



Impact of American Economy Insurance Company *et al* on WCL §25-a

On April 14, 2016, the NY Appellate Division issued its ruling in “American Economy Insurance Company *et al*, v State of New York *et al*.” 2016 N.Y. Slip Op. 02924 (Apr. 14, 2016) (*American Economy*). The ruling held WCL §25-a partially unconstitutional because insurance policies issued before 10/1/13 charged premiums based on the assumption that reopened cases could shift to the Reopened Case Fund (RCF) under **WCL §25-a**. For policies issued on or after 10/1/13, the Department of Financial Services approved an increase in premiums to account for the additional liability arising as a result of the closure of the RCF.

The State of New York filed a notice of appeal to the Court of Appeals, affecting a “stay” of the decision. In addition, the New York Workers’ Compensation Board issued WCB Subject Number 046-851 on 5/4/2016, stating the WCB will not adjudicate any applications for transfer of claims liability to the RCF; any applications will be held in abeyance pending further guidance from the Court of Appeals.

What This Court Decision Means to Insurers and Employers

Travelers will continue to carefully review and evaluate each claim on its merits and pay what is owed according to New York law.

In accordance with WCB Subject Number 046-851, Travelers is filing Requests for Further Action by Carrier/Employer (Form RFA-2) to apply for transfer of claim liability to the RCF in order to raise the issue for the record. While we await further guidance on this issue from the Court of Appeals, we will continue to administer claims as if no potential transfer of liability existed.

If the Court of Appeals supports the finding that closing the RCF for claims falling within policies issued prior to 10/1/13 is unconstitutional, we still must satisfy the three criteria for transfer:

- Seven years from date of injury
- Three years from last payment of compensation
- “True closure” by the WCB

We expect the “true closure” requirement to be challenged by the WCB on various claims, necessitating litigation. “True closure” hurdles could include:

- Unresolved issues such as permanency, apportionment, change in condition, tentative awards, medical evidence of lost time, unresolved injury sites, outstanding medical bills.
- No formal findings by WCB, but file is accepted, no issues identified, and case is reopened after a gap in treatment/action.
- Cases marked “No Further Action” by the WCB may not be deemed to be true closings.

This document is intended to provide general information and should not be construed as providing legal advice or legal opinions. You should consult an attorney for any specific questions.

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