

Jane A. Lombard  
Attorney at Law

## WORKERS' COMPENSATION ONE-LINERS FEBRUARY, 2005

Attorney's Fees  
Orenich v. WCAB,\*  
863 A.2d 165 (Pa. Commw. Ct. 2004)

Within the context of an awarded claim petition, the Commonwealth Court held assessment of attorney's fees and penalties was appropriate where the employer, while acknowledging a work injury and paying medical expenses, failed to issue NCD or NCP within 21 days of notice of injury finding a clear violation of their directive in Lemansky and Waldameer Park; Court refused to draw the distinction between an injury and disability for purpose of filing Bureau paper despite clear statutory language.

Brutico v. WCAB,\*  
\_\_\_ A.2d \_\_\_ (Pa. Commw. Ct. 2004)

In a case decided six days after the Orenich case, Commonwealth Court reached different result, finding attorney's fees and penalties were not appropriate where employer prevailed on a claim petition despite having paid medical expenses for an acknowledged work incident; the Court again stresses, however, an employer is required to issue Bureau paper within 21 days of an injury and if there was a basis for an award of compensation, penalties would have been appropriate as would attorney's fees.

Impairment Rating Evaluation  
Wellington Foods v. WCAB,  
863A.2d 151 (Pa. Commw. Ct. 2004)

Commonwealth Court affirms Workers Compensation Appeal Board Decision which reinstated temporary total disability benefits to a claimant who had attended an Impairment Rating Evaluation which was requested more than 60 days after expiration of 104 weeks of temporary total disability benefits, rejecting employer's argument that claimant waived an objection to the timeliness of the evaluation by attending the exam; Court seemed to believe that claimant was compelled to attend since notice "threatened" a suspension of benefits if he failed to attend.

Modification:  
Verizon Pa., Inc. v. WCAB,  
863 A.2d 1247 (Pa. Commw. Ct. 2004)

Employer appealed dismissal of its petition for modification based on ¶306(b)(1); while the Court affirmed the dismissal because employer's evidence was insufficient to persuade the fact finder that a class of similarly situated employees was available for comparison, it noted the circumstances of a case may permit comparison based on averages, rather than each fellow employee; employer is not required to prove a reduction in wages secondary to economic distress; and the appropriate focus for comparison is on the employment in which claimant was engaged at the time of injury, not currently.

\*For a more complete analysis on the claims handling challenges presented in medical only cases, see attached article "*Is Pennsylvania Still a Wage Loss State?*"