

# **Workers' Compensation: A Look Back & A View Forward**

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## The Law Court

**No workers' compensation (WC) case taken again, for 2023**

**Only one Justice has WC experience**

- Don't always understand WC Cases
- Could be that litigants are wary of seeking review
- Otherwise, unclear why no WC cases have gone to the Law Court in a number of years

## Appellate Division

### Statistics for 2023

- 20 appellate decisions
- Even number of Employer and Employee appeals
- Employee prevailed more often
- Judge Chabot is still the most-appealed Judge
- Wide range of issues appealed

## Appellate Division Take-Aways

- Coordinating SSI offset
- Controlled Substances Pre-emption for THC
- Tolling of SOL with SSI but not Medicare
- Acute/gradual injuries
- Refusal of *bona fide* offer of reasonable employment/COVID era

## Appellate Division Take-Aways (continued)

- Narrow construction of *Res Judicata*
- Pre-existing conditions becoming work-related
- Transfer to higher paying job set AWW
- MMI/PI and the caps on benefits

## Legislation

- 104-A Liability for Sexual Harassment, Sexual Assault, or Certain Intentional Torts
- “An Act to Index Workers’ Compensation Benefits to the Rate of Inflation”  
L.D.1896

## Predictions for 2024

- More turnover at Advocate Division
- More pre-existing conditions being asserted as work-related
- More acute/gradual injury claims
- More difficulty getting relevant medical records
- More of the increasingly liberal Board
- More difficulty locating suitable IME and Labor Market Survey Experts

## Predictions for 2024 (continued)

- Live versus remote Board proceedings
- More short-term employee claims
- Erosion of Caps at the Board level
- The 312 Roster challenge



# QUESTIONS?