-64).

**F. Second Injury Fund**:

If an employee is rendered permanently totally disabled as a result of a work-related injury in conjunction with pre-existing disability, he may apply to the Second Injury Fund

unless:

1. the disability resulting from the injury caused by the person's last compensable accident in itself and irrespective of any previous condition or disability constitutes total and permanent disability;
2. the disease or condition existing prior to the last compensable accident is progressive and, by reason of the progression, subsequent to the last compensable accident, the person is rendered totally disabled; or
3. a person is rendered permanently partially disabled by the last compensable injury and subsequently becomes permanently totally disabled by reason of progressive physical deterioration, regardless of a pre-existing condition or disease.

The Second Injury Fund is responsible only for the payment of permanent total disability. They do not contribute toward temporary or medical benefits. In the event the petitioner is found permanently and totally disabled with Second Injury Fund contribution, the respondent is still

responsible for providing ongoing treatment for related conditions for the life of the petitioner, even after the Second Injury Fund begins making payments for the permanent total disability.

As indicated, permanent total disability is based upon 450 weeks of benefits. If petitioner remains permanently totally disabled, under N.J.S.A. 34:15-12(b), benefits then continue for the remainder of his life. Second Injury Fund contribution will constitute some amount of the 450 weeks and then life-time benefits under 12(b), or in the event petitioner has two compensable accidents which render him totally disabled, the employer(s) will be responsible for the full 450 weeks of benefits, and the Fund will pay lifetime benefits under 12(b).

When assessing possible Second Injury Fund contribution, the disability associated with the last compensable accident is evaluated first, regardless of pre-existing disability. As a result, the Second Injury Fund has the ability to argue petitioner's last compensable accident, in and of itself, caused total disability. For example, assume a worker has an injury in 1985 resulting in an award of 20 percent of the statutory leg for an arthroscopically repaired knee. In 1995, he has a catastrophic injury resulting in severe head trauma and spinal injuries which require multiple surgeries and render the petitioner totally disabled. The Second Injury Fund may argue, successfully, that even though there is a documented pre-existing disability from the 1985 injury, it was the 1995 injury, in and of itself, which caused the permanent total disability. As a result, there would be no Fund contribution.

Because the Second Injury Fund may be responsible for not only some percentage of the first 450 weeks of benefits, but is always responsible for life-time benefits under 12(b), the potential savings for the employer is significant. For any claim where there is a potential for total disability, Second Injury Fund participation should always be investigated.

**G. Death Benefits**:

If an accident or occupational disease arises out of and in the course of employment, and that accident or occupational disease accelerates or contributes to the cause of a worker's death, benefits are paid in accordance with 34:15-13.

In a case where the death of a person is from a cause other than accident or occupational disease during the payment of permanent partial or permanent total disability, the remaining payments shall be made to the deceased person's dependents as defined by N.J.S.A. 34:15-13. If there are no dependents, the remaining amount due, but not to exceed the funeral allowance of

$3,500, shall be paid in a lump sum to the proper administrator of the petitioner's estate. If total disability is being paid in excess of 450 weeks, that stops immediately without further payment.

Benefits after the death of a worker are due only to those who qualify as "dependent" as of the date of the accident. According to 34:15-13(f), dependency is conclusively presumed for the decedent's spouse and natural children under 18 years of age who were actually a part of the decedent's household at the time of death. Children over the age of 18 years may also collect until 23 years of age if they are enrolled as full-time students. Dependents can be husband, wife, parents, step-parents, grandparents, children, step-children, grandchildren, post-humous children, illegitimate children, brothers, sisters, half brothers/sisters, nieces and nephews. No person outside of one of these categories, even if he is truly dependent on the decedent, can recover compensation.

Except for husbands, wives, parents, and step-parents, only those under 18 or over 40 years of age are entitled to benefits, and then only for that period in which they are under 18 or over 40. If, however, the dependent is physically or mentally deficient, he will be entitled to compensation for the full period of 450 weeks. (34:15-13i).

The workers' compensation statute was amended on January 14, 2004, to provide a flat rate at 70 percent of the decedent's gross weekly wage as the full dependency benefit. 70 percent is paid regardless of the number of dependents. In the event of more than one dependent, the 70 percent represents a pool divided among the individuals. In a traumatic accident claim, the weekly wage is that in effect on the date the injury occurred. In an occupational disease claim the gross weekly wage is calculated based upon the last exposure. Entitlement to

dependency benefits is also controlled by the minimum and maximum temporary disability rates in effect for the year in which the death occurred.

As indicated above, benefits are paid to children until they obtain the age of 18, or 23 if enrolled as full-time students. Benefits are paid to a widow for her entire life, unless she remarries. In the event the widow does remarry, she would receive the remaining portion of 450 weeks of benefits not paid, or 100 times the amount of weekly compensation paid immediately upon remarriage, whichever sum is lesser. Removed from the Act in 1995 was an offset for any earnings a surviving spouse may have after the initial 450-week period.

In situations where a person does not qualify as fully dependent, compensation shall be such proportion of the scheduled percentage as the amounts actually contributed to him by the deceased worker for his support. No minimum shall apply to this calculation. (34:15-13f).

**H. Compensation Rate**:

Wage computation is construed to mean the money rate at which services are compensated under the contract of hire in force at the time of the accident. Petitioner's temporary disability rate is 70 percent of the wage as computed. When the wage is fixed by the output of the employee (a piece worker), the daily wage is calculated by dividing the number of days petitioner was actually employed into the total amount of earnings during a 26-week period. When the rate of wages is fixed by the hour, for temporary disability benefits the wage is calculated by multiplying the hourly rate by the number of hours regularly worked by the employee. Many times if petitioner's wages or weekly rate is not static because the hours vary, the court will utilize an average of the weekly wage for the 26 weeks preceding the accident.

Gratuities regularly received in the course of the employment shall be included when

determining the weekly wage, however, only in those cases where the employer or employee has kept regular records of the amount of the gratuities. Again, the statute recognizes money received by way of gratuity will fluctuate and indicates a weekly average for the 26 weeks prior to the injury should be utilized. If no record of gratuities is kept, this does not prohibit the petitioner from making a claim and the statute indicates the amount should be fixed by the Judge of Compensation who is hearing the claim.

Wage computation for fixing permanent disability is different than that associated with temporary disability benefits. For permanent disability purposes, a petitioner is entitled to a daily wage multiplied by the hourly rate associated with the customary number of working hours constituting an ordinary day in the character of the work involved. In layman's terms, the petitioner may be entitled to receive what is termed "statutory reconstruction" of a part-time wage to a full-time wage.

For example, assume the petitioner is a retail clerk earning $7.00 per hour and working 20 hours per week. For temporary disability benefits, this would amount to a gross weekly wage of $140 and a temporary disability rate of 70 percent or the minimum for the calendar year of the injury. For permanent disability purposes, however, as the tasks of a retail clerk are performed by full-time workers, petitioner may argue entitlement to statutory reconstruction. This would entail a wage of $7.00 per hour times 40 hours per week, or $280 which would lead to a maximum permanent disability rate of $196 per week.

An injured employee's entitlement to statutory reconstruction is fact sensitive and should not be automatically undertaken. In addition to examining the nature of the work performed by the petitioner, investigation must be conducted to determine if the full-time earning capacity of

the employee was impaired or reduced because of the injuries. For example, if, following having reached maximum medical improvement, the petitioner returns to full-time employment, an argument may be made that statutory reconstruction is not appropriate. *See* Katsoris v. South Jersey Publishing Company, 131 N.J. 535, 622 A.2d 219 (1993).

**I. Minors**:

If an injured employee, at the time of an accident or a compensable occupational disease, is a minor under fourteen (14) years of age, employed in violation of state labor laws, or a minor between fourteen (14) and eighteen (18) years of age, employed, permitted, or suffered to work without an employment certificate or special permit, if required by law, or at an occupation prohibited at the minor's age by law, compensation indemnity benefits shall be payable to the employee or his dependents at double the amount payable under the statutory schedules. (34:15-10).

The possession of a duly issued employment certificate shall be conclusive evidence that the minor has reached the age certified to therein and no extra compensation shall be payable to any minor engaged in an employment allowed by the law for the age and sex certified in such certificate. If the employer accepts a permit which had actually been issued to another child, but due diligence exerted on behalf of the employer would not have disclosed that information, then the employer will not be liable for additional penalties.

The employer alone and not the insurance carrier shall be liable for any extra compensation due to a minor due to violation of this Act. (34:15-10).

**J. Commutation**:

Compensation benefits may be commuted by the Division of Workers' Compensation.

Either party may file a Motion to Commute (prematurely pay) an award if he can convince the court that such a commutation will be in the best interest of the employee or his dependents, or if either party can show that such requested premature payment will avoid undue expense and hardship. If the court approves the commutation, the carrier/respondent will be entitled to a 5 percent simple interest discount which is calculated by the Division.

The court will consider situations where the employee or his dependent(s) has left or is about to leave the United States. The court may also approve a commutation if an uninsured employer has sold or otherwise disposed of the greater part of his business or assets.

Without court approval, no compensation payments may be commuted. Commutation is to be allowed only when it clearly appears an unusual circumstance warrants a departure from the normal manner of payment. Commutation shall not be allowed to enable the injured employee or his dependents to satisfy a debt due and owing to physicians, lawyers, or others. (34:15-25).

## VI. SUBROGATION

The employer's rights to subrogation are covered in N.J.S.A. 34:15-40. Where a third person is liable to an employee for an injury or death, the right of the employee or his dependents to secure worker's compensation benefits does not operate as a bar to an action against the third party. If the injured employee is able to obtain monies from a third party arising out of a work-connected injury, the employer may obtain reimbursement of benefits paid. In order for reimbursement to be triggered, the employer or its compensation carrier must perfect its lien by

placing on notice, by registered mail-return receipt, the tortfeasor or defendant in the third-party action. Once notice has been properly perfected, it becomes the duty of the third-party defendant or his insurance carrier to inquire as to the amount of the worker's compensation lien before making any distribution to the injured worker.

The employer is entitled to a dollar-for-dollar reimbursement of medical, temporary, and permanent disability paid to the injured worker. The statute goes on to state, however, the employer must contribute back to petitioner the attorney's fees and costs incurred in the third-party action. This is not to exceed 33-1/3 percent of the recovery and costs of $750.00. As a result, before agreeing to final satisfaction of the lien, it is important for the employer to ascertain the fee which will be charged by the injured worker's third-party attorney.

Below are two examples of lien calculations:

(1) Assume the worker's compensation carrier has paid $100,000 in medical, temporary, and permanent disability, and petitioner is able to effectuate a $200,000 recovery from a third party for the injuries associated with the work injury. Once proper notice of the employer's lien is in place, the third-party cannot distribute the $200,000 to the injured worker without ascertaining the lien amount. In this example, assuming petitioner's attorney takes a full 33-1/3 percent fee on the $200,000 and had over $750.00 in costs, the compensation lien would be calculated as follows: $100,000 in payments, minus $33,333.33 for contribution to attorney's fees, minus $750.00 for contribution to costs, for a reimbursement of $65,916.67.

(2) The employer is entitled to reimbursement even if the benefits paid exceed the third-party recovery. For example, again assume a $100,000 payout by the employer for medical, temporary, and permanent disability, however, the petitioner only obtained a $50,000 recovery

by a third-party and his attorney took the full 33-1/3 percent fee and had at least $750.00 in costs. The calculation for reimbursement would be based on the $50,000 recovery. The reimbursement to the employer would be calculated as follows: $50,000 minus $16,666.67 for counsel fee and $750.00 for costs, leaving a repayment to the employer from the third-party recovery of $32,583.33.

Often, third-party counsel will seek to negotiate to reduce the employer's lien in order to effectuate a settlement of the third-party claim. There is no statutory obligation on the employer to negotiate or agree to compromise its lien.

Recently, the Appellate Division has concluded the employer is not entitled to attach a lien under N.J.S.A. 34:15-40 to recoveries made from a third party to the injured worker's spouse under a *per quod* claim. As a result, it may be necessary to negotiate with the injured worker's counsel the amount of money, if any, which is to be designated as payment for a *per quod* claim.

When an injured employee or his dependents fail to institute an action against a third party who may be responsible for the injuries within one year, the employer or its insurance carrier, after providing ten (10) days' written notice on the injured employee, can effectuate a settlement with the third party or institute a proceeding for recovery of damages in the name of the injured employee. The compensation carrier's rights to pursue a third-party case are no higher than the rights of the injured worker. In the event the carrier obtains a judgment in excess of the employer's payments and expense of the suit, such excess shall be paid to the injured employee or his dependents.

## VII. DISPOSITION

A valid claim petition may be resolved by utilizing one of the following judicial actions:

**A. Judgment**:

After reviewing testimony and medical records, a Judge of Compensation may determine the amount of temporary, medical, and permanency benefits, if any, due to an allegedly injured employee.

Following the award, the petitioner may reopen the claim within two (2) years of his last receipt of benefits.

**B. Order Approving Settlement**:

When the parties agree to settle a compensation claim following negotiations, the terms of the settlement must be presented to a Judge of Compensation for his review and approval. This method of disposition preserves the petitioner's right to apply for a Review and Modification of the Award within two years of his last receipt of benefits.

**C. Order Approving Settlement Under 34:15-20**:

When there exists genuine issues of jurisdiction, liability, causal relationship, and/or entitlement to permanent disability, the parties may enter into a lump-sum settlement of the controversy that results in a dismissal with prejudice. A Judge of Compensation must, with the consent of the parties, after considering the testimony of the petitioner and other witnesses, together with any stipulations of the parties, make a determination that the proposed settlement is fair and just under all of the circumstances.

A dismissal under Section 20 is final and conclusive upon the employee. The lump-sum payment involves a complete surrender of any future rights which might otherwise be available to the claimant. Such a settlement forever denies the claimant the ability to reopen his claim.

Payments under this section are recognized as payments of worker's compensation benefits for insurance rating purposes only.

The Supreme Court of New Jersey was held that unless the dependents of an injured worker consent to a dismissal of a claim under N.J.S.A. 34:15-20, the dismissal with prejudice is not binding upon any dependency case which may arise under N.J.S.A. 34:15-13, should the injured worker die from causes related to the injury which was the subject of the Section 20 settlement. As a result, caution should be utilized in resolving cases by way of Section 20 for a sum believed to forever close the employer's liability for the claim if there is a chance the petitioner may ultimately become deceased from the injuries claimed.

**D. Dismissal**:

Where there has been a failure on the part of petitioner to pursue and prosecute a claim, a Judge of Compensation may mark the claim "Not Moved." Thereafter, respondent may file a Motion to Dismiss for lack of prosecution and serve it on his adversary with a minimum of thirty (30) days' notice prior to the listing of the Motion. Should the Court dismiss the claim for lack of prosecution, the petitioner has one year from the date of dismissal to move to restore the claim to the active list with a showing of good cause. (34:15-54).

**E. Appeal**:

Any party may appeal the decision of a Judge of Compensation to the Appellate Division of the Superior Court. Such appeal shall be filed in accordance with the Rules of Court. (34:15-66).

**F. Review and Modification of Award**:

An award of compensation may be reviewed at any time within two years from the date upon which the injured person last received payment of medical and permanency benefits - whichever is later.

An Application for Review or Modification may be filed by either the petitioner/ employee or the respondent/employer when the earlier award had been entered via Judgment or an Order Approving Settlement. Said Motion must be supported by an argument for increased or diminished disability. The employee, in each situation, must submit himself to a physical examination in order to support or contradict allegations of increased or diminished disability.