

BENJAMIN K. DURSTEIN

SHAREHOLDER



AREAS OF PRACTICE

Workers' Compensation

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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

Superior Court affirms IAB decision enforcing workers' compensation settlement agreement and rejected claimant's attorney's argument of entitlement to common law "attorney's charging lien" that was not a term of the settlement.

Wilmington
Workers' Compensation
June 1, 2024

Mr. Webb workers' compensation claim was denied, and he filed a petition with the Industrial Accident Board that sought acknowledgment of the accident, medical expense benefits and temporary total disability (TTD) benefits. Mr. What's Hot in Workers' Comp, Vol. 28, No.

Delaware Supreme Court affirms the decisions of the IAB and Superior Court, holding that an employer CORRECTLY paid for ketamine infusion treatment in accordance with the Delaware Fee Schedule.

Wilmington
Workers' Compensation
May 1, 2024

Ms. Taylor injured her right wrist in 2016 while working as a teacher for the State. Her injury eventually developed into complex regional pain syndrome (CRPS) involving multiple extremities. What's Hot in Workers' Comp, Vol. 28, No.

Superior Court affirms decision denying claimant's motion to strike medical expert testimony regarding medical records produced for the first time after claimant's medical expert's deposition.

Wilmington
Workers' Compensation
April 1, 2024

Ms. Trincia filed a Petition to Determine Compensation Due that alleged she injured her cervical spine and left shoulder in a work accident on September 23, 2020. The claimant's primary care physician, Dr.

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.

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

DELAWARE SUPREME COURT AFFIRMS THE DECISIONS OF THE IAB AND SUPERIOR COURT, HOLDING THAT AN EMPLOYER CORRECTLY PAID FOR KETAMINE INFUSION TREATMENT IN ACCORDANCE WITH THE DELAWARE FEE SCHEDULE

Workers' Compensation

March 21, 2024

The claimant injured her right wrist in 2016 while working as a teacher for the State. Her injury eventually developed into complex regional pain syndrome (CRPS) involving multiple extremities. From 2017 to 2021, the State paid for 23 ketamine infusion treatments to treat the claimant's CRPS. The treatment was rendered by an out-of-state provider. In 2019, the State contracted with a new bill-review company that paid substantially lower amounts than was previously paid for the same treatment.

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.