

RECENT SURVEY OF WORKER'S COMPENSATION LAW

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INTRODUCTION

This Article surveys 1999-2000 cases construing the Indiana Worker's Compensation Act (hereinafter the "Act")¹. During this time, the courts addressed many significant issues affecting Indiana practitioners including the constitutionality of the bad faith provision, the extent of the ingress/egress exception, statutory attorney's fees, and workplace violence. Important legislative changes to the Act also occurred this year.

I. THE BAD FAITH PROVISION IS CHALLENGED

In 1998 the legislature enacted Indiana Code section 22-3-4-12.1, which gives the Worker's Compensation Board exclusive jurisdiction to adjudicate whether an employer, a worker's compensation administrator, or a carrier "has acted with a lack of diligence, in bad faith, or has committed an independent tort in adjusting or settling the claim for compensation."² The bad faith provision allows the employee to recover between \$500 and \$20,000, "depending upon the degree of culpability and the actual damages sustained."³ Prior to the enactment of this provision, an employee could maintain a civil action against his employer, worker's compensation administrator, or carrier where the employee was alleging an independent tort, fraud, or gross negligence.⁴

Since the effective date of the bad faith provision, practitioners have observed an increasing number of applications for adjustment of claims that allege an act of bad faith, a lack of diligence, or an independent tort falling within the Board's jurisdiction. In 1999, the courts began construing this provision.⁵ In those decisions, the courts addressed the retroactive applicability of the provision, the constitutionality of the provision, and the meaning of the terms adjusting or settling an independent tort. In 2000, the courts' focus returned to the constitutionality issue in *Sims v. United States Fidelity & Guaranty Co.*⁶

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1. IND. CODE §§ 22-3-1-1 to 22-3-12-5 (1998).

2. IND. CODE § 22-3-4-12.1 (1998) (hereinafter "the bad faith provision").

3. *Id.*

4. *See, e.g.,* *Vakos v. Travelers Ins.*, 691 N.E.2d 499 (Ind. Ct. App. 1998); *Stump v. Commercial Union*, 601 N.E.2d 327 (Ind. 1992).

5. *See, e.g.,* *Borgman v. State Farm Ins. Co.*, 713 N.E.2d 851 (Ind. Ct. App. 1999) (holding that retroactive application of the bad faith provision was appropriate and that the bad faith provision was constitutional); *Samm v. Great Dane Trailers*, 715 N.E.2d 420 (Ind. Ct. App. 1999) (finding employee's retaliatory discharge claim was not an independent tort within the meaning of the bad faith provision, but defamation, depending on when it occurred, was an independent tort within the bad faith provision).

6. 730 N.E.2d 232 (Ind. Ct. App. 2000), *trans. granted by* No. 49502-0105-CV-229, 2001

In *Sims*, the employee was a laborer who tripped over a welding lead that was across a stairway causing him to fall down the stairway resulting in bodily injury. The employee reported the injury and contacted United States Fidelity & Guaranty Company (USF&G), the employer's worker's compensation carrier. The employee attempted to contact USF&G on two occasions to schedule medical care and arrange for payment of temporary total disability benefits. USF&G failed to respond. Consequently, Sims filed a complaint in civil court against USF&G alleging gross negligence, intentional infliction of emotional distress, and intentional deprivation of statutory rights under the Act.⁷

Relying on the bad faith provision of the Act, USF&G filed a motion to dismiss for lack of subject matter jurisdiction. USF&G argued that, under the bad faith provision, the Worker's Compensation Board has the exclusive jurisdiction to determine whether the employer or the employer's worker's compensation carrier "has acted with a lack of diligence, in bad faith, or has committed an independent tort in adjusting or settling the claim for compensation."⁸ The trial court granted USF&G's motion to dismiss.⁹

On appeal, Sims argued the bad faith provision was unconstitutional on grounds that it violated the open courts provision of the Indiana Constitution¹⁰ and his constitutional right to a jury trial under the Indiana Constitution.¹¹ Relying on *Stump v. Commercial Union*¹² and *Martin v. Richey*,¹³ the court found the bad faith provision unconstitutional on both grounds.¹⁴

The Indiana open courts constitutional provision provides: "All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay."¹⁵ In determining whether the bad faith provision violated Article I, Section 12, the court considered the recent supreme court decision in *Martin v. Richey*.¹⁶ In *Martin*, the court held the legislature could abrogate common law rights and remedies, as long as doing so did not interfere with one's constitutional rights.¹⁷ Although the legislature has the right to abrogate rights and remedies available under the Act, the court specifically noted that an independent tort against the carrier was not the type of harm the Act was

Ind. LEXIS 416, at *1 (Ind. May 4, 2001).

7. See *id.* at 234.

8. See *id.* (quoting IND. CODE § 22-3-4-12.1 (2000)).

9. See *id.*

10. IND. CONST. art. I, § 12.

11. IND. CONST. art. I, § 20.

12. 601 N.E.2d 327 (Ind. 1992).

13. 711 N.E.2d 1273 (Ind. 1999) (considering the constitutionality of the medical malpractice statute of limitations).

14. See *Sims*, 730 N.E.2d at 237.

15. IND. CONST. art. I, § 12.

16. See *Sims*, 730 N.E.2d at 237.

17. See *Martin*, 711 N.E.2d at 1283.

intended to compensate and, thus, it would be unconstitutional to deprive injured workers who have been subsequently harmed by the malfeasance of the insurer of the right to a complete tort remedy.¹⁸

Sims also argued that the bad faith provision violated his constitutional right to a jury trial.¹⁹ The court observed that the jury trial right is preserved only when the action was triable by a jury at common law. USF&G argued that, under *Warren v. Indiana Telephone Co.*,²⁰ the Indiana Supreme Court held that the Act does not abrogate the right to a jury trial because the rights and duties created by the Act are contractual in nature and arise out of the voluntary acceptance of such terms. The court found USF&G's argument unpersuasive and, in addition to holding that the bad faith provision violated the open court's provision of the Indiana Constitution, it also found that it violated the constitutional right to trial by jury.²¹

In the dissenting opinion, Judge Baker noted that the intentional torts at issue "are an offshoot of the Worker's Compensation Act: but for the Act there would be no insurance carrier against whom to bring an action."²² It seems Judge Baker opines that the legislature cannot abrogate common law rights that would not exist but for the statutory creation of the Act from which those rights arise. Further, Judge Baker specifically stated that the majority's reliance on *Stump* was misplaced because the statute was enacted after the *Stump* decision and, in all likelihood, was a reaction to *Stump* and prior cases.²³ In light of the legislative and case law history, Judge Baker advocated deferring to the legislature and upholding the constitutionality of the bad faith provision.

Interestingly, Judge Baker also addressed the \$20,000 limitation on the recovery for a bad faith or independent tort claim brought pursuant to the bad faith provision.²⁴ Whereas the majority stated that this issue was not properly before the court,²⁵ Judge Baker felt compelled to point out the dangers of such a low monetary limit on recovery for such actions. Specifically, Judge Baker stated, "the \$20,000 limitation set forth in the statute may very well preclude meaningful recovery in some instances. Thus, I agree with *Sims*' assertion that such a cap serves to bar a complete remedy for some claimants."²⁶ Judge Baker believed that such a low limitation on a recovery simply invites such constitutional attacks and urged the legislature to increase the limitation.²⁷

18. See *Sims*, 730 N.E.2d at 236.

19. See *id.* at 237 (citing IND. CONST. art. I, § 20 (providing that, "[i]n all civil cases, the right of trial by jury shall remain inviolate")).

20. 26 N.E.2d 399 (Ind. 1940).

21. See *Sims*, 730 N.E.2d at 237.

22. *Id.* at 237-38 (Baker, J., dissenting).

23. See *id.* at 238.

24. See *id.* at 239.

25. See *id.* at 233 n.1.

26. *Id.* at 239 (Baker, J., dissenting).

27. See *id.* At the time this Article was sent to print, transfer to the Indiana Supreme Court was pending. It remains to be seen whether *Sims* will be upheld or whether the Indiana Supreme

II. COURT OF APPEALS EXTENDS THE INGRESS/EGRESS EXCEPTION

In *Clemans v. Wishard Memorial Hospital*,²⁸ an employee was crossing a public thoroughfare, to reach her vehicle parked in an employer-provided parking lot at the end of her work day. A vehicle struck and severely injured the employee when she crossed the public street. The parties stipulated that the street was neither owned nor controlled by the employer, Wishard Memorial Hospital. Further, Wishard provided a covered tunnel that connected the building in which Clemans worked to the lot, where her car was parked. Such a path would not have required Clemans to cross a public street. However, Wishard neither required nor encouraged its employees to travel the covered tunnel but, instead, left the means of access to the lot to the employees' discretion.²⁹

As a result of her injuries, Clemans filed an Application for Adjustment of Claim seeking worker's compensation benefits. Wishard denied her claim stating that her injuries did not arise out of and in the course of her employment.³⁰ The single hearing member and the full board agreed with Wishard's position. On appeal, the court reversed the Board's decision.³¹

The issue presented to the court of appeals was whether Clemans' injuries arose out of and in the course of her employment with Wishard. The court noted that the "'in the course of' [employment] element refers to the time, place, and circumstances of the accident, [whereas the term] 'arising out of' element refers to the causal connection between the accident and the employment."³² Indiana courts have long recognized that 'in the course' of one's employment is not limited to the moment when an employee reaches the place where he or she begins his or her workday or to the moment he or she ceases work activities.³³ Instead, the courts have crafted the ingress/egress rule to extend coverage of the

Court will reverse the Court of Appeals' decision. Interestingly, should the bad faith statute eventually be upheld, the legislature recently amended the provision to put an overall cap on the amount of damages recoverable as to an individual's claims against a single employer by adding the following language: "(f) An award or awards to a claimant pursuant to subsection (b) shall not total more than twenty thousand dollars (\$20,000) during the life of the claim for benefits arising from an accidental injury." IND. CODE § 22-3-4-12.1(f) (1998). By way of this new language, the Legislature hopefully has curbed the growing trend of filing repetitive (multiple) bad faith claims between one employee and one employer. Regardless of the number of separate allegations of bad faith that are made, the legislative change ensures that there is an overall cap on the amount of damages recoverable between one employee and one employer on each injury.

28. 727 N.E.2d 1084 (Ind. Ct. App. 2000).

29. *See id.* at 1085-86.

30. The Act provides compensation for employees who suffer injuries that occur "by accident arising out of and in the course of employment." IND. CODE § 22-3-2-5 (1998).

31. *See Clemans*, 727 N.E.2d at 1091.

32. *Id.* at 1086 (citing *K-Mart Corp. v. Novak*, 521 N.E.2d 1346, 1348 (Ind. Ct. App. 1988)).

33. *See, e.g., Reed v. Brown*, 152 N.E.2d 257, 259 (Ind. Ct. App. 1958).

Act to those accidents which occur during the employee's ingress to or egress from their employer's operating premises or extensions thereof. Prior to *Clemans*, it had been held that employer-controlled parking lots or private drives used solely by employees were extensions of the employer's operating premises for purposes of coverage under the Act.³⁴

Clearly, had Clemans' injuries occurred on the employer provided parking lot, Wishard would have accepted Clemans' worker's compensation claim as compensable. However, the unique issue presented was whether Wishard should be responsible for injuries occurring on a public street over which they exercise no ownership or control, particularly when they provided alternative means of travel which would have eliminated the risk undertaken by Clemans.

The court ultimately disagreed with Wishard, basing its decision almost entirely upon its decision in *Reed v. Brown*.³⁵ In *Reed*, the employer's property was subject to an operating easement of a railroad company; thus, railroad tracks ran through and divided the employer's operating premises. There were means of access to the building where the employee worked, one where no flasher signals were posted at the point where the private driveway crossed the tracks, and another with flasher signals. The employee was driving to work using the private driveway and crossed the tracks at the point with no flasher signals. He was struck by an oncoming train. In determining that Reed's accident 'arose out of' and 'in the course of' his employment, the court noted that premises not only "'include premises owned by the employer, but also those premises leased, hired, supplied or used by [the employer/employee.]"³⁶ The private driveway over the tracks afforded a shorter, quicker and more convenient route to and from the employment and, thus, the court found that the employer had implicitly authorized or permitted the employee to travel such route.³⁷

The *Clemans* court reasoned that,

[j]ust as the employee in *Reed* was subjected to an incidental risk every time he crossed the railroad tracks to access the building where he worked, so too was Clemans subjected to an incidental risk every time she crossed Wilson Street to access the vehicle which brought her to work in the first place.³⁸

In this author's opinion, the difference is necessity. In *Reed*, the employee would have been required to cross the railroad tracks regardless of which path the employee choose. Clearly, one path appeared safer due to the existence of cautionary lights. However, the employee nonetheless had to cross the railroad tracks at one of those two points, thus subjecting himself to an incidental risk of employment. In *Clemans*, however, it was not necessary for the employee to

34. See, e.g., *Lawhead v. Brown*, 653 N.E.2d 527, 529 (Ind. Ct. App. 1995); *U.S. Steel Corp. v. Brown*, 231 N.E.2d 839, 842 (Ind. Ct. App. 1967).

35. *Reed*, 152 N.E.2d at 257.

36. *Id.* at 261 (citations omitted).

37. See *id.* at 260-63.

38. *Clemans*, 727 N.E.2d at 1088.

cross the public street; instead, she could have traveled the tunnel, thereby eliminating the incidental risk all together.³⁹ Unfortunately for employers, the court of appeals did not agree.

Thus, in an expansive decision, the court of appeals extended the ingress/egress doctrine to include not only the logical extensions of an employer's operating premises, such as a private drive or an employer-provided parking lot, but also to any publically owned and controlled area situated between the actual place of employment and logical extensions of the employer's operating premises. The practical result may be a chilling effect on employer-provided parking as a benefit if, indeed, access to the provided parking requires an employee to cross a public street.

III. INDIANA SUPREME COURT RULES ON *SPANGLER, JENNINGS & DOUGHERTY P.C. v. INDIANA INSURANCE CO.*

Since 1998, practitioners have eagerly awaited the Indiana Supreme Court's decision in *Spangler, Jennings & Dougherty P.C. v. Indiana Insurance Co.*,⁴⁰ a decision construing Indiana Code section 22-3-2-13. Through Indiana Code section 22-3-2-13, the Act provides if an employee's injuries are caused by someone other than the employer or a co-employee, the injured worker may maintain a civil action against that party. If the employee recovers from the third party, then the Act provides that the employer or worker's compensation carrier may receive reimbursement for the amount of compensation benefits and medical expenses paid on behalf of the employee.⁴¹ The employer or worker's compensation carrier, must, however, pay a pro-rata share of litigation costs and expenses as well as a statutory fee to the employee's attorney.⁴² Once judgment or settlement has been reached in the third party suit, an employer's obligation to provide benefits ceases.⁴³

The *Spangler* decision addressed the issue of the employer's pro-rata share of the employee's attorney's fees. Specifically, the issue presented was whether the employer or carrier owe a pro-rata share of attorney fees on only the amount of the lien collected by the employee's attorney or, instead, whether it also owes its pro-rata share of attorney's fees on the amount it would have continued to pay in future benefits but for the existence of a third party recovery. The court of appeals held that the employer or worker's compensation carrier must contribute a pro-rata share of attorney's fees on the entire amount of the award including that amount of future benefits it would have paid but for the third-party recovery.⁴⁴

39. *See id.*

40. 729 N.E.2d 117 (Ind. 2000).

41. *See* IND. CODE § 22-3-2-13 (1998).

42. *See id.*

43. *See id.*

44. *See Spangler, Jennings & Dougherty P.C. v. Ind. Ins. Co.*, 685 N.E.2d 705, 707 (Ind. Ct. App. 1997), *rev'd*, 729 N.E.2d 117 (Ind. 2000).

On transfer to the Indiana Supreme Court, the court reversed and vacated the court of appeals' decision. The court noted that the language of the statute, when discussing third-party settlement without suit, stated that, "benefits shall consist of the amount of reimbursements."⁴⁵ When the statute discusses third-party settlement collected with suit, the statute also references benefits but fails to utilize the same language. The court nonetheless concluded that the "term 'benefits' discussed in the 'with suit' situation has the same meaning as the 'benefits' defined earlier in that very same sentence (in the 'without suit' situation)."⁴⁶ The court stated, "[w]hether the claim is resolved with or without suit, the benefits are the same: reimbursements."⁴⁷

The Indiana General Assembly seems to be in agreement with the *Spangler* decision given the recent legislative amendment to Indiana Code section 22-3-2-13. During the last session, the legislature clarified Indiana Code section 22-3-2-13 to provide for reimbursements

actually repaid after the expenses and costs in connection with the third party claim have been deducted therefrom, and a fee of thirty-three and one-third percent (33 1/3%), if collected with suit, of the amount of benefits actually repaid after deduction of costs and reasonably necessary expenses in connection with the third party claim action or suit.⁴⁸

The legislative change was likely a reaction to the court of appeals' interpretation in *Spangler* and thus an attempt to limit the attorneys' fees to the amount of benefits that have actually been paid to date, and to exclude from that calculation potential future benefits that have been avoided.

IV. WORKPLACE VIOLENCE

In *Conway ex. rel. Conway v. School City of East Chicago*,⁴⁹ the employee was employed as a school bus driver by the School City of East Chicago. The job required the drivers to park their buses in the Central Services Facility when not transporting children. At this facility, there was a gatehouse from which another employee would control the opening and closing of the facility gate. On April 7, 1995, employee Harris was working at the facility gatehouse when he shot and killed employee Conway. Immediately prior to the shooting, Harris began running towards Conway's vehicle. Using vile language, he stated, "[h]e was the one that caused my problem."⁵⁰ Conway's surviving spouse argued for entitlement to worker's compensation benefits on the premise that but for the requirement of Conway's job, he would not have had to pass through the security

45. *Spangler*, 729 N.E.2d 117 at 122.

46. *Id.* (citing IND. CODE § 22-3-2-13 (1991)).

47. *Id.*

48. IND. CODE § 22-3-2-13 (1998).

49. 734 N.E.2d 594 (Ind. Ct. App. 2000).

50. *Id.* at 596.

gate and would not have been shot. Thus, she argued that Conway's death arose out of and in the course of his employment.⁵¹

The Single Hearing Member and the Full Board both denied Conway's claim for worker's compensation benefits. In holding that the death did not arise out of and in the course of the decedent's employment, the Hearing Member found "(1) that the evidence fail[ed] to disclose that Decedent's death arose out of some work-related risk . . . (2) that there [was] no evidence to connect the employment conditions and the resulting death . . . (3) that the evidence show[ed] that [Harris] had a prior animosity toward the decedent."⁵² The Full Board affirmed, and Conway appealed.

On appeal, Conway pointed to evidence that the decedent came into daily contact with Harris at the facility gate and that Harris had been disciplined by the employer for becoming agitated at another bus driver who drove past the gate without showing Harris respect. Conway argued that these facts are sufficient to show that the animosity between the two employees was work related. The court of appeals, mindful of its standard of review,⁵³ declined to reweigh the evidence and instead found that the evidence presented to the Full Board was sufficient for the Board to conclude that a personal conflict, unrelated to work, existed between Conway and Harris.⁵⁴

Conway next argued that the Board erred in applying the law to the findings. Specifically, he argued that the Board failed to apply the correct test in determining whether the requisite causal relationship existed between the decedent's death and his work. Conway urged the court to apply the positional risk test. This test is applied if the risk appears to be neutral. For example,

cases of stray bullets, roving lunatics, and other situations in which the only connection of the employment with the injury is that its obligations placed the employee in a particular place at a particular time when he was injured by some neutral force, meaning *neutral* neither personal to the claimant nor distinctly associated with the employment.⁵⁵

If a positional risk test applies, then an injury arises out of the employment if it would not have occurred but for the fact that the employment placed claimant in a position where he was injured.⁵⁶ The court, however, found that the risk involved in *Conway* was not neutral because the evidence showed that Harris had personal animosity toward the decedent unrelated to work. The court opined that this finding made Conway's case subject to the increased risk analysis as

51. *See id.* at 596-97.

52. *Id.* at 597.

53. On appeal, the court must disregard all evidence unfavorable to the Board's decision and examine only that evidence and the reasonable inferences therefrom that support the Board's conclusion. *See Four Star Fabricators, Inc. v. Barrett*, 638 N.E.2d 792, 794 (Ind. Ct. App. 1994).

54. *See Conway*, 734 N.E.2d at 598.

55. *Id.* at 599 (quoting *K-Mart Corp. v. Novak*, 521 N.E.2d 1346, 1349 (Ind. Ct. App. 1998)).

56. *See id.*

opposed to the positional risk analysis advanced by Conway.⁵⁷

Under the increased risk analysis, a causal nexus exists between the injury and the employment when "a rational mind might comprehend that the accident was a risk incidental to the employment."⁵⁸ The court noted that as a general rule, "a risk is incidental to the employment if the risk involved is not one to which the public at large is subjected."⁵⁹ Under an increased risk analysis, there is no causal nexus when the injury arises from a personal conflict unrelated to work - such as the conflict in this case.⁶⁰ In support of its conclusion, the court noted prior decisions discussing workplace violence wherein worker's compensation benefits had been denied based on the same analysis. For example, in *Peavler v. Mitchell & Scott Machine Co.*,⁶¹ an ex-boyfriend came to his ex-girlfriend's place of employment and shot her while she was in the course of her employment. The court in *Peavler* held that harms arising from personal risks are universally noncompensable.⁶² The *Conway* court applied a similar analysis and concluded that the personal risk to which Conway was exposed was not incidental to his employment "because the public at large is also subjected to that same risk of being attacked for personal reasons on a daily basis, regardless of where they are employed."⁶³

V. OTHER LEGISLATIVE CHANGES

In addition to the legislative changes noted above, the General Assembly amended the Act to provide benefits for time missed at work due to medical treatment and amended the Act's definition of corporate employers.

A. *Lost Wages for Time Missed at Work due to Medical Treatment*

Indiana Code sections 22-3-3-4 and 22-3-7-17, which deal with the payment of reasonable and necessary medical expenses, were amended to include the following new language: "[i]f the treatment or travel to or from the place of treatment causes a loss of working time to the employee, the employer shall reimburse the employee for the loss of wages using the basis of the employee's average daily wage."⁶⁴ This change does not refer to payment of wages based on the temporary total disability rate, but rather, it is based on the "employee's average daily wage."⁶⁵ While many employers will pay wages to an employee while in treatment for a work injury during the standard work day, if the employer does not do so, it is now apparently the worker's compensation

57. *See id.*

58. *Id.*

59. *Id.* (quoting *K-Mart Corp.*, 521 N.E.2d at 1348).

60. *See id.*

61. 638 N.E.2d 879 (Ind. Ct. App. 1994).

62. *See id.* at 881.

63. *Conway*, 734 N.E.2d at 599.

64. IND. CODE §§ 22-3-3-4(a), 22-3-7-17(a) (Supp. 2000).

65. *See id.*

carrier's duty to do so. Of course there is still the option of requiring that all medical treatment be scheduled outside of the normal work hours of the employee, if possible.

B. Definitions of Corporate Employers

Indiana Code section 22-3-6-1 includes definitions of terms within the Act. In the last session, the legislature amended the definition of an employer as follows:

"Employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. A parent or a subsidiary of a corporation or a lessor of employees shall be considered to be the employer of the corporation's, the lessee's, or the lessor's employees for purposes of IC 22-3-2-6.⁶⁶

In addition, Indiana Code section 22-3-7-9 was amended to read:

As used in this chapter, "employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. A parent or a subsidiary of a corporation or a lessor of employees shall be considered to be the employer of the corporation's, the lessee's, or the lessor's employees for purposes of section 6 of this chapter.⁶⁷

These changes are presumably in response to *McQuade v. Draw Tite, Inc.*,⁶⁸ wherein the Indiana Supreme Court held that if a Corporation attempts to distance itself from its subsidiary through the corporate structure, it cannot then claim the benefit of the exclusive remedy provision and avoid civil liability for the injuries of an employee of the subsidiary.⁶⁹ While it is not clear that the language drafted and approved by the legislature will have the effect of protecting a corporation against separate civil liability, it appears that was the intent of the legislature.

CONCLUSION

The Act forges a compromise between employers and employees by allowing employees to recover benefits without having to show fault on the part of the employer. With each passing year, the legislature makes changes to this so-

66. IND. CODE § 22-3-6-1(a) (Supp. 2000).

67. *Id.* § 22-3-7-9(a).

68. 659 N.E.2d 1016 (Ind. 1995).

69. *See id.* at 1020.

called compromise and the courts interpret and clarify the boundaries of this compromise. As this Article demonstrates, this survey period was no different. Indiana practitioners should look forward to new developments in 2001.

