



LADDEY CLARK & RYAN

ATTORNEYS AT LAW

NEWSLETTER

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FALL 2001

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Even while growing up, Tom Ryan has never been far away from a lawyer. Not that Laddey, Clark & Ryan's Managing Partner is litigious, it is just that for four generations his family members have been engaged in the practice of law.

Cases of Note

Partner Andrew A.
Fraser Appeared on
MSNBC News

Tom's family includes two New York State Supreme Court Judges who served on the Bench in the early 1900's. His uncle, Thomas D. Conway, was recently honored for 50 years of service as a lawyer and member of the Bar. Six of Tom's first cousins are lawyers. It is not hard to understand the foundation for Tom's respect and commitment to the law.

In addition to serving as the Managing Partner at Laddey, Clark & Ryan, Tom also chairs the firm's labor and employment group. He works with both employers and individuals in addressing labor and employment issues. Tom works with small, mid-size and large companies, including non-profit organizations, to ensure that their personnel policies are in compliance with state and federal laws. He also investigates and addresses allegations of wrongful conduct, engages in collective bargaining, and defends employers, including public entities, in both the state and federal court as well as before administrative bodies. In addition to a law degree from Seton Hall University, Tom earned a Master's Degree from Harvard University, where he studied labor relations. He was recently appointed as a Master in the Sydney Reitman Employment Law Inn of Court.

Tom's work on behalf of his clients has taken him before the Merit Review Board of the NJ Department of Personnel; the Public Employment Relations Commission (PERC); the NJ Division on Civil Rights; the Equal Employment Opportunity Commission (EEOC), and the NJ Department of Labor-Division of Unemployment, among others. He has litigated cases before the New Jersey State Superior Court, the United States Federal District Court and the Appellate Division of the New Jersey State Superior Court.

His primary focus, however, is to help clients avoid litigation which, in addition to being costly, distracts from the mission of the business. Tom

works with employers to develop personnel policy manuals and to review and implement employment practices—all with an eye to help business owners and managers avoid behavior and events that lead to disputes that otherwise may evolve into litigation. For example, Tom works with individuals in reviewing and implementing employment contracts, dealing with employment disputes, and negotiating severance agreements, option agreements, and change in control agreements. In essence, he helps employers manage all aspects of the employer/employee relationship.

In addition to his commitment to the law, Tom has an abiding respect for and commitment to public education. In fact, prior to attending law school, Tom was a Social Studies teacher in the Teaneck, NJ school system. More recently, he served as a member of the Mountain Lakes Board of Education, and served as President of that board in 1993. He is currently a member of the Board of Trustees of the Mountain Lakes Educational Foundation and serves as a trustee and legal counsel to the Medical Needs Foundation. Tom is a former President of the Sussex County Bar Association and is a member of the Sussex, Morris and New Jersey State Bar Associations.

Tom enjoys coaching in the junior athletic programs in his community, serving over the past few years as a baseball, softball, and soccer coach. He currently coaches girls and boys lacrosse teams in Mountain Lakes, where he resides with wife Jean and their four children: Chris, Sally, Kevin and Megan. Tom can be contacted at tryan@lclaw.com or by calling 973-729-1880.

New Jersey Workers' Compensation Benefits

By Andrew A. Fraser, Esq.



The New Jersey Workers' Compensation System was created by the New Jersey Legislature to provide benefits to workers who are injured or who contract an occupational disease while working. Benefits under the New Jersey Workers' Compensation System include medical care, temporary disability benefits and compensation for a resulting permanent disability, even if you are only partially disabled. In the event of a death of an injured worker, benefits are payable to the family of the worker. Benefits may also be paid voluntarily or it may be necessary to apply for workers' compensation courts for relief.

Who is covered under the New Jersey Compensation Benefits?

Virtually every worker who performs services for wages is covered by the law in the State of New Jersey, regardless of the number of workers employed by the employer. Workers considered to be independent contractors, rather than employees, are generally not covered. This raises a legal question which can be answered by attorneys who specialize in this area of the law.

What to do if you are injured on the job.

If injured on the job a worker should notify the employer of the accident as soon as possible, but not later than 90 days from the date of the accident. The notice may be given to the worker's foreman, supervisor, personnel office or anyone in authority at the employer's place of business. Notice need not be in writing. The worker should also request that medical treatment be furnished through the employer's workers' compensation coverage.

Who pays for these benefits?

Benefits are paid by the employer or the employer's workers' compensation insurance company. If an employer refuses to provide medical services and/or temporary disability benefits, an attorney specializing in workers' compensation can file a formal claim petition and a motion for medical and temporary benefits with the Division of Workers' Compensation. The New Jersey Law permits attorneys to represent workers' compensation clients without charging a fee in advance for their services. Fees are determined by the court only if a compensation award is made.

Importantly, there is a two year statute of limitations involving all workers' compensation claims. A formal claim petition must be filed within two years of the date of the injury or the last payment of compensation, whichever is later. Medical treatment authorized by the employer is considered a payment of compensation. In cases of occupational illness, such as asbestosis, lead poisoning, hearing loss or carpal tunnel syndrome, the claim petition must be filed within two years from the date the worker first became aware of the condition and its relationship to employment. The statute of limitations applies to minors also.

Can an employer take action against a worker for filing a workers' compensation claim?

The workers' compensation statute prohibits the employer from discharging or in any other manner discriminating against an employee because the employee has claimed or attempted to claim workers' compensation benefits or because he has testified, or is about to testify in a workers' compensation case.

There are several specific types of benefits available through the New Jersey Workers' Compensation Act.

Medical Benefits

All necessary medical treatment and hospitalization services should be provided by the employer or the employer's insurance carrier.

The employer has the right to choose the treating physician. If the employer refuses to provide medical treatment, the injured worker is free to choose the treating physician. However, in case of an emergency, an injured worker may obtain medical or hospital treatment without specific

authorization from the employer, but the employer should be notified as soon as possible concerning the type of treatment being sought.

Temporary Disability Benefits

If there is lost time from work which extends beyond 7 consecutive days due to an injury received on the job, temporary disability benefits become payable. The benefit amount is 70% of gross weekly wages received at the time of injury, up to a maximum established annually by the Commissioner of Labor (maximum weekly rate for 2001 is \$591.00 per week).

Permanent Partial Disability Benefits

When a job related injury or illness results in a permanent partial disability, benefits are based upon a percentage of certain “scheduled” or “non-scheduled” losses. A “scheduled” loss is one involving arms, hands, fingers, legs, feet, toes, eyes, ears and teeth. A “non-scheduled” loss is one involving the back, heart, lungs, etc. The amount of the permanent partial disability benefits depends on the percentage of permanent partial disability. These percentages are available on a chart published through their workers’ compensation division.

Permanent Total Benefits

When a job related injury results in permanent total disability, the injured worker is entitled to payment for 450 weeks which will be continued thereafter for as long as the total disability exists. However, after the 450 weeks, these payments are subject to reduction for wages earned from employment.

Weekly payments for permanent total disability are 70% of the gross weekly wage at the time of the injury, up to a maximum established annually by the Commissioner of Labor (maximum for 2001 is \$591.00).

Permanent total disability is presumed when the worker has lost two major members or a combination of members of the body such as eyes, arms, legs, hands or feet. Permanent total disability, however, can result from other injuries or a combination of injuries that render the worker unemployable, including some injuries which predated the work-related accident.

Death Benefits

Finally, when a job-related accident or illness results in a worker’s death, benefits are payable to the dependents of the worker as defined by law. The weekly benefit payments are based upon the number of dependents, but the maximum total benefit payable to all of the worker’s dependents cannot exceed the maximum established annually by the Commissioner of Labor.

A surviving spouse and natural children who were a part of the decedent’s household at the time of death are conclusively presumed to be dependents.

A surviving spouse and natural children who are not a part of decedent's household at the time of death and all other alleged dependents (parents, grandparents, grandchildren, brothers, sisters, etc.) must prove actual dependency.

Children who are deemed to be dependents remain so until the age of 18 years or, if a full time student, until the age of 23. If a child is physically or mentally disabled he or she may be eligible for further benefits.

Additionally, the employer or its insurance carrier is responsible to pay up to \$3,500.00 in funeral expenses for a job-related death. These funds are payable to whomever is liable for the funeral bill, be it the individual or the estate.

The best way to determine whether you are eligible to receive workers' compensation benefits as a result of a work-related accident is to schedule a consultation with an attorney who specializes in workers' compensation law. Other general questions can be answered by visiting the Division of Workers' Compensation on line at www.dwc.dol.state.nj.us. Andrew A. Fraser's primary areas of practice are personal injury litigation and workers' compensation matters.

Cases of Note

Age Discrimination Lawsuit Dismissed

Partner Thomas Ryan and Associate LeeAnn Pounds successfully defended an established tool and die company against a State Superior Court lawsuit alleging age discrimination. The employer had terminated an employee due to a reduction in work and unsatisfactory performance. The employee, who was 62 years of age at the time, charged that he was terminated due to his age. Ryan and Pounds won Summary judgment as to two principals of the company who were named individually, as well to a count for emotional distress. The remaining count against the company alleging a violation of the New Jersey Law Against Discrimination (NJLAD) was subsequently submitted for non-binding arbitration prior to trial. The arbitrator found for the employer. Mr. Ryan and Ms. Pounds then argued that, due to the arbitrator's finding, the plaintiff would be liable for the employer's attorney's fees should the employer prevail at trial, and cited the frivolous litigation statute. On the eve of trial, after three years of litigation, the plaintiff voluntarily dismissed his suit without any compensation.

Employer May Set Hours

Partner Thomas Ryan successfully defended a municipal client before the Public Employment Relations Commission (PERC). A public employee's union brought an unfair labor practice charge against the municipality alleging that the employer unilaterally changed the workweek schedule, and thereby changed the terms and conditions of employment, without

submitting the issue for negotiation. Mr. Ryan argued that the clear and unambiguous language of the contract allowed the municipality to fix employees' schedules and that past practice does not negate that contractual right. The Union argued that the employees' schedules had been followed for 20 years and, therefore, as a past practice, it could not be changed without negotiation. PERC upheld Mr. Ryan's argument and dismissed the unfair practice charge.

\$1,000,000 Dollar Settlement

Partner Brian M. Laddey settled a negligence matter on behalf of a severely injured woman for \$1,000,000. The woman sustained bodily injuries, including numerous fractures and moderate cognitive defects, in an automobile accident. The matter involved complicated negotiations with an insurance company that provided excess insurance coverage above the negligent party's standard automobile coverage.

Partner Andrew A. Fraser Appeared on MSNBC News

LCR partner Andy Fraser appeared on MSNBC on August 28, 2001. Mr. Fraser offered commentary on the then current legal maneuverings in the disappearance of Chandra Levy, a government intern who was associated with U.S. Congressman Gary Condit. Preceding Mr. Fraser's appearance, the lawyer for the Levy family filed a motion in California to bring a "civilian" indictment against Congressman Condit. Mr. Fraser offered commentary on the viability of this tactic, which is based on a little used law left over from the 1800's. He was asked to be on the program due to his work as a prosecutor and his experience as a litigator. Mr. Fraser is a Barrister in the Worrall F. Mountain Inn of Court, a member of the American Trial Lawyers Association and one of only a dozen attorneys in New Jersey chosen to sit as an Appeals Committee Reviewer for a nationwide mediation service.



Laddey, Clark & Ryan Newsletter provides information of general interest to our readers. It is not intended, and should not be used, as a substitute for consultation with legal counsel. If you have any questions regarding specific issues raised in this newsletter, you may contact the authors directly at: Laddey, Clark & Ryan, Attorneys at Law, 60 Blue Heron Rd., Sparta, NJ 07871-2600, Voice: 973-729-1880, Fax: 973-729-1224, Website: www.lcrlaw.com For additional information, contact: Thomas N. Ryan, Managing Partner, via phone or e-mail at: tryan@lcrlaw.com.