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Section: NEWS

Politics tangle a safety net for workers hurt on job  
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STAR-LEDGER STAFF

After losing a bare-knuckle, down-to-the-wire state Senate race four years ago, George Geist needed a new job.

A former assemblyman and influential chairman of the Camden County Republican Party, Geist wanted a Superior Court judgeship but couldn't muster the support of the state bar. Even attorneys from his home county declared him unqualified.

In his final days in Trenton, Geist got the next best thing: Gov. James E. McGreevey nominated him to be a workers' compensation judge.

The appointment, unanimously approved by the Senate, was the quintessential political compromise. Geist, 52, got a \$114,000-a-year post with a generous pension - and didn't need the bar's blessing. Democrats succeeded in luring a longtime rival to the sidelines.

Political entanglements like Geist's infuse many aspects of New Jersey government, but rarely as they do in the workers' compensation system.

Nearly a century old, it is designed to be a no-fault safety net, giving quick relief to injured workers and sparing employers from costly and time-consuming lawsuits. At any time, more than 100,000 people have claims pending in the system, with more than 35,000 contested cases in "comp court."

The system is populated by jurists whose resumes often include past political appointments or elected office but thin trial experience. It also includes attorneys and insurance consultants who rank among the state's most prolific campaign donors.

That political mix casts a shadow in the Statehouse, where lawmakers routinely consider measures that would either boost workers' benefits or limit expenses for compensation carriers. Some of those same lawmakers run private law firms that earn tens of thousands of dollars representing insurers in comp court.

A Star-Ledger analysis of more than 117,000 workers' comp cases pending in 2007 found 469 cases in which insurance companies were represented by law firms whose principals were related to sitting compensation judges. And 606 more cases involved firms owned by county political chairs.

"It seems like the entanglements certainly raise an eyebrow or two," said Sen. Kevin O'Toole (R-Essex).

Measuring the scope and impact of those entanglements is difficult. Court filings and settlements are sealed from the public, in part to deter employers and others from snooping into workers' medical records and private lives.

Workers' compensation courtrooms are open for hearings, but attorneys and judges negotiate and resolve most cases in the \$1.8 billion-a-year system behind closed doors.

The judges run the system, which is part of the state Department of Labor and Workforce Development. They are bound by an ethics code, but any violations remain secret, as do the results of their annual evaluations. A board formed to consider complaints and disciplinary matters involving judges hasn't met in years.

By some measures, workers' comp judges could be counted among the most powerful officials to don robes in New Jersey. Their courts have no juries; they serve as lone arbitrators of fact, mediators of disputes and compensation adjusters, presiding over complex cases involving injuries and medical treatments. They are asked to decide the truth, recommend a settlement or set a fair price for a severed limb or damaged spine.

That politics and judgeships go together is nothing new in New Jersey. Superior Court judges are just as likely to have worked in the political arena as workers' comp judges. But there is one major difference: Superior Court

judges are vetted by the state bar association to guard against incompetence or lack of real experience.

No such vetting is done on candidates for the workers' comp bench.

This lack of screening was a concern as far back as 1974, when the State Commission of Investigation found that the selection process resulted too often in workers' comp judges who were "unoutstanding," appointed largely because of political pedigrees.

In a 300-page report, the SCI recommended the bar association review nominees and that its recommendations "be heavily considered in the interest of obtaining high quality and competence in the workers compensation judiciary."

The recommendation was never adopted.

Some who practice within the system say politics still play a role in who gets a comp judgeship in New Jersey.

"It's rare that you get a judge that actually handled workers' comp cases before he became a judge," said George Kotch, a longtime attorney in Burlington County. "Some judges never really handled any type of injury case before they get to the bench."

David Socolow, the state's labor commissioner, said some degree of political influence is inevitable in choosing judges.

"No matter how you try, you can't take the politics out of politics," Socolow said. "There is politics involved in everything. That doesn't mean that you end up with a bad product."

#### NO CHECKS AND BALANCES

Workers' compensation systems do not easily compare from state to state. Montana has just one workers' compensation judge; New Mexico seven. Some states elect their judges; governors make the choice in many other states.

But many have checks and balances in ways New Jersey does not.

Florida law requires its comp court judges to have experience practicing workers' compensation law and to win approval from a statewide nominating commission. Then they face re-evaluation by the commission every four years. In Massachusetts, two advisory councils review and rate candidates for the workers' comp bench.

Nebraska residents vote to keep or remove their comp judges every six years. In Minnesota, a special commission compiles evaluations of judges on topics ranging from fairness to knowledge of the law, then publishes its results.

In Michigan, a Qualifications Advisory Committee composed of workers and employers reviews comp judges every four years. Some fail to win reappointment. All are limited to 12 years on the bench.

New Jersey's process is less complicated - and less transparent.

Workers' comp judges in the Garden State get lifetime postings that now pay \$140,000 a year. The appointees rarely are scrutinized; instead they typically end up as a line item awaiting approval by the Senate, one of many nominations the governor's office sends in batches.

The nomination is almost always the last step in the process. Party leaders and legislators broker deals for the seat long before a name comes up for a vote.

"These jobs are not filled by nationwide searches," said Sen. Loretta Weinberg (D-Bergen). "They're all political appointments."

Usually it takes only a step or two to find the political ties. A Star-Ledger review of the 45 judges sitting in early 2008 found about two-thirds were politically active before taking the bench, with almost half having close business, familial or political connections to current or former legislators and party leaders.

Some are easy to spot: Diana Ferriero, wife of Bergen County Democratic Chairman Joseph Ferriero; Audrey Zane-Kernan, ex-wife of former Sen. Ray Zane (R-Gloucester); Jill Fader, whose husband, Paul, was a senior counsel to McGreevey.

Other comp judges first carved out reputations as local party stalwarts, such as Republicans Sue Pai Yang of

Bridgewater, Bradley Henson of Surf City and Ken Kovalcik of Wayne. All were prominent officers of their local GOP committees.

Anne Hutton was an active Passaic County Democrat and incorporator of Rep. Bill Pascrell's campaign committee. J. Michael Blake is past president of the New Jersey Stonewall Democrats, which touts itself as the state's largest grassroots gay and lesbian political activist group.

A state public defender from Scotch Plains, Blake had never donated to a local candidate before 2003, according to state campaign finance records. That year, he gave \$2,000 to the primary campaign of Sen. Raymond Lesniak (D-Union) - even though Lesniak, one of the party's most powerful incumbents, faced no significant opposition.

In 2005, when Lesniak wasn't even running, Blake gave \$1,000 more to the senator's fund. Five months later, the governor nominated Blake for his judgeship.

A review of Blake's docket last September showed that he was presiding over 10 cases that involved employers or insurers represented by Lesniak's law firm, Weiner Lesniak.

The employers included Jersey Central Power & Light, Amoco and GPU Energy. Another client on the list, the Plainfield Board of Education, paid Lesniak's firm \$175,575 last year for its work on 53 workers' compensation cases, according to the board's business administrator, Michael Donow.

Blake, reached by phone, declined to discuss his cases or his appointment. State officials said eight of the 10 cases before Blake are still open, though they would provide no other information.

Lesniak bristled at any suggestion there could be a conflict between his role as a state lawmaker who nominates comp judges and his law firm's practice before them.

"I also have something to say about Superior Court judges and Supreme Court justices," he said during a Statehouse interview. "It's never been a problem in 30 years. No one's ever raised a question about it."

Ferriero's appointment presented a different kind of potential conflict. She is prohibited from presiding over cases involving her husband's law firm - an indisputable conflict judges typically honor. She also recused herself in claims involving the Diabes Brothers' development company, a firm that had donated \$53,100 to Bergen Democrats.

But a review of Ferriero's docket last fall showed more than two dozen other cases involving insurers or employers who had been generous donors to the Bergen County Democratic Committee, which her husband controls. One was Commerce Bank, whose board member, George Norcross, steered \$187,000 to the Bergen Democrats just before a critical 2002 election.

Like Blake, she declined to comment.

The division doesn't track how often judges have recused themselves or been asked to. Peter Calderone, director of the Division of Workers' Compensation and a judge for more than a decade, said he is unaware of any conflicts involving judges and donors.

"I've never heard that issue, to be honest with you," he said.

Legal experts say such conflicts are not automatically grounds for recusal. Most judges, they say, seek the post believing they can be objective and ethical. Even when conflicts are apparent, many attorneys are reluctant to challenge or antagonize a judge.

"That said, one can imagine without too much difficulty cases in which it would seem the judge is someone beholden to that senator," said Geoffrey Hazard, a longtime professor of legal ethics now teaching at Hastings School of Law in San Francisco.

Even the most vocal critics of New Jersey's system are less troubled by the potential conflicts than they are by the political deal-making that stocks the comp bench with novices.

"These are complex medical issues, requiring an increased level of sophistication on the part of judges," said Arthur Kravitz, incoming chairman of the state bar association's workers' compensation section. "The good ones learn it. Some don't."

## NO COMPLAINTS

Not everyone agrees politics has tainted the system. Frank Petro, a South Jersey workers' compensation lawyer for

more than 20 years, believes the judges are among the strengths of the state's system.

"The comp judiciary is a relatively experienced one across most of New Jersey," said Petro, president of the Justice James H. Coleman Jr. New Jersey Workers' Compensation American Inn of Court, an association of veteran lawyers and judges that trains and mentors new attorneys. "The judges who have been appointed as workers' compensation judges are, to a person, hardworking and willing to learn."

Ray Farrington, a Wyckoff attorney who retired in 2007 after nearly 20 years on the bench, said New Jersey's comp judges need more supervision, not better credentials. Compensation attorneys tend to build their résumés on one side or the other, representing workers or insurers, Farrington said, so the best candidates for the bench tend to be those who have no experience - and thus no leanings.

"If you know how to try a case, you learn the medicine, it's not a hard job to learn," he said. "Because you have absolute control."

Paul Schwartz, a Ridgefield comp attorney, said he believes the judges as a group are far superior to the ones he encountered when he started in the field more than 20 years ago - when, he said, some became renowned for their long lunches at bars or expecting gifts from attorneys.

"Judge Ferriero couldn't (have been) a more controversial choice because of her husband," Schwartz said. But he said Ferriero has worked hard since coming on the bench and now has widespread respect from attorneys in the field, despite her last name.

"I don't know how you make judges less political in this state," Schwartz said.

#### NO BAR INPUT

For nearly four decades, New Jersey's governors have allowed members of the state bar association to interview and advise on candidates for Superior Court, where judges hear criminal, civil and family matters. Every few years, the bar concludes a candidate is unqualified and the governor withdraws the nomination.

Superior Court judges who do win Senate approval must wait seven years before getting their lifetime appointment. In the last 20 years, about a dozen have failed to win reappointment or been forced to serve a second seven-year term before getting tenure, said David Anderson, director of the Judiciary's Office of Professional and Governmental Services.

By contrast, New Jersey comp judges face no real scrutiny and qualify for a lifetime reappointment by the Senate after three years. None has been rejected. Until two years ago, the Senate didn't even require candidates to attend their own nomination hearings.

Richard Marcolus, chairman of an informal council of compensation attorneys and doctors, said he believes that if the workers' comp bar had the right to vet its judicial nominees, one-third of the current judges would have been rejected.

"All we have been asking for is an opportunity to be consulted with before appointments are made," he said. "Our efforts have been met with flat denials."

The disparity was clear in the case of Christopher Dietz, a former Superior Court judge in Union County. In 1998, the bar association complained about Dietz's performance and effectively torpedoed his reappointment to the Superior Court bench.

But Dietz, a former Union County Democratic Party chairman quickly rebounded. Within weeks, Gov. Christie Whitman nominated him for a workers' comp judgeship. In 2002, with support from Lesniak and McGreevey, Dietz won lifetime tenure.

Dietz, now retired, declined to discuss his appointment.

It was not known whether Dietz drew any criticism for his conduct as a workers' comp judge.

In the past decade, New Jersey's Supreme Court has disciplined more than two dozen Superior and municipal court judges after complaints of malfeasance, subpar performance or ethical infractions. Workers' comp judges have a similar monitoring body - a Judicial Performance Board formed in the 1990s to hear allegations of malfeasance or subpar performance by judges. It hasn't met in at least six years.

"We have not had any complaints," said its chairwoman, Marie Rose Bloomer.

## LEGISLATIVE BILLS

During the legislative session that ended Jan. 8, lawmakers proposed 35 bills to make changes to the state's workers' compensation system. Of those, 14 would have increased benefits for injured workers; four would have benefited insurers.

In a state with a part-time Legislature, potential business conflicts crop up all the time. But rarely as clearly as in workers' comp.

At least eight New Jersey lawmakers maintain private legal practices that represent insurers in workers' compensation cases, while others work for unions or are employers themselves. It is a situation that veteran politicians recognize could influence votes.

"I'd be foolish to say it doesn't," said Sen. Steven Sweeney (D-Gloucester).

During the last legislative session, Sweeney, an ironworkers union official, backed several bills that would have boosted benefits for injured workers. He succeeded in advancing three to the important Senate Budget and Appropriations Committee. Each died without a hearing.

At the time, the appropriations chairman was Senate Majority Leader Bernard F. Kenny Jr. (D-Hudson), whose law firm represents insurers in hundreds of workers' compensation cases. Also on the committee was Lesniak, whose firm earned about \$81,000 from the Municipal Excess Liability Fund, a public insurance program whose paid lobbyists worked to defeat the benefit enhancement bills last year.

Both said the committee's inaction on the worker benefit bills was not connected to their private business. "I'm personally unaware of the bills, and I certainly never entertained them vis- -vis any interest of my firm," said Kenny, who retired in January.

In at least three other instances last year, the influence of workers' comp attorneys on workers' comp legislation was more direct.

Assemblymen Brian Rumpf and Christopher Connors, both Ocean County Republicans whose law firms represent workers' compensation insurers, sponsored bills aimed at overturning court decisions that had gone against insurer interests. One would have barred illegal immigrants from collecting comp benefits; the other would have prohibited benefits for workers who were intoxicated at the time of their injury. Neither bill passed.

Meanwhile, Assemblyman Jon Bramnick (R-Union), whose Scotch Plains law firm has represented hundreds of injured workers, sponsored a bill to boost comp benefits by as much as \$550.

Bramnick said his professional background was an asset, not a conflict.

"It's hard to root out someone's experience and passion," he said. "People come to the table with some built-in bias, built-in prejudice, because of their experience in the field."

At least one lawmaker disagrees.

Sen. Jennifer Beck (R-Monmouth) said she routinely abstained from voting on bills that affected insurance carriers when she worked as vice president at Qualcare, a claims administrator.

"You want to be above the shadow of a doubt," said Beck, who left the job last year and thinks more legislators these days recognize such potential conflicts. "In the past you had many legislators that walked in a gray area." Dunstan McNichol may be reached at [dmcnichol@starledger.com](mailto:dmcnichol@starledger.com) or (609) 989-0341. John P. Martin may be reached at [jmartin@starledger.com](mailto:jmartin@starledger.com) or (609) 989-0379.

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