

WCL § 29: 1975 Amendments to Worker's Compensation Law Held Applicable to Actions Accruing or Commenced Prior to Effective Date

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evincing a marital relationship is not sufficient to constitute "holding out" under DRL § 248, the *Northrup* Court has effectively placed a bar to the use of judicial discretion in cases where injustice may result.

Unfortunately, the problem raised by the *Northrup* holding does not lend itself readily to legislative solution. While the legislature can act to amend the statutory language requiring "holding out,"¹⁹² it would be impossible to provide detailed standards to be utilized in determining whether a particular relationship justifies invocation of the relief provisions of DRL § 248. Such standards can be developed only on a case by case basis. It is therefore suggested that, in deciding future cases arising under DRL § 248, the courts should give the broadest possible effect to the concession of the *Northrup* majority that "conduct may constitute a holding out."¹⁹³

Lawrence J. Santoro

WORKER'S COMPENSATION LAW

WCL § 29: 1975 amendments to Worker's Compensation Law held applicable to actions accruing or commenced prior to effective date

Section 29 of the Worker's Compensation Law¹⁹⁴ allows an injured employee to claim compensation benefits without forfeiting the right to bring an action against a nonemployee tortfeasor.¹⁹⁵

¹⁹² 43 N.Y.2d at 573, 373 N.E.2d at 1225, 402 N.Y.S.2d at 1001 (Wachtler, J., dissenting). One month after *Northrup* was decided, the New York State Senate unanimously passed a bill which would allow courts to eliminate alimony even though the former wife had not represented herself to be married to her paramour. N.Y. Times, March 19, 1978, at 45, col. 5. Similar legislation was introduced in the Assembly, but did not receive sufficient support for passage.

¹⁹³ 43 N.Y.2d at 571, 373 N.E.2d at 1223, 402 N.Y.S.2d at 999; see note 177 *supra*.

¹⁹⁴ The New York Legislature recently amended the short title of the Workmen's Compensation Law to read "Worker's Compensation Law." Ch. 79, [1978] N.Y. Laws 253 (McKinney).

¹⁹⁵ N.Y. WORK. COMP. LAW § 29(1) (McKinney Supp. 1977-1978) provides in pertinent part:

If an employee entitled to compensation . . . be injured or killed by the negligence or wrong of another not in the same employ, such injured employee, or in case of death, his dependents, need not elect whether to take compensation and medical benefits under [workmen's compensation] or to pursue his remedy against such other but may take such compensation and medical benefits and . . . pursue his remedy against such other subject to the provisions of this chapter [T]he state insurance fund . . . or insurance carrier liable for the payment of . . . compensation . . . shall have a lien on the proceeds of any recovery . . . whether by judgment, settlement or otherwise, after the deduction of the reasonable and necessary expenditures, including attorney's fees, incurred in effecting such recovery, to

Although, under the statute, the compensation carrier has a lien on any recovery up to the amount of benefits it has paid the injured employee,¹⁸⁶ prior to 1975 the employee was required to bear the full burden of litigation expenses.¹⁸⁷ On June 10, 1975, however, section 29 was amended to permit an employee who has recovered from a third-party tortfeasor to petition the court for an equitable apportionment of the "reasonable and necessary" expenses of litigation, including attorneys' fees.¹⁸⁸ While the remedial legislation was to

the extent of the total amount of compensation awarded Should the employee or his dependents secure a recovery from [a third party] whether by judgment, settlement or otherwise, such employee or dependents may apply . . . for an order apportioning the reasonable and necessary expenditures, including attorneys' fees, incurred in effecting such recovery. Such expenditures shall be equitably apportioned by the court between the employee or his dependents and the lienor.

¹⁸⁶ Prior to 1937, § 29 required an injured employee or his dependents, in event of his death, to elect statutory workmen's compensation benefits or to pursue a third-party personal injury action. Ch. 816, § 29, [1913] N.Y. Laws 2293; see *Curtin v. City of New York*, 287 N.Y. 338, 340, 39 N.E.2d 903, 904 (1942). If the employee chose to receive compensation benefits, his right to bring a third-party tort action was automatically assigned to the compensation carrier. Ch. 816, § 29, [1913] N.Y. Laws 2293; see *Travelers Ins. Co. v. Brass Goods Mfg. Co.*, 239 N.Y. 273, 146 N.E. 377 (1925); *Sabatino v. Thomas Crimmins Contracting Co.*, 102 Misc. 172, 168 N.Y.S. 495 (Sup. Ct. N.Y. County), *aff'd mem.*, 186 App. Div. 891, 172 N.Y.S. 917 (1st Dep't 1918). If, however, the employee pursued the third-party action, his claim to compensation benefits was lost unless his recovery from the third party was less than the statutory compensation amount. In such a case, the compensation carrier was liable for the deficiency. Ch. 816, § 29, [1913] N.Y. Laws 2293; see *Parchefsky v. Kroll Bros., Inc.*, 267 N.Y. 410, 196 N.E. 308 (1935) (Lehman, J.). This binding election of remedies received considerable criticism. See, e.g., 2A A. LARSON, *THE LAW OF WORKMEN'S COMPENSATION* § 73.30 (1976) [hereinafter cited as LARSON]; Behrendt, *The Rationale of the Election of Remedies Under Workmen's Compensation Acts*, 12 U. CHI. L. REV. 231 (1945).

In 1937, the statute was modified to permit the employee or his dependents to collect benefits without automatically relinquishing the right to pursue a third-party action. Ch. 684, § 1, [1937] N.Y. Laws 1556-57; see 7 FORDHAM L. REV. 282 (1938). To prevent double recovery for a single injury, the carrier was granted a lien on any recovery equal to the amount of compensation awarded. Ch. 684, § 1, [1937] N.Y. Laws 1556.

¹⁸⁷ Ch. 684, § 1, [1937] N.Y. Laws 1556-57. Prior to the 1975 amendments, expenses incurred by the employee in litigating a third-party claim were paid from the recovery fund before the carrier received its reimbursement. Thus, the litigation expenses were, in effect, a prior lien on the recovery, while the carrier's claim represented a secondary lien. LARSON, *supra* note 196, § 74.32, at 14-229 & n.53. The effect was that the carrier received full reimbursement without being required to share any of the expenses of litigation. Atleson, *Workmen's Compensation: Third Party Actions and the Apportionment of Attorney's Fees*, 19 BUFFALO L. REV. 515, 526, 537 (1970) [hereinafter cited as Atleson]; see *Sarancza v. Roberts and Grancelli, Inc.*, 41 Misc. 2d 415, 245 N.Y.S.2d 403 (Sup. Ct. Nassau County 1963), *aff'd mem.*, 22 App. Div. 2d 764, 253 N.Y.S.2d 252 (2d Dep't 1964). The injured employee, the focus of both tort and compensation law, had to bear the full burden of the legal expenses. Atleson, *supra*, at 539.

¹⁸⁸ Ch. 190, § 1, [1975] N.Y. Laws 293 (McKinney). The inequities in the prior provisions for payment of legal expenses, see note 197 *supra*, were the subject of strong criticism, and legislative correction frequently was urged. See, e.g., *Kussack v. Ring Constr. Corp.*, 1 App. Div. 2d 634, 635, 153 N.Y.S.2d 646, 648 (3d Dep't 1956), *aff'd mem.*, 4 N.Y.2d 1011,

“take effect immediately,”¹⁹⁹ its applicability to causes of action accruing or commenced before its effective date remained unclear.²⁰⁰ Recently, in *Becker v. Huss Co.*,²⁰¹ the Court of Appeals resolved this question by holding the amendment applicable to judgments or settlements obtained after June 10, 1975, regardless of when the underlying cause of action accrued or when the lawsuit was commenced.²⁰²

Becker involved five cases in which the carrier had paid compensation benefits and consequently had a lien on any proceeds arising from the injured employee's third-party tort action.²⁰³ Four of the injured plaintiffs had initiated tort actions prior to June 10, 1975, but did not negotiate a settlement or receive a judgment until after that date.²⁰⁴ In the fifth case, the injured employee had been awarded a judgment for damages in 1974 but had not been paid at the time the apportionment amendment became effective.²⁰⁵ In each

152 N.E.2d 540, 177 N.Y.S.2d 522 (1958); Recommendation of the Law Revision Commission Relating to the Apportionment of Attorney's Fees in Third-Party Actions Under Workmen's Compensation Law §§ 29 and 227, [1975] N.Y. LAW REV. COMM'N REP., reprinted in [1975] N.Y. Laws 1551 (McKinney); Recommendation of the Law Revision Commission Relating to the Apportionment of Attorney's Fees in Third-Party Actions Under Workmen's Compensation Law §§ 29 and 227, [1974] N.Y. LAW REV. COMM'N REP., reprinted in [1974] N.Y. Laws 1904 (McKinney); Recommendation of the Law Revision Commission Relating to the Apportionment of Attorney's Fees in Third-Party Actions Under Workmen's Compensation Law §§ 29 and 227, [1971] N.Y. LAW REV. COMM'N REP., reprinted in [1971] N.Y. Laws 2333 (McKinney); NEW YORK STATE BAR ASS'N REPORT OF SPECIAL COMM. APPOINTED TO STUDY THE WORKMEN'S COMPENSATION LAW (1957). See also Edelman, *Practical Problems in Handling the Compensation Lien and Attorneys' Fees*, 12 FORUM 666, 668-71 (1977). One court held that § 29 was an unconstitutional deprivation of property without due process since it lacked a provision requiring the carrier to share in the burden of legal expenses. *Koutrakos v. Long Island College Hosp.*, 78 Misc. 2d 39, 355 N.Y.S.2d 718 (Sup. Ct. Kings County 1974) (mem.), *rev'd*, 47 App. Div. 2d 500, 368 N.Y.S.2d 528 (2d Dep't 1975), *aff'd mem.*, 39 N.Y.2d 1026, 355 N.E.2d 301, 387 N.Y.S.2d 247 (1976). The appellate division, however, reversed, finding that the matter was for the legislature to correct. 47 App. Div. 2d at 506, 368 N.Y.S.2d at 533.

¹⁹⁹ Ch. 190, § 3, [1975] N.Y. Laws 294 (McKinney).

²⁰⁰ One lower court held the apportionment amendment to be applicable to recoveries occurring after its enactment even though the cause of action accrued and the suit was commenced prior to June 10, 1975. *Cardillo v. Long Island College Hosp.*, 86 Misc. 2d 438, 382 N.Y.S.2d 642 (Sup. Ct. Kings County 1976) (mem.).

²⁰¹ 43 N.Y.2d 527, 373 N.E.2d 1205, 402 N.Y.S.2d 980 (1978).

²⁰² *Id.* at 537, 373 N.E.2d at 1210, 402 N.Y.S.2d at 982. The method of calculating the compensation lienor's share of the litigation expenses was also at issue. *Id.* at 537, 373 N.E.2d at 1207, 402 N.Y.S.2d at 982; see note 219 *infra*.

²⁰³ 43 N.Y.2d at 536, 373 N.E.2d at 1207, 402 N.Y.S.2d at 981-82.

²⁰⁴ *Id.* at 536-37, 373 N.E.2d at 1207, 402 N.Y.S.2d at 982. The workmen's compensation benefits paid by the State Insurance Fund to the five injured employees ranged from \$536.78 to over \$19,000. *Id.* at 536, 373 N.E.2d at 1207, 402 N.Y.S.2d at 982.

²⁰⁵ *Id.* at 537, 373 N.E.2d at 1207, 402 N.Y.S.2d at 982. In *France v. Abstract Title Div. of Title Guarantee Co.*, a judgment was entered on December 16, 1974, but was not paid until January 1976. *Id.* at 537, 373 N.E.2d at 1207, 402 N.Y.S.2d at 982.

case, the carrier argued that the amendment's provisions were not applicable to lawsuits commenced before its enactment.²⁰⁶ The appellate division rejected this argument and held the carrier responsible for a proportionate share of the employees' expenses in all five cases.²⁰⁷ The Court of Appeals affirmed in part, but held that the apportionment amendment was not applicable to the fifth case, since that action had proceeded to judgment before June 10, 1975.²⁰⁸

The *Becker* Court reviewed the relevant legislative history²⁰⁹ and found no conclusive indications of whether the 1975 amendment was intended to apply to actions pending at the time it became effective.²¹⁰ Rejecting a rigid adherence to axiomatic "canons of statutory construction,"²¹¹ the Court had "no choice but to determine the retroactive reach of the statute influenced by policy considerations and the practicalities."²¹² Writing for a unanimous

²⁰⁶ *Id.*, 373 N.E.2d at 1208, 402 N.Y.S.2d at 982; see note 211 *infra*.

²⁰⁷ 43 N.Y.2d at 536, 373 N.E.2d at 1206-07, 402 N.Y.S.2d at 982.

²⁰⁸ *Id.* at 537, 373 N.E.2d at 1210, 402 N.Y.S.2d at 982; see note 205 *supra*.

²⁰⁹ 43 N.Y.2d at 537-40, 373 N.E.2d at 1207-08, 402 N.Y.S.2d at 982-84; see notes 196-198 *supra*.

²¹⁰ 43 N.Y.2d at 540, 373 N.E.2d at 1207-08, 402 N.Y.S.2d at 984. The *Becker* Court did not find guidance in the amendment's provision that it "take effect immediately," since prior decisions had rejected such language as a basis for applying new statutes to pending actions. *Id.* at 541, 373 N.E.2d at 1209, 402 N.Y.S.2d at 984-85 (citing *Shielcraw v. Moffett*, 294 N.Y. 180, 61 N.E.2d 435 (1945) (construing section of former General Corporation Law); *In re Miller's Estate*, 110 N.Y. 216, 18 N.E. 139 (1888) (construing estate tax provision)).

²¹¹ 43 N.Y.2d at 540, 373 N.E.2d at 1209, 402 N.Y.S.2d at 984. The carrier argued that, absent a clear statutory provision to the contrary, traditional rules of statutory construction require that amendments be applied only prospectively. *Id.* at 537, 373 N.E.2d at 1208, 402 N.Y.S.2d at 984; see *Phillips v. Agway, Inc.*, 88 Misc. 2d 1087, 389 N.Y.S.2d 977 (Sup. Ct. Cattaraugus County 1976); N.Y. STATUTES § 52 (McKinney 1971); 2 A. SUTHERLAND, STATUTORY CONSTRUCTION § 41.09 (4th ed. C. Sands 1973). The employees, however, argued that because the amendment is remedial, the "canons of construction" required retroactive application. 43 N.Y.2d at 537, 373 N.E.2d at 1208, 402 N.Y.S.2d at 984; see N.Y. STATUTES §§ 54-55 (McKinney 1971); 2 A. SUTHERLAND, STATUTORY CONSTRUCTION § 41.09 (4th ed. C. Sands 1973).

While acknowledging their value as useful tools in statutory interpretation, the *Becker* Court noted that these "canons" "should not be abused as talismanic." 43 N.Y.2d at 540, 373 N.E.2d at 1209, 402 N.Y.S.2d at 984. One commentator has stated: "[T]here is no refuge in absolutes. Textbook rules on the construction of statutes are useful and indispensable as tools to be used with discretion and discrimination. They are not substitutes for the appreciation of an individual situation and for the choice between conflicting values." W. FRIEDMANN, LAW IN A CHANGING SOCIETY 61 (1959); see *Consolidated Mut. Ins. Co. v. Keepnews*, 41 N.Y.2d 982, 983, 363 N.E.2d 708, 709, 395 N.Y.S.2d 158, 159 (1977) (mem.).

²¹² 43 N.Y.2d at 541, 373 N.E.2d at 1209, 402 N.Y.S.2d at 985. The Court stated:

It is possible, of course, that the Legislature had views on retroactivity, but failed to express them. Study of the act and its history is inconclusive and, therefore, suggests at least two other possibilities: the gap may be a true one, that is, an unintentional legislative omission; or, elaboration may have been deliberately left to the courts. Whatever the cause, the court has no choice but to determine the

panel, Chief Judge Breitel stated that the broad social purposes and inherent flexibility underlying the Worker's Compensation Law should be determinative in construing the scope of the 1975 amendment.²¹³ Recognizing that the compensation system is actually "a method . . . for implementing an injured employee's right to monetary recovery,"²¹⁴ the Court noted that the benefits and burdens arising from the statute have always been subject to reallocation.²¹⁵ Similarly, the 1975 amendment represented nothing more, in the Court's view, than a new distribution of the burden of legal expenses.²¹⁶ Thus, application of the amendment's provisions to causes of action accruing or commenced before June 10, 1975, would not impair any of the carrier's existing substantive rights. Furthermore, Chief Judge Breitel observed that the right to reimbursement held by the carrier is contingent and subject to fluctuations in value "depending upon who initiates the tort action, against whom the action is brought, and whether the recovery is subject to allocation

retroactive reach of the statute influenced by policy considerations and the practicalities. But, the relative disciplined freedom with which the court may thus approach the issue results directly from the Legislature's invitation, be it deliberate or inadvertent.

Id.

²¹³ *Id.* at 541-42, 373 N.E.2d at 1209-10, 402 N.Y.S.2d at 985; see notes 214-215 *infra*.

²¹⁴ 43 N.Y.2d at 541, 373 N.E.2d at 1209-10, 402 N.Y.S.2d at 985. Workmen's compensation in America is a twentieth century development designed to provide a satisfactory method for handling occupational disabilities by replacing common-law negligence remedies with the concept of strict industrial liability in the form of compulsory insurance. See CHAMBER OF COMMERCE, ANALYSIS OF WORKMEN'S COMPENSATION LAWS (1974); 1 LARSON, *supra* note 196, § 1. In exchange for statutory benefits, the injured employee surrenders all rights and remedies which he might otherwise have against his employer. See N.Y. WORK. COMP. LAW § 11 (McKinney 1965 & Supp. 1977-1978). Fault is no longer an issue, and common-law defenses such as contributory negligence and assumption of risk are immaterial in the compensation scheme. See N.Y. WORK. COMP. LAW § 10 (McKinney 1965); E. CHEIT, INJURY AND RECOVERY IN THE COURSE OF EMPLOYMENT 12 (1961); J. RHODES, WORKMEN'S COMPENSATION (1917). The system was intended to provide a remedy even in circumstances where recovery would be unavailable in an ordinary common-law action. *In re Petrie*, 215 N.Y. 335, 338, 109 N.E. 549, 550 (1915). The remedial purpose of the Worker's Compensation Law has resulted in extremely liberal judicial construction, engendering the common belief that "if the Workmen's Compensation Board or the courts can dream up any possible basis for recovery, the claimant will recover." Comment, *New York Workmen's Compensation Law: What the Claimant Must Prove to Recover an Award*, 36 ALB. L. REV. 543, 543 (1972).

²¹⁵ 43 N.Y.2d at 541, 373 N.E.2d at 1210, 402 N.Y.S.2d at 985; see, e.g., *Mlodozienec v. Worthington Corp.*, 9 App. Div. 2d 21, 189 N.Y.S.2d 468 (3d Dep't 1959), *aff'd mem.*, 8 N.Y.2d 918, 168 N.E.2d 834, 204 N.Y.S.2d 163 (1960), *cert. denied per curiam*, 364 U.S. 628 (1961) (amendment expanding scope of coverage for silicosis held applicable to employee injured before its enactment although employee would have been unable to recover under prior law); *DiMartino v. Mountain Valley Water Co.*, 270 App. Div. 968, 62 N.Y.S.2d 174 (3d Dep't 1946) (*per curiam*).

²¹⁶ 43 N.Y.2d at 541-42, 373 N.E.2d at 1210, 402 N.Y.S.2d at 985.

based either on comparative negligence or on relative degrees of culpability among joint tort-feasors."²¹⁷ In view of the inchoate nature of the carrier's rights under section 29, the Court reasoned that retroactive application of the amendment would not result in "inordinate, unusual, or unanticipatable harm."²¹⁸ Since the amendment specifically mandates apportionment only upon the employee's recovery, the Court concluded that the date of judgment or settlement is controlling.²¹⁹

The *Becker* holding is clearly consistent with the policies underlying the workmen's compensation concept. Designed to spread the risk of occupational injury, the compensation scheme places particular emphasis on accomodating the injured employee.²²⁰ Concern for the needs of the employee may be seen in a number of court decisions giving retroactive effect to amendments granting extensions of time limitations for filing claims,²²¹ increasing benefits²²²

²¹⁷ *Id.* at 542, 373 N.E.2d at 1210, 402 N.Y.S.2d at 985. Compare *Phillips v. Agway, Inc.*, 88 Misc. 2d 1087, 389 N.Y.S.2d 977 (Sup. Ct. Cattaraugus County 1976) (lien vests when insurer applies first dollar to compensate claimant), with *Cardillo v. Long Island College Hosp.*, 86 Misc. 2d 438, 382 N.Y.S.2d 642 (Sup. Ct. Kings County 1976) (lien does not vest until recovery in third-party action).

²¹⁸ 43 N.Y.2d at 537, 373 N.E.2d at 1207, 402 N.Y.S.2d at 982.

²¹⁹ *Id.* at 542, 373 N.E.2d at 1210, 402 N.Y.S.2d at 985. Addressing the subsidiary issue of computing the lienor's responsibility for a share of the litigation expenses, the Court noted that the statute mandates "equitable" apportionment and that the Law Revision Commission explicitly rejected "a rigid statutory formula." *Id.* at 543, 373 N.E.2d at 1210, 402 N.Y.S.2d at 986 (citing N.Y. WORK. COMP. LAW § 29; Recommendation of the Law Revision Commission Relating to the Apportionment of Attorney's Fees in Third-Party Actions Under Workmen's Compensation Law §§ 29 and 227, [1975] N.Y. LAW REV. COMM'N REP., reprinted in [1975] N.Y. LAWS 1551, 1553 (McKinney)). The Court suggested that factors such as standardized fees, the relative difficulty of prosecuting the case, and the possibility that a fee was inflated in anticipation of the carrier's responsibility to share the expense, should be weighed in determining an equitable division of the legal expenses. 43 N.Y.2d at 543, 373 N.E.2d at 1211, 402 N.Y.S.2d at 986. Other courts have also suggested methods for computing the carrier's share of legal costs. Typically the percentage of litigation expenses which the carrier must absorb is equal to the percentage of the total recovery which its lien represents. See *Wargo v. Longo*, 85 Misc. 2d 898, 380 N.Y.S.2d 1009 (Sup. Ct. Albany County 1976); *Arman v. Marx*, 85 Misc. 2d 406, 381 N.Y.S.2d 592 (Sup. Ct. Onondaga County 1976).

²²⁰ See, e.g., *Busch v. Austin Co.*, 37 App. Div. 2d 648, 322 N.Y.S.2d 416 (3d Dep't 1971) (mem.); *Mlodozienec v. Worthington Corp.*, 9 App. Div. 2d 21, 189 N.Y.S.2d 468 (3d Dep't 1959), *aff'd mem.*, 8 N.Y.2d 918, 168 N.E.2d 834, 204 N.Y.S.2d 163 (1960), *cert. denied per curiam*, 364 U.S. 628 (1961); see note 214 *supra*.

²²¹ See, e.g., *McCann v. Walsh Constr. Co.*, 282 App. Div. 444, 123 N.Y.S.2d 509 (3d Dep't 1953), *aff'd mem.*, 306 N.Y. 904, 119 N.E.2d 596 (1954); *Wood v. Queen City Neon Sign Co.*, 282 App. Div. 106, 121 N.Y.S.2d 888 (3d Dep't), *appeal denied*, 306 N.Y. 979, 115 N.E.2d 440 (1953).

²²² See, e.g., *De Concilus v. Juney Juniors, Inc.*, 9 App. Div. 2d 17, 189 N.Y.S.2d 466 (3d Dep't 1959) (employee granted increased benefits pursuant to amendment enacted after injury occurred and partial payments received); *Schmidt v. Wolf Contracting Co.*, 269 App. Div. 201, 55 N.Y.S.2d 162 (3d Dep't 1945), *aff'd mem.*, 295 N.Y. 748, 65 N.E.2d 568 (1946)

and expanding the scope of compensation coverage.²²³ Such modifications are similar in effect to the 1975 amendment which reallocates the burden of the employee's litigation costs and indirectly results in an increase in that portion of the recovery fund retained by the injured employee. The *Becker* holding is thus in accord with an established pattern of retroactively applying statutory modifications in order to confer added benefits upon the injured employee. Moreover, the decision of the *Becker* Court to apply the 1975 amendment to settlements or judgments occurring after its effective date is consistent with the policy of conditioning the carrier's right to reimbursement upon the injured employee actually recovering in a third-party action.²²⁴ Since the carrier has no vested right to a specific sum before the employee recovers,²²⁵ legislative modifications of interests in future recoveries are justifiable.

While the *Becker* Court's conclusions are legally and pragmatically sound, its holding may have a temporary adverse economic effect on compensation carriers. By holding the carriers liable for a proportionate share of legal expenses, the Court has imposed a burden that was not taken into account when initial insurance rates were calculated. The balance that the carrier must maintain between cost and price is thereby disturbed.²²⁶ Ultimately, however, the expenses now properly chargeable to the carrier under the *Becker* holding will be absorbed by the general public.²²⁷ It is submitted that this socialization of risk is appropriate in light of the laudable purposes underlying the workmen's compensation system.

Kimberlee Bogen

(amendment effective June 1, 1944, temporarily increasing ceiling for disability payments held applicable to claimant whose payments began in April 1944).

²²³ See note 215 *supra*.

²²⁴ See N.Y. WORK. COMP. LAW § 29 (McKinney Supp. 1977-1978); notes 195-196 *supra*.

²²⁵ See note 217 *supra*.

²²⁶ See 43 N.Y.2d at 538, 373 N.E.2d at 1208, 1209, 402 N.Y.S.2d at 983.

²²⁷ See J. BOYD, THE LAW OF COMPENSATION FOR INJURIES TO WORKMEN 10 (1913); H. SOMERS & A. SOMERS, WORKMEN'S COMPENSATION 26 (1954); Atleson, *supra* note 197, at 516.