

BENJAMIN K. DURSTEIN

SHAREHOLDER



AREAS OF PRACTICE

Workers' Compensation

CONTACT INFO

(302) 552-4341
bkdurstein@mdwgcg.com

Nemours Building, 1007 N. Orange St.
Suite 600, P.O. Box 8888
Wilmington, DE 19801

ADMISSIONS

Delaware
2013

EDUCATION

Widener University School of Law
(J.D., cum laude, 2012)

University of Delaware (B.A.,
2007)

OVERVIEW

As a member of the Workers' Compensation Department, Ben represents employers, insurance carriers and third-party administrators in defense of workers' compensation claims before the Industrial Accident Board and Delaware courts.

Ben earned his Bachelor of Arts degree from the University of Delaware in 2007, and went on to receive his *juris doctor* from Widener University School of Law in 2012. After law school, he served as a judicial law clerk to the Honorable James T. Vaughn, Jr., who was then President Judge of the Delaware Superior Court.

Ben is a member of Delaware Claims Association, Delaware State Bar Association Workers' Compensation Section and the Randy J. Holland Delaware Workers' Compensation American Inn of Court. He is admitted to practice in the State of Delaware.

HONORS & AWARDS

Best Lawyers: Ones to Watch®,
Workers' Compensation Law –
Employers
2024

Top Lawyer, Workers'
Compensation Employer Defense,
Delaware Today Magazine
November 2022

ASSOCIATIONS & MEMBERSHIPS

Delaware Bar Association,
Workers' Compensation Section

Delaware Claims Association

Randy J. Holland Delaware
Workers' Compensation American
Inn of Court

THOUGHT LEADERSHIP

Delaware Supreme Court affirms IAB decision and rejects employer's arguments that Superior Court Civil Rule 41(a)(1) and the doctrine of collateral estoppel barred claimant from filing a petition for a recurrence of total disability benefits.

Wilmington
Workers' Compensation
March 1, 2024

The claimant was injured in a work accident on October 28, 2018. On December 9, 2019, he filed a Petition to Determine Additional Compensation Due that sought total disability benefits (TTD) and two surgeries, including a spine surgery. What's Hot in Workers' Comp, Vol. 28, No.

Delaware Superior Court affirms an Industrial Accident Board decision that a claimant injured while performing an employer-related volunteer activity was not within the course and scope of employment.

Wilmington
Workers' Compensation
February 1, 2024

Ms. Testa-Carr worked as a customer service representative for Sallie Mae. On March 21, 2022, she was fell down some stairs and was injured while delivering Meals on Wheels to an apartment in Newark. What's Hot in Workers' Comp, Vol. 28, No.

Superior Court affirms decision that claimant failed to prove she contracted COVID-19 at work, but does not reach issue of whether COVID-19 qualifies as an occupational disease for a nurse who worked in the "COVID wing" of a hospital.

Wilmington
Workers' Compensation
January 1, 2024

Ms. Hudson worked as a front-line nurse for the employer on its COVID-19 floor in the Fall of 2020. She contracted COVID at some point in October 2020 and was hospitalized on October 21, 2020. Her sons contracted the virus at the same time. What's Hot in Workers' Comp, Vol. 28, No.

TOP 10 DEVELOPMENTS IN DELAWARE WORKERS' COMPENSATION IN 2023

Wilmington
Workers' Compensation
December 1, 2023

1. Supreme Court holds an employer or workers' compensation carrier may assert a subrogation lien against an employee's recovery of benefits under an employer-purchased UIM policy, overruling its own precedent, *Simendinger v. What's Hot in Workers' Comp*, Vol. 27, No.

Risk of exposure to COVID-19 at employer's poultry processing plant was not distinct from that attending employment in general.

Wilmington
Workers' Compensation
November 1, 2023

Mr. Fowler alleged that he suffered a compensable COVID-19 exposure while working as a "boxer" at a poultry processing plant. What's Hot in Workers' Comp, Vol. 27, No.

CLASSES/SEMINARS TAUGHT

Ethics and the Duty to the Tribunal and Opposing Counsel, panelist, Delaware State Bar Association and the Industrial Accident Board Workers' Compensation Seminar 2023, Wilmington, Delaware, May 2, 2023

Strategies to Limit Exposure and Minimize Risk, Marshall Dennehey Workers' Compensation Seminar, October 27, 2022

Do's and Don'ts in the Practice of Workers Compensation, Delaware State Bar Association William D. Rimmer Workers' Compensation Seminar 2022, Wilmington, Delaware, May 3, 2022

Are You Coming or Going – Do You Know Your Course and Scope?, Marshall Dennehey webinar, October 26, 2020

RESULTS

Industrial Accident Board grants motion for reimbursement.

Workers' Compensation

November 1, 2022

We succeeded in having the Industrial Accident Board grant reimbursement of an amount of total disability benefits tendered that were offset by contemporaneous short-term disability payments. The Board denied the claimant's motion to compel production of paystubs that he claimed were required to determine the appropriate offset amount, if any. The Board reasoned that the information provided was sufficient to calculate the overpayment amount and that the Fair Labor Standards Act did not require the pay records be kept in any particular form.

Defense prevails before the Industrial Accident Board.

Workers' Compensation

December 2, 2021

The claimant alleged several injuries. The Board denied the claimant's petition for additional compensation due on all counts, and granted the employer's petition for review to terminate total disability benefits. Specifically, the Board concluded that (1) a proposed left ankle reconstruction surgery was not reasonable and necessary, (2) there was insufficient evidence to prove a compensable left knee injury, (3) there was insufficient evidence to prove a compensable lumbar spine injury and (4) the claimant was capable of unrestricted return to work.

Successful defense of workers' compensation case before the Delaware Supreme Court.

Workers' Compensation

March 1, 2020

In its order, the Supreme Court affirmed a decision of the Superior Court that had affirmed a Board decision regarding the compensability of travel expenses for trips to and from medical appointments. The claimant had petitioned for parking and toll expenses incurred during her trips to visit a doctor at University of Pennsylvania from her residence in Dover, Delaware.