

STATE OF CONFUSION—WHEN MORE THAN ONE STATE CAN HAVE JURISDICTION

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Easiest Example (PA and NJ)

- Claimant lives in NJ and works out of a NJ location
- Claimant injured in PA
- What happens when Claimant is receiving NJ TTD (Called “Temporary Disability Benefits”) and wants the protection of PA jurisdiction?
- First need to understand how NJ works

QUICK SUMMARY OF NJ BENEFITS

- 70% of AWW
- TTD benefits cease when:
 - Return to work, or
 - Reach maximum medical improvement (MMI)
- Employer controls all medical treatment
- Temporary Disability Benefits stop when the claimant (petitioner in NJ) reaches MMI. Medical stops too
- Then employee is potentially entitled to statutory permanency



PERMANENT PARTIAL DISABILITY

- Unique to New Jersey
- Requires the following:
 - Medical evidence of objective loss of function
 - The loss of function can be:
 - Ability to do work related functions, or
 - Ability to engage in everyday activities
 - Only considered after all treatment has concluded



Pennsylvania

WHAT WE TYPICALLY SEE IN PA

- Employee receives Temporary Disability Benefits in NJ
- Employee receives authorized medical treatment in NJ
- Employee nears MMI
- Employee has NJ counsel and knows that wage loss and medical will stop at MMI
- Employee files PA claim petition at or near time of MMI (sometimes sooner)
- We get a credit for the Temp paid in NJ, but unless we have a defense to the payment of wage loss benefits, we will be stuck paying TTD in PA

WHEN DOES PENNSYLVANIA PROVIDE JURISDICTION FOR WORKERS' COMPENSATION BENEFITS

- All injuries that occur in PA.
- The employee's contract for hire is made in PA but employee does not work at or from any location.
- The employee is injured outside of PA, but works at or from a PA location.



HOW DO WE STRATEGIZE IN THIS SITUATION

- If there is dual jurisdiction, claims professional should be aware of this at the outset.
- Claims professional can then handle the case under NJ law but be aware of the PA issues that can allow us to defend against a later claim for PA benefits.
- Best way to defend eventual PA claim is to make a job offer. So long as this precedes the PA claim petition, we can use this as an indemnity defense.
- Consider asking the authorized NJ treating physician to confirm full recovery, not just MMI.
- There is no PA case law on this issue. I have won cases and also have received awards against the employer for counsel fees.

SETTLEMENT OF DUAL JURISDICTION CLAIM

- You do not have to settle PA and NJ when there is dual jurisdiction, but you need to weigh the pros and cons.
- If the employee is represented in both states, smart business practice to settle both states together. Use settlement of one as condition precedent to settlement of the other.
- Use helpful decision in one state to reduce exposure in the other.
- We usually get General Releases in PA but not binding in NJ.
- No guarantee that if you don't settle claims together, that either state will award a credit.
- Better to pursue a Section 20 in NJ in conjunction with PA settlement.
- Make sure that PA counsel is negotiating the settlement of both states.

RECOMMENDATIONS WHEN WE KNOW THERE IS DUAL JURISDICTION FROM THE OUTSET

- If the employee comes to New Jersey after PA and PA paid a higher TTD rate, seek a credit for the differential
- If the employee seeks permanency, refuse to arrange permanency evaluations if the employee continues to treat with his or her chosen physicians in Pennsylvania – force them to agree to MMI
- Have defense counsel try to have employee's physician to admit to MMI in PA. If so, seek a credit in NJ against a permanency award for all PA TTD benefits paid after MMI

EXAMPLES OF CONCURRENT PA/NJ JURISDICTION

- Injured in PA but work at or from a NJ location.
- Injured in New Jersey but work out or from a PA location.
- Employee accepts job in NJ but is injured in PA (the reverse is not true).
- Other rare situations

THE TRAVELING EMPLOYEE—CONTRACT TO LIMIT JURISDICTION?

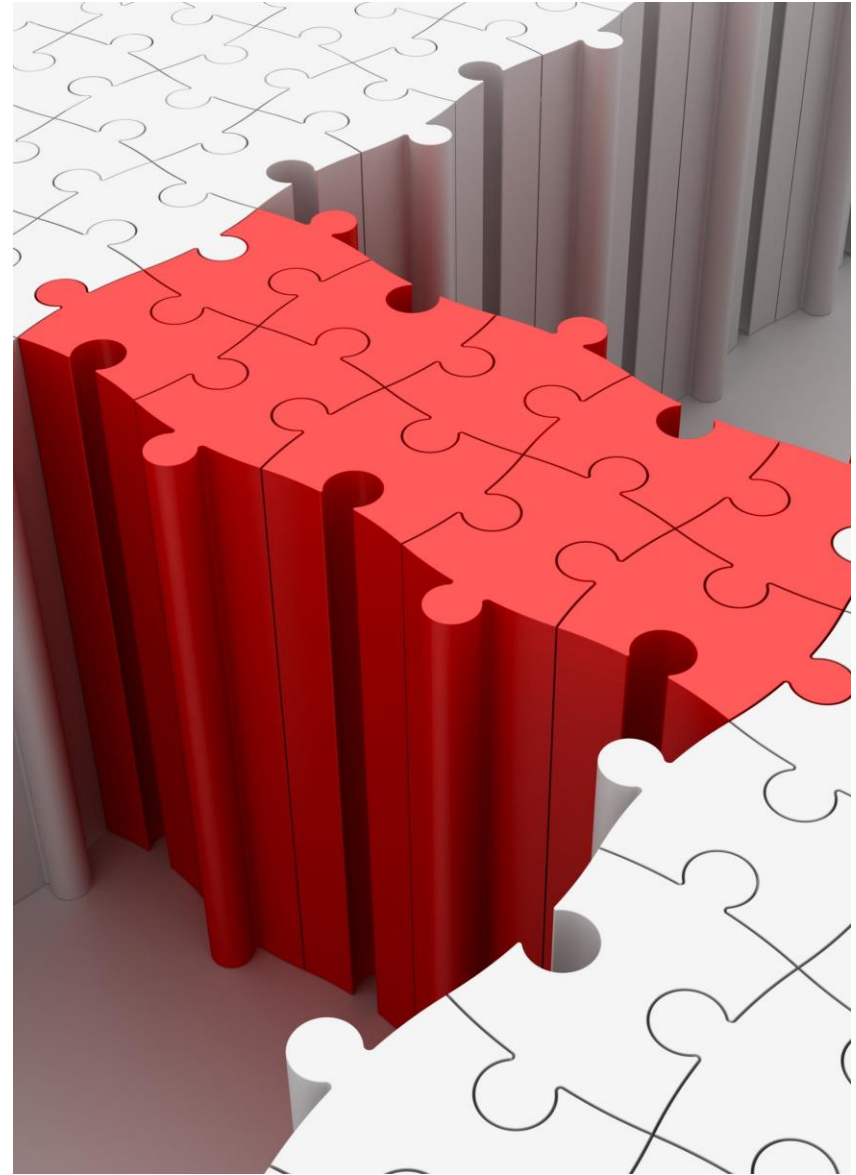
- Employer has agreement that places jurisdiction in another state for over the road drivers.
- Employer has many connections with the state where jurisdiction is sought?
- Valid? Section 305.2 (d)(4) of the Act discusses.

SECTION 305.2 (d)

- The language is important:
 - An employee whose duties require him to travel regularly in the service of his employer in this and one or more other states may, by written agreement with his employer, provide that his employment is principally localized in this or another such state, and, unless such other state refuses jurisdiction, such agreement shall be given effect under this act

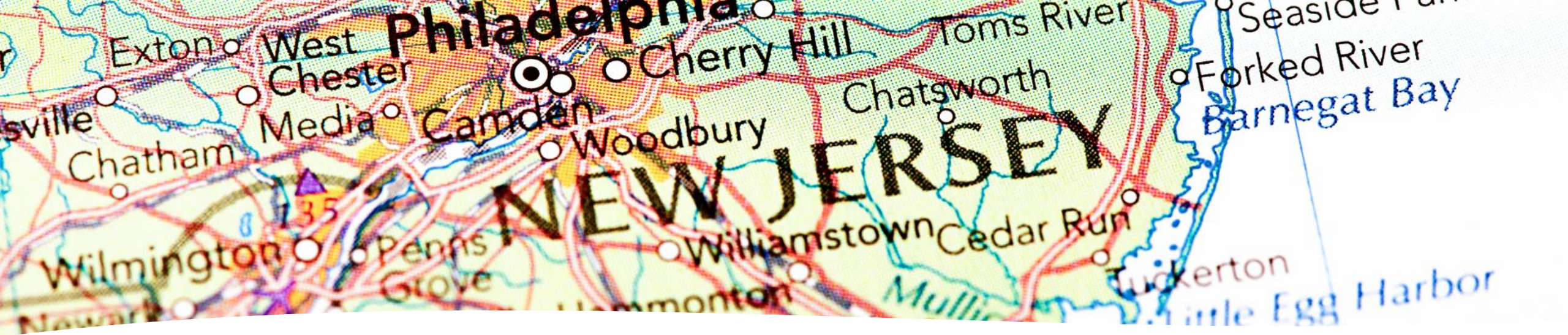
THE ARGUMENT IN PA "BUT THE EMPLOYEE CHOSE NJ FIRST" DOESN'T WORK

- No case law in PA like there is in NJ
- WCJ is only concerned about whether PA law applies
- Typically, not what the employee chose but what the employer/carrier chose



WHAT WE TYPICALLY SEE IN NEW JERSEY

- Employee receives TTD in PA
- Employee returns to work (with or without wage loss) and files for NJ permanency
- Employee settles PA claim by C+R and files for NJ permanency
- Effect of General Release in PA?



WHEN DOES NEW JERSEY PROVIDE JURISDICTION FOR WC BENEFITS

- When the contract for hire is in NJ—state of contract of hire is where employee accepts job
- When the accident occurs in New Jersey
- When a substantial amount of employment for the employee occurs in New Jersey
- Residence alone in New Jersey is not enough

WHY CAN AN INJURED WORKER OBTAIN BENEFITS FROM MORE THAN ONE STATE FOR THE SAME INJURY?

- Case law such as Williams v. A&L Packing and Storage, 314 N.J. Super. 460 (App. Div. 1980) make it clear:
 - An injured worker can have separate workers' compensation claims in different States for the same injury
 - Can seek the highest available benefits in each State
 - Cannot duplicate any benefit

WHERE DO YOU ACCEPT A COMPENSABLE CLAIM WHEN YOU KNOW THERE IS DUAL JURISDICTION

- While the employer can choose, the employee can change states
- If you choose first, choose the state that makes most sense
- If medical treatment will be the largest exposure—see if New Jersey makes sense based upon employee's residence
- If wage loss and medical expense are minimal: consider Pennsylvania
- Make sure to be consistent—there are other laws that apply

Dual Jurisdiction Tests – Claims Professionals



- The **W.A.L.S.H** Test acronym to assist in determining jurisdiction between states when more than 1 state is involved.
 - **W** – Worked most of the time
 - **A** – Accident occurred
 - **L** – Lived
 - **S** – Salaried or Paid From
 - **H** – Hired
- The importance of each part of the jurisdiction depends on the position of the term in the acronym **W.A.L.S.H**.
- The higher on the list, the higher the relevance in relation to jurisdiction
- Policy considerations — Covered States under 3A of the policy