

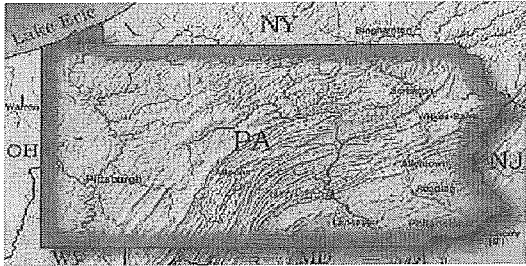
# EMPLOYERS' UPDATE

## FOR PENNSYLVANIA AND NEW JERSEY

### A QUICK – REFERENCE UPDATE FOR RISK MANAGEMENT AND CLAIMS PROFESSIONALS\*

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**Law Offices of Thomas J. Wagner, LLC**

[www.wagnerlaw.net](http://www.wagnerlaw.net)

Pennsylvania Office

New Jersey Office

8 Penn Center , 6<sup>th</sup> Floor  
1628 John F. Kennedy Boulevard  
Philadelphia, PA 19103  
Ph: (215) 790-0761  
Fax: (215) 790-0762

1114 Kings Highway  
Swedesboro, NJ 08085  
Ph: (856) 241-7785  
Fax: (856) 241-7786

#### RECENT WORKERS' COMPENSATION CASES

##### The Proper Method for a Claimant to Challenge the Characterization of an Accepted Injury is Through a Review Petition

There has been much confusion as to the proper procedure where a claimant challenges the characterization of an accepted injury. The Pennsylvania Supreme Court has now established black letter law requiring only a Review Petition, and not a Claim Petition. The Review Petition is treated as a Claim Petition, but there is a different burden of proof - the claimant must establish a material mistake in the characterization, but need not establish statutory notice as would be required in an original Claim Petition. *Jeanes Hospital v. WCAB (Hass)*, 872 A.2d 159 (Pa., 2005). This holding procedurally converts a Review Petition into a Claim Petition, according to the Court's Opinion, but in reality the Review Petition is treated as a Modification Petition pursuant to the third paragraph of Section 413 (a) of the Pennsylvania Workers' Compensation Act.

##### Three Year Statute of Limitation for Adding Diagnoses Following Commutation

An employer is not responsible for additional diagnoses first claimed more than three years after the grant of a commutation, even where the employer knew of the additional diagnosis and paid medical expense related to it before and after the commutation. *Westinghouse Electric Corporation v. WCAB (Korach)*, 2005 Pennsylvania Supreme LEXIS 2190 (September 22, 2005). This holding reinforces the generally accepted proposition that the voluntary payment of medical expense does not admit liability or toll the statute of limitations.

##### Payment of Premium on a Workers' Compensation Insurance Policy May be Evidence of Employment Relationship

Although direction and control remains the key issue in resolving disputes as to employment relationship, the payment of premium is admissible on the question and, overall, the issue is one of fact. This case arose in the context of a personal injury case where the "employer" claimed immunity as conferred under the Workers' Compensation Act. *Gallagher v. Pa. Liquor Control Board et. al.*, 2005 Pennsylvania Supreme LEXIS 2138 (September 28, 2005). This holding may evolve to the point where payment of premium becomes part of the prima facie case as to employment relationship.

#### SUBROGATION POINTS

##### Interest on Disputed Liens

Generally, interest is not payable by a claimant as such is not authorized in the Workers' Compensation Act. (*Warner Lambert v. WCAB (Brown)* 575 A. 2d 956 (Pa. Commw., 1990), but interest actually accrued on a disputed lien has been ordered payable, at least where there was an agreement to do so by a claimant. (*Goldberg v. WCAB (Girard Provision)*, 620 A. 2d 550 (Pa. Commw., 1993). Is a claimant who fails to agree to the payment of interest to be in a superior position? We will keep you posted.

#### Workers' Compensation Rate Schedule

\$662.00 Max	\$675.00 Max	\$690.00 Max	\$716.00 Max
01/01/2002	01/01/2003	01/01/2004	01/01/2005
Between \$992.95 and 66 2/3% \$496.49	Between \$1,012.45 and 66 2/3% \$506.23	Between \$1,034.48 and 66 2/3% \$517.24	Between \$1,074.00 and 66 2/3% \$537.01
Between \$496.48 and \$331.00 <b>\$367.78</b>	Between \$506.22 and \$337.50 <b>\$375.00</b>	Between \$517.23 and \$345.00 <b>\$383.33</b>	Between \$537.00 and \$358.00 <b>\$397.79</b>
\$367.77 or 90% Less	\$374.99 or 90% Less	\$383.32 or 90% Less	\$397.77 or 90% Less

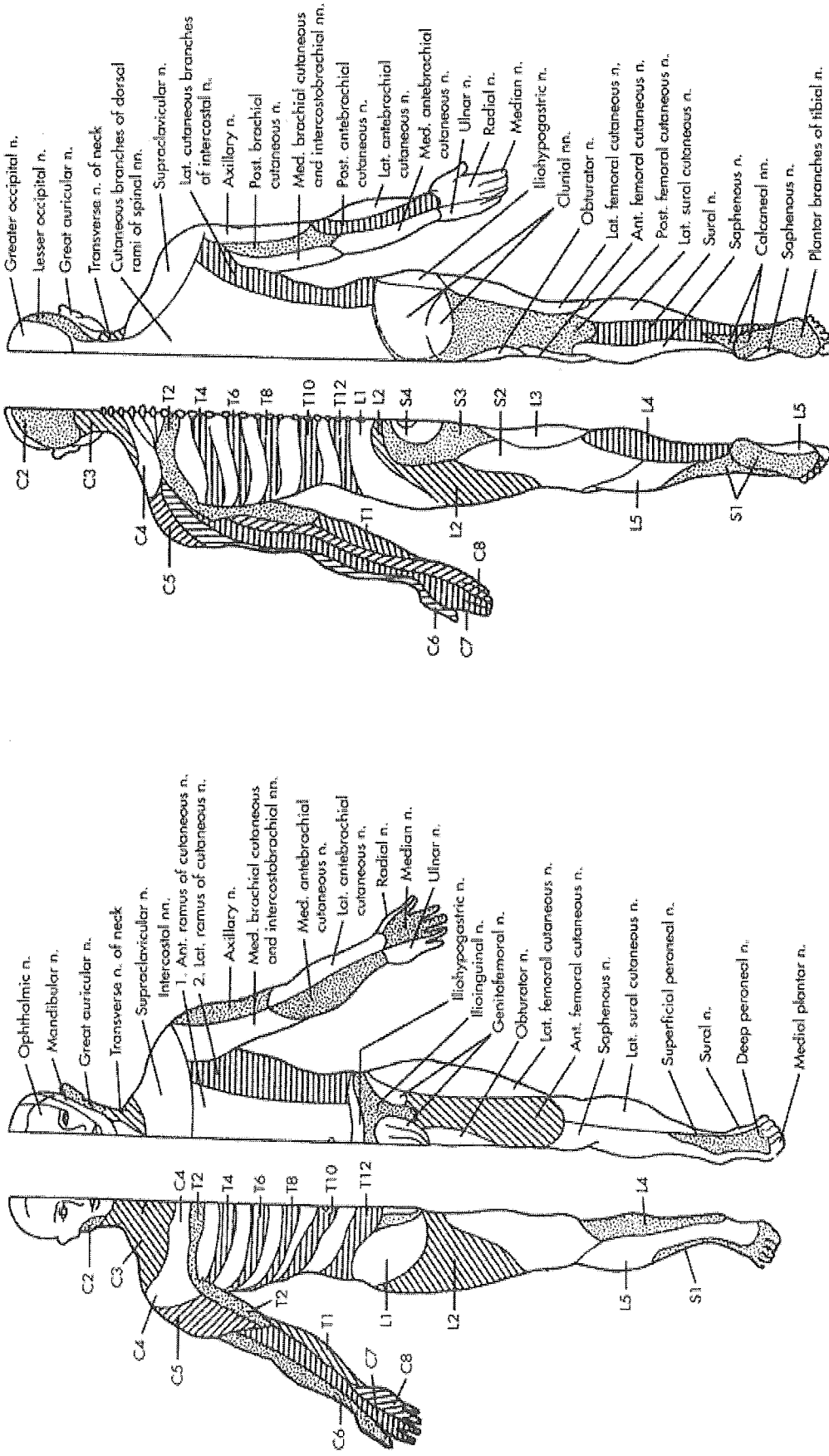
#### Specific Loss Rates

	Weeks*	Healing Period**
Hand	335	20
Forearm	370	20
Arm	410	20
Foot	250	25
Lower Leg	350	25
Leg	410	25
Eye	275	10
Thumb	100	10
First Finger	50	6
Second Finger	40	6
Third Finger	30	6
Fourth Finger	28	6
Great Toe	40	12
Other Toe	16	6
Scarring	Up to 275	

\*Payable at not less than one-half the maximum rate.

\*\*Payable to the extent of lost time.

DO THE COMPLAINTS MATCH THE LEVEL IMPLICATED ON THE IMAGING STUDY?



The Law Offices of Thomas J. Wagner defends carriers, employers and self insured entities in Pennsylvania and New Jersey Workers' Compensation litigation and in litigation involving employers' rights.

\* Note: The Update is intended to inform of new developments. It is not intended as advice on legal strategies or substitute for legal assistance and consultation. Legal strategies, duties and obligations vary according to the facts involved.

Questions? Comments? Kindly call Thomas J. Wagner, Esquire, Direct Dial (215) 790-0767, e-mail: [tjwagner@wagnerlaw.net](mailto:tjwagner@wagnerlaw.net)