

The New York State Workers' Compensation Board

Centennial

*Celebrating 100 Years of New York State Workers' Compensation
and Leading the Way Forward for the Next Century*



A Centennial Message from **Governor Andrew M. Cuomo**



Hardworking men and women are the strength of New York. Innovative employers who pay a fair wage and ensure safe conditions for those workers are the engine that drives the Empire State. The covenant of workers' compensation, adopted across the industrialized world, protects the interests of both.

Forged in the Progressive era, New York adopted one of the nation's first workers' compensation laws in 1909. It was initially struck down as unconstitutional on March 24, 1911. However, the next day, 146 people, predominately young women immigrants, perished in the worst industrial disaster in our state in the 20th century, the Triangle Shirtwaist Factory fire. Survivors of those killed received an average of \$75 each – after enduring the tort system. Many people couldn't make

it down that onerous route, a burden workers' compensation was supposed to alleviate. So we amended our state constitution and the workers' compensation law took effect July 1, 1914. Parties who rejected the value of this new idea took the matter to the United States Supreme Court, who of course upheld it. New Yorkers had fought hard to do the right thing for workers and their employers. We prevailed.

We have learned the lessons of the last century, so with the help of system stakeholders, we are re-engineering workers' compensation to implement them now. The injured workers who return fastest and healthiest immediately receive medical care; their injuries are promptly reported; they are paid benefits in a timely manner, without struggle; they continue getting good medical treatment; and their employers welcome them back as soon as they can work again. Their good outcomes mean lower costs for employers, as well. The interests of employers and employees are aligned.

Labor and business should not suffer delays and controversies in their workers' compensation system. One hundred years of experience demonstrates the importance of a genuine commitment to healing and timely benefits; inefficiencies and undue controversy derail the interests of labor and business. Our commitment to the two parties who created the workers' compensation covenant is to create a structure that meets their mutual need for the best outcomes without incorporating the features of the tort system this no-fault insurance system was intended to avoid. It's the right thing to do.

We will continue pressing forward with improvements to workers' compensation that protect its fundamental goals and its intended beneficiaries, labor and business. We will continue restoring New York to its traditional role as the progressive leader in the United States.

Andrew M. Cuomo
Governor



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The New York State Workers' Compensation Board

328 State Street, Schenectady, NY 12305

www.WCB.NY.Gov

Dedication

This publication commemorates a century of workers' compensation in New York.

A no-fault social insurance system, workers' compensation has been a lifeline for literally millions of New Yorkers since 1914. It has provided medical care and lost wages to the worker who needed more than just first aid; to the worker who was catastrophically injured; and to the survivors of those killed on the job. All were helped by this progressive, necessary social insurance and all deserve to receive their benefits quickly, with a minimum of controversy. We hope that all New Yorkers extend them compassion and work to prevent any more injuries or illnesses.

This book is dedicated to all those who have been injured or made ill on the job.



Courtesy of the Kheel Center of Cornell University

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RECOGNIZING THE FIRST 100 YEARS OF THE WORKERS' COMPENSATION BOARD

Whereas, the New York State Workers' Compensation Law went into effect on July 1, 1914, and as a result the New York Workmen's Compensation Committee was established; and

Whereas, the Workers' Compensation Law provides for lost wage and medical benefits without regard to fault, with all employers obligated to provide coverage for their employees; and

Whereas, in addition to traumatic injuries, occupational diseases became compensable in 1935, and in 1950 the disability benefits law secured lost wages temporarily for workers suffering a non-work related disability went into effect, administered by the Board; and

Whereas, in 1973 the law was amended to render unlawful any discrimination against employees who file or attempt to file a claim for workers' compensation; and

Whereas, in 1978 the agency name was changed to the Workers' Compensation Board to reflect the presence and contributions of both genders in the labor market; and

Whereas, the Board ensured thousands of people hurt and killed both directly by and after the terrorist attacks of September 11, 2001, humanely and quickly received benefits; and

Whereas, legislation in 2007 ensured the maximum benefit would adjust automatically as wages rise in New York, and that claims from injured workers would not be disputed solely in an effort to delay benefits; and

Whereas, the Business Relief Act of 2013 delivered efficiencies resulting in \$800 million in system savings to all employers, both public and private, as well as raising the minimum benefit for the most vulnerable workers; and

Whereas, the New York State Workers' Compensation Board protects the rights of employees and employers by ensuring the proper delivery of benefits to those who are injured or ill, and by promoting compliance with the law;

Now, Therefore, I, Andrew M. Cuomo, Governor of the State of New York, do hereby proclaim the

100 YEARS OF THE WORKERS' COMPENSATION BOARD

being observed and celebrated throughout 2014 in the Empire State.

Given under my hand and the Privy Seal of the State at the Capitol in the City of Albany this first day of July in the year two thousand fourteen.

Andrew M. Cuomo
Governor

Lawrence Schwartz
Secretary to the Governor

A Centennial Message from Senator Kirsten Gillibrand



KIRSTEN GILLIBRAND
NEW YORK



UNITED STATES SENATOR

July 14, 2014

Dear Friends,

It is my pleasure to recognize the 100th anniversary of the Workers' Compensation Board. One hundred years ago, the state of New York took critical steps toward establishing laws that would better protect workers who have experienced any harm or ill effects while on the job. Your efforts continue to ensure that workers maintain rights and access to compensation in cases of injury or disability.

I am especially pleased to recognize the recipient of the Frances Perkins Award, Ms. Jamila Wignot, and the recipient of the Dr. Stephen Levin Award, Dr. Robert B. Goldberg. Ms. Wignot's efforts to document the history and significance of the Workers' Compensation movement and Dr. Goldberg's dedicated efforts to reform workers' compensation and healthcare policy have been invaluable in the continued efforts to ensure workers' rights.

I send my congratulations and best wishes for the next one hundred years.

Sincerely,

A handwritten signature in blue ink that reads "Kirsten Gillibrand".

Kirsten Gillibrand
United States Senator

A Centennial Message from Chair Robert E. Beloten



The Workers' Compensation Law was born out of the Industrial Revolution at the turn of the 20th century as a remedy to the social uncertainty that ensued. Specifically, how does a society ensure workers not suffer social and economic consequences while they are recuperating from injuries sustained while using new and dangerous technologies and chemicals? The answer the United States and much of the industrialized world created was a no-fault insurance system of medical care and lost wage benefits. The cooperation and mutual interest of both labor and business forged the workers' compensation system. William Green, president of the American Federation of Labor from 1924 to 1952, may have said it best. "With labor and management working together in common cause – and not against each other – we can build and produce and prosper, and defeat any threat, from whatever source, against our own security and the peace of the world."

Americans work harder, longer, and with less vacation than almost anyone else in the industrialized world. Disease and disability are a ruthless equalizer: everyone is vulnerable. We as a society and the workers' compensation community in particular can do more to eliminate the havoc that disease and disability from work cause on the workers they afflict. The Workers' Compensation Law was devised 100 years ago to ease this burden in the pursuit of health and economic security. Over my 30 years in the system, I've seen the harmony of families severely disrupted by injury. Our job at the Board is to reduce the social and economic costs by ensuring workers receive their benefits promptly, with a minimum of controversy, while encouraging an expeditious return to work. The cooperation of labor, employers, and all other parties who operate professionally in the system is essential.

As we commemorate our first century and look toward the next, we celebrate our progress in occupational medicine and health: more efficacious treatment, greater understanding of how to reduce injuries and all their attendant costs, including their effects upon the family. Dr. Robert Goldberg will receive the Dr. Steven Levin Award for his contributions in this endeavor, an award named for a giant in the field. Documentarian Jamila Wignot will receive the Frances Perkins Award; her film *Triangle Fire*, shown on PBS, stirringly portrayed the events and people of the tragedy that ensured New York finally created a workers' compensation system.

We remember the Triangle Shirtwaist Factory fire and we remember the World Trade Center disaster. They compel us to fulfill our social mandate. We are charged by law to ensure the claims of injured workers are processed quickly and equitably in the most cost-efficient manner. It's incumbent upon the Board to maintain a healthy structure that puts the needs of labor and management first – their interests are aligned. All parties benefit from a healthy, safe and socially responsible workplace, through increased productivity, economic reward and job satisfaction.

Robert E. Beloten
Chair, NYS Workers' Compensation Board

A Century of Workers' Compensation

- 1909** The Wainwright Commission begins examining the viability of a workers' compensation law in New York.
- 1910** New York enacts a workers' compensation law.
- 1911** On March 24, New York's law is found unconstitutional by the New York Court of Appeals.
- 1911** On March 25, the Triangle Shirtwaist Fire, the worst industrial disaster in New York in the 20th century, occurs.
- 1914** New York's Workers' Compensation Law takes effect. The Workmen's Compensation Commission is founded with five members: Chair Robert E. Dowling, J. Mayhew Wainwright, John Mitchell, Dr. Thomas Darlington and Howard Townsend Mosher.
- 1916** The Board is renamed the Industrial Commission.
- 1917** The US Supreme Court upholds New York's Workers' Compensation Law.
- 1935** All occupational diseases became compensable.
- 1944** The number of board members rises to 10. Three-member panels are introduced. The chair does not participate in determining the outcome of claims.
- 1945** The agency name is changed to the Workmen's Compensation Board.
- 1948** The Board is increased to 13 members, with the present term structure introduced.
- 1950** Article 9 of the Workers' Compensation Law, disability benefits, takes effect, securing lost wages temporarily for workers in the case of non-work related disability.
- 1954** A state commission examines the workers' compensation system in New York.
- 1957** Volunteer firefighters receive benefits under the Workers' Compensation Law.
- 1978** The agency's name is officially changed from the Workmen's Compensation Commission to the Workers' Compensation Board.
- 1983** The Temporary State Commission on Workers' Compensation and Disability Benefits addresses system flaws identified by employers, employees, and other stakeholders in the workers' compensation system.
- 1989** Workers' compensation benefits are extended to volunteer ambulance workers.
- 1990s** Board moves from paper to electronic files.
- 1996** The Office of the Workers' Compensation Fraud Inspector General is established.
- 2001** Board responds to World Trade Center disaster, ensuring payment of death benefits to more than 2,000 survivors of victims killed on September 11, 2001, as well as benefits to thousands more workers injured.
- 2006** The Workers' Compensation Law is amended to give the workers who performed rescue, recovery and clean-up at the World Trade Center additional time to file notice of their participation.
- 2007** Reform establishes indexing of the maximum benefit to New York's average weekly wage and creates a new process that cuts the number of controverted claims in half while speeding them through to resolution.
- 2013** Governor Cuomo's Business Relief Act eliminates \$800 million in workers' compensation system costs.
- 2013** Governor Cuomo reopens and extends the protections afforded to the workers who performed rescue, recovery and clean-up at the World Trade Center.
- 2013-2014** Re-engineering of workers' compensation system in New York begins.

The Road to Enactment of the New York Workers' Compensation Law

It seems almost unthinkable today, but 100 years ago a no-fault workers' compensation system was controversial. Common law rules of liability such as contributory negligence, the fellow servant rule, and the assumption of risk were firmly in place. The concept of liability without fault was said to violate due process rights granted by the Fourteenth Amendment of the US Constitution. However, between 1909 and 1917, dramatic changes in thinking and legislation took place that enabled New York to enact its Workers' Compensation Law.

In the 1920 *A Study of Judicial Decisions in New York's Workmen's Compensation Cases*, Leon S. Senior writes, "It is true, that for a time the American courts have opposed the principle of workmen's compensation on the ground that the doctrine of 'liability without fault' was repugnant to the *fundamental principles of the common law*, and to the 'due process' clause in the Fourteenth Amendment of the United States Constitution. But the swift changes in the court decisions on this subject that have taken place within a brief decade are noteworthy."



Three cases support the constitutional authority of the legislature to enact the law:

Matter of Ives v South Buffalo Railway, 201 NY 271 (3/24/11),

Matter of New York Central Railroad C. v White, 243 U.S. 188 (1917),

Matter of Southern Pacific Co. v Jensen, 244 U.S. 205 (1917).

On March 24, 1911, the New York State Court of Appeals ruled in the *Ives* case that the 1909 attempt to legislate Workers' Compensation violated due process and upended common law, thus rendering it unconstitutional under the Fourteenth Amendment.

The next day, March 25th, 146 workers died in the Triangle Shirtwaist Fire. Coming the day after the Court of Appeals invalidated the Workers' Compensation Law, the fire galvanized the public and labor organizations to demand change. Law makers reconsidered the common law rules of liability that made it so difficult for employees injured on the job to sue for compensation in the court system, their only recourse at the time. The fire outraged the public and inspired sweeping changes in labor laws nationally; New York passed its own progressive protections for workers.

The legislature amended the New York Constitution, effective January 1, 1914, to allow for a law on compulsory workers' compensation. In December, 1913, the legislature enacted Laws 1913, c. 816, and in 1914 reenacted it (Laws 1914, c. 41), as per the New York constitutional process. It took effect as to payment of compensation on July 1, 1914. Despite the legislature's persistence to ground workers' compensation in the constitution and enact a second law, the constitutionality of the 1914 Workmen's Compensation Law was challenged by *NY Central Railroad v. White* in 1917. A night watchman for NY Central Railroad, Jacob White was fatally injured at work while guarding tools and materials to be used in the construction of a new station and tracks designed for interstate commerce. The New York Workmen's Compensation Commission awarded compensation to Mr. White's survivors in accordance with the new law. Although the original ruling was upheld without opinion by the Appellate Division of the Supreme Court for the Third Judicial Department and by the New York Court of Appeals, the case was appealed to the United States Supreme Court.

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A Pirate's Tale



One of NY Central Railroad's main contentions was that the provisions of New York's Workmen's Compensation Law denied its Fourteenth Amendment rights. Although the Court acknowledged "that the scheme of the act is so wide a departure from common-law standards respecting the responsibility of employer to employee that doubts naturally have been raised respecting its constitutional validity," it rejected the claims that New York's law violated the Fourteenth Amendment. The Court stated that common-law rules were subject to legislative change, citing other cases of "legislative departures" from common-law rules that affected the employer's liability for personal injuries to the employee. In fact, the Court held that liability without fault wasn't even unusual or radical:

... liability without fault is not a novelty in the law. The common-law liability of the carrier, of the inn-keeper, of him who employed fire or other dangerous agency or harbored a mischievous animal, was not dependent altogether upon questions of fault or negligence. Statutes imposing liability without fault have been sustained.

In a 9-0 decision, the Court decided that New York's law was constitutional.

In the *Jensen* case, a clear boundary was established between state-level workers' compensation and federal jurisdiction over maritime workers. Gregory C. Krohm writes:

The court ruled that the New York legislature had acted justly in substituting the new remedy of workers' compensation for the former remedy of torts. Making the employer liable irrespective of the doctrines of negligence, contributory negligence, assumption of risk, and negligence of fellow servants, is not an arbitrary violation of due process of law under the Constitution. Additionally, the court ruled that even though workers' compensation stripped employees, or their dependents, of potentially greater damage awards from tort suits, this was not an unreasonable denial of their Fourteenth Amendment rights.¹

This decision validated the constitutionality of New York's law and enabled other states to enact workers' compensation laws. By 1920, 42 states had passed their own laws. By 1949, every state then in the union had workers' compensation laws.

¹ Krohm, Gregory C. "Is Workers' Compensation Constitutional?" IAIABC, 2011. Web. 24 April 2014. <www.iaibc.org/i4a/headlines/headlinedetails.cfm?id=246>

Pirates and buccaneers of the 17th century developed articles of agreement, or *chasse-partie*, to indicate how the booty, if any, was to be divided among the officers and crew of the ship. The *chasse-partie* also included awards for crew members wounded during the voyage – an early form of workers' compensation. In Alexander O. Exquemelin's first-hand account of Caribbean buccaneers, *The Buccaneers of America*, first published in 1678, he details the compensation system the buccaneers used:

Then came the agreed awards for the wounded, who might have lost a limb or suffered injuries. They would be compensated as follows: for the loss of a right arm, 600 pieces of eight or six slaves; for a left arm, 500 pieces of eight or five slaves in compensation; a left leg 400 or four slaves; an eye, 100 or one slave, and the same award was made for the loss of a finger. If a man lost the use of an arm, he would get as much as if it had been cut off, and a severe internal injury which meant the victim had to have a pipe inserted in his body would receive 500 pieces of eight or five slaves in recompense.

The amounts having first been withdrawn from the capital, the rest of the prize would be divided into as many portions as men on the ship.¹

This early form of social insurance was far ahead of its time, but common among pirates, who had highly organized systems of checks and balances to govern themselves – not bad for a band of outlaws!²

¹ Exquemelin, Alexander O. *The Buccaneers of America*. (1678) 2000. Translated by Alexis Brown. Mineola, New York: Dover, pp. 71-72.

² Leeson, Peter T. 2007. "An-arrgh-chy: The Law and Economics of Pirate Organization." *Journal of Political Economy*, vol. 115, no. 6: 1065-73.

A Century of Reforms to the Workers' Compensation Law

A century ago, New York adopted the workers' compensation law. Hailed as the Great Compromise, this revolutionary piece of social legislation protected the interests of both business and labor with no-fault insurance, while removing them from the tort system. Few pieces of legislation can claim to have the same amount of success and tenure of necessity as the workers' compensation law.

As the economy and social contracts developed over the last century, continued reforms and updates have been passed to ensure that injured workers receive medical treatment quickly and receive benefits efficiently. The workers' compensation system in New York has seen periods of reform including in the mid-1950's, 1996, 2007 and 2013. Implementing these reforms saw state government working together with business and labor groups to ensure all stakeholders involved were fairly represented.

The First Reform: 1954

In 1954, a commission examined the workers' compensation system in New York, finding systemic problems, recommending sweeping changes, and leading to volunteer firefighters' benefits under the workers' compensation law in 1957.

However, an attempt to impose penalties under WCL Section 25 for failure to timely controvert unfortunately led to a schism in timing. The result was the codification of an additional 25 days for an insurer to respond to a notice of indexing with a notice of controversy. This created a subset of cases that tends to lead to delayed insurer action that we still feel today.

The legacy of split timing mechanisms is being addressed today through the business process re-engineering process, with the goal of improving the promptness of initial indemnity benefits for injured workers.

The New York Employment, Safety and Security Act: 1996

In 1996, the New York Employment, Safety and Security Act was passed to provide balanced, comprehensive reforms to the workers' compensation system while also installing measures to save employers more than \$1 billion dollars in premium costs annually. The 1996 reforms saw successes in:

- The institution of a grave injury threshold (for third-party lawsuits against employers) for lawsuit claims-over against employers, thus limiting the scope of *Dole v. Dow*, which was costing New York businesses over \$300 million per year in added workers' compensation insurance costs;
- Institution of WCL section 21-a, allowing for payment without prejudice, whereby employers may make payments for up to one year without admitting liability;
- The establishment of the Office of the Fraud Inspector General within the Board to bridge the gap between the system and prosecutorial authorities;
- Increased the time threshold for shifting of liability to the Special Disability Fund from 104 weeks to 260 weeks.

The 2007 Reforms

In 2007, business and labor groups again collaborated to forge a series of reforms. The 2007 Reforms:

- Increased the maximum benefit rate, unchanged for 15 years, immediately from \$400 to \$500 a week and then eventually indexed to the state average weekly wage; as of July 1, 2014, it is \$808.65;
- Created evidence-based Medical Treatment Guidelines to improve treatment procedures for selected body parts;
- Phased out the shift of new reimbursement claims and requests to the Special Disability Fund (WCL section 15[8]);

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- Reformed the classification of permanently partially disabled claimants, including maximum benefit weeks, the use of modern guidelines for determining permanent impairment and loss of wage earning capacity, and the encouragement of bona fide settlement offers upon classification;
- Create an expedited calendar for controverted claims. Tightening the reasons for controversy immediately cut the rate of controversies in half. Speeding discovery and hearing time-frames drastically reduced the time to reach a decision on compensability;
- Enhanced the Board's ability to remove the authorization of medical providers who have engaged in misconduct (WCL section 13-d);
- Increased monetary penalties against non-compliant employers, and created the stop-work order, to encourage full compliance with the mandate that employers in New York state provide compensation for injured workers.

As a result of the 2007 reforms and subsequent action, the industry has seen:

- steadily declining controverted claim rates;
- fewer uninsured claims;
- 97% proof of coverage compliance rates from carriers;
- a new livery fund that has produced high rates of compliance in an industry with a history of noncompliance;
- A multiagency focus on issues of misclassification in the construction and commercial goods transportation industries.

The Business Relief Act: 2013

Gov. Cuomo's Business Relief Act of 2013 provided savings for employers, increased the minimum benefit to workers, and overhauled the way the workers' compensation system is managed. The reforms will bring immediate savings to businesses by:

- **Providing Assessment Relief for Employers:** The state created one method for collecting annual assessments from employers, thereby saving employers an estimated \$300 million. This change eliminated an overly complicated and bureaucratic system that was not only expensive for the state but also for employers. The new system achieved administrative efficiencies and provided predictability to employers. The new methodology also provided financial relief of approximately \$500 million to private self-insurers in New York state.
- **Closing the Fund for Reopened Cases:** Previous law allowed payments in certain old and reopened claims to be made out of a special fund known as the Fund for Reopened Cases.
- **Increasing competitiveness in the workers' compensation insurance market:** The governor's reforms include a series of measures to increase competitiveness in the workers' compensation marketplace that will help to drive down costs and provide relief to businesses.
- **Resolving Defaulted Group Trust Crisis:** The governor proposed legislation authorizing \$900 million of bonding, providing a path to resolution for companies involved in the group self-insurance crisis. The bonding will provide relief for 10,000 businesses across New York who are saddled with almost \$1 billion in liabilities.
- **Increasing Benefits for Workers:** The governor's reforms assist the state's most vulnerable injured workers, increasing the minimum benefit from \$100 to \$150.

Today: A New Direction

Operating within the present legislative framework, the Board recently undertook an aggressive agenda of structural change in the workers' compensation system that should pay dividends in the coming decades. Insurers now file injury reports electronically using a national standard, known as eClaims. This will cut paper-handling costs, greatly improve system oversight and guarantee benefits are paid timely to injured workers. In the business process re-engineering project, the Board is reimagining the New York system, with the help and input of all stakeholders. The goal is improving the timeliness of benefit payments to workers and the quality of medical care, which in turn will lower employer costs.

Top 10 Decisions

by Appellate Courts in the Past 100 Years

The workers' compensation system is shaped by many factors, including case law. Here are 10 important areas of law where individual decisions impacted the system.

1. Jurisdiction

- *Matter of Nashko v Standard Water Proofing Co.*, 4 NY2d 199 (Ct. App., 1958)

The decedent lived in New York, was employed by a company based in New York, and performed assignments both in and outside New York. He was killed while on assignment in New Jersey.

Prior case law suggested if a claimant worked in a fixed place outside the state, there would not be New York jurisdiction. The Court held that while restricted geographical location is a factor, there are other factors, such as

...a hiring in New York, control of employment from an office located in New York, payment of out-of-state expenses by the employer and an understanding that the employee is to return to New York after out-of-state assignments... The facts that the employee is a resident and that compensation insurance was procured here are also pertinent.

2. Cases Stemming from Historical Events

Wall Street Bombing, 1920

- *Matter of Roberts v J.F. Newcomb & Co.*, 201 AD 759 (1922)

An outside employee who worked for a printing corporation was on the street, making his way to his next business call, when the "Wall Street explosion" occurred, injuring him.

The Court held "...when a man is injured by an accident in the street, while he actually is performing the services he is employed to perform by his employer, he is covered by the statute."

This case's significance is in its reliance upon an earlier Court of Appeals case that established the concept of **zone of danger**.

Terrorist Attack upon the World Trade Center, September 11, 2001

- *Matter of Tompkins v Morgan Stanley Dean Witter*, 1 AD3d 695 (2003)

Claimant was on the subway on 9/11, which was halted. He transferred trains and emerged two blocks from Two WTC, where he worked. While watching the damage to the first tower from the sidewalk, still trying to get to work, the second tower exploded. He was struck in the head by debris. The Board and Court held that accidents while commuting are **not covered**, but certain risks arise that constitute a nexus between the street risks and the employment.

The Board found there was a special hazard in a zone of danger at Ground Zero, and that there was a close association between the entrance route claimant took and the location of the work premises. Contrast this with...

- *Matter of Betro v Salomon Smith Barney*, 8 AD3d 847 (2004)

A business analyst was evacuated from his building, five blocks from Ground Zero, after the first plane struck the North Tower, so he observed events while on the street. He filed a PTSD claim, alleging a close association to the special hazard that led to the evacuation and the psychological claim. However, the medical and testimonial evidence showed that the PTSD arose from observations after the evacuation, and at that point the scope of employment had ended. Thus, there was no nexus between work and the psychiatric claim.

Attica Correctional Facility "Uprising" and Recapture, September 1971

- *Matter of Werner v State*, 53 NY2d 346 (1981)

The decedent, a guard at Attica, was taken hostage, and then killed by gunshot during the retaking. The claimant applied for and accepted death benefits.

The Court held "[h]ad claimant not chosen to accept benefits, she would ... have been free to maintain her



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wrongful death action for intentional assault." However, the Court pointed out that would have been tough because it likely would have been found that "...excessive force resulted from reckless rather than deliberate acts." Contrast this with *Jones v State*, 96 AD2d 105, where an account clerk, taken hostage and killed in the retaking, did not receive compensation benefits, and was permitted to pursue an intentional tort claim – the Fourth Department held that state actions were intentional, not merely reckless.

Following *Werner*, many Attica claimants filed applications to reopen their claims, seeking to rescind compensability on the grounds that the state deliberately misled them to accept benefits so it could raise exclusivity in the intentional tort suits. The cases were **not** reopened. See *Matter of Monteleone v NY State Attica Corr. Facility (and 19 related claims)*, 141 AD2d 938 (1988).

3. Occupational Disease

- *Matter of Goldberg v 954 Marcy Corporation*, 276 NY 313 (1938)

In 1935 the law was amended to include "any and all occupational diseases, contracted through any and all employments." *Goldberg* set forth basic principles still followed today. For example:

...an occupational disease is one which results from the nature of the employment, and by nature is meant, not those conditions brought about by the failure of the employer to furnish a safe place to work, but conditions to which all employees of a class are subject, and which produce the disease as a natural incident of a particular occupation, and attach to that occupation a hazard which distinguishes it from the usual run of occupations and is in excess of the hazard attending employment in general.

Later, this distilled to **distinctive feature of employment**, as opposed to environmental.

- *Matter of Johannesen v New York City Dep't of Hous. Preservation & Dev.*, 84 N.Y.2d 129 (1994)

What is the difference between occupational disease and an accident?

Claimant's bronchial asthma was aggravated by exposure to large amounts of second-hand cigarette smoke in a confined work area. The Court held:

We reject this employer's assertion that exposure to tobacco smoke was not an accident essentially because many people still smoke. The seriously adverse environmental conditions to which claimant was subjected as part of her job and workplace reasonably qualify as an unusual hazard, not the 'natural[] and unavoidable[e]' result of employment.

4. Independent Contractor

- *Matter of Litts v Risley Lumber Co.*, 224 NY 321 (1918)
- *Matter of Beach v Velzy*, 238 NY 100 (1924)

These two early cases set the standard for the distinction between employees and independent contractors.

In *Litts*, the Court stated that "[t]he rules which demarcated the relation of master and servant from that of employer and independent contractor are operative in the consideration of claims made under the act."

Matter of Beach included language that would become the standard template of the direction and control, and relative nature of the work test, up to and including today.

The independent contractor is one who agrees to do a specific piece of work for another for a lump sum or its equivalent who has control of himself and his helpers, as to when, within a reasonable time, he shall begin and finish the work; as to the method, means or procedure of accomplishing it; and who is not subject to discharge because he does the work as to method and detail in one way rather than another. In the relation of employer and employee the employer has control and direction not only of the work as to its result but as to the details and method of doing the work and may discharge the employee for disobeying such control and direction.

5. Common Law Contribution and Indemnification

- *Matter of Dole v Dow*, 30 NY2d 143 (1972)

Claimant used an insecticide manufactured by Dow Chemical in an enclosed area while working for his employer. The toxic exposure caused poisoning that led to his death.

Dow was sued for negligence. Dow filed a third-party suit against the employer, saying that Dow was passively negligent, but employer engaged in active negligence.

The Court allowed a claim-over against the employer as a third-party defendant for common law indemnification and contribution. Employers who were previously immune from common law suit thanks to exclusivity now found themselves liable for common law indemnification and contribution.

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Top 10 Decisions

With respect to legacy, in 1996 WCL section 11 was amended to limit common-law claims-over against employers to those cases where claimant can meet a **grave injury** threshold.

6. Coverage

- **Matter of Jaabeck v Theodore A. Crane's Sons Co., 238 NY 314 (1924)**

The employer was found liable, but the insurer asserted the policy did not cover this particular loss. This case is significant because it held that the Board, and Third Department, have jurisdiction to enforce the terms of the policy to make the insurance carrier liable for this award. The alternative would have been the employer filing declaratory judgment actions against carriers to enforce its obligations.

7. Solely Mental Injuries

- **Matter of Wolfe v Sibley, 36 N.Y.2d 505 (1975)**

In *Wolfe*, the Court for the first time permitted claims for psychic trauma that produce psychological injury. The claimant worked as a secretary to a store director. She found him lying in a pool of blood caused by a self-inflicted gunshot wound. This caused a severe depressive condition.

The Court held: "... [P]sychological or nervous injury precipitated by psychic trauma is compensable to the same extent as physical injury.... [W]e see no reason for limiting recovery in the latter instance to cases involving physical impact. There is nothing talismanic about physical impact."

With respect to legacy, in 1990 WCL § 2(7) was amended to exclude claims for solely mental injuries based on stress and that are "a direct consequence of a lawful personnel decision involving a disciplinary action, work evaluation, job transfer, demotion, or termination taken in good faith by the employer."

8. Presumption of Compensability

- **Matter of Keevins v Farmingdale UFS, 304 A.D.2d 1013 (2003)**

An exemplar and codification of the mechanism of WCL § 21, this case has ramifications for all cases where the accident occurs in the course of employment.

A classroom teacher, claimant twisted her knee while walking around her desk. The insurer submitted no contrary medical evidence. The Board found the injury did not arise out of the course of employment, and the Third Department reversed.

Citing WCL § 21(1), the Court noted "[a]ccidents arising 'in the course of' employment are presumed to arise 'out of' such employment, and this presumption can only be rebutted by substantial evidence to the contrary."

9. Scope of Employment: Special Hazards

- **Matter of Husted v Seneca Steel Service, Inc., 41 N.Y.2d 140 (Ct. App. 1976)**

Claimant worked as a laborer. The entrance to the plant parking lot required a left-turn from a four-lane highway. Claimant turned left and his car was struck by a vehicle. The Court held that while commuting injuries are not covered,

... as the employee comes in closer proximity with his employment sites, there develops 'a gray area' where the risks of street travel merge with the risks attendant with employment and where the mere fact that the accident took place on a public road or sidewalk may not ipso facto negate the right to compensation.

In that **gray area** the accident "is compensable if it occurred as an incident and risk of employment, i.e., there must be (1) a special hazard at the particular off-premises point and (2) a 'close association of the access route with the premises, so far as going and coming are concerned.'"

10. Voluntary Removal from the Labor Market

- **Matter of Zamora v New York Neurologic Assoc., 19 NY3d 186 (2012)**

The statute says nothing about **voluntary removal (or withdrawal) from the labor market**: The defense emerged over time. The Appellate Division issued a series of cases that created an inference, which the majority in *Zamora* held looked more like a presumption, that when a claimant was classified permanently partially disabled, the insurer could not challenge ongoing benefits without direct and positive proof that something other than the disability was the sole cause of claimant's reduced earning capacity.

In a 4-3 decision, the Court of Appeals held that for a non-scheduled permanently partially disabled claimant, "Claimant must demonstrate that his or her reduced earning capacity is due to the disability, not ... factors unrelated to the disability."

Agency Chairs

Robert E. Dowling 1914-1915

John Mitchell 1916-1919

Edward F. Boyle 1920-1921

John D. Higgins 1921-1925

Frances Perkins 1926-1929

Richard J. Cullen 1929-1942

Edward Corsi 1943-1944

Mary Donlon 1945-1954

Angela Parisi 1955-1959

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Robert R. Snashall 1995-2003

David P. Wehner 2004-2005

Donna Ferrara 2006-2007

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The First Workmen's Compensation Commission

Our agency names throughout history

1914 - Workmen's Compensation Commission

1916 - Industrial Commission

1945 - Workmen's Compensation Board

1978 - Workers' Compensation Board

The Legacy of the Triangle Fire

A century ago, sweatshops abounded, and workers risked their health in unconscionable conditions. The Triangle Shirtwaist Fire on March 25, 1911, resulted in workers' rights that would have mitigated the nightmare suffered by the survivors of that tragedy.

New York did not have a workers' compensation law at the time of the fire. One of the original two 1910 workers' compensation statutes was ruled unconstitutional on Friday, March 24, 1911. The next afternoon, 146 people died in New York's worst industrial accident of the 20th century. Their survivors, and those who made it out of the building alive, had to bring a tort action in civil court to receive the benefits awarded today as workers' compensation. This was an onerous task.

At that time, *contributory negligence* was an employer's defense. If the worker was as little as 1 percent negligent, she was barred from recovery, or payment. Employers and their counsel desperately tried to prove the workers were somehow responsible for their own injuries and deaths. They tried to cast aspersions on the employees' testimony and employed verbal trickery to raise the possibility that the injured or dead employee locked the doors that could have saved lives.

Public outrage over the Triangle fire got the state constitution changed, and the workers' compensation law took effect in 1914. It was affirmed by the US Supreme Court in 1917. Today, we have a no-fault insurance system to pay a worker's medical bills and lost wages, taking them out of the tort system.

Rose Hauser Survivor

When I got out of the dressing room I looked toward the freight elevator and I saw smoke pouring up. The smoke was also coming out of the staircase. I ran with some of the other girls to the front door. I put my hand on the knob and tried to open it and I stood there screaming that the door was locked. I tried to open it and I stood there screaming that the door was locked. I tried to force it open with all my strength but it would not move.

I looked around and I saw the flames coming in all the windows. The fire was in the shop and was coming toward us. There was a fire escape at the windows near the freight side. The fire escapes had iron doors and shutters. Everybody was running and hollering and people were choking from the heavy smoke. I took my muff and put it over my head. I ran back to the front elevator and there was no chance there. I kept my muff on my head and ran toward the freight side again. I found that the door to the back staircase was open and that is how I got out.

Before I went down the staircase I looked to the fire escape. I saw one woman climb on there and fall right over the rail.

Mary Domsky-Abrams Survivor

A group of men made a human ladder of themselves in an attempt to make it possible for girls hunched in fear at the windows not yet on fire to cross over to the next building, to which there was a small bridge (or passage.) But all the men, about 10 of them, fell down, not being able to bear up under the weight, and were killed together with those who tried to save themselves. We were all deeply moved by the heroism and tried to kiss their bodies as they were being removed to the morgue.

(Continued on next page)



Survivor stories and photo courtesy of the Kheel Center of Cornell University.

New York City Fire Commissioner Salvatore J. Cassano

The terrible tragedy of Triangle Shirtwaist had a tremendous impact on New York City and led our Fire Department to establish the Bureau of Fire Prevention in 1913, just two years later. As a result of that tragedy, numerous rules were put in place requiring factories to install sprinkler systems on upper floors, keep doors unlocked and hold fire drills. The Bureau of Fire Prevention continues to exist today, with a staff of 400 inspectors, engineers and civilian and uniformed staff. The FDNY conducts more than a quarter of a million field inspections each year, many performed by firefighters in the field as part of their regular duties. The Bureau is constantly working to find new and innovative ways to keep people safe, using technology to report critical building information and prioritizing inspections by those most in need of follow-up. A special, 25-member unit was also created to focus on inspecting and enforcing safety regulations at buildings under construction, demolition and abatement.

Fire prevention is a critical part of FDNY.

Pamela Vossenas Workplace Safety and Health Coordinator UNITE HERE

UNITE HERE, a successor union of the International Ladies' Garment Workers' Union honors the brave women, children and men of Local 25 (ILGWU affiliate) who so bravely fought for improved working conditions during the 1909 strike in New York City and those who perished just two years later in the horrific Triangle Shirtwaist Fire of 1911.

With over 80% of U.S. jobs now in the service sector, women, immigrants and workers of color are still at increased risk for workplace injuries and illnesses. Workers, UNITE HERE locals and community allies are at the forefront, taking action to make workplaces safe. A recent example is a series of delegations that visited Hyatt properties in Chicago, Honolulu, Santa Clara, San Francisco, Los Angeles, Long Beach, San Antonio, Sacramento, Indianapolis and Vancouver to draw attention to the need for fitted sheets and long-handled tools such as mops to prevent injuries to hotel housekeepers. The victims of the Triangle Shirtwaist Fire continue to inspire us.

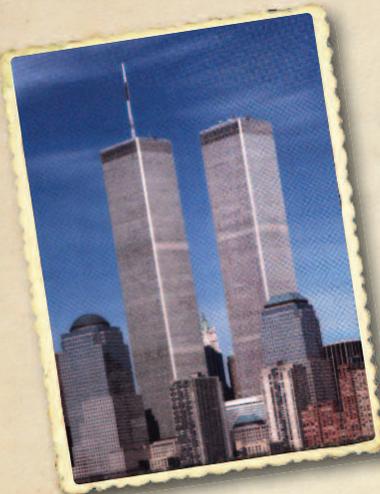
Richard Greenwald, PhD Dean, Caspersen School of Graduate Studies, Drew University

March 25th, 1911, was a day that transformed American life. On a Saturday slightly before 5, a fire broke out at the Triangle Factory in Greenwich Village, NY. Within 30 minutes, 146 mostly young, immigrant women died, trapped on the 9th floor of a 10 story building. As hundreds of New Yorkers stood watching the horror, 90 workers without any options jumped to their deaths. Triangle was, even before the fire, notorious. In 1909, during a large strike of garment workers, Triangle's owners resorted to violence to resist the union. Standing on the sidewalk in 1911, Frances Perkins, then a young social worker, knew many of the victims from that strike and also recognized that if the union had been a success, many of them would be alive.

The tragedy galvanized the city's labor unions and middle class reform groups. It posed a moral question: what did society owe its workers in terms of safe work places and adequate wages? With mounting pressure from organized labor and reform groups, New York's Tammany Hall sprang into action. Robert Wagner and Al Smith, state senate majority leader and assembly speaker, then known as the "Tammany Twins," created the Factory Investigating Commission. For the next few years, Wagner and Smith led a state-wide investigation of working conditions in the state. The result was 36 new laws that transformed the state's labor, building and fire codes. By 1914, New York would become a model for other states. Out of the tragedy of the fire came a new vision for the regulatory power of the state.



The Response to the World Trade Center Disaster



September 11, 2001

In addition to other terrible distinctions, the attacks on the World Trade Center were the worst workplace disaster in American history. The Board had offices in Tower 2, the South Tower, from the opening of the building in 1973 through 1985. Those staff moved to Brooklyn, to a building across the East River where many of them watched the towers burn, then collapse, through their office windows that crystalline morning. While people around the world felt the shock and horror of that day, wondering what the end would be, Board staff across New York had another consideration: How will we successfully process thousands, or tens of thousands, of claims?

As the fires raged in the 9 o'clock hour, management knew the Board had to prepare immediately for major claims work. By the time the governor closed state offices just before noon, plans were underway to begin adapting claim processing to handle an immediate influx of between 5,000 and 50,000 claims – without impacting all other claims. As the day progressed, reports from local hospitals indicated the attacks and subsequent collapse of the buildings were not resulting in the overwhelming number of injured victims they were prepared to treat. Everyone feared the worst.

On September 12, Board management convened at 20 Park Street in Albany to present the plans they'd created over the previous 24 hours to handle the expected volume of claims. The main areas of concern were Claims Operations, who'd see the cases first, and then Adjudication, where judges would hear many of them. It was also apparent that thousands of death claims were imminent, and they'd probably arrive all at once. Expediting those processes was therefore a top priority. The agency typically handled less than 300 death claims annually, so gathering Claims staff and judges who knew those specific processes was necessary. The unique circumstances of these deaths, where remains could not be identified, made some requirements impossible to fulfill. Finally, there was also the human imperative to compassionately and quickly resolve the claims, in part so survivors didn't suffer economic hardship after losing loved ones, but also because it was simply the right thing to do.

Removing Barriers

Board Votes to Remove Red Tape

At the Workers' Compensation Board meeting on September 25, the 13 members voted unanimously to suspend the regulation requiring beneficiaries to present a death certificate to the Board when claiming death benefits. The Board also authorized the creation of an affidavit that would alleviate the requirement for World Trade Center claimants to appear at hearings to answer very basic questions. This affidavit (now the AFF-1) was further refined and is in general use today.

"It is clearer now than ever before that the goal of this Board is to give people hope. On behalf of all the workers, I want to thank the chairman and the governor. Without these actions, we could never begin to bring closure to so many New Yorkers," AFL-CIO President Denis Hughes said.

Suspending the Requirement of Notice

On October 11, Executive Order 113.35 suspended the requirement for injured workers, or the surviving families of workers who were killed, to notify employers of injury within 30 days. This addressed practical issues in this disaster and provided security for the survivors and families, enabling them to address immediate issues of concern without fear of losing their right to benefits.

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Pay Without Prejudice

Executive Order 113 instructed all of New York state government to do whatever was necessary to ensure no one suffered further in the aftermath of the attacks. At the time, 15 percent of new claims were being controverted, so the Board acted decisively to ensure World Trade Center claims did not endure a similar or higher rate of dispute, particularly for ministerial reasons. The Board resolved to move meritorious claims through the system quickly, with as little burden as possible on surviving families and injured workers. Therefore, the Board sent a single letter to all insurers, reminding them that the 1996 reform allowed insurers to *pay without prejudice*, which reserves their right to dispute claims in the future while choosing to begin paying benefits promptly so claimants don't wait while they investigate ultimately compensable cases. Insurers exercised their prerogative to pay without prejudice, one of the most impactful decisions in the days after the attacks. The difficulty in documenting victims according to the rules in place on September 11, 2001, and the circumstances of the disaster made this move especially sensible. Given how many people perished and the difficulty in identifying victims and providing burials, it was simply humane as well.

The Claims Workgroups

To avert a potential crisis in claim processing, Claims Operations created a plan for immediate, comprehensive and high quality service. Following September 11, the Board:

- Reorganized immediately to form one electronic workgroup comprising a large cadre of its most experienced claims examiners across the state to work specifically on World Trade Center claims. Processing all World Trade Center claims in one workgroup ensured expedience, quality and consistency. These workgroups continue today;
- Deployed staff electronically from upstate districts to assist downstate offices affected by the tragedy, including double shifts to help maintain normal processing in other claims;
- Made major changes in the indexing and processing rules associated with these claims;
- Created and implemented dozens of new operating procedures in days.

The International Association of Industrial Accident Boards and Commissions turned to the Board to take the lead in preparing a disaster preparedness model plan to help guide its member jurisdictions in the event of similar catastrophes. IAIABC Executive Director Gregory Kromm cited the Board's focus on "people not rules" as a primary reason for the successful delivery of benefits to New Yorkers in need.

Congress established a fund for World Trade Center volunteers that provides benefits to those who are sick or injured after serving as first responders during rescue, recovery and clean-up operations. Claims filed with the fund are not workers' compensation claims, and these World Trade Center first responder volunteers are the only volunteers who receive this type of benefit.

WTC Adjudication Plan

The Board promptly organized an adjudication team and a new plan for World Trade Center claims. This team consisted of judges and the Board's most experienced personnel from across the state. World Trade Center hearing parts were created so cases could proceed as quickly and as compassionately as possible.

Using Technology

Technology was indispensable in accelerating services for World Trade Center victims. Statewide response was a central pillar of the Board's strategy to handle the influx of claims. The increased caseload was distributed across all offices via the Claims Information System, so all staff fulfilled the agency's mission of handling all World Trade Center cases in the quickest and most compassionate manner. In the first few months nearly 6000 claims were filed, including more than 2,000 death benefit claims. It worked so well that the distributed caseload was subsequently implemented as a regular practice. Most geographic boundaries on workers' compensation claims fell, so based on this success, the Board shifted its practice to allow what was already technologically possible: any examiner can work on any claim, no matter where it originates.

Much of the Board's metropolitan area communication infrastructure was seriously impacted by the attacks, so the Board established two data centers to ensure it wouldn't lose computing capabilities during another occurrence. It made the most extensive use of its web site to that date, and created a statewide call center to accept

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A Benefit Found

In 2010, the Board surveyed World Trade Center claimants who'd made initial filings in late 2001 and 2002 but left their claims unpursued almost a decade later. That survey yielded both a better understanding of the claimants' thinking and also benefits to some claimants who'd failed to pursue their claims in the aftermath of September 11.

A few surveys came back with letters. One worker explained the unpursued claim was for a survivor's benefit for a domestic partner who perished in Tower 1; after the victim's mother received the death benefit, this survivor withdrew that second claim for the same benefit. The worker offered this letter as an explanation for that filing, without asking for anything.

Since 2003, after the survivor's benefit for domestic partners entered the law, there was precedent and a mechanism for allowing the parent to keep that benefit (by reimbursing the original insurer), and then awarding the survivor's benefit to a domestic partner.

The Public Information Office, which performed the survey, immediately passed the letter and information to the Administrative Review Division; a three-member panel promptly reconsidered the claim and sent it to a law judge for further consideration. The World Trade Center workgroup got the claim and the Office of the Advocate for Injured Workers became involved. Even the Board's records access officer provided information regarding the accessibility of decades-old public records needed to establish the claim. The insurer didn't dispute the case, and this claimant, the domestic partner of someone killed on September 11, 2001, was awarded the survivor's benefit, retroactive to that date.

World Trade Center

calls for any district office. Hotlines were established for World Trade Center claimants, too, where claims examiners answered extremely difficult questions and comforted victims seeking assistance.

"Your actions instilled confidence for both the families directly affected from this event, but also for the citizens of the State of New York who were reminded that the purpose of government is to serve the people. Your foresight to convert an arcane paper intensive system to a state of the art paperless environment is more valuable today than one could have ever imagined," attorney Andrew Finkelstein of Fine, Olin & Anderman said.

Domestic Partner Benefits

Effective Aug. 20, 2002, Workers' Compensation Law § 4 was amended to provide workers' compensation death benefits to the domestic partners of those killed in the World Trade Center attacks. The City of New York was already maintaining a domestic partner registry at the time. The change extended workers' compensation death benefits eligibility to a group that had never previously, nor has subsequently, been entitled to those benefits. The law does not draw a distinction in the gender of the partners.

As a result of this statutory change, 53 survivors received a benefit after the death of a domestic partner.

The Outreach

The Board maintained a continuing presence at the Family Assistance Center at Pier 94 in Manhattan, where people spoke with knowledgeable staff, including the advocate for injured workers, claims examiners and members of management. People could also file a claim at the Board's information booth.

The Board quickly began working with organizations that disseminated important information to their members. Immediately following the terrorist attack, representatives of the Board met with

- The New York State Crime Victims Board
- The AFL-CIO
- The International Brotherhood of Electrical Workers
- The Communication Workers of America
- The NYS Business Council
- The American Insurance Association
- The Long Island Association
- The New York State Association of Self-Insureds
- The International Association of Industrial Accident Boards and Commissions
- The Workers' Compensation Bar Association

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For three months the staff of the Office of the Advocate for Injured Workers was activated to a 12 hour per day/seven day per week schedule to comfort and assist victims and injured workers. Advocate for Injured Workers Edwin Ruff conducted over 1,100 public information contact service hours of outreach to organizations throughout the state, keeping various groups apprised of the latest changes and issues in the workers' compensation system.

Hundreds of employees demonstrated their dedication during this time of crisis, seven days a week, for many weeks following the disaster. In June 2012, Ed Ruff and Andrea Picoro, who has worked with survivors since the first days on Pier 94, were recognized by the New York State Legislature for their service to World Trade Center workers with plaques at the Well of the Legislature. Both continue that work today.

(Continued on next page)



Rescue, recovery and clean-up operations. Courtesy FEMA.

“ 2 WORLD TRADE CENTER by Grace Kelly

The Board had its main offices in Two World Trade Center from the time the building opened in 1973 until it moved to Brooklyn in 1985.

Working at the World Trade Center was quite the experience.

I remember traveling to the iconic buildings known as World Trade Center (One and Two). After stepping off the train at Cortland St. and making the long walk through the tunnels, a sign advised, This Way to World Trade Center. If you've traveled the New York City transit system, you'll know that you barely have to walk in any one direction, as the crowds of people will gently or not so gently nudge you forward towards the most commonly traveled walkways. All I remember was being very afraid at the hordes of people coming at me in all directions. They all seemed to be walking with purpose forward, forward, all persons keeping pace with the others, don't walk too slowly or you will be pushed forward. Not for the faint of heart! I remember asking myself if I was ready to work at such an imposing location. I quickly decided I was, and joined the mass in whichever direction they were traveling because I instinctively knew that my journey would end at the World Trade Center.

What I remember most is that during the winter months you never had to leave the building to do anything, as most everything you needed could be found in the massive Concourse Level. There were restaurants, banks, card stores, pharmacies, clothing stores, jewelry stores and all kinds of specialty and novelty shops. We would commonly have breakfast, lunch and sometimes dinner in these various restaurants and they were all excellent, especially the Big Kitchen restaurant, which served a variety of foods in different sections of their massive space.

I loved working at the Trade Center. In my mind there will never be another place like it.



*Grace Kelly in the Judges' Bureau
on the 36th floor.*

World Trade Center

Tell Us You Were There: Registering Workers under Article 8-A

By 2006, it was apparent the Workers' Compensation Law did not address World Trade Center claimants with latent illnesses, so New York adopted Article 8-A of the law to address their unique needs. Article 8-A extends the filing deadline for rescue, recovery and clean-up workers and creates a hybrid approach to their exposure claims. It incorporates occupational disease-like notice and filing requirements for those who developed a "latent" disease or condition as a result of their exposure, allowing two years from the date of disablement to file and give notice. (The statute states *the Board shall determine the date of disablement that is most beneficial to the claimant.*)

Workers and volunteers who performed rescue, recovery, or clean-up work at the World Trade Center site, at Fresh Kills, or on the piers, the morgues or the barges between Sept. 11, 2001, and Sept. 12, 2002, should file Form WTC-12. The first deadline was Aug. 14, 2007, but lawmakers extended it to Aug. 14, 2008. As that date approached, the deadline was extended to Sept. 11, 2010. Since that day was a Saturday, the Board accepted the WTC-12 form to Monday, Sept. 13, 2010. Those whose claims were disallowed previously were entitled to reopen them.

The August 2008 legislation also broadened coverage, filling a gap in eligibility of rescue, recovery and clean-up workers disabled after September 2003 (when the two-year statute of limitations for accidents had run) but before August 2004 (more than two years before the adoption of Article 8-A). The legislation eliminated the statute of limitations and notice requirements altogether for 8-A claims whose date of disablement falls between Sept. 11, 2003 and Sept. 11, 2008, provided those claims were filed by Sept. 13, 2010.

The Board's *Tell Us You Were There* campaign urged these workers to file a WTC-12 form. It made television and radio commercials with New York Yankee Bernie Williams, who read the spots in both English and Spanish. They ran statewide in the summer of 2008 and then again in 2010 before the final deadline. The Board partnered with mainstream media, trade publications, the Hospital Association of New York State, the NYC Dept. of Health, NYS Dept. of Labor, and the NYS Dept. of Motor Vehicles to reach the public. Suffolk, Nassau, Westchester and Rockland counties were also very helpful. In addition, every employer covered by the Liberty Mutual and Zurich Insurance wrap-up policies purchased by the federal government in October, 2001, was reminded of those policies and asked to make their employees aware of the WTC-12.

Governor Andrew M. Cuomo reopened the World Trade Center registry in November 2013 and extended the registration deadline to Sept. 11, 2014. This enabled the Board to consider any WTC-12 forms that arrived after the former 2010 deadline timely. The Board also located any World Trade Center claims previously disallowed for untimely submission under Workers' Compensation Law Secs. 18 and/or 28 or from failure to file a timely WTC-12 form and allowed those particular claims as timely. A detailed list of qualifying health conditions resulting from hazardous exposure for World Trade Center workers who participated in rescue, recovery and clean-up operations was also added in the following categories:



Former New York Yankee Bernie Williams, from the *Tell Us You Were There* commercials, standing atop the World Financial Center overlooking Ground Zero.

- Upper respiratory tract and mucosae;
- Lower respiratory tract;
- Gastroesophageal tract;
- Psychological axis; and
- New onset diseases that develop in the future resulting from exposure.

Where We Are Today

The effect of September 11, 2001, reverberates today in New York. Workers continue to open cases, and those claims go to dedicated work groups in place since September 2001. Judges and staff who've received special training for handling these claims regularly hear additional facts in existing cases, on an expedited basis. When workers require treatment for their workplace injuries and illnesses, and benefits for lost wages, it is the duty of the Workers' Compensation Board to ensure they receive them. Whether they were injured or not, the people who worked at the World Trade Center are remembered in New York.

The New York State Insurance Fund

By John Mesagno, NYSIF

The Triangle Shirtwaist Factory fire in New York City is often cited as a defining moment in labor history, modern industrial safety and progressive insurance legislation, leading to the creation of the New York State Insurance Fund and the New York workers' compensation system. The tragedy took place in 1911 and remains one of the most deadly workplace accidents in North America – 146 workers died and many were injured.



The State Insurance Fund was established in 1914 as part of the original enactment of the Workmen's Compensation Law, among the first compulsory workers' compensation statutes in the United States. Under the law, employers could insure with private carriers, self-insure or obtain coverage from the State Insurance Fund.

Because the cost of insurance would ultimately be borne by consumers, the New York State Legislature justified creating the not-for-profit State Fund to provide coverage at the lowest possible cost. The Legislature also foresaw that the act's compulsory nature required the establishment of the State Fund as a competitive insurance carrier so that it would always be available to any employer needing coverage. NYSIF's mission is to guarantee the availability of workers' compensation coverage at the lowest cost possible while maintaining a solvent fund, as well as provide timely and appropriate indemnity and medical payments to injured workers.

Payroll auditors were NYSIF's first representatives in 1914. They stayed on the road for months at a time, auditing payrolls, writing new business, handling claims and providing any other service required. In the ensuing years, NYSIF grew to become a full-service workers' compensation insurance carrier and the number one writer of workers' compensation insurance in New York State by 1928.

Today, NYSIF operates 12 business offices covering every region of the state with a staff of approximately 2,500 full-time employees. It annually insures one-third or more of the New York workers' compensation market, adding disability benefits insurance to its product line in 1950.

In 2013, with more than \$2.2 billion in premium, NYSIF was the sixth largest workers' compensation insurance writer in the nation. Approximately 166,000 employers hold NYSIF workers' compensation policies and more than 60,000 employers have active disability benefits policies with the Fund.

A Board of Commissioners appointed from private industry by the Governor oversees NYSIF operations. NYSIF is committed to a healthy and accident-free work environment for each of its policyholders and their employees. With 100 years in the workers' compensation industry, NYSIF's longevity distinguishes it from all competitors, and its workers' compensation and disability benefits specialists draw on 100 years of cumulative experience.

Minimum and Maximum Wage Replacement Benefits

1914 - 2014

Date	Minimum (weekly)	Maximum (weekly)
7/1/14	\$5	15
5/5/20	\$8	20
10/1/27	\$8	25
7/1/35	\$8	25
6/1/44	\$12	28
7/1/48	\$12	32
7/1/54	\$12	36
7/1/58	\$20	45
7/1/60	\$20	50
7/1/62	\$20	55
7/1/65	\$20	60
7/1/68	\$30	85
7/1/70	\$30	95
7/1/74	\$30	125
7/1/78	\$30	180
1/1/79	\$30	215
7/1/83	\$30	255
7/1/84	\$30	275
7/1/85	\$30	300
7/1/90	\$30	340
7/1/91	\$40	350
7/1/92	\$40	400
7/1/07	\$100	500
7/1/08	\$100	550
7/1/09	\$100	600
7/1/10	\$100	739.83
7/1/11	\$100	772.96
7/1/12	\$100	792.07
5/1/13	\$150	792.07
7/1/13	\$150	803.21
7/1/14	\$150	808.65

From The International Association of Industrial Accident Boards and Commissions, known as the IAIABC

The International Association of Industrial Accident Boards and Commissions (IAIABC) is the world's oldest trade association dedicated to improving workers' compensation systems, serving its members through education, research, and resource management. For 100 years, workers' compensation leaders have come together at the IAIABC to improve policy, regulation, and administration. Throughout this century, the NYS Workers' Compensation Board has actively engaged in the Association's leadership, events, and services.



The first meeting of what would become the IAIABC took place on April 14 and 15, 1914, three years after the first constitutionally valid workers' compensation act in the United States. Representatives from seven of the newly created industrial accident boards and commissions met in Lansing, Michigan, to discuss best regulatory practices. So began a process of collaboration and peer-to-peer guidance that still continues today, 100 years later.

The New York Industrial Commission joined the IAIABC in 1916 and representatives actively engaged in the Association's early years. During the 1918 IAIABC Annual Convention, J.L. Gernon, First Deputy Commissioner, presented a paper titled *What the New York State Industrial Commission is Doing to Prevent Accidents*. Mr. Gernon's remarks described how state agencies were working together to educate and enforce safety practices in factories across New York. He touched on the necessity of industrial safety programs for economic success, commenting, "Never in the country's history has so much depended on our industries, and most important are the workers in such industries."

The IAIABC has also benefited from New York leaders serving on its governing board. The following individuals served as IAIABC President:

1927-1928: James A. Hamilton, Industrial Commissioner of New York

1928-1929: Frances Perkins, Industrial Commissioner of New York

1947-1948: Mary Donlon, Chairman of the New York Workmen's Compensation Board

1989-1990: Thomas W. Gleason, Executive Director of the New York State Workers' Compensation Board

During her President's Address at the 1929 Annual Convention, Frances Perkins thoughtfully expressed the considerations of state regulators.

It seems to me that we should give more careful consideration to all the implications of the problems of human necessity in the administration of workmen's compensation law, so that it will not be too hard and too difficult a problem for the injured workers, first, to get their compensation; second, to spend their compensation; and third, to live while the august officials of the government are determining what they ought to have. In other words, it is a human problem with them – it is a 100 per cent loss to them even though it is only one more case to us.

The IAIABC continues to recognize the pioneering work of Frances Perkins by giving an award in her honor annually. Distinguished recipients include John F. Burton, Professor Emeritus, Rutgers University; Dr. Joachim Breuer, Director General, German Social Accident Insurance (DGUV); and Christine Baker, Director, California Industrial Relations.

The IAIABC Annual Convention has been held in Buffalo (1929) and New York City (1948, 1979, 1990, and 2004) over the past century. New York City was selected as the venue for the IAIABC's 90th Annual Convention following the September 11 terrorist attacks as the IAIABC wanted to recognize the exceptional job the Board did in responding to the attacks and demonstrate its ongoing support of the city and state.

In more recent years, the New York State Workers' Compensation Board has been involved in the development and implementation of the IAIABC's electronic reporting standards for Proof of Coverage (POC) and Claims. As a part of New York's eClaims initiative, the Board adopted the IAIABC Claims Release 3 Standard for reporting of first and subsequent reports of injury. New York joins more than 16 states utilizing Claims Release 3 to improve their system efficiency and provide timely and accurate claims information.

New York has a long tradition of leadership in shaping industrial accident and workers' compensation policy. Through the IAIABC, other jurisdictions have benefited from learning more about New York's innovations and issues. The IAIABC congratulates New York on 100 years of safeguarding the workers and employers of the state.

From Western New York to Long Island:

Two Injured Workers Recognize the Power of Open Communication and Transitional Duty

I injured my elbow and shoulder while working in the meat department of a food retailer. During my three surgeries and rehab I felt I was taken care of fairly by the nurse case manager and the workers' compensation adjuster. These two people were very helpful and caring. They were very concerned and did their best to help me through this very difficult time in my life. I used to play with my grandkids, gardened, golfed, and did other things that I enjoyed. After my injury I felt worthless and unsure of my future with my employer. The people at my employer helped me overcome these fears by making me feel better about my situation.

When I returned to work after each surgery the division manager had me working light duty in the bakery at a different store and then in back in the meat department. During this time I was very impressed with the care the store managers showed me along with the Human Resource managers that checked on me on a weekly basis. I also had an ergonomist working with me along with the nurse to help me transition back to work and that was greatly appreciated. Whenever the senior vice president of operations would see me he would ask how I was doing. That kind of caring made me feel better and helped during this time.

I have always tried to do my best working at my job over the last 40 years and I have tried to teach all my children to have the same work ethic. My employer has taken care of my family during my time here and I feel that it has given back its best to me during my injury. I really appreciate that.

I am still struggling with my shoulder and elbow during my day-to-day, but it feels good knowing that my employer has done its best to give me the care I needed. I am hoping that I can resume doing the things that I enjoy and will continue to do my best here at work and at home.

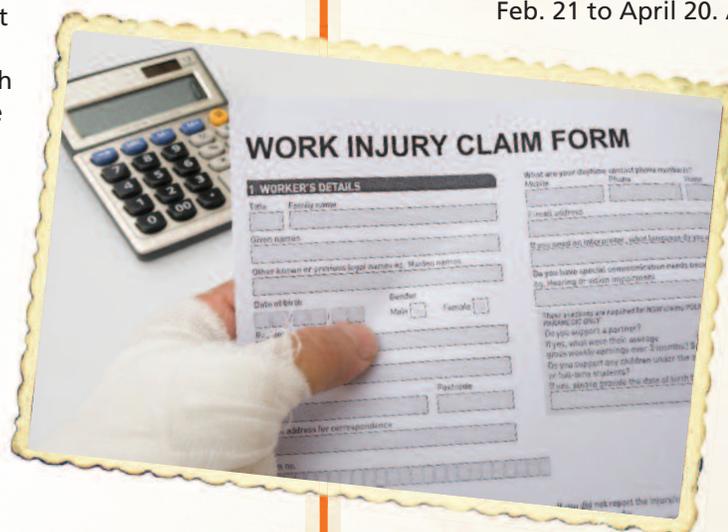
My work-related injury occurred two years ago. I work for a town government as a maintenance mechanic and in the winter of 2012, I was shoveling 4 to 5 inches of wet snow outside Town Hall when I felt a pain in my right bicep as I went to throw a shovelful of snow. I immediately told my supervisor and went to the hospital. I injured my right bicep, and I was out of work completely for just about a full month.

The management from the town kept in touch with me while I was home healing. They'd check in to see how I was doing. We're a town and we know each other so that isn't unusual. I saw my doctor and got good care so when I felt better, I came back to work in a transitional duty assignment. I did not want to stay at home and my doctor was able to clear me for a limited duty assignment.

My usual duties included carpentry, construction and constant use of my bicep muscles, but the town was able to set up a transitional assignment that involved obtaining quotes, ordering materials and overseeing work being done by contractors for the town. I worked in transitional duty from Feb. 21 to April 20. After two months of

that, I was feeling 100 percent. My doctor agreed that I could handle it, so I returned to full duty on April 21, three months after the injury.

Working with the town and the town's staff made the whole experience much easier. We worked together to get me back to work.



Frances Perkins

The First Woman of New York Workers' Compensation

By John Mesagno, NYSIF

Member, New York State Industrial Commission, 1918-1926
Chair, New York State Industrial Commission, 1926-1928
New York State Industrial Commissioner 1929-1933
U.S. Secretary of Labor 1933-1945



Frances Perkins was the first woman to chair the Industrial Commission, the forerunner of today's Workers' Compensation Board. She served in that role from 1926 to 1928; she'd joined the Commission in 1918. Ms. Perkins by that time was well known for her work in labor safety and workers' compensation.

Ms. Perkins developed an interest in social change at an early age, beginning in 1898 at Mt. Holyoke College. After observing factory life during field trips to nearby mills she concluded, "Avoiding poverty was not a question simply of liquor or laziness, but also of safety devices on machines."

Among her first assignments as a volunteer for the settlement house Chicago Commons in 1904, she collected overdue wages for "bundle women" who worked in tenement houses for the clothing industry. On March 25, 1911, fate placed her one block from the scene of the Triangle Shirtwaist fire. She rushed to the site to witness the carnage, an image that influenced all of her subsequent labor reforms.

The fire led to the creation of the Factory Investigation Commission three months later. Ms. Perkins and the committee of legislators and reformers – chaired by Senator Robert F. Wagner, Sr., and co-chaired by Assemblyman Alfred E. Smith – toured factories across the state. Ms. Perkins recounted how, at one site, "We made sure Robert Wagner personally crawled through the tiny hole in the wall that gave exit to a step ladder covered with ice and ending 12 feet from the ground, which was euphemistically labeled Fire Escape."

When Gov. Franklin D. Roosevelt named Frances Perkins as New York's first woman industrial commissioner in 1929, she also became the top state official of the New York State Insurance Fund. She remained in that role until 1933 when then-President Roosevelt picked her to become the nation's first woman cabinet member as labor secretary.

"Frances Perkins was a major contributor to the programs of the New Deal, including serving as chairwoman of the President's Committee on Economic Security, which resulted in the Social Security Act of 1935. Following her long service in Washington, she was a faculty member at the New York State School of Industrial and Labor Relations (ILR) at Cornell University from 1957 until her death in 1965. In the history of workers' compensation, Frances Perkins is an Empire State Emerald," said workers' compensation scholar John F. Burton Jr. She also never let go of the memory of the 146 Triangle victims who perished in the blaze. At the fire's 50th memorial observance in 1961, Ms. Perkins said, "They did not die in vain, and we will never forget them."

CHAMPIONING WORKERS' COMPENSATION ISSUES

Jamila Wignot, Recipient of the Frances Perkins Award

Jamila Wignot will receive the Centennial Frances Perkins Award for performing significant work to ensure injured workers are treated with dignity and get the benefits they deserve. This year, we find no better candidate than Ms. Wignot, through her resourcefulness as an artist and storyteller. Ms. Wignot produced and directed *Triangle Fire* in 2011 for the PBS series *American Experience*: it won a Peabody Award. This one hour film follows the terrible events surrounding the Triangle Shirtwaist Factory fire with compassion and a profound understanding of the significance of the disaster to working people and the Progressive movement. In the spirit of Frances Perkins, Ms. Wignot continues with the spirit and boisterous advocacy that reflects Commissioner Perkins' legacy. Ms Wignot explained her perspective.



When I began Triangle Fire nearly two years ago, I knew as much about the story as the average American learns...a tragic event...men and women, young and old, forced to make the horrible choice between burning to death on a factory floor and jumping from a nine story window. On March 25th 2009, I attended the 98th anniversary of the fire. Surrounded by present-day garment workers, union leaders, and a handful of relatives and descendants, I counted up the nine stories of the Asch Building (now the Brown Building and home to NYU's Chemistry Department) and tried to imagine making that choice.

They read the names. One hundred forty-six virtually anonymous poor souls whose deaths ushered in sweeping reforms that would change the nation's views of workers, the workplace, and the kind of country we lived in. Yes, it was an important story that deserved to be told. Still, I had no idea just how necessary a story it was. How important that it be heard.

The workers who died were not victims. They had not passively accepted their intolerable conditions, but instead had fought courageously to better their circumstances. They had come to this country with a profound faith in the virtues it extolled: fairness, equality, and the chance for a better future. And when they did not find it, they took to the streets, challenging the people of New York City to live up to those high ideals.

They demanded more for themselves, and in so doing demanded more for us, today. The story of the Triangle fire serves as a powerful reminder the human costs behind America's transformative historical moments. It has been an honor to bring their story and their lives to life.

An award-winning, Brooklyn-based filmmaker, Ms. Wignot's body of work also includes *Town Hall*, a feature-length co-production with ITVS, about the Tea Party movement (Seattle International Film Festival '13); for PBS, the Peabody Award-winning film *The African Americans: Many Rivers to Cross*; and the Emmy-nominated *Walt Whitman*. Ms. Wignot also produced *The Rehnquist Revolution*, the fourth episode of WNET's series *The Supreme Court*, which was an IDA Best Limited Series winner. She is currently directing one hour of the six-part women's series *Makers* and is a producer/director on a documentary film about the playwright Lorraine Hansberry. Her other producing credits include *Jesse James* and *Massie Affair*, which aired on WGBH's *American Experience*. Prior to her work as a producer and director, she worked on other PBS programs, including *Reconstruction: The Second Civil War* and the series *Race: The Power of an Illusion*.

Dr. Stephen Levin



Physician Who Dedicated His Career to Injured Workers

Former Board Medical Director Widely Recognized for Groundbreaking Work

When the Board filled its medical director position after nearly a dozen vacant years in 2009, it hired whom it felt best for the job: an acknowledged expert in the treatment of injured workers and the causes of industrial diseases and accidents, a physician with a national reputation for his work and compassion. It of course turned to Dr. Stephen Levin, an expert in occupational medicine and a pioneer in the treatment and diagnosis of World Trade Center workers.

A physician with sterling credentials treating injured workers, Dr. Levin's arrival brought immediate credibility to the Board at a time when the agency was moving deeply into medical care issues. He stressed evidence-based medicine and the importance of restoring people as closely as possible to their normal routines of life, with work just one of those activities. Dr. Levin quickly established relationships with disparate medical and advocacy communities. He founded the present medical director's office, and brought the Medical Treatment Guidelines to fruition.

The entire world of occupational medicine also mourned Dr. Levin's passing on Feb. 7, 2012. He was 70.

"He was very skilled, kind, giving and compassionate, just as you'd expect in a great doctor. He accomplished so much as our medical director with his unique gift for bringing people together from often entrenched and conflicting opinions to a common ground," Chair Robert Beloten said.

Dr. Levin practiced more than 30 years at the The Mt. Sinai – Irving J. Selikoff Occupational Health Clinical Center, including 25 years as its medical co-director. Internationally known for his World Trade Center work, Dr. Levin was the principal investigator of the illnesses and then for the data collection performed by the Mt. Sinai monitoring program. He later became the treatment program's senior occupational medicine physician, as well as its medical co-director.

Dr. Levin was born in Philadelphia in 1941. His father was a union carpenter; his mother, a hospital aide. He published his first of at least 48 academic papers while still a biology undergraduate, and graduated from New York University School of Medicine in 1967. He subsequently did residencies in surgery, psychiatry and occupational/environmental medicine. A private practitioner during the 1970s, he also worked during that period in a pediatric clinic, a family planning setting and a prison. He entered occupational and environmental medicine in 1977, and joined Mt. Sinai Hospital in 1981.

At Mt. Sinai, Dr. Levin directed the Asbestos Archives and Research Center and the Occupational Medicine Residency Program. Advocate for Injured Workers Ed Ruff, who held health and safety positions with the AFL-CIO, sat on The Mount Sinai – Irving J. Selikoff Occupational Health Clinical Center's board while Dr. Levin was there.

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“Dr. Levin was what many of us strive to be in occupational medicine: A fierce advocate on behalf of workers and a dedicated, compassionate and gifted physician. Dr. Levin will be remembered for... his advocacy and unrelenting dedication to thousands of WTC responders ... and his ongoing commitment to promoting worker safety and health not only in New York but on the world stage.

The Mt. Sinai Medical Center

“Dr. Levin was a true believer in fighting for the working man. When people were made ill by their jobs, he was one of the first to find the cause and get it corrected, as well as treat the workers,” Ed said. “He took occupational medicine very seriously, and he educated the rest of the medical profession on its importance.”

He spent two years as the Board’s interim medical director, interim because of his huge commitments and value elsewhere. The workers’ compensation community agrees he achieved his goal for the Board: “I have spent my career dedicated to improving the health of ill and injured workers,” Dr. Levin said upon his hiring. “I will bring the same focus and dedication to the medical director position at the Board.”

Dr. Levin’s capacity for meaningful work and devotion to caring for working people was clear throughout his long career. He leaves the legacy of a physician and a humanitarian.

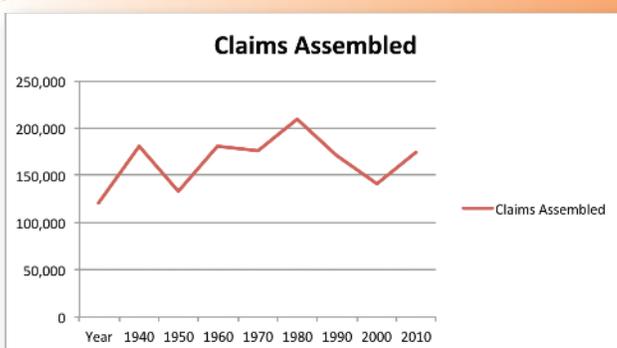
“His legacy lives on within those groundbreaking changes to the workers’ compensation system upon which he directly impacted, and I consider myself fortunate to have worked with an individual of Steve’s integrity.

**Jeffrey Kahn MD,
The Medical Society of the State of New York**

“We were extremely fortunate to have Dr. Levin re-establish and redefine the medical director’s office. He brought instant credibility and tremendous knowledge to the Board. His expertise and compassion for workers was a model for the Board and for his colleagues in medicine.

Former Chair Zachary S. Weiss

In memory of Dr. Levin’s contributions to occupational medicine, the Board created the Dr. Stephen Levin Award, to be presented to a health care provider who has demonstrated significant achievement in the care and treatment of injured workers. It will be presented to Dr. Robert Goldberg at the Centennial Conference on July 15.



Year	Claims Assembled
1940	120,782
1950	181,319
1960	132,629
1970	181,609
1980	175,390
1990	208,918
2000	171,608
2010	140,724
2013	173,916

CHAMPIONING WORKERS' COMPENSATION ISSUES

***Dr. Robert B. Goldberg, Recipient of the Dr. Stephen Levin Award
Dean, Touro School of Osteopathic Medicine***

Among distinctions too numerous to fully cite, Dr. Robert B. Goldberg is president of the Organization of State Medical Association Presidents of the American Medical Association, which furthers the aims and ideals of organized medicine by advocating for patients and striving to enhance medical education and clinical opportunities at the undergraduate and graduate levels. He is certified by the American Osteopathic Board of Rehabilitation Medicine, American Board of Physical Medicine & Rehabilitation, and the American Board of Neuromuscular and Electrodiagnostic Medicine. He has served on many New York State Task Forces addressing workers' compensation issues and has always advocated quality medical care to injured workers.



Elements of Change

The Workers Compensation Board, in concert with the State Insurance Department, took a bold stance in 2007 when it convened a Task Force to look at medical practice, and confront the status quo. What the Task Force knew was that the medical treatment system did not work—that in some instances care was withheld and in others, abundant services of dubious value were administered. The Task Force committed thousands of professional hours to look at evidence against the framework of rules and regulations in order to create medical treatment guidelines that serve as a guidepost to the effective management of the injured worker.

The Task Force appreciated that the trend in medicine is toward incorporation of evidence-based research into the evaluation and treatment of patients. This scientific platform sounds reassuring to many, but to the practicing physician it poses challenges that must be considered when one develops effective policy. Physicians approach patients by addressing what the physician knows about the patient and medical science. At the same time the physician looks at a patient through a series of personal beliefs which may or may not have foundations that will withstand scientific rigor, but have been seen to lead to good patient outcomes. Over time, the distinction between what one knows and that which one believes blurs. The modern physician must then combine this “blurred” position with the strengths of evidence based medicine balanced against its weakness. Though evidence based medicine is defined as objective analysis of clinical and research observations, this “analysis” has vast limitations. According to David Deitz, MD, Medical Director for Liberty Mutual Insurance Company, “having no evidence is not the same as evidence against.” Therefore, a medical intervention may be valuable, but the foundation or explanation may be lacking in prospective double blinded research studies. Proof of this is the refusal by prospective volunteers to evaluate the effectiveness of a parachute — when asked to be randomly assigned to one group with a parachute (or one with a backpack that resembles a parachute) and then jump from a plane at 8000 feet.

Research design influences measurement. This finding, The Hawthorne Effect, is well known. To minimize the effect of bias, prospective studies are designed. But not everything is studied. When the consensus is strong, the need to investigate is weak. Unfortunately, consensus is often based upon belief. Stephen Levin, MD, a champion for injured workers and major contributor to the Task Force, illustrated this obstacle when the Task Force considered the scope of work to be undertaken. He offered the example of looking toward historical efforts to change beliefs that have been fraught with professional and personal risk. Galileo and Copernicus were ostracized and imprisoned when they spoke of their astronomical theories to a scientific community that was rooted in contrary opinion. Decades and perhaps centuries were needed for the consensus to move in the direction of their evidence based positions.

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This last point is essential. California witnessed that by passing medical treatment guidelines (consensus based) as a formal Rule, typographical errors imbedded in the text [once approved] were found to be enforceable. Innovation and medical advances have been stifled. New York considered this lesson and built into the New York Medical Treatment Guidelines pathways for individualization and review so that the injured worker could avail from improvements in medical treatment by allowing the physician and other health professionals the ability to build upon the fund of knowledge.

The complexities of practicing medicine are well known. Medical practice and treatment of the injured worker is even more daunting. The burden that the physician assumes when confronted by an injured worker discourages many from participating in the workers' compensation system. The filing requirements, the guidelines, the "frictional" delays and imposed time-lines are cited as reasons, perhaps excuses, for some. This is regrettable. An injury is serious — the look in the patient's eyes when the physician walks into the examining room gives a glimpse into that reality. The impact of loss of ability to function and pain are obvious. Importantly, lost time, lost wages, lack of money for food and rent and stature as the breadwinner in the family are also significantly challenged the instant an injury is sustained. The rewards for effective, responsible, appropriate and empathetic care remind the physician why medicine was chosen for a career.

Chronic pain and the issues associated with narcotic use are priority health concerns that affect a patient's recovery, performance and ultimately return to work. The Non-Acute Pain Medical Treatment Guidelines, a state-of-the-art medical treatment guideline to address the complex care needs of an injured worker with chronic pain, is a highlight of the work of the Medical Advisory Committee (MAC), the Board's successor to the Task Force. The need to allow for patient access while developing a Medical Treatment Guideline that requires surveillance and adherence to best practices was fraught with challenges. Art Wilcox, Labor's representative and Lev Ginsburg, the Business Council's representative to the MAC, played an important role in balancing recommendations for safe practice while maintaining strict confidentiality. The efforts were successful. In and around the time the Non-Acute Pain Medical Treatment Guidelines were drafted, New York initiated I-STOP, a system wherein physicians access a state-run database to determine whether a patient is prescribed controlled substances by other physicians or allied health professionals. The MAC went far beyond I-STOP by creating a document that provides physicians and patients with a framework upon which reliable and safe medical treatment may be provided, while protecting the privacy and rights of the patient, physician and regulatory agencies.

Physician and medical educators must incorporate the principles and policies created by the Task Force and the MAC into the training of future physicians. Medical students must learn that an injury is but a part of the needs that a patient has. That scientific rigor must support what a physician does, and that the needs of the patient must be met. What better way to practice medicine than to be a part of the system?

40 Years of Progress with the Board

Memories from Assistant Workers' Compensation Examiner Spanish Language Carmen S. Lugo, a 40-year Employee

I came to New York more than 40 years ago from Puerto Rico. When I arrived, La Esperanza Catholic Church in Manhattan was offering English courses so I immediately registered and attended the class the entire year. I was hired as a stenographer in the Board's Review Bureau (known today as the Administrative Review Division) in 1973. My colleagues and I have adapted to new systems and technology because the workplace has changed dramatically over the past four decades. I first performed my daily tasks on an electric typewriter. The next change for me was the introduction of the fax machine. Then in the mid-1990s, there was another transition, to a more advanced computerized system. Now we are phasing out the paperwork.

We face new challenges in our everyday work. Technology is advancing and over these years the work procedures have been updated. In the 1990's, with the introduction of computers, some Bureaus were combined, people took new positions, and tasks were reorganized. The stenographer position was no longer needed but as a Spanish speaker, I was assigned a new position. Since the number of Spanish-speaking injured workers was increasing, I was transferred to the Information office to assist with Spanish translations.

I started with the Board 26 days after we moved into the World Trade Center. The construction of the building had not yet been completed, so we entered and left through a different exit every day until the work was done. The building itself was a miniature city with its own zip code. In the concourse floor a variety of stores were found, from bookstores, banks, clothing stores, a place to develop films, and more stores than I can remember.

The WTC management kept its tenants informed about events performed on top of Building #2 by sending a "110 News" circular around. It was a wonderful experience to work in a building where thousands of people were coming and going, and not knowing who they were.

Forty years is a long journey. I have seen many changes and made many friends among my coworkers. It has been an interesting and rewarding career.

Fighting Fraud in the Current Workers' Compensation System

The Office of the Fraud Inspector General (OFIG) was created as part of the state's comprehensive Workers' Compensation Reform Act of 1996. Headquartered in Albany with offices in Buffalo, Syracuse, Rochester, Binghamton, Peekskill, and New York City, OFIG's mission is to investigate violations of the laws and regulations governing the state's workers' compensation system. Through its investigations, audits, and reports, OFIG focuses on eliminating and deterring fraud, which reduces costs to the workers' compensation system and improves efficiency and effectiveness in the delivery of benefits to injured workers.

The Inspector General's Office has statewide responsibility to investigate and assist in the prosecution of workers' compensation fraud. Organized much like a district attorney's office, with attorneys and investigators working together to develop cases for prosecution, OFIG maintains a close working relationship with county district attorneys, the Criminal Prosecution Bureau of the State Attorney General's Office, and the US Attorney's Office to advance criminal fraud cases. A similar relationship exists with the New York State Department of Financial Services and the New York State Insurance Fund.

To aid prosecution, the statute that created the Office of the Fraud Inspector General – Chapter 635 of the Laws of 1996 – specifically authorizes OFIG to:

- Conduct and supervise investigations concerning allegations of workers' compensation fraud;
- Subpoena witnesses and take depositions of witnesses under oath;
- Compel the production of books, records and documents;
- Report to the attorney general, local district attorneys or other law enforcement agencies;
- Provide supporting evidence for any prosecution of fraud and assist in that prosecution;
- Submit annual reports to the governor and chair of the Workers' Compensation Board regarding office findings; and
- Recommend legislative and regulatory changes to the governor and chair of the Board.

The office's work deters fraudulent claims that often result in lost profits to business; fewer job opportunities and lower wages for workers; and higher insurance premiums for consumers.

Defining Fraud

Workers' compensation fraud occurs when someone knowingly and intentionally makes a false, material statement in order to obtain or deny a benefit for themselves or another. The office pursues cases under the Workers' Compensation law (WCL), NYS Penal Law and Federal Statutes. The employees of OFIG routinely investigate allegations of fraud committed by employees, employers, attorneys, health care providers and insurance carriers.

With passage of the Workers' Compensation Reform Act of 1996 and creation of the Office of the Fraud Inspector General, there was a renewed effort to focus public attention on insurance fraud and to bring cases to criminal court in an effort to deter fraud. Criminal penalties and other sanctions for those engaged in fraud were strengthened.

- The crime of workers' compensation fraud was reclassified a Class E felony, from a misdemeanor;
- Insurance carriers, employers, self-insurers, and claimants are now subject to criminal prosecution for any material false statements;
- Claimants are disqualified from benefits and can be required to make restitution of any illegal gains from material false statements; and
- An employers' experience rating and surcharges can be readjusted with any fraudulent claims.

There was additional fraud-fighting reform in 2007 that enhanced the penalties under the workers' compensation law and focused on statutes to deter employer fraud.

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From Paper Files to Computers to eClaims

The office operates a 24-hour hotline number (1-888-363-6001); callers filing a complaint are never required to leave their name. The office also receives numerous complaints through an online form on the Board's website. The OFIG receives over 1,000 complaints every year. Every complaint is reviewed by OFIG for its viability as a subject of investigation.

Recent Cases

Since its inception, OFIG has referred thousands of cases for prosecution. The following are just a few examples of cases investigated and referred to prosecutorial agencies that resulted in a indictments and convictions:

- Two Utica attorneys pled guilty to fraud charges resulting from their scheme to defraud the system by having a claimant's sister impersonate the claimant in order to secure a Section 32 settlement.
- The owner of a New York City asbestos abatement company was found guilty of fraud for underreporting the number of workers the company employed and scope of work being performed. The owner had secured coverage for minor construction work and message delivery for one or two employees, when in fact the company employed more than 50 workers engaged in many large public and private asbestos abatement projects.
- A central New York man was arrested after he was discovered running a billiard room and restaurant, owned by his daughter, after claiming a job-related back injury prevented him from working. He was charged and convicted for fraudulently collecting \$17,940 in workers' compensation benefits.
- Two Staten Island doctors and a New Jersey pharmacist were indicted for their scheme to bill for treatments not rendered and for their fraudulent dispensing of prescriptions for Oxycodone, a painkiller with a high street resale value. Working together, the three conspired to sell more than 1.8 million pills over four years to longshoreman working on the docks of Staten Island and Brooklyn. The case is pending.

The Office of the Fraud Inspector General consistently detects and prevents millions of dollars in fraud losses every year and provides thousands of dollars in victim restitution and fines through its continuing fraud fighting efforts. The office is ever evolving in an effort to meet more complex fraud schemes and most effectively deter fraud in the workers' compensation system.

Memories from Senior Workers' Compensation Examiner Sandra Burke-Arrington, a 40-year Employee

I started working at the Workers' Compensation Board on Dec. 13, 1973. It was then called the Workmen's Compensation Board. The Board had recently moved to the World Trade Center from 50 Park Place. I heard comments from some of the employees who were not happy with the move.

I started work as a Grade 3 Clerk in Unit 4. We had units back then, not teams. The ladies of Unit 4, Edna, Linda and Sylvia, showed me the ropes. My job consisted of filing papers; pulling cases to give to examiners as abeyances; prepping cases for calendar; giving cases to the typists for decisions or form letters to be sent out, as well as handling phone calls. The claimant files were packed very tightly with paperwork. I broke many a nail and scraped many fingers in those files.

When we transitioned to computers, some people could not embrace the change. I looked forward to the change but was also nervous because I was unsure as to how I would adapt. I surprised myself and caught on quicker than I thought. It made life easier. No more heavy cases to lift. No lost cases.

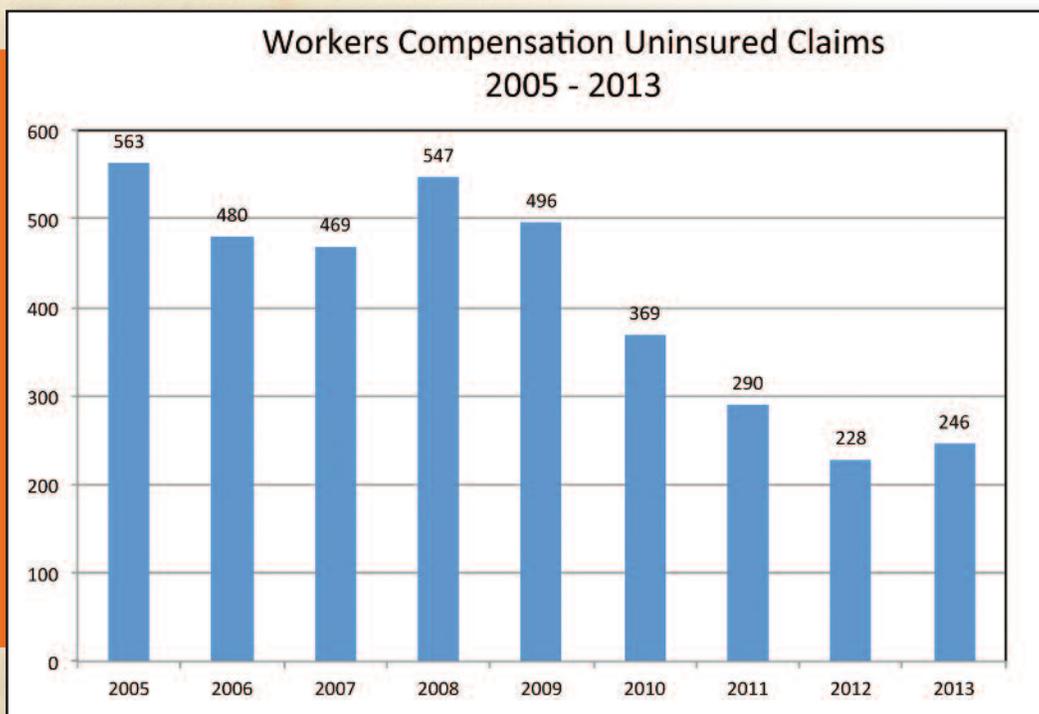
I have seen many changes over the last 40 years. I am hoping the new changes in eClaims will benefit the claimants as well as the employees.

Increased Compliance Strengthens the System for Workers and their Employers

Insurance compliance efforts strengthen the entire system for both workers and employers. Beyond the obvious benefit to workers, employers who carry insurance are protected from open-ended liability. Enforcing the insurance requirement also levels the playing field, making it harder for unscrupulous competitors to take advantage of their workers and undercut honest employers. Any penalties for noncompliance are meant to enforce the law, a necessary component of the workers' compensation system: they're not meant to be punitive nor designed to collect revenue. Any penalties are deposited into the Uninsured Employers Fund, which pays the claims of workers whose employers refuse to carry the mandatory insurance.

The advent of computer technology over the last 20 years has greatly enhanced the Board's ability to ensure that employers comply with the requirement to carry workers' compensation insurance for their employees. The Board has been aggressive and generally successful in enforcing this bedrock tenet of the covenant. The Board created a Monitoring Unit this May, a direct result of the business process re-engineering, and will use the latest technology to increase compliance. Ongoing education and outreach to employers has also had a significant impact.

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NONCOMPLIANCE PENALTIES

Prior to 2007	2007 Reform	2008	2013			
\$250 every 10 days without insurance: All employers	\$1,000 every 10 days without insurance: All employers	\$2,000 every 10 days without insurance: All employers	Every 10 days without insurance: \$500 up to 5 employees	Every 10 days without insurance: \$750 6-10 employees	Every 10 days without insurance: \$1,000 11-24 employees	Every 10 days without insurance: \$2,000 25+ employees

Enforcing the Coverage Requirement

In the first years of this century, the Board created a viable Insurance Compliance database (IC2). IC2 seamlessly identifies and contacts uninsured employers, penalizes noncompliant employers, makes referrals to collection agencies, and ultimately files judgments, all through automated processes. In addition to making payment, noncompliant employers must also obtain a workers' compensation policy. Ensuring that employers obtain a policy to protect their employees is more important to the Board than the revenue raised from penalties.

IC2 uses data the Board receives and collects to identify uninsured employers. The Board receives a weekly electronic feed from the NYS Dept. of Labor (DOL) Unemployment Division, which includes newly registered employers and updates to previously registered employers. By regulation, all workers' compensation insurance carriers must notify the Board within 30 days when they write, change or cancel an employer's insurance policy. These two data sources provide a wealth of information that IC2 uses to examine employers for compliance by simply cross-checking the two data sets.

The Board took three critical steps in 2004.

- 1) The Board mandated carriers electronically file their insurance information with the Board. Electronic filing makes it easy to create a data file to compare with the DOL file in IC2.
- 2) The Board adopted the IAIABC standard for reporting proof of coverage (POC) information. This made it easier for carriers to file with the Board, as they no longer had to use a proprietary New York standard. The Board has also worked with the IAIABC to incorporate premium data into the latest version of this international standard. This additional data point, along with payroll information, will be a powerful antifraud and misclassification tool.
- 3) The Board also mandated that carrier filings include the employer's Federal Employer Identification Number (FEIN), eliminating filing inaccuracies from business owners. Now we automatically cross-reference an employer between the DOL file and the carrier's file using the FEIN, increasing the efficiency and reliability of that process without manual data entry.

The compliance process begins when IC2 finds data that does not match between the two files. IC2 sends an inquiry letter seeking verification of insurance, and if there is no response within 60 days, a penalty is automatically generated. If the employer doesn't settle the penalty within three months, the account goes to a collection agency. If the account is not resolved within six months of referral to that collection agency, a judgment is automatically processed against that employer. Penalties continue accumulating automatically.

However, the employer may contact the Board at any one of these many points to review the appropriateness of the penalty and

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Who Needs Insurance

- Workers in all for-profit businesses, including volunteers and family members.
- Domestic workers, sitters, and companions employed 40 hours per week in a residence, including time spent living at a residence.
- Farm workers whose employer paid \$1,200 or more for farm labor in the preceding calendar year.
- Most workers compensated by a nonprofit organization.

Who Doesn't Need Insurance

- Sole proprietors with no employees.
- Individuals in partnerships (including LP, LLC, LLP, PLLC, PLLP or RLLP) with no employees.
- One/two-person corporations where the owners own all stock (a share or more each) and hold all corporate offices and have no employees.
- Business owners can always include themselves on a policy.

Independent Contractors

Workers under an employer's direct control are considered employees for workers' compensation purposes, regardless of their tax status. There is a perception that workers who are independent contractors for tax purposes do not need workers' compensation insurance coverage; that is often false because a worker's tax status is not the sole determinant of whether workers' compensation insurance is required. In addition, specific rules were established under the law for the construction and trucking industries regarding who is an employee and who is an independent contractor.

Increased Compliance

even the penalty amount. Employers are strongly encouraged at every point in the process to contact the Board for these purposes.

IC2 won the 2007 Best of New York Award from the Center for Digital Government for the Project Demonstrating the Best Sustainable Value.

Uninsured Employers Fund

Due to the focus on compliance, the Uninsured Employers Fund (UEF) generally operates with a surplus. Wholly funded by penalties on noncompliant employers, New York's UEF was one of the few UEFs in the nation for many years that didn't require additional funding. The UEF pays the claims of workers whose employers do not carry the mandatory insurance. Because our enforcement has drawn so many employers into compliance, the dollars collected have plateaued and total penalty amounts have decreased.

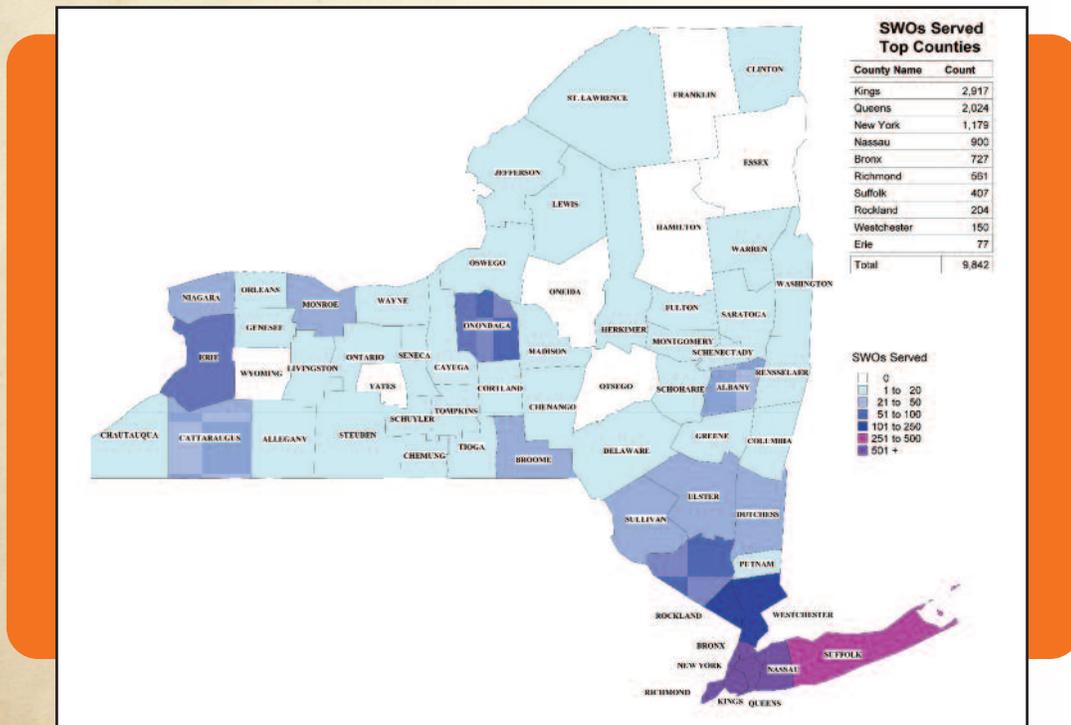
The Board also handles *no insurance* claims from employees whose employers do not have a workers' compensation policy. When a claim arrives at the Board for an employer that is not carrying insurance, the Board directs an investigation, holds necessary hearings, and determines if the purported employer is in fact the employer for workers' compensation purposes. If yes, the Uninsured Employers Fund will pay the claim and that employer reimburses the Fund. Increased enforcement efforts have led to a steady decline in the number of uninsured claims in recent years.

Stop Work Orders

The 2007 Reform gave the Board the authority to issue a stop work order to an employer that resists carrying the mandatory insurance. This has proven extremely effective. The stop work order requires the employer to immediately cease operations until insurance is purchased and outstanding penalties are resolved. Since July 2007, the Board has issued nearly 10,000 of them statewide. The stop work orders also have the support of the courts. In 2009, the Appellate Division, Third Dept., upheld the Board's imposition of a stop work order in *Mamaroneck Village Tile Distributors*.

More than once, Board investigators have conducted sweeps, checking insurance in unannounced stops at all businesses on a city block. They will find employers without it, and, if the employers refuse to immediately purchase insurance, the investigators post a stop work order. Before they reach the end of the street, business people come to them saying they're on the phone now buying insurance. Enforcement works.

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A Hard Day's Night

In 2013, two investigators from the Board's Enforcement Unit worked a full day then went on an overnight sweep with nine officers from the 41 Precinct in the South Bronx and members of the NYS Liquor Authority to investigate businesses identified by local law enforcement as troublesome. The Board examined insurance and observed employment at the bar/restaurants during their busy times. The results:

- Business 1.** Penalty: \$150,000. The employer was arrested for obstructing governmental administration. He was open despite a previous stop work order.
- Business 2.** Penalty: \$288,000. A stop work order and record subpoena were issued. The principal owner was arrested and charged with a felony for operating without insurance with more than five employees.
- Business 3.** Penalty: \$298,000. A stop work order and record subpoena were issued.
- Business 4.** Penalty: \$30,000. A stop work order and record subpoena were issued.
- Business 5.** The president and treasurer were charged with failure to carry disability insurance and given desk appearance tickets.
- Business 6.** While no workers' compensation violations were cited, the police arrested eight people after cocaine was found.

The sweep resulted in a total of \$766,000 in penalties against these nuisance businesses. Three stop work orders were imposed and an existing one enforced with an arrest. The businesses either purchased insurance or closed.

This intergovernmental cooperation cleans up New York, one scofflaw employer at a time, by vigorously enforcing the law that businesses with employees must carry workers' compensation insurance. The district attorneys in the areas where we operate with the police have signed on, too.

Working with police agencies is helpful because night work is necessary with bars and nightclubs and security is a consideration. "If we arrive at night without the police, a business doesn't always believe we're really Board employees, because they don't expect us to be working at 2 a.m.," an investigator explained.

Education

Education is a crucial part of compliance. The Board provides educational outreach to business groups, associations and other parties to educate employers about the importance of workers' compensation coverage. Every year, outreach efforts include educating local building officials on the requirements of the workers' compensation law. Section 57 requires that any business receiving a permit, license or contract with a governmental entity in New York State carry workers' compensation coverage. As part of our Section 57 training, we explain the compliance requirements and acceptable documentation building officials and code enforcement officers are required to collect in order to issue building permits, licenses and/or contracts. This education particularly reaches the construction trades, where serious accidents are frequent.

Increased compliance through monitoring, enforcement and education reduces uninsured claims and protects against fraud, improving benefits to all system participants.



The Future of Workers' Compensation in New York

Recent years have been transformative for the workers' compensation system. The successful implementation of eClaims, the current business process re-engineering (BPR) project, and the effective implementation of the 2007 Reform changed how the Board has traditionally operated. Additional legislation enabled the Board to reduce costs and increase benefits. We expect the initiatives coming out of the re-engineering will further transform the Board's processes and technology to better meet the needs of injured workers and employers and position us squarely to meet the challenges of the second century of workers' compensation in New York.

First, let's summarize what has already been done. Under Governor Andrew Cuomo, the Board has aggressively improved the system.

- We fully implemented and continue to improve upon the 2007 Reform.
- We increased the minimum benefit from \$100 to \$150, protecting New York's most vulnerable employees.
- We created \$800 million in savings to employers when Governor Cuomo signed the Business Relief Act of 2013. Closing the Fund for Reopened Cases will generate assessment savings into the future.
- We issued bonds to protect the injured workers of group self-insured trusts and create a path to resolution.

Simultaneously, we were asked to look inward and evaluate how to best fulfill our mission. To integrate the new reforms and meet the emerging needs of today's system and our evolving role in it, we initiated two major initiatives: eClaims and the business process re-engineering project. The Board decided to implement eClaims before the BPR project because of the benefits of electronic filing – we're the 39th jurisdiction in the US to adopt this national standard.

eClaims revolutionizes the haphazard paper reporting process of injuries and payments that New York has used for almost a century. Adopting the International Association of Industrial Accident Boards and Commissions' (IAIABC) standard gives New York industry best practices for injury reporting. For the first time, the Board will know with electronic data when injuries occur and when payments are made. True oversight will now be possible. Additional and significant benefits include:

- Improved, timely delivery of benefits to injured workers.
- Seamless processing of information from the initial claims reporting source.
- Reduced paper handling costs to the Board and to system participants.
- Fewer duplicative claim form filings.
- Faster availability of better quality claims information, directly benefitting injured workers.
- Increased availability of data for policy decisions in a single, consistent data format.

The electronic filing of claims data finished implementation on April 23, 2014. We are already seeing reduced costs (e.g., paper scanning), and anticipate concrete data on the timeliness of filings in the near future.

The re-engineering process builds on the eClaims success, with a much wider scope. It is a sweeping effort to examine how well the workers' compensation system in New York meets its goals, and then design a system that effectively serves the needs of injured workers and employers. Since August of 2013, the Board has been working with our stakeholders to conduct this evaluation and plan the future.

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The initiatives that come out of the BPR will correct long-standing problems. Independent research, such as studies by the Workers' Compensation Research Institute, shows that New York's insurers are historically slow to pay injured workers. The medical outcomes are poorer than what workers in other states see. It is undisputed that prompt delivery of benefits is good for injured workers and reduces employer costs. The data indicates that those most in need receive the least, our workers wait longer for benefits, and our employer costs are the fifth highest in the nation. These things must change in order for the system to fulfill its mission to injured workers and employers. Among the areas that re-engineering will improve are:

- Medical reporting and billing
- Data collection, enabling system oversight
- Timeliness of the first payment of benefits

The Board consciously reached out to stakeholders for their feedback and ideas. We deeply appreciate the time, cooperation and participation of so many stakeholders. We believe maintaining this dialogue has already paid dividends and is an important reinvention of the system. Of note among the many positive outcomes of the planning phase was a shared stakeholder vision for the Board. This vision comprises these ideas:

- Create a transparent organization that reports metrics to focus on improving the system for all participants.
- Create a flexible and self-executing system that responds to leading practices, legislative and regulatory changes and is built on an eGov platform.
- Maintain the open dialogue between the Board and key participant groups to increase collaboration and share improvement ideas.

Transforming processes and technology alone will not take us where we want to go. We could not do this without the participation of our stakeholders so we must maintain and strengthen that collaborative relationship. Not every vested interest will agree on every recommendation, but for the first time in a long time, the Board is systematically identifying and fixing fundamental system problems. We move forward with the core belief that everyone benefits from timely and appropriate lost wage benefits and good quality medical care. Looking back at our progress and where we stand today, the future looks very bright indeed.

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A Celebration of the Board by Hand

By Joseph N. Merola, Case Assembly Unit, 1989

Drawn in celebration of the Board's 75th anniversary, *Creation of the New York State Workers' Compensation Board* is an allegorical drawing in pen, ink and pencil, executed in the Beaux Arts style popular circa 1914. Board employee Joseph N. Merola drew it in 1989 for that year's commemoration. The framed drawing hangs in the Schenectady office.

The following is Mr. Merola's commentary on the work.

The central standing figure represents the state of New York, commanding the ship of state to the creation of the Board. With her right hand, she points the way while in her left hand she holds a lantern for other states to follow her lead. She wears a crown emblematic of the Empire State, and a chain of jewels, each representing a county.

The figure in the bow is *Compassion*, who holds a material wreath for the Triangle Factory workers. She passes the state's commands to the blind *Justice*, who steers the ship. The ship is propelled by the *Will of the People*, represented by the two male figures at the lower left.

The ship approaches a structure emblematic of the Board, its roof upheld by columns named for the counties that also hold the stanchions to moor the Ship of State. In the background at right is the forsaken dark past, a time when the injured worker was left destitute, deprived of his or her livelihood.



Creation of the New York State Workers' Compensation Board, Joseph N. Merola, 1989

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