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WORKERS' COMPENSATION ONE-LINERS JUNE 2003

AVERAGE WEEKLY WAGE:

Zerby v. WCAB,
821 A.2d 193

Commonwealth Court reasoned that because claimant maintained an employment relationship with the employer, calculation of his average weekly wage for a second injury sustained within a year of the first injury is to include average weekly wage from the first injury; Court overrules *Merkle v. WCAB* and follows *Colpetzer v. WCAB* as average weekly wage should reasonably reflect reality of claimant's pre-injury earning experience.

COMMUTATION:

Chester Upland School District v.
WCAB, 820 A.2d 836

Commonwealth Court holds employer's petition to review is precluded by three year statute of limitations where employer sought credit against commutation sums upon claimant's subsequent return to work without loss of earnings as both employers and claimants run the risk of a change in circumstances beyond three years.

COURSE AND SCOPE:

Sloane Nissan v. WCAB,
820 A.2d 925

Commonwealth Court affirms award of compensation to an employee who sustained significant injuries secondary to a motor vehicle accident when sent home by his employer to change his attire in order to comply with company dress code, evidence established this was consistent with a special mission furthering the interest of the employer.

CREDITS:

Septa v. WCAB,
822 A.2d 114

WC Judge reversed; Commonwealth Court holds pension credit available pursuant to Section 204 despite a pension plan amendment precluding WC benefit offset as a private party plan cannot preempt mandatory statute language.

SUBROGATION:

Independence Blue Cross v. WCAB,
820 A.2d 868

Third-party payer is not entitled to subrogation when it fails to assert its lien during the underlying proceedings and fails to prove it lacked notice of those proceedings, Court reasons subrogation under paragraph two of Section 319 is neither automatic nor absolute.

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*See attached WC Alert