

# Occupational Injury Claims:

This is the Way!

# Presenters

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Gregory Boyer, Esquire  
*Law Offices of Gregory Boyer*

Andrew S. Caslowitz, Esquire  
*Rappoport, DeGiovanni and Caslowitz*

The Honorable Michael J. Feeney  
*State of Rhode Island Workers' Compensation Court*

## History:

# Manufacturing in Rhode Island— The Jewelry District

- During the 19<sup>th</sup> and 20<sup>th</sup> centuries, the manufacturing of jewelry and costume jewelry emerged as a dominant local industry
- Jewelry manufacturing began in Providence in 1794
- In 1794, Nehemiah Dodge developed a process for coating lesser metals with gold and silver
- Seril Dodge opened a jewelry store on North Main Street in Providence
- Historians claim these two men started Rhode Island's jewelry industry

# History Continued. . .

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- By 1890, there were more than 200 firms with almost 7,000 workers in Providence
- A demand for inexpensive jewelry and a growing immigrant labor force fueled that growth for another 100 years
- Most of Rhode Island's jewelry manufacturers were small, family owned and operated businesses
- There were many large, well known companies such as Trifari, Monet, Jewel Co. of America, Kienhofer & Moog, Anson, Bulova, Gorham, Swank and Speidel, to name a few.
- Unfortunately, it did not last. Foreign companies used cheap labor to compete with local companies. Many Rhode Island Companies went out of business from the late 1970s through the early 1990s.

# Occupational Diseases

- It has been known for many centuries that certain diseases are associated with particular occupations (shipbuilding/asbestos)
- All chemicals used in the workplace pose hazards, some which may result, with sufficient exposure, in a range of occupational diseases
- Most chemicals are irritant to the skin or mucous membranes, while others are toxic, allergenic, carcinogenic via skin contact, inhalation or accidental ingestion
- By the end of the 18<sup>th</sup> century, physicians discovered a causal link between chemicals and cancer
- Occupational cancer was recognized as a compensable disease by the 1920s

# Workers' Compensation Laws

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- The earliest workers' compensation statutes in this country typically provided compensation only for industrial accidents
- Coverage for occupational diseases developed slowly
- While accidental injuries were known to the common law and could be made the subject of an action for damages, the concept of occupational disease was a stranger to the lexicon of the pre-compensation-era of common law
- Rhode Island enacts its first version of the occupational disease statute in 1938. Note the original version only listed 31 exposures.
- Only 16 states compensated for occupational diseases at this time
  - CA; CT; IL; KY; MA; MN; MO; NE; NJ; NY; NC; ND; OH; RI; WV; WI
  - Today, all 50 states provide some measure of recovery for occupational diseases

## **Notable categories included in the 1938 Statute:**

1. Anthrax
2. Arsenic poisoning []
8. Poisoning by wood alcohol
12. Poisoning by nitrous fumes []
16. Chrome ulceration or its sequela or chrome poisoning
18. Glanders
19. Compressed air illness []
24. Poisoning by sulphuric, hydrochloric, or hydrofluoric acid.
28. Infection or inflammation of the skin or eyes or other external contact surfaces or oral or nasal cavities due to oils, cutting compounds, or lubricants, dusts, liquids, fumes, gases, or vapors.

## **The current statute has added 5 additional categories, including:**

32. Disability arising from silicosis or asbestosis.
33. Disability arising from any cause connected with or arising from the peculiar characteristics of the employment.
36. The disablement of an employee resulting from mental injury caused or accompanied by identifiable physical trauma or from a mental injury caused by emotional stress

# Caselaw—Manifestation of Condition

- Morgan v. Stillman White Foundry Co., 142 A.2d 536 (R.I. 1958)
  - Silicosis (molder)
  - “An occupational disease is ‘contracted’ . . . when some organ, tissue or fluid of the body develops a pathology characteristic of the particular disease”
  - An employee may have contracted a disease before symptoms manifest
  - An employer can be liable in cases where symptoms did not appear until after the employment ended

# Caselaw—Defining Occupational Disease

- Souza v. Raytheon Co., 490 A.2d 500 (R.I. 1985)
  - Inhalation of hysol (adhesive) gas fumes
  - “The term ‘occupational disease,’ as defined by § 28–34–2, means simply one of the injuries set forth in that section. It does not carry with it the common lay definition.”
  - Employee’s claim of disability from exposure to noxious gas was not impacted by her failure to file a claim for past exposures.
  - To require an employee to file a claim immediately for any injury, regardless of how long it disabled them, or forfeit all future claims is “contrary to the intention and meaning of the statute.”

# Caselaw—Evidence Required

- **Blau v. Walsh-Kaiser Co., 53 A.2d 330 (R.I. 1947)**
  - Dermatitis venenata of the hands
  - Where evidence supported that skin disease was not a work injury, employee was not entitled to receive benefits.
  
- **Perez v. Columbia Granite Co., 62 A.2d 658 (R.I. 1948)**
  - Silicosis (stonecutting)
  - The statute was “intended to require some evidence of the nature of the employment and the general conditions under which the employee [worked] for a period of at least sixty days.” And employee must show he was required to perform work duties that exposed him to the condition he allege
  
- **Leva v. Caron Granite Co., 124 A.2d 534 (R.I. 1956)**
  - Silicosis (stone cutting dust)
  - Employee’s testimony that he was unable to work “was sufficient for finding of total incapacity despite unanimous medical testimony of ability to do light work.”
  - The commission has the right to weight the evidence present as they see fit “as the sole triers of the facts. . . their decision cannot be disturbed by this court.”

# Caselaw—Evidence Required

- Edward Pesare v. Raymond & Higgins Petroleum Products Inc., W.C.C. 1985-02981 (App. Div. 1993)
  - Asbestos exposure
  - Where employee could not prove his lung cancer was related to asbestos exposure at work and doctors reasonably disagreed on whether the cancer was mesothelioma, court found no work injury
- Edward L. Omerod, Jr. v. Fry's Metals, Inc., W.C.C. 2011-01198 (App. Div. 2003)
  - Pulmonary alveolar proteinosis (from inhaling indium)
  - Strict application of the Daubert standard to specific expert testimony is erroneous in RI Workers' Comp. trial decisions
  - The trial judge's opinion "goes to the weight to be accorded to the testimony rather than to its admissibility."
  - If expert medical testimony meets Daubert standard and would have been helpful to a jury it should be admitted into evidence
- Denise Delomba v. The Miriam Hospital, W.C.C. 2017-07262 (App. Div. 2019)
  - Airways disease from noxious fumes
  - So long as the trial judge has reasoning to support their decision, and does not arbitrarily reject weak medical evidence, the trial decision can stand.

# Caselaw—Issues of Previous Employment

- **Gosselin v. Parker Brass Foundry, 119 A.2d 189 (R.I. 1955)**
  - Silicosis (foundry molder)
  - Nothing in the statute requires “that an employee must prove that the occupational disease causing his disability was actually contracted while working for the last employer.”
  - It is sufficient to establish that the nature of current work is “of the same nature as that in which the disease was contracted.”
- **Tavares v. A.C.&S. Inc., 462 A.2d 977 (R.I. 1983)**
  - Asbestosis
  - The last employer is liable for an occupational disease that was caused by continuous exposure through multiple employers if either:
    - (a) The employee’s work with their last employer caused an aggravation of the prior condition or
    - (b) The last employment (no matter how brief) was of the same nature and type in which the disease was first contracted
- **Gallagher v. National Grid USA/Narraganset Electric, 44 A.3d 743 (R.I. 2012)**
  - Mesothelioma
  - The fact that the employee worked as a welder for multiple past employers was not enough to hold the last employer liable.
  - His occupational disease was related to the “*conditions in which he was welding,*” not the welding itself.