UNCOVERING THE ROOTS: A BRIEF DISCUSSION OF THE HISTORY, POLICY AND PURPOSES OF DELAWARE'S WORKERS' COMPENSATION ACT

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A learned treatise on the law of workers' compensation has observed that:

> [a] correctly balanced underlying concept of the nature of workers' compensation is indispensable to an understanding of current cases and to a proper drafting and interpretation of compensation acts. Almost every major error that can be observed in the development of compensation law, whether judicial or legislative, can be traced either to the importation of tort ideas, or, less frequently, to the assumption that the right to compensation resembles the right to the proceeds of a personal insurance policy.[1]

The purpose of this article is to explain the basis, nature and development of Delaware's workers' compensation law so that practitioners may avoid such pitfalls.

I. CORE PHILOSOPHY

In the nineteenth century, before the first workers' compensation law was enacted in Delaware, an injured worker could only receive compensation for injuries received at the workplace through a personal injury action at common law. Under the "fellow-servant exception," however, an employer would not be liable to an injured worker if the injury was the result of a co-worker's negligence.[2] In addition, in cases when the employee could apprehend the possible danger of the employment, that employee, when injured, could not successfully sue the employer because he or she had "assumed the risk" of injury.[3] On top of this, at the time the harsh rule of contributory negligence applied; therefore, an injured worker could not be compensated for an accident if the injured worker was negligent to any degree.[4] Because the employer could only be found responsible if the employer itself was negligent, recovery could not be had in cases where a worker was injured as the result of an "Act of God," or when no party was found to be negligent.

As if the deck were not stacked enough against the injured worker, it must be kept in mind that the injured worker might easily be out of work because of the workplace injury. With no income, the worker would likely lack the financial

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1. Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law, Desk Edition, § 1.02 (2014).

2. *Id.*, § 2.03. The injured worker could, in theory, bring a cause of action in tort against the coworker, but a fellow employee was unlikely to have great financial resources. Thus, even if the injured worker won, the recovery would, as a practical matter, be small and inadequate.

3. *Id.*

4. *Id.*

resources for a prolonged court battle even in those rare cases when recovery might theoretically be had against the employer.[5] This situation could easily put the injured worker and the worker's family into the poor house and/or dependent on State hospitals for medical care—in other words, becoming a charge upon the taxpayers rather than remaining productive members of society. It is little wonder that state governments sought a different approach to the problem of injured workers.

Like legislatures elsewhere in the United States, in the early twentieth century the Delaware General Assembly worked to rectify the situation. In 1917, the General Assembly enacted the original Delaware Workmen's Compensation Act ("the Act").[6] The original Act provided for compensation to injured workers regardless of the question of negligence, but limited the amount and types of compensation an injured worker could receive and prohibited the injured worker from suing a co-worker.

The Act removed workplace injuries from traditional personal injury law. An employee has "no rights to workers' compensation except for those granted by the Act."[7]

> Workers' compensation is fundamentally different from strict tort liability in its basic test of liability, which is work connection rather than fault; in its underlying philosophy of social protection rather than righting a wrong; in the nature of the injuries compensated; in the elements of damage; in the defenses available; in the amount of compensation; in the ownership of the award; and in the significance of insurance.[8]

The original version of the 1917 Act was "elective" in nature; however, both employer and employee were presumed to have elected to be bound by the provisions of the law unless, prior to the employee's injury or death, either party gave proper notice to the other that it did not intend to be bound. The purpose of this approach was to ensure the Act's constitutionality.[9] Eventually, court decisions across the country established the constitutionality of a compulsory act as a proper exercise of a state's inherent police powers to protect the citizenry.[10] The General Assembly made the Act compulsory in 1941.[11] Since then, with only a few narrow exceptions, every employer and employee is bound "to pay and to accept compensation for personal injury or death by accident arising out of and in the course of employment, *regardless of the question of negligence and to the exclusion of all other rights and remedies."*[12] This exclusivity provision "precludes a suit for negligence

5. "One need only add that the usual witnesses of the accident, being co-employees, would naturally be reluctant to testify against the employer, to complete the picture of helplessness which characterized the position of the injured worker of the precompensation era." *Id.*, § 2.03.

6. 29 Del. Laws 233 (1917).

7. Ruddy v. I.D. Griffith & Co., 237 A.2d 700, 705 (Del. 1968).

8. Larson, *supra* note 1, Chapter 1 "Scope."

9. *See* Larson, *supra* note 1, § 2.07; Hill v. Moskin Stores, Inc., 165 A.2d 447, 449 (Del. 1960).

10. *Cf. Hill*, 165 A.2d at 449 (stating that the Act was "obviously" grounded in an exercise of the police powers).

11. 43 Del. Laws 269 § 2 (1941).

12. Del. Code Ann. tit. 19, § 2304 (2005) (emphasis added). Under certain circumstances, however, an employee may forfeit the right to benefits granted under the Act. For example, the Delaware Supreme Court held:

> Upon the basis of public policy, the authorities above discussed, and the principles of fairness and justice, we hold that an employee forfeits his right to benefits under the Delaware Workmen's Compensation Act if, in applying

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under the common law, even if the injury was caused by the gross, wanton, wilful, deliberate, reckless, culpable or malicious negligence, or other misconduct of the employer."[13] By the same token, compensation was available even if the injury was caused by the negligence of the injured employee or by a co-employee, and even if the injured employee had either expressly or impliedly assumed the risk of being injured.[14]

Thus, the core principle of Delaware's Workers' Compensation Act is "to eliminate questions of negligence and fault in industrial accidents, and to substitute a reasonable scale of compensation for the common-law remedies, which experience had shown to be, generally speaking, inadequate to protect the interest of those who had become casualties of industry."[15] As such, an employer would be required to pay benefits to an employee who was injured at work even though the employee's own negligence may have caused the injury, and even though the employer was in no way "at fault" for the injury. Clearly, this placed an additional burden on the employer. As a trade-off, the legislature restricted the benefits available to the employee. On the whole, the injured worker enjoyed the greatest benefit of the Act in that he or she was relieved of the expense and hazard of maintaining a lawsuit.

> Of course, in some cases, … a recovery might be had at law exceeding the compensation payable under the act. But the policy of the law is to take the whole subject out of the field of negligence. The overall benefit to the employee is clear. For that benefit, he gives up the right to sue at law.[16]

Instead of a suit at law, an administrative board—the Industrial Accident Board ("IAB")—was created to have jurisdiction over cases arising under the Act and to hear disputes as to the compensation to be paid to an injured worker.[17]

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> for employment, the employee (1) knowingly and wilfully made a false representation as to his physical condition; and (2) the employer relied upon the false representation and such reliance was a substantial factor in the hiring; and (3) there was a causal connection between the false representation and the injury.

Air Mod Corp. v. Newton, 215 A.2d 434, 440 (Del. 1965) (citations omitted). All three elements must be present before benefits are forfeited. Mountaire of Delmarva, Inc. v. Glacken, 487 A.2d 1137, 1140 (Del. 1984). Other bases for forfeiture are listed in title 19, section 2353 of the Delaware Code.

13. Rafferty v. Hartman Walsh Painting Co., 760 A.2d 157, 159 (Del. 2000). The exclusivity provision pertains to the relationship between the employer, the employee and co-employees. The Act does not, however, prevent an injured worker from bring a traditional tort action against a third party. "Although the exclusivity provision prevents an injured employee from suing the employer for the employer's negligence, it does nothing to alter the injured party's right to bring a negligence action against a third-party tortfeasor." Stayton v. Clariant Corp, 10 A.3d 597, 600 (Del. 2010).

14. Del. Code Ann. tit. 19, § 2314 (2005).

15. *Hill*, 165 A.2d at 451 (citation omitted).

16. *Hill*, 165 A.2d at 451.

17. Del. Code Ann. tit. 19, § 2301A(i) (2005). The current phrasing of the statute has caused some confusion. It states that the Board "shall have jurisdiction over cases arising under Part II of this title and shall hear disputes as to compensation to be paid under Part II of this title." Del. Code Ann. tit. 19, § 2301A(i). Some have assumed that the phrase "Part II of this title" refers only to subchapter II of chapter 23, namely sections 2321 to 2334, inclusive. This is a mistaken assumption. "Subchapter II of chapter 23" is not the same thing as "Part II of this title" as that phrased is used in section 2301A. In fact, the phrase means exactly what it says: Part II of this title, not "of this chapter." The "title" in question is title 19 of the Delaware Code. That title ("Labor") consists of four parts. Part I contains "General Provisions" (chapters 1 through 17 of the title). Part II pertains to Workers' Compensation and comprises

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II. THE EXPANSION OF BENEFITS TO INJURED WORKERS

The Delaware courts have acknowledged that the provisions of the Act should be construed liberally to fulfill the "twin purposes of providing a scheme of assured compensation for work related injuries without regard to fault and to relieve employers and employees of the expenses and uncertainties of civil litigation."[18] The first of these "twin purposes" is assured compensation to injured workers. "Workmen's compensation law is grounded in a public policy strongly in favor of employers making restitution to employees who are injured while working. Unlike tort claims acts, the point of workmen's compensation is to protect workers, not to shield employers."[19] Because the purpose of the Act is to benefit the injured worker, the courts have held that the Act is to be construed liberally and, in interpreting the statutory provisions, reasonable doubts are to be resolved in favor of the injured worker.[20]

It is also important to understand that the Act is not "based on eleemosynary principles, but upon the fundamentals of injury or death arising out of and in the course of employment, and reliance upon the employee's earnings for support. Indiscriminate awards of compensation, based on uncertain evidence, or on sympathy, are not in the public interest."[21] In other words, the Act is not an act of charity. It also should not be read so broadly that the Act is "transformed into a health insurance statute."[22] It is not intended to compensate an employee for every ailment that the employee may have, but only those that can fairly be said to have been caused by the employment. In addition, because the point of compensation is to replace periodic wages, an injured worker is generally not to be compensated with a lump sum payment for lost wages. Rather, wage replacement benefits are intended to be made periodically, as wages were payable prior to the accident.[23] The purpose of these periodic payments is to "preclude any possibility of an imprudent employee or dependent wasting the means provided for his [or her] support and thereby becoming a charge on society."[24]

The employer also gains from the compromise that resulted in the Act. The trade-off for removing workers' compensation from the field of negligence (and thus creating essentially a no-fault law) was to impose a "reasonable scale

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chapters 21, 23 and 26 (although currently there are no active provisions in chapters 21 and 26, so "Part II" is really just chapter 23 of title 19). Part III of title 19 pertains to Unemployment Compensation (chapters 31, 33 and 34). Part IV is the Workplace Fraud Act (chapter 35). In short, section 2301A's reference that the Board has jurisdiction over cases arising under "Part II of this title" means that the Board has jurisdiction over any action arising under all of the Workers' Compensation Act (chapter 23 of title 19), including all its subchapters.

18. New Castle County v. Goodman, 461 A.2d 1012, 1014 (Del. 1983); *see* Duvall v. Charles Connell Roofing, 564 A.2d 1132, 1133 (Del. 1989) (noting the "two primary purposes of [the Act] are to assure prompt compensation of injured employees without regard to fault and to obviate the need for litigation").

19. Barnard v. State, 642 A.2d 808, 819-20 (Del. Super. 1992).

20. Estate of Watts v. Blue Hen Insulation, 902 A.2d 1079, 1081 (Del. 2006) (citing Hirneisen v. Champlain Cable Corp., 892 A.2d 1056, 1059 (Del. 2006)).

21. Children's Bureau of Delaware v. Nissen, 29 A.2d 603, 609 (Del. Super. 1942).

22. *Air Mod Corp.*, 215 A.2d at 442.

23. *See* DEL. CODE ANN. TIT. 19, § 2360.

24. *See* Molitor v. Wilder, 195 A.2d 549, 551-52 (Del. Super. 1963).

of compensation" rather than permitting the compensation potentially available in common law tort.[25] "[T]here are no rights to workmen's compensation except those granted by the Act."[26] As such, the benefits that are available to an injured employee are only those expressly provided for in the Act and "the benefits of th[e] Act are intended to benefit the employee primarily."[27] Further, the Board is not a court of equity; it cannot create or fashion whatever "fair" remedy a litigant may wish. Unlike a tort recovery, benefits under workers' compensation were never meant to make the injured party whole.[28] In short, while the Act is to be interpreted broadly in favor of the injured worker, the trade-off for this is that the available benefits are deliberately limited in scope.

Over time, however, the benefits available to injured workers have steadily expanded. A few examples illustrate this trend.

A. Example: Occupational Disease

When it was enacted in 1917, the Act defined "personal injury" as only one that involved "violence to the physical structure of the body and such disease or infection as naturally results directly therefrom when reasonably treated."[29] Occupational "diseases not entailing direct physical damage to a bodily structure were not covered."[30] In 1937, this very restricted definition of "personal injury" was expanded to include twelve *specified* occupational diseases provided that the culpable exposure occurred during the period of employment and the disability manifested itself ("commenced") within five months after the termination of the exposure.[31] In 1949, the legislature removed the list of twelve specific diseases to allow recovery for "all occupational diseases arising out of and in the course of employment."[32] Finally, in 1974, the legislature removed the five-month-commencement requirement.[33] As the Delaware Supreme Court has observed, this evolution of coverage for occupational diseases parallels the development of workers' compensation laws elsewhere.[34] "[T]his evolution of statutory treatment of compensable occupational diseases—from no coverage, to schedule coverage, to general coverage—is not unusual."[35]

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25. *See Hill*, 165 A.2d at 451.

26. *Ruddy*, 237 A.2d at 705.

27. Magness Construction Co. v. Waller, 269 A.2d 554, 555 (Del. 1970).

28. *See Hill*, 165 A.2d at 451 (recognizing that a greater recovery might have been had by an injured worker in a personal injury action at law than is available under the Act); Witt v. Georgia-Pacific Corporation, No. 95A-08-002, 1996 WL 30250, at *7 (Del. Super. Jan. 24, 1996) (finding that a ruling under the Act may seem inequitable, but there are no additional rights to compensation except for those found in the Act).

29. 29 Del. Laws 233 (1917).

30. Champlain Cable v. Employers Mutual Liability Ins. Co., 479 A.2d 835, 839 (Del. 1984).

31. 41 Del. Laws 241 § 1 (1937).

32. 47 Del. Laws 270 § 1 (1949).

33. 59 Del. Laws 454 § 8 (1974).

34. *Air Mod Corp.*, 215 at 441.

35. *Id.*

B. Example: The Three-Day Rule

At one time, the Workers' Compensation Act provided:

> No compensation shall be paid for any injury which does not incapacitate the employee for a period of 3 days from earning full wages, and compensation shall begin on the fourth day of incapacity after the injury, unless the incapacity extends to 7 days, including the day of injury, or unless the incapacity results in hospitalization of the employee. In the case of incapacity for a 7 day period, amputation or hospitalization, the employee shall not be excluded from receiving compensation for the first 3 days of incapacity.[36]

This became known as the "three-day rule." The intent was to limit the payment of workers' compensation so that compensation was not paid for minor or transient injuries. As written, the three-day rule affected the payment of medical expenses: if an employee was hurt but could continue working (for example, if the employee was already working in a sedentary capacity), then medical expenses for treatment of the injury would not be paid unless that employee was actually hospitalized. This led both the Board and the courts to interpret the statute to avoid its occasionally harsh literal effect.

For example, in *M & M Hunting Lodge v. DiMaio,*[37] the employee injured his shoulder and was unable to perform his normal duties, but he returned to work "in a limited capacity driving a tractor."[38] He was paid his full wages. The employer argued that, because the employee had not lost wages, it was not required to pay his medical bills. The Board decided that the employer had paid the full wages as a gratuity (having given claimant a "specially created position") and that such a job could not serve to deprive the claimant of benefits. The Superior Court agreed, holding, "[i]f a claimant is truly incapacitated from earning full wages due to a work related injury and returns to work in a gratuitous situation, this should not effect [sic] his workmen's compensation benefits."[39]

Likewise, in *Streett v. State,*[40] the employee was incapacitated for seven days, which happened to coincide with a previously planned vacation. At the time, section 2321 stated that benefits were only paid if the injured worker was incapacitated from "earning full wages."[41] In this case, because the employee was on vacation, she received full vacation pay and lost no wages. As such, the employer argued that it was not required to pay the medical bills.[42] The Delaware

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36. Del. Code Ann. tit. 19, § 2321 (1985). An even earlier version of this provision was more draconian, not only requiring three days of incapacity from earning full wages, but also limiting the payment of medical expenses to "the first thirty (30) days of the injury" and limiting the total cost of such treatment to no more than $200.00. *See* 43 Del. Laws 269 §6 (1941). Even acknowledging that two hundred dollars went further in those days, this was an extremely limited amount of compensation available for medical expenses. While the current version of the Act provides for a fee schedule to control medical expenses, there is no flat limit on those costs. *See generally* Del. Code Ann. tit. 19, § 2322B.

37. No. 90A-JL-81991, 1991 WL 89802 (Del. Super. May 10, 1991).

38. *DiMaio*, 1991 WL 89802, at *2.

39. *Id.* at *2, 3.

40. 669 A.2d 9 (Del. 1995).

41. *Id.* at 12 (citing Del. Code Ann. tit. 19, §2321 (1995)).

42. In fact, the employer *had* paid the medical expenses, but argued that it had done so "voluntarily" rather than because they were compensable under the Act. *See Streett*, 669 A.2d at 11.

Supreme Court found that an employee should not be penalized for the timing of the injury and should not be required to cancel a scheduled vacation just so she could "not go to work" because of her injury.[43] The Court therefore concluded that "vacation days may be used to satisfy the three-day waiting period."[44]

Finally, in *Aiken v. General Motors Corporation,*[45] the employee sought disfigurement benefits although she "did not lose any time from work, nor any wages as a result of [her] injury.[46] The Delaware Supreme Court held that the specific wording of section 2321 reflected the General Assembly's determination that the recovery of "*lost earnings"* required incapacity for at least three days.[47] Compensation for permanent injuries under the Act (including both permanent impairment and disfigurement), however, was specifically paid "'regardless of the earning power of the employee.'"[48] The Court held that such permanent injuries were compensable *per se.*[49] Accordingly, the Court concluded that the three-day rule, which was a condition on recovery of "lost earnings," was inapplicable to a claim for disfigurement.[50]

As these cases made their way through the courts, the legislature changed the statutory language. The General Assembly, deciding that medical expenses for work injuries should be paid even if "minor" in the sense of not resulting in any wage loss, re-wrote the three-day rule of section 2321, effective July 10, 1995, to provide:

> Surgical, medical and hospital services, medicines and supplies, and funeral benefits shall be paid from the first day of injury. Beginning with the fourth day of incapacity, all compensation otherwise provided by law shall be paid. If the incapacity extends to 7 days or more, including the day of injury, the employee shall receive all compensation otherwise provided by law from the first day of injury.[51]

This change allowed a claimant to receive compensation for medical treatment without the necessity of being incapacitated for three days. In other words, an injury that was so "minor" that it did not cause an employee to lose any time from work could still be deemed compensable under the Act for the reasonable and necessary medical expenses involved in treating the injury.

The legislature amended section 2321 once again in 1996, before *Aiken* was decided. The 1996 version, which remains in effect today, provides:

> Permanent injury relating to hearing or vision loss, surgical, medical and hospital services, medicines and supplies, and funeral benefits shall be paid from the first day of injury. Beginning with the fourth

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43. *Id.* at 13.

44. *Id.*

45. 687 A.2d 186 (Del. 1997).

46. *Aiken*, 687 A.2d at 188.

47. *Id.* (citing Smith v Feralloy Corp., 460 A.2d 516, 518 (Del. 1983)).

48. *Aiken*, 687 A.2d at 189 (quoting Ernest DiSabatino & Sons, Inc. v. Apostolico, 269 A.2d 552, 553 (Del. 1970)).

49. *Aiken*, 687 A.2d at 189.

50. *Id*. Presumably, the same rationale would also have applied to claims for permanent impairment under section 2326 of Title 19.

51. Del. Code Ann. tit. 19, § 2321 (1995).

> day of incapacity, all compensation otherwise provided by law shall be paid. If the incapacity extends to 7 days or more, including the day of injury, the employee shall receive all compensation otherwise provided by law from the first day of injury.[52]

Not knowing how the Delaware Supreme Court would decide *Aiken*, the General Assembly included a statement that "[p]ermanent injury relating to hearing or vision loss" was to be paid from the first day of injury, thus statutorily excluding such permanent injuries from the effect of the three-day rule.[53]

Another change that further weakened section 2321's three-day rule and increased the benefits to injured workers addressed situations where an employee continued to work, but at less than full capacity. The original version of the three-day rule provided that no compensation was to be paid for any injury "which does not incapacitate the employee for a period of 3 days *from earning full wages*."[54] The 1995 revision quoted above (which stands today), deleted the phrase "from earning full wages" and merely noted that "all compensation otherwise provided by law shall be paid" beginning with "the fourth day of incapacity."[55] The term "incapacity" historically had been defined as an incapacity to work, i.e., loss of earning power.[56] With respect to the three-day rule, though, it can no longer be read as meaning an inability to earn full wages. The General Assembly deleted those specific words from the statute.[57] Because "[t]he courts may not engraft

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52. Del. Code Ann. tit. 19, § 2331.

53. Ironically, by amending the statute before the decision issued in *Aiken,* the General Assembly ended up limiting the effect of the Court's decision. The current version of section 2321 arose from Senate Bill 289 ("SB 289"), introduced on January 24, 1996. As originally proposed, SB 289 only added the words "permanent injury" to the beginning of section 2321, thereby exempting all permanent impairments from the scope of the three-day rule—exactly what the Supreme Court would decide was how the original section should have been read. That this was the original intent of the legislature is confirmed by the stated purpose of the legislation, which noted that SB 289:

> would permit injured workers to receive benefits for permanent injury such as hearing loss or other cumulative non-incident loss even though they were not incapacitated for three days.
>
> The three day rule is a device to exclude minor injuries from the chapter and should not be used to avoid paying benefits for a permanent loss.

SB 289, "Synopsis." However, in May 1996, an amendment to the legislation ("SA 1 to SB 289") was drafted which added the specific phrase "relating to hearing or vision loss." According to its stated purpose, this amendment "clarifies the scope of the legislation." SA 1 to SB 289, "Synopsis." By specifically limiting the permanent impairments excluded from the operation of the three-day rule to those impairments "relating to hearing or vision loss," the implication is that the General Assembly intended for all other permanent impairment to be subject to the three-day rule. No other explanation of SA 1 to SB 289 is possible. As the General Assembly noted, the limiting language does clarify the scope of the legislation. Thus, although the Supreme Court stated in *Aiken* that section 2326 "is a legislative recognition that certain permanent specifically 'scheduled injuries' … are compensable *per se*," *Aiken,* 687 A.2d at 189, the enactment of SB 289 as amended evinces a specific legislative intent that permanent injury (with the exception of those relating to hearing and vision loss) are to be covered by the three-day rule. Any other reading of the statute would render the clause "[p]ermanent injury relating to hearing or vision loss" meaningless.

54. Del. Code Ann. tit. 19, § 2321 (1985) (emphasis added).

55. Del. Code Ann. tit. 19, § 2331.

56. *See, e.g.*, Wilmington Housing Authority v. Gonzalez, 333 A.2d 172, 175 (Del. Super. 1975) (noting that, while the term "incapacity" is not defined in the statute, it "is generally held to mean 'incapacity to work.'") (quotation omitted).

57. *See* 70 Del. Laws 205 § 1 (1995).

upon a statute language which has been clearly excluded therefrom by the Legislature,"[58] presumably the General Assembly intended that the three-day rule would no longer be conditioned solely on a loss of earnings—merely on "incapacity." The Board concluded therefore that "incapacity" for purposes of the three-day rule, while it must be an incapacity *from work* (in accordance with the historical reading of the term in workers' compensation law), did not need to be an incapacity that led to a loss of earning capacity; if an employee injured in a compensable accident is restricted to *less than full duty work*, such as being limited to light duty, that is an "incapacity" for purposes of the three-day rule even though that employee has suffered no loss of earnings.[59]

C. Example: Abatement After Death

Over time, dependent benefits following the death of a claimant also have expanded. The original 1917 version of the Act specified that, if an injured worker died as a result of the work injury, the benefits payable to the injured worker's dependents would be reduced based on the amount of benefits paid to the injured worker during the worker's lifetime, although no reduction was to be made based on the amounts that "may have been paid for medical, surgical and hospital services and medicines nor for the expenses of last sickness and burial."[60] This was in accord with the original intention of the Act to benefit the employee specifically, not his or her dependents.[61] This reduction of benefits based on what had been paid to the injured worker was eliminated in 1941.[62] Now section 2332 provides:

> Should the employee die as a result of the injury, no reduction shall be made for the amount paid for medical, surgical, dental, optometric, chiropractic or hospital services and medicines nor for the expense of last sickness and burial as provided in this chapter. Should the employee die from some other cause than the injury as herein defined, the claim for compensation shall not abate, but the personal representative of the deceased may be substituted for the employee and prosecute the claim for the benefit of the deceased's dependent or dependents only, but in the event an agreement for compensation or an award has theretofore been made, the full unpaid amount thereof shall be payable to the deceased employee's nearest dependent as indicated by § 2330 of this title and such payments may be made directly to a dependent of full age and on behalf of an infant to the statutory or testamentary guardian of any such

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58. Giuricich v. Emtrol Corp., 449 A.2d 232, 238 (Del. 1982) (*en banc*).

59. Marra v. Raytheon, No. 1120439, at 9 (Del. I.A.B., July 7, 1998).

60. *See* 29 Del. Laws 233 § 103(d) (1917) (setting forth new section 3193(j) of "Chapter 90 of the Revised Code of the State of Delaware").

61. *See* Magness Construction Co. v. Waller, 269 A.2d 554, 555 (Del. 1970).

62. *See* Estate of Watts v. Blue Hen Insulation, 902 A.2d 1079, 1082 (Del. 2006) ("When the statute was amended in 1941, the General Assembly eliminated the reduction for prior payments to workers who died from the industrial injury, but continued to deny benefits to workers who died of other causes…"). This statutory amendment, although removing the provision allowing for reduction of benefits to dependents, still continued to provide that "[s]hould the employee die as a result of the injury, no reduction shall be made for the amount which may have been paid for medical, surgical, and hospital services, and medicines, nor for the expense of last sickness and burial." 43 Del. Laws. 269 §8 (1941). Because the whole concept of any reduction was being removed from the statute, it is unclear why it was considered necessary to retain this provision. It seems to serve no useful purpose. Nevertheless, the language has remained in section 2322 to the present day. *See* Del. Code Ann. tit. 19, § 2332.

> infant provided, however, that no payment or award under § 2324 [compensation for total disability] or § 2325 [compensation for partial disability] of this title shall continue or be ordered beyond the date of such injured employee's death.[63]

Prior to 1964, section 2332 was divided into subsections (a) and (b).[64] Subsection (a) provided, in language similar to the current section, that, if the death was related to the work injury, "no reduction shall be made for the amount paid for medical, surgical, dental, optometric or hospital services and medicines nor for the expense of last sickness and burial," but that, if death was *unrelated* to the work injury, then "liability for compensation, expense of last sickness, and burial of such employee, shall cease."[65] Section 2332 (b), on the other hand, provided that "[c]ompensation agreed upon or awarded to an injured employee who has died and which has not been paid at the time of his death, shall be paid to his nearest dependent as indicated by section 2330 of this title." [66] Unlike subsection (a), subsection (b) did not specify the cause of death--whether death was related to the work injury or not, agreements and awards that had been established prior to death were to be paid to the "nearest dependent" as defined by section 2330 ("section 2330 dependents").[67]

In *Moore v. Chrysler Corporation*,[68] the Delaware Supreme Court applied this pre-1964 version of section 2332 to a deceased employee's permanent impairment claim. In that case, the employee was injured in June 1962 and, as a result of this injury, his left leg was amputated in October 1962, and he died from causes unrelated to his injury in August 1963.[69] The employee made no claim for permanent impairment benefits prior to his death. "Accordingly, no compensation was 'agreed upon' by the parties or 'awarded' by the Board for such scheduled loss."[70] The employee left a surviving spouse, who filed a claim for permanency benefits. The Delaware Supreme Court held that the right to compensation for

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63. Del. Code Ann. tit. 19, § 2332. It should be noted that this section does not affect the award of death benefits (provided under Del. Code Ann. tit. 19, § 2330), and burial expenses (provided under section Del. Code Ann. tit. 19, § 2331). It only addresses the abatement or non-abatement of benefits that would otherwise have been payable if the injured worker was alive.

64. *See* Del. Code Ann. tit. 19, § 2332 (1953).

65. Del. Code Ann. tit. 19, § 2332(a) (1953). In 1955, "chiropractic" was added to the list of amounts paid for which there would be no reduction. *See* 50 Del. Laws 267 § 3 (1955).

66. Del. Code Ann. tit. 19, § 2332(b) (1953).

67. Such dependents are primarily the surviving spouse and children. Section 2330 currently provides that, if there are no surviving spouse or children, then the surviving parent(s) can be the section 2330 dependent(s) provided that they were "actually dependent" on the employee for at least fifty percent of their support. If there was also no surviving parent, then the surviving sibling(s) could be the section 2330 dependent(s) provided again that they were "actually dependent" on the employee for at least fifty percent of their support. *See* Del. Code Ann. tit. 19, § 2330(a). This provision is an example of a situation where the availability of benefits has been restricted since 1917. The original 1917 version of the Act allowed some compensation to a surviving parent or sibling (if there were no surviving spouse or children) if the parent or sibling was "dependent to *any* extent" upon the deceased employee for support. *See* 29 Del. Laws 233 § 104 (1917) (setting forth new section 3193(k) of "Chapter 90 of the Revised Code of the State of Delaware") (emphasis added). The requirement of fifty percent of support was not added to the statute until 1974 (which took effect on July 1, 1975). *See* 59 Del. Laws 454 § 14 (1974).

68. 233 A.2d 53 (Del. 1967)

69. *Id*. at 54.

70. *Id*.

the loss of the leg did *not* survive the employee's death.[71] The Court opined that the statute clearly stated that "liability for compensation ended if the employee died from a cause other than the industrial accident, except when compensation had been agreed upon or awarded to the employee prior to his death."[72] No such agreement or award had been reached; therefore, the right to compensation for the impairment ceased with the employee's death.

In 1964, section 2332 was amended to delete subsection (b).[73] The new section 2330, substantially as it exists today, was created.[74] Specific new "non-abatement" language was added to provide that "[s]hould the employee die from some other cause than the injury as herein defined, the claim for compensation shall not abate, but the personal representative of the deceased may be substituted for the employee and prosecute the claim for the benefit of the deceased's dependent or dependents only."[75] This provision was in addition to the "agreement or award" provision, which was carried over into the new section.

The Delaware Superior Court reviewed this non-abatement clause in *Witt v. Georgia-Pacific Corporation*.[76] In *Witt*, the injured employee filed a petition to determine permanent impairment and disfigurement benefits related to two separate work-related injuries.[77] Five days after he filed the petition, the employee died from causes unrelated to the work injury, leaving no surviving spouse or children.[78] His father, who survived him, acting as the deceased employee's personal representative, desired to pursue the claim filed by the deceased.[79] The primary issue for the case was whether there was a "dependency threshold" requiring the existence of section 2330 dependents in order to pursue benefits under the non-abatement clause.[80] In ruling that there was, the *Witt* Court indicated that the legislature intended to limit benefits available after an employee's death, finding that "[t]he purpose of Workers' Compensation is to compensate victims …. While parents suffer emotionally from the death of their child, the purpose of the statute is to compensate those who suffer *economically* from the employee's death."[81] This opinion followed the Delaware Supreme Court's view that "the benefits of this Act are intended to benefit the employee primarily."[82]

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71. *Id*. at 55.

72. *Id.*

73. 54 Del. Laws 280 § 4 (1964).

74. 54 Del. Laws 280 § 3 (1964).

75. *Id*.

76. 1996 WL 30250.

77. *Id*., at *1.

78. *Id*.

79. *Id*.

80. *Id*. The Court specified that the issue before it was not the factual question of whether the surviving parents fit the definition of "dependent," but rather the legal question of whether the Act required the presence of a dependent. *Id*.

81. *Id*., at *4 (citation omitted; emphasis in original).

82. *Magness Construction Co.* , 269 A.2d at 555. Although the case did not involve a death, the Delaware Supreme Court in *Magness* observed that if the employee did not receive section 2326 permanent impairment benefits during his lifetime and the

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If the injured worker dies from the work-related injury itself, however, benefits can be paid to one who is not even a dependent of the deceased. The Delaware Supreme Court reached this conclusion in *Estate of Watts v. Blue Hen Insulation*.[83] In its analysis, the Court acknowledged the general application of title 10, section 3707 of the Delaware Code, which provides that a "statutory right of action or remedy against any officer or person, in favor of any person, shall survive to, or against the executor or administrator of such officer or person, unless it be specially restricted in the statute."[84] Workers' compensation benefits, of course, are purely statutory in nature.[85] The question in *Watts*, therefore, was whether the statute allows a permanent impairment claim to survive the death of a claimant.[86] Reviewing section 2332, the Court found that, in the case where a claimant dies *from the work accident*, nothing in section 2332 expressly abrogates a claim for permanency benefits.[87] The Court held that "[s]ince there is no express restriction on a post-death claim for permanent injuries by the estate of a worker who dies from his injuries, … the worker's statutory right of action survives."[88]

III. CURRENT STATE OF THE LAW

Although the Act originally focused on compensating only injured employees and those who suffer economically from an injured employee's injury,[89] now the Act allows payment of permanent impairment benefits to a deceased worker's estate even if there was *nobody* who was economically dependent on that worker.[90] Taking this extension one step further, the Court has held that *the estate of* a claimant's "surviving spouse" was entitled to a full 400 weeks of "surviving spouse" benefits.[91]

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employee died without leaving a section 2330 dependent, then the employee "would lose all benefits under § 2326." *Id*. The Court did not specify that it was only talking about a situation where the employee's death was unrelated to the work accident; however, under the hypothetical that the Court was considering it is reasonable to assume that that was what the Court had in mind.

83. 902 A.2d 1079 (Del. 2006).

84. Del. Code Ann. tit. 10, § 3707.

85. *See Ruddy* , 237 A.2d at 705 ("[T]here are no rights to workmen's compensation except those granted by the Act.").

86. *Watts*, 902 A.2d at 1081.

87. *Id.* at 1082.

88. *Id*. at 1083.

89. *Witt*, 1996 WL 30250 at *4.

90. The Board's decision on Charles Watt's claim provided additional background facts. *See* Estate of Charles Watts v. Blue Hen Insulation, No. 1209205, 1-2 (Del. I.A.B. Nov. 15, 2004). Charles Watts died at the age of 63. His surviving spouse, Verna Watts, was his sole beneficiary. Verna, on behalf of the Estate of Charles of Watts, filed the petition seeking permanent impairment benefits. She then died suddenly. The employer filed a petition to terminate the ongoing receipt of death benefits to Verna (or, rather, her estate). Verna's estate consisted only of *her* adult child and adult stepchildren, and it appears that none of these adult children were economically dependent on either Charles or Verna. *See Id*.

91. *Watts*, 902 A.2d at 1083-84. The Court found that the statute provided a surviving spouse benefits for a *minimum* of 400 weeks and not merely until the spouse dies or remarries. *Id*. at 1083 ("If the 400 weeks is not a minimum, then the statute need

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Thus, an Act that originally was enacted primarily to compensate an injured worker, rather than that worker's dependents, has evolved to the point where benefits can be paid to a deceased worker's estate even though there are no dependents to benefit from the award, and to a surviving spouse's estate even though the surviving spouse died leaving no dependents. This is truly an expansion of compensation under the Act far beyond the Act's original purpose. It also suggests, as Larson suggested in the excerpt cited at the beginning of this article, that considerations more properly associated with personal injury tort recovery have mistakenly influenced some legislative changes to workers' compensation.

Although the influence of common law tort recovery has increased workers' compensation benefits over time, the original concept that injured workers gave up their common law benefits has not been totally abandoned.[92] This is most clearly seen in the case of a worker who is employed in multiple jobs. With certain very limited exceptions, the Act does not recognize that a work injury incurred at one job might disable a claimant from multiple jobs.[93] Compensation for a work injury is based *solely on the wage loss from the job where the injury happened*.[94] If a claimant was working both full-time and part-time, compensation would only be based on the job where the injury happened, even if the consequence of the injury was that the claimant was unable to work both jobs.[95] Thus, a worker earning full-time wages at one job of $900 per week and earning part-time wages at another job of $350 per week would, if totally disabled as a result of an injury at the part-time job, only be compensated based on the wages received at the part-time job. In other words, the worker's weekly compensation would be two-thirds of $350, or $233.33 per week, quite a reduction for an injured worker who had

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not make any reference to time… . Thus, to give full effect to all of the language in the statute, the requirement that a surviving spouse be paid for 400 weeks should be interpreted as a minimum amount that must be paid regardless of the spouse's subsequent death.")

92. Other states have also addressed this balance between giving up common law rights in exchange for receiving statutory benefits. Recently, in Florida, a trend that was the opposite of Delaware's trend for expanding benefits was discussed. A judge from the Eleventh Circuit Court determined that Florida's version of workers' compensation had become an unconstitutional deprivation of due process because the workers' compensation benefits available under Florida law had been reduced to the point that the Florida law was no longer considered a "reasonable alternative remedy to the tort remedy it supplanted." Florida Workers' Advocates v. State of Florida, C.A. No. 11-13661, at 19 (Fla. Cir. Ct. Aug. 13, 2014). In other words, the court concluded that injured workers were giving up their rights to common law benefits but not getting adequate benefits in return. This decision is currently on appeal.

93. One notable exception is for a volunteer firefighter who, if injured working as a volunteer firefighter, is treated as if the firefighter were a State employee with compensation based on that firefighter's "wage received in regular employment." DEL. CODE ANN. tit. 19, § 2312. There are also special provisions for an employee who is in the "joint service" of two or more employers. *See* DEL. CODE ANN. tit. 19, § 2354(a). In such cases, the joint employers contribute to the employee's compensation in proportion to their wage liability to such employee, regardless of for whom the employee was actually working at the time of injury. *Id*. However, an employee is only deemed to be under "joint service" when the employee is (a) under the simultaneous control of both employers, (b) performs services simultaneously for both employers, and (c) the services performed for each are the same or closely related. *See* A. Mazzetti & Sons, Inc. v. Ruffin, 437 A.2d 1120, 1123 (Del. 1981). If an employee is under contract with two employers but (a) the employers act independently of each other, (b) a specific portion of the work time is separately allocated to each employer, (c) the services performed for each employer are clearly separable and independent, and (d) the employee does not perform simultaneously for both employers, then that is not "joint service" but is, rather "dual" or "concurrent" employment. *Id*. at 1123-24.

94. Compensation for an injury, such as for total disability, is based on a percentage of the injured employee's average weekly wage. *See* DEL. CODE ANN. tit. 19, § 2324. The term "average weekly wage" is defined in the Act to mean "the weekly wage earned by the employee at the time of the employee's injury *at the job in which the employee was injured*." DEL. CODE ANN. TIT. 19, § 2302(A) (EMPHASIS ADDED).

95. *See* Howard v. Peninsula United Methodist Homes, Inc., No. 03A-04-002RRC, 1996 WL 30250 (Del. Super. Nov. 17, 2003) (citing Peterman v. L.D. Caulk, Nos. 72, 1992, 82, 1992, 1992 WL 219072 (Del. Aug. 19, 1992)).

been making (from both jobs) $1,250 per week.[96] While this may seem unfair or harsh, it follows from the central point: that the only benefits available to an injured worker are those provided for in the Act.[97]

IV. SECOND PURPOSE OF THE ACT

The second of the twin purposes of the Act—to "relieve employers and employees of the expenses and uncertainties of civil litigation"—is just as important as the first.[98] *Both* parties gain from this second purpose, which has two related parts: cost saving and certainty.

A. Cost Savings

As compared to personal injury litigation in Superior Court, the litigation cost savings before and during a Board hearing are substantial. Formal pleadings are not required, which saves the expense of preparing a formal complaint or formal answer to a complaint.[99] While expert witness depositions may be taken to obtain testimony to be used at a hearing, "in lieu of personal appearance before the Board," the use and expense of "discovery depositions" is not provided for in the *Board Rules*.[100] The primary discovery method contemplated by the *Board Rules* is the Request for Production.[101]

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96. *See* DEL. CODE ANN. tit. 19, § 2324, providing that compensation for total disability is paid at 66 2/3% (or two-thirds) of the injured employee's wages. The Act further provides that compensation cannot exceed two-thirds of the statewide "average weekly wage" that is announced on an annual basis by the Secretary of the Department of Labor (the "DOL rate"). *Id*. On the other hand, a minimum compensation rate is set at 22 2/9% of that DOL rate. *Id*. If an injured employee's weekly wage at the time of injury was less than 22 2/9% of the DOL rate, then the employee receives the employee's full amount of wages as compensation. *Id*.

97. While it may seem harsh to the injured part-time worker who loses both the employee's part-time and full-time wage because of an injury at the part-time job, it would be a bizarre result indeed if a part-time employer had to pay an injured worker a higher weekly wage when injured than that employee would have received if healthy and working. It is "unrealistic to turn a part-time able-bodied worker into a full-time disabled worker." Spicer v. State, No. 91A-03-3, 1991 WL 190334, *2 (Del. Super. Aug. 23, 1991). In any event, as a practical matter it should be remembered that the part-time employer's insurance rates were likely calculated based on the actual wages paid to that employer's employees. It would be equally unfair (and financially crippling) for a small part-time employer to have to pay insurance premiums that are based on what some other full-time employer might be paying its employees. Nobody benefits if workers' compensation premiums are so high as to drive an employer out of business. As such, the Act intentionally limits benefits based on the wages that the employer was actually paying the injured worker.

98. New Castle County v. Goodman, 461 A.2d 1012, 1014 (Del. 1983).

99. *See Rules of the Industrial Accident Board for the State of Delaware* ("*Board Rules*"), Rule 6. The Board Rules are available at http://dia.delawareworks.com/workers-comp/documents/Rules%20of%20the%20Industrial%20Accident%20Board.pdf. Rule 6(A) states:

> No formal pleading or formal statement of claim or formal answer shall be required of any party to any action before the Board. However, each person making written request for a hearing shall file with the Department on forms to be promulgated by the Department … a statement giving substantially the information requested on said forms.

100. *See Board Rules*, Rule 10 ("Depositions Upon Oral Examination"). Rule 10(C) states, "The taking of fact witness depositions may not proceed without Board approval." *Id*.

101. *See Board Rules*, Rule 11 ("Requests for the Production and Inspection of Documents And Other Evidence; Healthcare Authorizations And Copying or Photocopying").

In general, the parties are relieved of the expense of preparing and responding to burdensome interrogatories. In most cases, the Board even makes the pre-trial conference cost effective by allowing the scheduling conferences to be done telephonically or by e-mail, while the pre-trial memorandum can be prepared without the need for the attorneys to appear at the Department of Labor.[102]

Flexibility in the application of the rules of evidence also reduces the costs of litigation for the Board hearing itself. The Board is permitted to consider such evidence "which, in its opinion, possesses any probative value commonly accepted by reasonably prudent persons in the conduct of their affairs."[103] By allowing flexibility in applying the customary rules of evidence, such as with regard to hearsay testimony, the Board also saves the parties the time and expense of procuring witnesses to testify on the sort of tangential matters for which the Board customarily accepts hearsay testimony.[104] For example, the Board may properly consider information contained in medical records prepared by medical personnel and referenced in the testimony of other medical experts appearing before the Board. It has been held that the Board may properly conclude that such evidence has probative value that "reasonably prudent persons" would accept. Indeed, doctors normally do rely on such records supplied to them by hospitals or other doctors when treating a patient.[105] Thus, the parties do not need to go through the cost of bringing in to the case every medical expert who prepared a relevant medical record.

However flexible the rules of evidence, the Board must still conduct a fair hearing.[106] Trial by surprise is not favored in Delaware and is not endorsed by the Board. Litigants are required to deal fairly with each other and not engage in "'unhandsome dealing.'"[107] In litigation before the Board, each side must be given a fair opportunity to question the factual reliability of evidence presented. In exercising its flexibility in these matters, the Board recognizes that fundamental principles of justice, such as due process, need to be observed.[108] Thus, while parties are spared the expenses that attach

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102. *See Board Rules*, Rule 9 ("Pre-Trial Scheduling Conference and Pre-Trial Memorandum").

103. *Board Rules*, Rule 14(C). In full, Rule 14(C) states:

> The rules of evidence applicable to the Superior Court of the State of Delaware shall be followed insofar as practicable; however, that evidence will be considered by the Board which, in its opinion, possesses any probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The Board may, in its discretion, disregard any customary rules of evidence and legal procedures so long as such a disregard does not amount to an abuse of its discretion.

104. *See id.*; Thomas v. Christiana Excavating Co., No. 94A-03-009, 1994 WL 750325, *5-, his per. 1994 WL 750325, *5-e? If not, pleaesarch to make them all consistent.6 (November 15, 1994), *aff'd sub nom.* Thoma v. Christiana Excavating Co., 655 A.2d 309 (Del. 1995) ("Indeed, administrative boards ought not to be constrained by the rigid evidentiary rules which govern jury trial. On the contrary, all evidence which could conceivably throw light on the controversy should be heard.") (citation omitted).

105. *See id.* at *5-6.

106. *See* Del. Code Ann. tit. 19, § 2301A(i), which states (with emphasis added):

> The Board shall have jurisdiction over cases arising under Part II of [Title 19] and shall hear disputes as to compensation to be paid under Part II of [Title 19]. The Board may promulgate its own rules of procedure for carrying out its duties consistent with Part II of [Title 19] and the provisions of the Administrative Procedures Act [§ 10101 et seq. of Title 29]. Such rules shall be for the purpose of securing the just, speedy and inexpensive determination of every petition pursuant to Part II of [Title 19]. *The rules shall not abridge, enlarge or modify any substantive right of any party and they shall preserve the rights of parties* as declared by Part II of [Title 19].

107. *See* Delaware Home & Hospital v. Martin, No. K11A-07-001RBV, 2012 WL 1414083, at *2 (Del. Super. February 21, 2012).

108. *See* General Chemical Div., Allied Chemical & Dye Corp. v. Fasano, 94 A.2d 600, 601 (Del. Super. 1953).

to more formal litigation, this comes with an associated duty on the part of the litigants to deal fairly and above-board with each other.

B. Reducing Uncertainty

In addition to cost savings, the Act's second mutual benefit is avoiding the "uncertainties of litigation." There is a great benefit to all parties in having matters considered by an experienced administrative board rather than by an untrained jury. The United States Supreme Court recognized this benefit of administrative proceedings in connection with the Social Security Act:

> There emerges an emphasis upon the informal, rather than the formal. This, we think, is as it should be, for this administrative procedure, and these hearings, should be understandable to the layman claimant, should not necessarily be stiff and comfortable only for the trained attorney, be liberal and not strict in tone and operation. This is the obvious intent of Congress so long as the procedures are fundamentally fair.[109]

The reason this approach works is that an administrative board necessarily develops experience and skill within its sphere of operation:

> [A]dministrative boards have been developed to allow individuals who have expertise and knowledge in the board's unique area of jurisdiction to initially attempt to resolve disputes. This unique setting is different than a courtroom where jurors, who are usually not trained in the area, need to be educated on the basic grounds of the litigation.[110]

Having such expertise and knowledge allows the Board to give more predictable results than could be obtained from a less trained jury such as would be faced in tort actions. This leads to greater certainty as to the application of the statutes of the Act and the regulations promulgated by the Board. When the parties have greater certainty as to the consistent application of the provisions of the Act and the regulations, it is easier for them to reach agreement as to the application of the law to their set of facts, thereby avoiding the cost of unnecessary litigation.

It is precisely because the Board is experienced in considering matters that arise under the Act that proceedings can be less formal.[111] For example, the purpose of "the rule against hearsay … is to keep from an untrained trier of fact material whose reliability is untrustworthy … [but] the Board, with its background and expertise, is able to evaluate evidence without the restrictions and safeguards imparted by the formal rules of evidence."[112]

On appeal, "when factual determinations are at issue," an appellate court "shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted."[113] It

109. Richardson v. Perales, 402 U.S. 389, 400-01 (1971).

110. Irish Hunt Farms, Inc. v. Stafford, 2000 WL 972656, *6 (Del. Super. Apr. 28, 2000).

111. *See* Torres v. Allen Family Foods, 672 A.2d 26, 31 (Del. 1995); Standard Distributing Co. v. Nally, 630 A.2d 640, 647 (Del. 1993).

112. *Torres*, 672 A.2d at 31 (citation omitted).

113. Del. Code Ann. tit. 29, § 10142(d).

is, of course, the courts that ultimately determine the proper interpretation or construction of the workers' compensation statutes and regulations.

> Statutory interpretation is ultimately the responsibility of the courts. A reviewing court may accord due weight, but not defer, to an agency interpretation of a statute administered by it. A reviewing court will not defer to such an interpretation as correct merely because it is rational or not clearly erroneous.[114]

Respect should be given, however, to an administrative board's interpretation of its own statutes, regulations, rules and procedures. It is no more anomalous to give such respect and weight to an administrative tribunal's legal rulings than it would be to give respect and weight to the opinion of a medical specialist over that of a general practitioner on a matter within the specialist's field. Administrative tribunals are specialists within their field, dealing with the day-to-day application of the statutes and regulations under their charge. If an administrative board renders an opinion about the application of the law within the scope of its specialization and that opinion is rational and not clearly erroneous, then, while an appellate court certainly is not bound by and need not defer to that interpretation, the court should respect that interpretation and only overturn it with great caution and reluctance.

V. CONCLUSION

This brings us back once again to Larson's point cited at the beginning of this paper: that almost every major error in the development of workers' compensation law can be traced to the importation of concepts from other areas of law. It is only by truly understanding and remembering the guiding policies and purposes underlying workers' compensation that the proper interpretation and application of the Workers' Compensation Act can be achieved.

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114. Public Water Supply Co. v. DiPasquale, 735 A.2d 378, 382-83 (Del. 1999) (footnotes omitted).