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In-Person Events Return: 2021 Affinity Bar Association Quizzo Championship



The annual YLD Affinity Bar Association Quizzo returned in person on Aug. 18 at City Tap House Logan Square. Congratulations to this year's winners: the Asian Pacific American Bar Association of Pennsylvania (1st), The Barristers' Association of Philadelphia, Inc. (2nd) and the Brehon Law Society (3rd.) We also raised \$565 at the event for donated school supplies for Turning Points for Children. Thanks to all who joined us!

Twenty-Five Years Later: A Retrospective of Act 57

By Joseph L. Ring

The year was 1996. Gas was \$1.23 a gallon; the internet was delivered on CDs sent through the mail; and you also could not resolve a workers' compensation claim via Compromise and Release. Also, Employer could not unilaterally suspend benefits, even if a Claimant had returned to work, and Notices of Ability to Return to Work were optional. That changed when Governor Tom Ridge signed a set of comprehensive amendments to the Pennsylvania Workers' Compensation Act on June 26, 1996.

Those amendments, known as Act 57, forever

continued on page 6

In This Issue

- 3 Chancellor's Column: A Time to Celebrate
- 4 YLD Column: Lifelong Learning — Sharpening Our Legal Tools
- 7 Bar Association–Drexel Law Partnership
- 18 Quick Bites: Bar Bombon



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Act 57

continued on page 6

changed the practice of workers' compensation law and transformed how claims were handled and litigated. In a sense, Act 57 created the "modern" workers' compensation system. This summer marks the 25th anniversary of this landmark legislation and provides an apropos moment to reflect on its impact over the past quarter century.

Prior to the enactment of Act 57, an Employer's options to cease payment of workers' compensation benefit were limited, to say the least. Absent a Claimant's incarceration after conviction, there were essentially three methods to stop benefits: 1.) litigation; 2.) Supplemental Agreement; and 3.) Final Receipt.

The first option often proved both difficult and expensive, while the other two options required Claimant's cooperation, which was not always forthcoming. Even in instances where a Claimant had returned to work, benefits could not be suspended until the Claimant agreed or an Employer prevailed on a petition.

Perhaps the most significant change was in the introduction of the Compromise and Release Agreement. Prior to Act 57, the only way to "settle" a workers' compensation case was through a commutation

of benefits, which essentially involved an Employer prepaying wage-loss benefits up to 500 weeks, while retaining liability for medical expenses. The growth of the Compromise and Release Agreement has led to more cases being resolved and has arguably rendered commutation functionally obsolete.

Of course, not all of Act 57 has survived the past 25 years unscathed. One of the largest changes found in Act 57 involved the IRE process. Section 306(a.2) required Claimants to undergo an examination to be conducted under "the most recent edition of the American Medical Association 'Guides to the Evaluation of Permanent Impairment.'" This would prove to be controversial, and, in the 2017 case of *Protz v. WCAB (Derry Area Sch. Dist.)*, 161 A.3d 827 (Pa. 2017), the Supreme Court held that this provision violated the non-delegation provisions of the Pennsylvania Constitution.

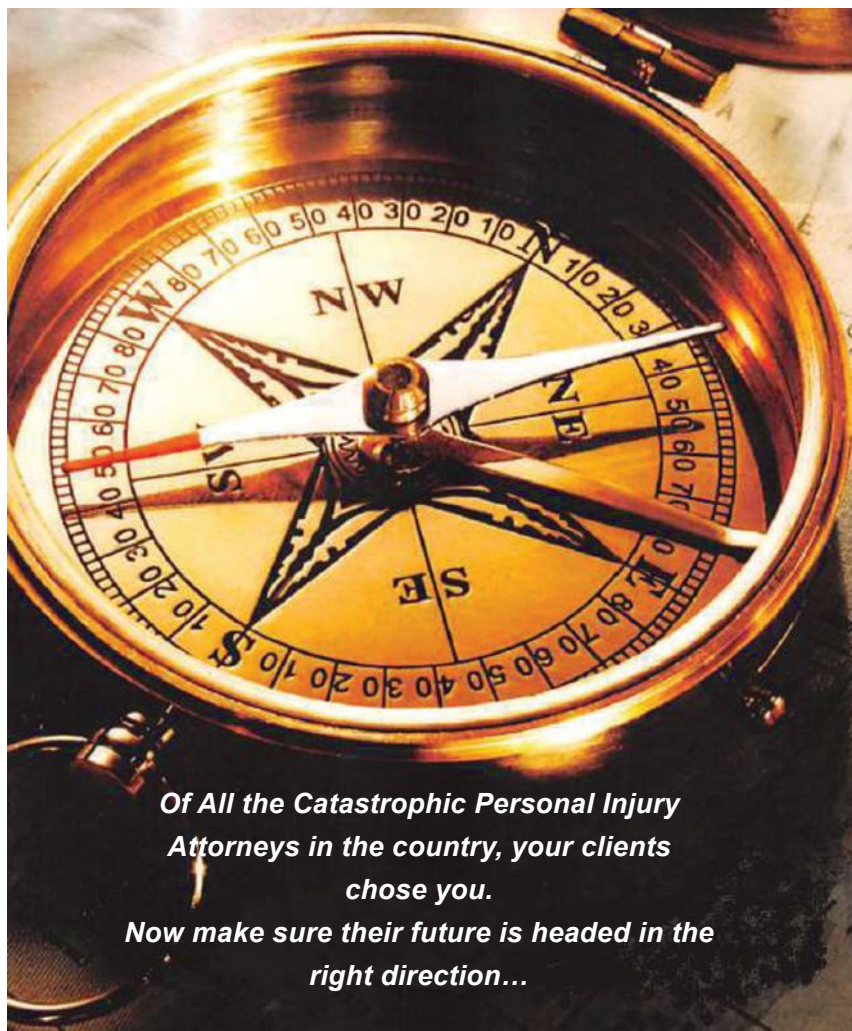
Similarly, Act 57's changes to Section 306(b)(2), while not explicitly invalidated by the Courts, have been significantly mitigated by subsequent case law. Section 306(b)(2) permitted the modification of benefits based upon earning power as established by expert vocational testimony. In *Phoenixville Hospital v. WCAB (Shoap)*, 81 A.3d 830 (Pa. 2013), the Supreme Court essentially

resurrected the Kachinski standard from 1987, allowing a Claimant to defeat a modification or suspension by showing that they applied for a job referral but did not receive an offer.

Other changes wrought by Act 57 include the establishment of the modern Utilization Review and supersedeas processes. Additionally, it changed how an injured worker's "base year" was established for the purposes of unemployment compensation, and allowed a credit for Social Security Retirement benefits. All of these changes factor into the current workers' compensation litigation landscape.

With all of these extensive substantive changes, one change best illustrates the evolution of our practice. Recognizing the increasing complexity and nuance of workers' compensation litigation, Act 57 got rid of "referees" and gave us Judges. While the other amendments under Act 57 certainly changed how our practice works, the creation of the Workers' Compensation Judges changed how it is perceived and symbolizes how our modern practice was born in 1996.

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