

Jane A. Lombard  
Attorney at Law

## WORKERS' COMPENSATION ONE-LINERS SEPTEMBER, 2005

### Average Weekly Wage:

Weissman v. WCAB, 878 A.2d 953 (Pa. Commw. Ct. 2005)

Commw. Ct. relying on Copetzer "economic reality" in calculating average weekly wages holds that for purpose of determining partial disability only a post injury increase in self-employment earnings can be measured against a pre-injury average weekly wage; to use the entire amount of self-employment earnings would result in a windfall to the employer and failed to accurately reflect claimant's pre-injury earning experience.

### Course of Employment:

Morris v. WCAB (WalMart Stores), 879 A.2d 869 (Pa. Commw. Ct. 2005)

Comm. Ct. affirms dismissal of claim petition holding the claimant, who was using an employee discount to shop before her shift began, was not in the course of employment because providing the discount is no more than a perquisite and claimant was not acting in her capacity as an employee at the time of injury.

### Occupational Disease:

Rex v. WCAB, 879 A.2d 854 (Pa. Commw. Ct. 2005)

Claimant, a firefighter, was not entitled to the presumption of causation pursuant to Section 301 (e) as his non-Q wave myocardial infarction brought about by vasospasm was not an occupational disease; an occupational disease presumes gradual onset secondary to exposure.

### Subrogation:

Superior Lawn Care v. WCAB, 878 A.2d 936 (Pa. Commw. Ct. 2005)

Commw. Ct. reversed WCAB holding the doctrine of laches does not preclude subrogation despite eight years elapsing between the third-party recovery and the employer's petition to review to recoup their subrogation lien as the right to subrogation is absolute.

### Utilization Review:

Howrie v. WCAB, 879 A.2d 820 (Pa. Commw. Ct. 2005)

Noting the regulation which prohibits finding treatment not reasonable or necessary solely because other treatment exists, Court affirms dismissal of claimant's petition to review utilization review where the Judge found long term chiropractic care not reasonable or necessary based on a credibility ruling in favor of the reviewer who thought the care was of "little value" despite claimant's belief in its palliative benefits.

*Jane Lombard   Chuck Katz   Steve Harlen   Paul Pauciulo  
Sharon McGrail-Szabo   Sheilah Tone   Debra Matherne   Thomas Ollason*