

## BENJAMIN K. DURSTEIN

SHAREHOLDER



### AREAS OF PRACTICE

Workers' Compensation

### CONTACT INFO

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### ADMISSIONS

Delaware  
2013

### EDUCATION

Widener University School of Law  
(J.D., cum laude, 2012)

University of Delaware (B.A.,  
2007)

### HONORS & AWARDS

The Best Lawyers: Ones to  
Watch®, Workers' Compensation  
Law – Employers  
2024-2025

Top Lawyer, Workers'  
Compensation Employer Defense,  
Delaware Today Magazine  
November 2022

### OVERVIEW

As a member of the Workers' Compensation Department, Ben represents employers, insurance carriers and third-party administrators in defense of workers' compensation claims before the Industrial Accident Board and Delaware courts.

Ben earned his Bachelor of Arts degree from the University of Delaware in 2007, and went on to receive his *juris doctor* from Widener University School of Law in 2012. After law school, he served as a judicial law clerk to the Honorable James T. Vaughn, Jr., who was then President Judge of the Delaware Superior Court.

Ben is a member of Delaware Claims Association, Delaware State Bar Association Workers' Compensation Section and the Randy J. Holland Delaware Workers' Compensation American Inn of Court. He is admitted to practice in the State of Delaware.

### THOUGHT LEADERSHIP

**Petition for compensability of post-concussion syndrome treatment granted. Petition to terminate total disability benefits, alleging ability to return to work w/restrictions and forfeited right to benefits for refusing reasonable medical treatment, denied**

**Wilmington**  
**Workers' Compensation**  
**November 1, 2024**

Ms. Makowski injured her low back, neck, shoulder, head/brain in a work-related motor vehicle accident on January 22, 2009, and remained on total disability benefits. The Industrial Accident Board later determined that Ms. What's Hot in Workers' Comp, Vol. 28, No.

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## ASSOCIATIONS & MEMBERSHIPS

Delaware Claims Association

Delaware State Bar Association;  
member, Workers' Compensation  
Section

Randy J. Holland Delaware  
Workers' Compensation American  
Inn of Court

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## YEAR JOINED

2017

**Relying on Delaware Superior Court memorandum opinion that determined the Industrial Accident Board correctly decided to terminate total disability benefits following a total knee replacement, Delaware Supreme Court affirms Boards' decision.**

**Wilmington  
Workers' Compensation  
October 1, 2024**

The claimant suffered from rheumatoid arthritis for approximately 20 twenty years and required biological medications to treat pain, swelling and stiffness in his joints. What's Hot in Workers' Comp, Vol. 28, No.

**The Delaware Superior Court affirms Industrial Accident Board's decision and rejects claimant's argument on appeal that the Board's decision to allow certain questioning from the employer's attorney constituted a reversible abuse of discretion.**

**Wilmington  
Workers' Compensation  
September 1, 2024**

On July 19, 2017, the claimant injured his right shoulder, requiring surgery, while working for the employer. What's Hot in Workers' Comp, Vol. 28, No.

**Delaware Superior Court reverses and remands Industrial Accident Board's decision involving a Utilization Review appeal because it was unclear whether the Board had correctly applied the relevant Delaware Healthcare Practice Guidelines.**

**Wilmington  
Workers' Compensation  
August 1, 2024**

Mr. Baxter was injured when he fell from a ladder on May 28, 2019, while working as a fiber optic cable installer. He had multiple injuries, one of which was to the left knee. What's Hot in Workers' Comp, Vol. 28, No.

**The Delaware Supreme Court affirms decision that a COVID-19 workplace exposure at a poultry processing plant did not qualify as a compensable occupational disease.**

**Wilmington  
Workers' Compensation  
July 1, 2024**

Mr. Fowler alleged that he suffered a compensable COVID-19 exposure while working as a "boxer" at a poultry processing plant. What's Hot in Workers' Comp, Vol. 28, No.

## CLASSES/SEMINARS TAUGHT

*Ethics and the Duty to the Tribunal and Opposing Counsel*, panelist, Delaware State Bar Association and the Industrial Accident Board Workers' Compensation Seminar 2023, Wilmington, Delaware, May 2, 2023

*Strategies to Limit Exposure and Minimize Risk*, Marshall Dennehey Workers' Compensation Seminar, October 27, 2022

*Do's and Don'ts in the Practice of Workers Compensation*, Delaware State Bar Association William D. Rimmer Workers' Compensation Seminar 2022, Wilmington, Delaware, May 3, 2022

*Are You Coming or Going – Do You Know Your Course and Scope?*, Marshall Dennehey webinar, October 26, 2020

## RESULTS

### DELAWARE SUPREME COURT AFFIRMS THE DECISIONS OF THE IAB AND SUPERIOR COURT, HOLDING THAT AN EMPLOYER CORRECTLY PAID FOR KETAMINE INFUSION TREATMENT IN ACCORDANCE WITH THE DELAWARE FEE SCHEDULE

#### **Workers' Compensation**

**March 21, 2024**

The claimant injured her right wrist in 2016 while working as a teacher for the State. Her injury eventually developed into complex regional pain syndrome (CRPS) involving multiple extremities. From 2017 to 2021, the State paid for 23 ketamine infusion treatments to treat the claimant's CRPS. The treatment was rendered by an out-of-state provider. In 2019, the State contracted with a new bill-review company that paid substantially lower amounts than was previously paid for the same treatment.

### Industrial Accident Board grants motion for reimbursement.

#### **Workers' Compensation**

**November 1, 2022**

We succeeded in having the Industrial Accident Board grant reimbursement of an amount of total disability benefits tendered that were offset by contemporaneous short-term disability payments. The Board denied the claimant's motion to compel production of paystubs that he claimed were required to determine the appropriate offset amount, if any. The Board reasoned that the information provided was sufficient to calculate the overpayment amount and that the Fair Labor Standards Act did not require the pay records be kept in any particular form.

### Defense prevails before the Industrial Accident Board.

#### **Workers' Compensation**

**December 2, 2021**

The claimant alleged several injuries. The Board denied the claimant's petition for additional compensation due on all counts, and granted the employer's petition for review to terminate total disability benefits. Specifically, the Board concluded that (1) a proposed left ankle reconstruction surgery was not reasonable and necessary, (2) there was insufficient evidence to prove a compensable left knee injury, (3) there was insufficient evidence to prove a compensable lumbar spine injury and (4) the claimant was capable of unrestricted return to work.

### Successful defense of workers' compensation case before the Delaware Supreme Court.

#### **Workers' Compensation**

**March 1, 2020**

In its order, the Supreme Court affirmed a decision of the Superior Court that had affirmed a Board decision regarding the compensability of travel expenses for trips to and from medical appointments. The claimant had petitioned for parking and toll expenses incurred during her trips to visit a doctor at University of Pennsylvania from her residence in Dover, Delaware.