

THE NATIONAL WORKPLACE INJURY LITIGATOR

Lighting the Way For the Rights of Injured Workers



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The Workplace Injury Litigation Group, Inc.

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Federal Legislation Endangers Asbestos Victims

By Jon L. Gelman, Esq.

A serious challenge to the rights of injured workers in third party asbestos litigation is pending in Congress. Sponsored by U.S. Senator John D. Ashcroft (R-MO) and Congressman Henry J. Hyde (R-IL) S.758 and H.R. 1283 are called the "Fairness in Asbestos Compensation Act of 1999."

The proposed legislation jeopardizes and may delay the rights of asbestos victims and their families to obtain fair and adequate benefits from the manufacturers, suppliers and distributors of asbestos and health care groups.

No civil trials will be allowed to commence or be maintained until a national claims facility (Asbestos Resolution Corporation) has reviewed the plaintiff's cause of action, certified the case and released the plaintiff from mandatory mediation.

The legislation proposes to limit the issues that may be raised at trial, prohibit recovery for enhanced risk and punitive damages, and waive the time-liness defenses unless the action was stale at the time of the act's passage.

Not only would this bill apply to future cases, this bill would wipe out all current asbestos cases, no matter how long the asbestos victims have been waiting for a trial and whether or not the cases are on the verge of settlement.

(Continued on page 3)

Reported Workplace Injuries Decline for 1997

According to the Bureau of Labor Statistics, 1997 saw the fewest injuries since their record keeping began in 1970. Manufacturers had the highest incidence of injury, at 10.3% of the workforce, followed by Transportation and public utility workers at 8.2%. There were over 6.1 million non-fatal injuries for the year. About 47.5% (2.9 million) of these injuries resulted in light duty or lost time from work.

Workplace occupational diseases were about 430,000 for the year, with 72% representing repetitive trauma such as carpal tunnel syndrome and hearing loss.

INSIDE STORY ...

Summer WILG/ATLA Educational Program in San Francisco

According to a report in *Best's Review*, March, 1999, the rate of injuries and illnesses per 100 full time workers continues to decrease every year since 1993. Critics suggest that because of reform which eliminated coverage or encumbered the process to receive compensation, the true number of occupational injuries and diseases is significantly under-reported.

(Continued on page 5)

Techno Tips: "The Dummies Guide to the WILG Documents Online"

(jon@gelmans.com)

The WILG document database is a valuable resource which is available to all members. The easiest way to access the database is to go directly to the document site <http://members/docdata/search.html>.

Step 1: How to use the database

Members should either bookmark this address or enter it as a shortcut on their windows desktop. The initial log-on screen requires your user name and password. If you do not have that information, please e-mail membership@wilg.org or call (303) 830-0112 to obtain it.

Hundreds of articles concerning workers' compensation have already been contributed and have been posted to the searchable database. Members can search on a specific term to locate information that will be of assistance to them.

Step 2: How to contribute to the database

All members are encouraged to contribute new documents to the database. To post a

(Continued on page 3)

Visit Our Web Site at <http://www.wilg.org>

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P.O. Box 300488
Denver, CO 80203
Phone: 303-830-0112
Fax: 303-830-2543
E-mail: wilg@wilg.org
Web: www.wilg.org

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Spring Board Meeting Highlights Las Vegas

The spring board meeting was held in conjunction with the California Applicants' Attorneys Association/WILG joint educational program on April 24th and 25th. Key federal issues were discussed and members were assigned to monitor changes in the areas of Medical Records Privacy; Asbestos; OSHA's Ergonomic Standards Proposal; the Patients Bill of Rights; and Structured Settlement Reform.

It was agreed to create a special section in the WILG web site for sustaining members law practices to be listed. A new membership category of "Benefactors" was created to encourage contributions from the medical and other professions. A key benefit will be advertising in the members-only section of the web site, receipt of the *Litigator*, possible advertising space in the *Litigator*, listing in a special "Benefactors List", and other benefits to be determined.

The **Nominating Committee** named the following candidates for election to WILG offices during the membership meeting in San Francisco on July 18th: Chairman: Mike Rucka (CA) (one year); President: Jay Causey (WA) (two years); President Elect: Len Jernigan (NC) (two years); Treasurer: Steve Birnbaum (CA) (two years); Secretary: Steve Embry (CT) (two years). Ballots will be mailed to all members prior to the meeting.

Summer Membership and Board Meetings to be Held in San Francisco

The **WILG Board and Membership Meetings** (for the election of Board Members and Officers) meetings will be held at the Pan Pacific Hotel on Sunday, July 18 starting at 8:00 am. A membership telethon will be held on Monday, July 19 starting at 10:00 am. (location to be announced). Election of ATLA Workers' Compensation Section Officers will be held on Saturday, July 17 at 8:15 am (prior to the joint Section/WILG Educational Program. A block of sleeping rooms has been reserved for WILG members at the **Pan Pacific Hotel**, 500 Post Street, \$220 for Single/Double Occupancy (Rack Rate is \$300). This hotel is 2-3 blocks from the ATLA meetings at the Hilton & Towers. Call 1-800-533-6465 to reserve your room.

WILG Online Database

(Continued from page 1)

document, click on "Post Message " and enter your name and e-mail address in the appropriate field boxes.

The subject message of the document should be entered in the "Subject Box." A "Message" can either be an entire document that you want to post, which can be cut and pasted to the message box, or it can be a short note indicating where the document that you have located can be found on the Internet, ie. Internet address.

Step 3. Contributors who want to show off

To easily direct other members to an Internet site, you also have the option of cutting and pasting the Internet address of the document that you have located to the "Optional Link URL" box. The reader can then click on the URL link and the reader's browser will be directed to that web site.

An additional option exists for those who would like to paste an image file into the message by entering the location (Internet address) of the image file into the "Image Location" box. The reader of the message will then have a graphic image appear on the screen as well as any text that you have posted.

Asbestos Victims Endangered

(Continued from page 1)

In order to be eligible for compensation under the proposed bill, a worker must satisfy criteria not required by our courts or our doctors when diagnosing an asbestos related disease.

Those seeking recovery for non-malignant conditions would be required to show the existence of a latency period of at least twelve years and either clinical or pathological evidence of asbestosis or bilateral pleural thickening with impairment.

Mesothelioma victims would be required to demonstrate that they have been diagnosed with malignant mesothelioma located primarily in the pleura or peritoneum which had a latency period of at least 10 years.

Plaintiffs with lung and other cancers must offer proof of diagnosis by a board-certified physician, a latency period of at least 12 years and either evidence of a non-malignant illness that meets the requirement for a non-malignant condition or chase x-rays that show both asbestos-related pleural plaques or thickening plus evidence of 15 years exposure to asbestos fiber.

If the claimant meet the Corporation's criteria, the claim must be submitted to ADR for resolution. Additional parties may only be added during a 60-day grace period. Should ADR fail the parties must submit the claim to mediation and the Corporation will appoint a mediator.

The parties are required to exchange good faith settlement offers. Arbitration may be selected in addition to mediation. If the ADR approach fails to resolve the matter the plaintiff may then move for trial of the action.

The proposed legislation limits the issues to be acted upon.

The legislation is co-sponsored by Christopher J. Dodd (D-CT) and Joseph Lieberman (D-CT) and has reportedly received the endorsement of Robert Torricelli (D-NJ).

Joint ATLA/WILG Educational Program Planned for San Francisco in July

The Workplace Injury Litigation Group and the Workers' Compensation and Workplace Injury Section are again jointly hosting a full-day educational program for injured workers' advocates through ATLA's National College of Advocacy. The intensive educational program is set for Saturday, July 17th, from 8:45 am until 5:30 pm.

The day's program kicks off with "Medical Breakthroughs and Diagnosing and Treating Injured Workers - Standing Magnetic Resonance Imaging, Moving X-ray, Diagnosing the Soft Tissue Injury, Functional Capacity" by Gary Rinzler, M.D., Robert Lieberman, M.D., Functional Capacity Expert to be announced.

"Racial Bias and Psychiatric Evaluation" by Kyle Vega, M.D. Maria Marshal, M.D, Alberto Lobe, M.D. follows along with "Nuts and Bolts Law Office Management for Your Workers' Compensation Practice (Maximizing Your Time and Effort) with June Reeves, (Law Offices of Green and Azevedo) and R. Craig Scott.

Following the lunch Break, Steven C. Embry and Leonard Gordon, M.D. will present on White Finger (Vibrational Syndrome) - What are the compensation and Third-Party Opportunities?

"Creative Compromise - Methods for Resolving Liens and Claims on Your Clients' Awards - How the Hold Harmless Clause Affects Your Clients' Awards" by Thomas Domer, Esq. is next and the day ends with "Expanding Your Practice in the New Millenium - Overviews of Handling the Veterans Administration Case, Social Security, and Pushing the Private disability and Medical Insurance Policy" with Michael Blecker, Todd J. O'Malley, Ray Boorhis, and Jay Causey.

The Truth About HMO's (A Little Humor)

Q. What does HMO stand for?

A. This is actually a variation of the phrase, "Hey, Moe!" Its roots go back to a concept pioneered by Doctor Moe Howard, who discovered that a patient could be made to forget about the pain in his foot if he was poked hard enough in the eyes. Modern practice replaces the physical finger poke with hi-tech equivalents such as voice mail and referral slips, but the principle remains the same.

Q. I just joined a new HMO. How difficult will it be to choose then doctor I want?

A. Just slightly more difficult than choosing your parents. Your insurer will provide you with a book listing all the doctors who were participating in the plan at the time the information was gathered.

These doctors basically fall into two categories -- those who are no longer accepting new patients, and those who will see you but are no longer part of the plan. But don't worry -- the remaining doctor who is still in the plan and accepting new patients has an office just a half day's drive away!

Q. What are pre-existing conditions?

A. This is a phrase used by the grammatically challenged when they want to talk about existing conditions. Unfortunately, we appear to be pre-stuck with it.

Q. Well, can I get coverage for my pre-existing conditions?

A. Certainly, as long as they don't require any treatment.

Q. What happens if I want to try alternative forms of medicine?

A. You'll need to find alternative forms of payment.

Q. My pharmacy plan only covers generic drugs, but I need the name brand. I tried the generic medication, but it gave me a stomach ache. What should I do?

A. Poke yourself in the eye.

Q. I have an 80/20 plan with a \$200 deductible and a \$2,000 yearly cap. My insurer reimbursed the doctor for my out-patient surgery, but I'd already paid my bill. What should I do?

A. You have two choices. Your doctor can sign the reimbursement check over to you, or you can ask him to invest the money for you in one of those great offers that only doctors and dentists hear about, like windmill farms or frog hatcheries.

Q. What should I do if I get sick while traveling?

A. Try sitting in a different part of the bus.

Q. No, I mean what if I'm away from home and I get sick?

A. You really shouldn't do that. You'll have a hard time seeing your primary care physician. It's best to wait until you return, and then get sick.

Q. I think I need to see a specialist, but my doctor insists he can handle my problem. Can a general practitioner really perform a heart transplant right in his office?

A. Hard to say, but considering that all you're risking is the \$10 co-payment, there's no harm giving him a shot at it.

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Benefits Include: Document Library, Monthly Newsletter and Special Communications; Educational Programs; Research Data; Speakers Bureau; Internet Site; Professional Networking and Information Sharing. Dues may be tax deductible as a business expense.

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☐ **Document Library Listing** by key subject; list subject: _____

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☐ **Public speaking assistance or talking points on key issues.** List issue: _____

☐ **AMA Guidelines Teleconference** with George Smith, MD, author of Chapters 1 and 2 of the Third Edition of the Guides and consultant to the 2nd, 3rd and 4th Editions, November 1996 teleconference transcripts \$30. March 1997 follow-up teleconference transcript \$25. Both for \$50.

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Workers Memorial Day

On Workers Memorial Day (April 28, 1999) thousands of workers mobilized calling for an end to the attacks on job safety laws and for stronger enforcement provisions. There was also a call for whistle-blower protections and an affirmation of the right of workers to organize through their unions and to speak out and work for safe jobs, respect, and a better future.

The first Workers Memorial Day was observed in 1989. April 28 was chosen because it is the anniversary of the passage of the Occupational Safety and Health Act as well as a day of similar activity in Canada.

Every year, hundreds of communities and worksites recognize workers who have been killed or injured on the job. Trade unionists around the globe now mark April 28 as an International Day of Mourning.

For more information on Workers Memorial Day activities visit the AFL-CIO web site at www.aflcio.org/safety/wmd.htm.

Work-related Deaths Decried

Associated Press

GENEVA—An estimated 11 million work-related deaths occur each year, many of which could be prevented by better safety measures, the U.N. International Labor Organization said recently.

Nearly 300,000 deaths are due to exposure to hazardous substances that lead to cancer and heart and respiratory disease, the organization said.

The ILO said workers suffer an estimated 250 million accidents each year. Working children are involved in 12 million occupational accidents annually, of which 12,000 are fatal.



Workplace Injury Litigation Group, Inc.
Addressing Plaintiffs' Workplace Injury Issues Nationally
P.O. Box 300488
Denver, CO 80203



Gelman, Jon L.
1455 Valley Road, 3rd Floor
PO Box 934
Wayne, NJ 07474

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