

# **DELAWARE LAW ON MULTI-STATE WORKERS' COMPENSATION ISSUES**

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In a previous article, we discussed how various states address the pertinent issues that arise when a workers' compensation claim involved more than one jurisdiction.<sup>1</sup> The purpose of this article is to address how the state of Delaware statutes and cases have addressed those issues. This may be of some assistance to attorneys practicing in the state of Delaware or attorneys from other states when their clients' claims might potentially also be filed in this state. That is the purpose of this discussion below.

## **I. What Are the Requirements For Delaware To Assert Jurisdiction Over A Workers' Compensation Claim?**

The Delaware General Statutes permit employees injured outside the state to recover workers' compensation benefits under limited circumstances. Pursuant to 19 Del. C § 2303 (a):

(a) If an employee, while working outside the territorial limits of this State, suffers an injury on account of which the employee, or in the event of the employee's death the employee's dependents, would have been entitled to the benefits provided by this chapter had such injury occurred within this State, such employee, or in the event of the employee's death resulting from such injury the employee's dependents, shall be entitled to the benefits provided by this chapter, provided that at the time of such injury:

- (1) The employee's employment is principally localized in this State; or
- (2) The employee is working under a contract of hire made in this State in employment not principally localized in any state; or
- (3) The employee is working under a contract of hire made in this State in employment principally localized in another state whose workers' compensation law is not applicable to the employee's employer; or

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<sup>1</sup> Andrew Reinhardt, Conflicts of Law: Maximizing your recovery when handling Workers' Compensation claims involving multiple jurisdictions, VTLA Journal, Summer 2006.

(4) The employee is working under a contract of hire made in this State for employment outside the United States and Canada.

In *Knox v. Georgia-Pacific Plywood Co.*, the Supreme Court stipulated that in spite of the legislature's failure to amend pertinent sections of the Workers' Compensation Act which provides that no hearings could be held except in the city and county where the accident occurred (19 Del.C. §§ 2348(a); 2349), Delaware's Industrial Accident Board retains jurisdiction in cases where the accident occurred outside the state. The Court noted further that any appeal should also be taken to Delaware's Superior Court. *Knox v. Georgia-Pacific Plywood Co.*, 1957, 50 Del. 315, 130 A.2d 347

Currently, 19 Del.C. § 2348(a) provides:

- (a) In all hearings before the Board, the Board shall make such inquiries and investigations as it deems necessary. Unless otherwise stipulated by counsel and approved by the Department, the hearings shall be held in the Division of Industrial Affairs office nearest the site where the injury occurred or, if the accident occurred out of the State, in any county designated by the Department as convenient for the parties.

19 Del.C. § 2349 provides:

An award of the Board, in the absence of fraud, shall be final and conclusive between the parties, except as provided in § 2347 of this title, unless within 30 days of the day the notice of the award was mailed to the parties either party appeals to the Superior Court for the county in which the injury occurred or, if the injury occurred out of the State, to the Superior Court in and for the county in which the hearing was had. Neither the Board nor any member of the Board shall be named as a party to the appeal. Whenever an award shall become final and conclusive pursuant to this section, the prevailing party, at any time after the running of all appeal periods, may, if a proper appeal has not been filed, file with the Prothonotary's office, for the county having jurisdiction over the matter, the amount of the award and the date of the award. From the time of such filing, the amount set forth in the award shall thereupon be and constitute a judgment of record in such court with like force and effect as any other judgment of the court, except that the renewal provisions of § 4711 of Title 10 shall not be applicable,

and a judgment obtained under this section shall automatically continue for a period of 20 years from the date of the award. The Prothonotary shall enter all such certificates in the regular judgment docket and index them as soon as they are filed by the prevailing party.

More specifically, the Court held that “although amendment to Workmen's Compensation Act permitting recovery of compensation in certain instances by employees who had been injured outside state created anomalous situation because of failure to amend sections which provided that no hearings could be held except in city and county where accident occurred and no appeals could be taken except to Superior Court in county in which accident occurred, the Industrial Accident Board has jurisdiction, within statutory limits, of claim based on accident occurring outside state and the Superior Court has jurisdiction of an appeal from board's decision of such a claim.” Moreover, “the fact that sections 2348(a) and 2349 were not amended to conform with §2303, as amended, does not defeat appellant’s right to a hearing before the Industrial Accident Board or to an appeal therefrom to the Superior Court. Section 2303 is the jurisdictional section of the Act; sections 2348(a) and 2349 relate only to the venue, which both the Industrial Accident Board and the Superior Court have authority to correct.” *Knox v. Georgia-Pacific Plywood Co.*, 1957, 50 Del. 315, 130 A.2d 347

## **II. Will Delaware Allow Simultaneous Or Successive Recoveries For The Same Accident And Injury In Multiple States?**

Yes. Delaware's Code permits claimants to file a claim in more than one jurisdiction provided the claim for recovery under Delaware's workers' compensation law is filed within two years. However, as provided in 19 Del. C § 2303 (b) (1) – (3), the amount of medical, income and death benefits paid or awarded the employee in another jurisdiction will be credited or otherwise set off against the total amount of benefits paid under Delaware's workers' compensation law.

19 Del. C § 2303 (b) Territorial application of chapter provides:

(b) The payment or award of benefits under the workers' compensation law of another state, territory, province or foreign nation to an employee or the employee's dependents otherwise entitled on account of such injury or death to the benefits of this chapter shall not be a bar to a claim for benefits under this chapter, provided that claim under this chapter is filed within 2 years after such injury or death. If compensation is paid or awarded under this chapter:

(1) The medical and related benefits furnished or paid for by the employer under such other workers' compensation law on account of such injury or death shall be credited against the medical and related benefits to which the employee would have been entitled under this chapter had claim been made solely under this chapter;

(2) The total amount of all income benefits paid or awarded the employee under such other workers' compensation law shall be credited against the total amount of income benefits which would have been due the employee under this chapter had claim been made solely under this chapter;

(3) The total amount of death benefits paid or awarded under such other workers' compensation law shall be credited against the total amount of death benefits under this chapter.

In a 1966 case, *Coen v. Ambrose-Augusterfer Corp.*, the employee fractured his left wrist in a compensable industrial accident while working for a Delaware-based mechanical contractor. He filed for and received benefits under the Delaware Workmen's Compensation law. A few years later, in 1975, the employee refractured his wrist while

working in Delaware for a Philadelphia-based mechanical contractor. Because the principal place of business of the second company was in Pennsylvania, the employee was eligible to claim workers' compensation in either Pennsylvania or Delaware. He filed and received benefits under Pennsylvania law and then sought "permanency benefits," i.e., a schedule award for loss of use of the wrist under Delaware law for the same injury.

Although the benefits he received under Pennsylvania law were greater than those under Delaware, he asserted that the statutory set-off under provided for under 19 Del. C § 2303, is restricted to claims based upon impaired earning capacity claims based upon total or partial disability. He further contended that the statutory purpose would not be served by a set-off because disability and permanency benefits are, under Delaware law, considered distinct and independently recoverable.

The Court held, however, that an award of permanency benefits constitutes an "income benefit" within the purview of the set-off provisions of 19 Del. C § 2303 and that the "employer was entitled to credit under the setoff provision of the compensation statute for the amount of disability benefits it had paid employee under a Pennsylvania disability award and, since that amount exceeded the amount the employee would have recovered under Delaware law had he filed his entire claim in Delaware, any Delaware permanency award was offset by the Pennsylvania disability award, and employer was not liable for further payment under the Delaware statute." *Coen v. Ambrose-Augusterfer Corp.*, 463 A.2d 265 (1983).

### **III. What Is The Impact In Delaware Of An Acceptance Of Benefits Or Election In Another State?**

The impact of acceptance of benefits in another state seems to be, as set forth in answer to Question 2, to reduce the amount of the Delaware compensation award by the amount of compensation benefits awarded in the other jurisdiction.

As to the apparent purpose of § 2303, the Supreme Court in *Coen v. Ambrose-Augusterfer Corp.*, stated that “the purpose is not merely to prevent double recovery but, instead, to impose a ceiling on the total amount recoverable under the Delaware Law.” The Court noted further that “the Statute is an “anti-forum-shopping” statute to the extent that a claimant eligible for workmen's compensation in more than one state may not bring a portion of his claim in a state providing greater benefits than would be available under Delaware Law and later seek additional benefits in Delaware which would exceed the maximum award available under Delaware Law had the claim been made solely in Delaware.” *Coen v. Ambrose-Augusterfer Corp.*, 463 A.2d 265 (1983).

#### **IV. How Will Delaware Do A Benefit Comparison To Allow A Maximizing Of Recovery Between States?**

As set forth in the answers to Questions II, pursuant to 19 Del. C § 2303 (b) a Delaware compensation award must be set-off by the amount of the award in another jurisdiction.

The Court in *Coen v. Ambrose-Augusterfer Corp.*, provides that “ a claimant eligible for workman's compensation in more than one state may not bring a portion of his case in a state providing greater benefits than would be available under Delaware law and later seek additional benefits in Delaware which would exceed the maximum award

available under Delaware law had the claim been made solely in Delaware.” Coen v. Ambrose-Augusterfer Corp., 1983, 463 A.2d 265 (1983).

Accordingly, if Delaware benefits are more generous than those in another jurisdiction, then a claimant should consider filing in Delaware first. On the other hand, there may be circumstances where filing first in another state, or simultaneously could also be considered.