



State of New Jersey

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
PO BOX 381
TRENTON, NEW JERSEY 08625-0381

AARON R. FICHTNER, Ph.D.
Acting Commissioner

RUSSELL WOJTENKO, JR.
Director & Chief Judge

Dear Sir/Madam/Counsel:

Attached, for your attention and information, please find a checklist of documents to be provided to the Office of Special Compensation Funds in cases to which the Uninsured Employers Fund may be associated, sample motion papers (Attachments A through C), and a copy of the Rules of the Division of Workers' Compensation applicable to the UEF (Attachment D).

Please be advised that benefits from or on behalf of the Uninsured Employers Fund are payable only in cases of injury and/or occupational exposure on or after May 27, 1988. This date, however, is not applicable for cases where the petitioner was exposed to asbestos and has an asbestos related cancer, including mesothelioma. Please note that additional documentation is required to be filed in these matters; kindly refer to the appropriate statutes and regulations to determine same.

You should refer to case law and the statutes to assist you in properly preparing your case.

Questions concerning the Uninsured Employers Fund should be directed to this office at the address shown above, at (609) 292-6020 or, via email, at oscf@dol.state.nj.us.

Very truly yours,

Melpomene Kotsines, Acting Administrator
Office of Special Compensation Funds

ATTACHMENTS

New Jersey Is An Equal Opportunity Employer

DOCUMENTS TO BE SUBMITTED TO THE UNINSURED EMPLOYERS FUND

Prior to Trial

1. A copy of an amended claim petition, naming the principals of the corporation pursuant to N.J.S.A. 34:15-79 as respondents and a copy of the certificate of incorporation and any amendments thereto. A corporate search will assist in gathering the names of the principals. To obtain corporate information, the petitioner's attorney must contact:

Department of the Treasury
Division of Commercial Recording
225 West State Street
P O Box 308
Trenton, New Jersey 08625-0308
(609) 292-9292
www.state.nj.us/njbgs.com

If unsuccessful in the corporate search, the petitioner's attorney may then request that the Division attempt a corporate search. Should the respondent not be a corporation, a trade name search should be conducted in the county where the respondent is located. This information may be obtained from the county clerks' office.

2. A copy of the original claim petition, copies of any amended claim petitions, motion to join the UEF, the petitioner's certification, and all accompanying documents must be personally served upon the individual respondent(s), all principals of the corporation and the corporation. Certified mail is insufficient – service must be hand delivered. The petitioner's attorney shall attempt personal service upon the respondent employer and may hire the service of an outside agency and be reimbursed for the cost of such service, at the discretion of the Judge, in the final judgment. Where such service is unsuccessful, petitioner's attorney may request the Division of effectuate personal service. If both the Division and the outside agency are unsuccessful, then the petitioner's attorney must file a motion for substituted service via publication of general circulation. The language to use for such publication is attached (See Attachment A). The names of all principals, individual respondents and the corporation and/or employer must be included in the publication.
3. A motion to join the Uninsured Employers Fund, utilizing the attached form (See Attachment B). This motion must also include the Order for Joining the Uninsured Employers Fund (See Attachment C). The proper wording for the Order is attached.
4. The petitioner's certification pursuant to N.J.A.C. 12:235-7.3 (See Attachment D).
5. Proof from the Compensation Rating and Inspection Bureau (CRIB) that the employer is, in fact, uninsured. The petitioner's attorney may contact:

Compensation Rating and Inspection Bureau
60 Park Place
Newark, New Jersey 07102

or obtain a printout from the CRIB web site at www.njcrib.com.

6. All outstanding and itemized medical bills. Letters from collection agencies are unacceptable.
7. The primary treating physician's affidavit establishing the following:
 - a. The period of temporary disability;
 - b. The reasonableness and necessity of all medical treatment and bills. The physician should refer to the State's schedule of reasonable medical costs; and
 - c. The causal relationship between the injury and the accident.
8. Copies of all of the physician's treating notes for all treatment rendered to the petitioner for the injury allegedly sustained at work.

At Trial

1. Introduce proof of personal service.
2. Introduce letter from the Compensation Rating and Inspection Bureau or print from CRIB's website confirming that the respondent employer was without coverage at the time of the accident.
3. Petitioner testifies to:
 - a. Employment history (date of hire, length of employment, etc.);
 - b. Wages;
 - c. Accident (how it occurred);
 - d. Time lost from work, treatment obtained (all supported by the treating physician's affidavit); and
 - e. Current complaints (if petitioner is seeking permanency benefits).
4. Present the treating physician's affidavit.
5. Present the evaluating physician's report if seeking permanency benefits.

Judgment

1. Judgment must be entered solely against the respondent(s) and the business. The statute and rules prohibit any judgment being entered against the Uninsured Employers Fund.
2. The judgment must state that the respondent was uninsured at the time of the accident.
3. Counsel for the Uninsured Employers Fund must consent to the form of the Order.

4. Counsel for the Uninsured Employers Fund will return to the Division a copy of the Order which will be referred to the Director for assessment of penalty pursuant to N.J.S.A. 34:15-120.19(c).
5. A copy of the judgment and demand for payment will be sent to the respondent(s) by the Office of Special Compensation Funds. If the respondent fails to respond within 45 days from the date of mailing, the judgment will be docketed in the Superior Court. A copy of the statement for docketing will be forwarded to the petitioner's attorney.
6. The petitioner's attorney must complete and sign the form requesting payment of the temporary disability benefits, medical expenses and counsel fee from the Uninsured Employers Fund as per N.J.S.A. 34:15-120.1 et seq., "in accordance with the judgment entered by the Honorable (name of Judge of Compensation) on (date of judgment). A copy of that form will be available from the UEF attorney at the time the judgment or order is entered. The UEF attorney will return the signed and completed form to the Office of Special Compensation Funds to initiate the payment process.
7. Benefits will be paid approximately 4-6 weeks after confirmation of the judgment's docketing has been received from the Superior Court or the date of request for payment, whichever shall be later.
8. Question concerning the status of payment from the Uninsured Employers Fund should be directed to Debi Ralston, Office of Special Compensation Funds, at (609) 292-6020.

ATTACHMENT A

LANGUAGE TO BE USED FOR SUBSTITUTED SERVICE

All other means of Personal Service having been attempted, Notice of Substituted Service is hereby given in the matter of [name of case and claim petition number]. In this action, it is claimed that the petitioner was in the employ of the respondent [name of respondent(s), employer(s) and all principals] on [date of accident] and suffered a compensable injury in accordance with N.J.S.A. 34:15-7 et seq. This matter is to be held before the Honorable [name of Judge], Judge of Compensation at [address of court] on [next listing date of the case] at 9:00 a.m. Anyone wishing to be heard in reference to this matter should contact [UEF Attorney*] of the Uninsured Employers Fund, Office of Special Compensation Funds, P O Box 399, Trenton, New Jersey 08625-0399, [telephone number of UEF attorney**], on or before 10 days prior to the hearing.

* Melpomene Kotsines, Esq.	** (609) 984-1214
* Charlotte Kelley, Esq.	** (609) 633-9869
* Thomas Daly, Esq.	** (609) 777-4924

Note: The Notice of Substituted Service is to be published in a newspaper of general circulation in the area containing the last known address of the respondent(s) and business for one day.



State of New Jersey
 Department of Labor and Workforce Development
 Division of Workers' Compensation

NOTICE OF MOTION

Petitioner Respondent

C.P. No: _____

D.O.: _____

PETITIONER

Social Security Number:

Name:

County of Residence:
 Address:

PETITIONER ATTORNEY

Federal Employer Identification Number:
 (If none, insert Social Security Number)

Name:

Address:

RESPONDENT

Name:

County of Residence:
 Address:

INSURANCE CARRIER

Name (indicate if not covered or self-insured):

Claim File No:
 Address:

TO: _____ **Office of Special Compensation Funds** _____

_____ **P O Box 399, Trenton, New Jersey 08625-0399** _____

PLEASE TAKE NOTE that the undersigned, Attorney for _____
 will appear before the Presiding Judge of Compensation, at the District Office of the Division
 of Workers' Compensation referred to above, on the date to be fixed by the Division, and will
 move, pursuant to Rule

Factual and Legal Basis for relief requested:

Dated: _____

 (Attorney for Petitioner)

Attachment B



State of New Jersey
 Department of Labor and Workforce Development
 Division of Workers' Compensation

**ORDER
 JOINING THE
 UNINSURED EMPLOYERS
 FUND**

C.P. No: _____
 D.O.: _____

PETITIONER
Social Security Number:
Name:
County of Residence: Address:

PETITIONER ATTORNEY
Federal Employer Identification Number: (If none, insert Social Security Number)
Name:
Address:

RESPONDENT
Name:
County of Residence: Address:

INSURANCE CARRIER
Name (indicate if not covered or self-insured):
Claim File No: Address:

THIS MATTER having been before the Court by _____ of the law firm of _____, attorneys for the petitioner, and notice having been given pursuant to the Rules of the Division of Workers' Compensation and the Court having reviewed the petition submitted and heard the argument of counsel and other good cause being shown:

IT IS ON THIS _____ day of _____, 200____,

ORDERED that the petitioner be and the same is hereby granted leave to join the Uninsured Employer's Fund pursuant to N.J.S.A. 34:15-120.1 et seq. and N.J.A.C. 12:235-7.1 et seq. solely on the basis that the Uninsured Employers Fund may be liable for a portion of the judgment entered against the respondent.

AND IT IS FURTHER ORDERED that the Uninsured Employers Fund shall be considered a party, however an order or judgment of the Court may not attach against the Uninsured Employers Fund;

AND IT IS FURTHER ORDERED that the Uninsured Employers Fund may appear, present witnesses and evidence and cross examine witnesses in the usual manner.

Dated: _____

 Judge of Compensation

ATTACHMENT C

SUBCHAPTER 7. UNINSURED EMPLOYER'S FUND**12:235-7.1 Purpose; scope**

- (a) The Uninsured Employer's Fund (UEF) has been established pursuant to N.J.S.A. 34:15-120.1 to provide for the payment of certain awards of medical and temporary benefits entered against uninsured defaulting employers. This subchapter sets forth the procedures by which the UEF will be operated.
- (b) Benefits for temporary disability and medical costs shall be provided in accordance with N.J.S.A. 34:15-120.1 et seq.
- (c) The UEF shall be a party to proceedings under this subchapter. However, no judgment or order for the payment of benefits shall be entered against the UEF.
- (d) The UEF may relax or dispense with requirements under the subchapter where appropriate and with the consent of the judge hearing the case.
- (e) The UEF shall be provided a copy of a notice of appeal of any order or judgment in which the UEF is a party.

12:235-7.2 Filing notice of an uninsured claim; personal service; subpoena duces tecum; third party joinder;

- (a) Petitioner or petitioner's attorney shall contact the Compensation Rating and Inspection Bureau for coverage information in writing within 30 days after the petitioner or the petitioner's attorney knew or should have known that the employer was uninsured or has received confirmation that the employer was uninsured on the date of the accident or occupational exposure alleged in the claim petition. A copy of the Rating Bureau's response shall be included in the motion to join the UEF.
- (b) If benefits may be sought from the UEF, the petitioner or petitioner's attorney shall notify the UEF in writing within 30 days after the petitioner or petitioner's attorney knew or should have known that the employer was uninsured on the date of the accident or occupational exposure or has received information from the Compensation Rating and Inspection Bureau showing that the employer was uninsured on the date alleged.
- (c) In order to secure reimbursement of a petitioner's temporary disability benefits from the Uninsured Employers Fund, the petitioner shall file a motion to join the UEF in an action brought by or against the uninsured employer.

1. When filing a motion to join the UEF, the petitioner's attorney or petitioner shall attach a copy of the inquiry and response of the Compensation Rating and Inspection Bureau.
 2. The motion to join the UEF shall be filed in the vicinage in which the case is assigned.
 3. A copy of the motion to join the UEF shall be served upon the Fund in the Office of Special Compensation Funds, P.O. Box 399, Trenton, New Jersey 08625-0399.
- (d) Petitioner's attorney may make personal service of the claim petition and the motion to join the UEF on respondent.
1. Proof of service shall be filed with the Division and with the attorney representing the UEF.
 2. If respondent is unable to be served, petitioner's attorney shall make a motion with the Judge of Compensation for substituted service pursuant to Rules of Civil Practice. The motion shall be supported by convincing evidence that the petitioner has made all reasonable attempts to serve respondent.
- (e) The UEF shall have the authority to join a third-party and the third-party's insurance carrier when it appears that such party is or may be liable for the benefits sought.
- (f) In reviewing claims submitted to the Uninsured Employer's Fund for payment pursuant to N.J.S.A. 34:15-120.4, the Commissioner may consider the extent of delay in notification to the Uninsured Employer's Fund by the petitioner and/or his/her attorney from the time they knew or reasonably should have known the respondent employer was uninsured.

12:235-7.3 Certification

- (a). Petitioner shall submit a certification when filing a motion for an uninsured claim. The certification shall be specific, and shall contain the following information if known or available to the petitioner and should be supplemented as such information becomes known or available to the petitioner:
1. The date of hire immediately preceding the date of the accident, injury or occupational exposure;
 2. The length of employment: If not continuous, list all dates of employment;

3. Copies of petitioner's W-2 forms for all dates of employment during the year in which the accident occurred;
4. Pay stubs for or other documentation in support of all wages received from respondent for the six months immediately preceding the date of the accident or occupational exposure;
5. The total wages received from respondent for 12 months immediately preceding the accident which includes salary, gratuities, services in lieu of wages, meals or lodging;
6. The name, address (business and personal) and phone number of the respondent and any corporate officer or manager of the company;
7. Any documents relating to the employer/employee relationship or lack thereof;
8. A statement of facts which establish the employer-employee relationship;
9. The name, address and phone number of all persons with knowledge of the existence of an employer/employee relationship between petitioner and respondent;
10. The address and/or other identifying information about where the injury occurred, including the name of the owner of the property and the reason why the employee was at the location where the injury occurred;
11. The name, address and phone number of all witnesses to the accident, and whereabouts of respondent when the accident occurred;
12. The name, address and phone number of all persons with any knowledge of the accident;
13. The date on which a medical provider was first contacted concerning injuries sustained in the accident or occupational condition;
14. The name and address of all treating physicians and the name and address of any hospital, laboratory or other facility where treatment was received;

15. Copies of all medical reports from the hospitals and treating physicians;
16. Medical insurance coverage for employee and/or spouse, and if available, the name and address of the company and the policy number;
17. A detailed listing of medical expenses which have been paid, the dates the medical services were provided, the names of individuals and entities providing such services, and the sources and amounts of such payments; and
18. Whether or not the petitioner is receiving or has applied for Social Security, unemployment compensation, temporary disability insurance, disability insurance, pensions or any other wage-related benefits.

12:235-7.4 Medical bills; physician's examination

- (a) The UEF shall have the opportunity to review all medical bills and charges to determine if the costs incurred were reasonable and necessary.
- (b) The UEF may order an independent medical examination of a petitioner by a physician at any time when the UEF is involved or when it appears the UEF may become involved in a case. The examining physician may be asked to offer an opinion on:
 1. The causal relationship between the alleged accident or occupational exposure and the petitioner's current medical condition;
 2. The necessity of petitioner's previous and current medical treatment and the reasonableness of charges for such treatment for the alleged accident or occupational exposure;
 3. The prognosis for the petitioner;
 4. Whether petitioner is able to return to work;
 5. Whether or not petitioner requires further treatment to reach maximum medical improvement; and
 6. Any other pertinent issues or information.

- (c) Fees for the independent medical evaluation ordered by the UEF shall be paid by the UEF.
- (d) If it appears that the petitioner may be entitled to benefits from the UEF, then the UEF may direct the petitioner to the appropriate authorized treating physician for treatment.
 - 1. Treatment obtained by petitioner from any physician other than the one authorized by the UEF shall be deemed to be unauthorized treatment, and costs for such treatment shall not be payable by the UEF.
- (e) The UEF may provide for medical care to assist the petitioner until he or she has reached maximum medical improvement.

12:235-7.5 Assignment of cases; schedules

- (a) The Director shall assign the UEF cases for hearing.
- (b) The Director shall establish the vicinages in which the cases shall be heard.
- (c) The Director shall establish the hearing dates and schedules for all uninsured employer cases.

12:235-7.6 Payments from the UEF

Payments from the UEF shall be made only in accordance with N.J.S.A. 34:15-120.4.

- (a) The UEF shall not reimburse governmental agencies for benefits paid to or on behalf of the petitioner except for benefits or expenses conditionally paid under the New Jersey Temporary Disability Benefits Law (N.J.S.A. 43:21-25 et seq.), New Jersey Medicaid reimbursement statute (N.J.S.A. 30:4D-7.1), and the federal Medicare Secondary Provider Statute (42 U.S.C. 1395y). Such reimbursements for medical expenses are subject to the limitation set forth in N.J.A.C. 12.235-7.4 (e).
- (b) Payments under (a) above can be made only after a Judge of Compensation has ordered the uninsured employer to reimburse the agency or agencies making the conditional payments and the uninsured employer has defaulted on making such reimbursements within the time period set forth by N.J.S.A. 34:15-120.3 and N.J.S.A. 34:15-120.4

12:235-7.7 Attorney fees

- (a) An attorney fee may be payable from the UEF to the petitioner's attorney when the petitioner is found eligible for UEF benefits by the Commissioner and shall exclude any fees awarded in association with permanent disability benefits.
- (b) An attorney shall make an application to the Commissioner for payment of the attorney fee awarded by the Judge of Compensation for obtaining the medical and/or temporary benefits assessed against the respondent.

12:235-7.8 Asbestos exposure claims under N.J.S.A. 34:15-33.3

- (a) After due diligence, as defined in (b) below, an application may be filed with the UEF for compensation for asbestosis or asbestos-induced cancer, including mesothelioma, resulting in injury or death from exposure to asbestos where:
 - 1. The workers' compensation insurance carrier of the employer, the employer, or the principals of the employer where the employee was last exposed cannot be located or the employee worked for more than one employer during the time the exposure to asbestos may reasonably be deemed to have taken place but the employer or employers where the employee was last exposed cannot reasonably be identified;
 - 2. The claim petition was pending on or filed after January 14, 2004 and had not been concluded or dismissed prior to that date; and
 - 3. Compensation is based on the last date of exposure if known, or if such date cannot be known, on an appropriate date established by the judge of workers' compensation, pursuant to N.J.S.A. 34:15-33.3 (d).
- (b) "Due diligence" shall be defined as a reasonable effort on the part of the petitioner or the petitioner's attorney, given the particular facts and circumstances of the case, to determine the identities of the carrier of the employer, the employer, and/or the principals of the employer where the employee was last exposed to asbestos, as well as the identities of any other carriers, employers, and/or principals of other employers that may be liable for benefits. Such efforts shall be listed in the certification required under N.J.A.C. 12:235-7.9 and shall include, unless explained under N.J.A.C. 12:235-7.9(b), the following:
 - 1. Inquiries made to the Compensation Rating and Inspection Bureau to ascertain the workers' compensation insurance coverage of such employers;
 - 2. Acquisition and review of the employee's Social Security earnings history for the period or periods during which the employee was exposed to asbestos;

3. Review of the employee's Federal and state income tax returns for the period or periods during which the employee was exposed to asbestos;
 4. Acquisition and review of labor union records and/or pension plan records maintained for the employee for the period or periods during which the employee was exposed to asbestos;
 5. Review of the employee's medical records during and subsequent to the period during which the employee was exposed to asbestos;
 6. Review of any personal records maintained by the employee with respect to employment for the period or periods during which the employee was exposed to asbestos; and
 7. Any other efforts by the petitioner or the petitioner's attorney to establish due diligence.
- (c) The UEF may without motion take the deposition of a petitioner and/or other individuals that may have information relevant to the application.
- (d) In (a) above, the UEF shall have subrogation and lien rights including those provided by N.J.S.A. 34:15-33.3 (b) and (c).

12:235-7.9 Certification to the UEF, medical information in asbestos exposure cases

- (a) In addition to the items specified at N.J.A.C. 12:235-7.4 for certification to the UEF, the petitioner shall, in asbestos exposure claims under N.J.A.C. 12:235-7.8, provide the following as part of such certification:
1. Identification of all third-party actions or latent disease claims filed by or on behalf of the employee based upon exposure(s) to asbestos, including the names of the defendants and the courts in which such actions are pending or were concluded;
 2. Date of manifestation of the employee's asbestosis or asbestos-induced cancer;
 3. Date of discovery, disclosure or diagnosis of the employee's asbestosis or asbestos-induced cancer and its relation to the ability of the employee to work;
 4. Rate of progression of the employee's asbestosis or asbestos-induced cancer;
 5. Date(s) the employee was impaired or unable to work as a result of the asbestosis or asbestos-induced cancer;
 6. Date(s) of any lost time for medical treatments related to asbestosis or asbestos-induced cancer;
 7. Nature of pre-existing pulmonary conditions, cancer-related conditions, exposure to any other chemicals, and/or smoking history;

8. Medical basis for concluding that there is a causal relationship between the employee's work and the employee's asbestosis or asbestos-induced cancer;
 9. Medical conditions pre-existing the alleged exposure(s) to asbestos, including the nature of the pre-existing condition(s), the date(s) and type(s) or medical treatment received, and the names and addresses of all medical practitioners and providers involved in the diagnosis and treatment of such condition(s);
 10. Details of efforts made under the provisions of N.J.A.C. 12:235-7.8 (b);
 11. Dates and nature of employment during which the employee was exposed to asbestos or during which the employee was exposed to conditions which aggravated or contributed to the asbestosis or asbestos-induced cancer. Such information should include, but not be limited to, any environmental information and data giving evidence of the level of exposure to asbestos and how such levels exceeded those encountered in the general environment; and
 12. Nature and extent of any future treatment for the employee's asbestosis or asbestos-induced cancer.
- (b) If any of these items of information are not provided to the UEF, the petitioner or the petitioner's attorney shall indicate that a request or search has established that such item or information is not available. The UEF may require such additional information and searches that are necessary and reasonable for review of the application.
- (c) In addition to the information required under the provisions of this rule in (a) above and under N.J.A.C. 12:235-7.4, the petitioner shall provide the UEF with all medical records and information related to the asbestos exposure claim.