

## A Bad Day at Work

### Contrasting Occupational Disease and Fatal Claims and "Disease as Injury" Fatal Claims

The classification of the type of disease which ultimately causes a workers' compensation claimant's death will determine whether or not that employee is entitled to workers' compensation fatal claim benefits. In a recent article published in the May 2009 edition of *Pennsylvania Bar Association Quarterly*, Perry D. Merlo, partner in Post & Schell's workers' compensation defense department, addresses this issue in his article entitled "A Bad Day at Work: Contrasting Occupational Disease and Fatal Claims and 'Disease as Injury' Fatal Claims."

The article examines the recent Commonwealth Court case of *Brockway Pressed Metals and Ace USA v. WCAB (Holden)*, 948 A2d 232 (Pa Commonwealth 2008). In that case, the Commonwealth Court denied fatal claim benefits to an individual who had suffered a work-related injury in the nature of Non-Hodgkin lymphoma. Benefits were denied even though it was uncontested that the Claimant's death was related to his exposure to chemicals which caused the disease. The court, in denying benefits, stated that because Non-Hodgkin lymphoma is not one of the enumerated occupational diseases, the Claimant would not be entitled to workers' compensation fatal claim benefits because he did not die within 300 weeks of his last exposure to the chemicals. This defense is important to workers' compensation insurers and employers because it imposes a limitation upon a claimant's access to fatal claim benefits; the Workers' Compensation Act requires that a claimant suffer one of the enumerated 17 occupational diseases prior to being awarded fatal claim benefits where death does not occur within 300 weeks of last exposure. Non-Hodgkin lymphoma, and many other ailments, are not part of those classified injuries and as such the benefits available for these non-occupational injury ailments is controlled by other provisions of the Act.

To view the article, please follow this link: [A Bad Day at Work](#).\*

If you have any questions or concerns in regards to Occupational Disease, the Pennsylvania Workers' Compensation Act in general, comments or need further information about this e-flash, please contact Perry Merlo at 717-391-1171 or [pmerlo@postschell.com](mailto:pmerlo@postschell.com).

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