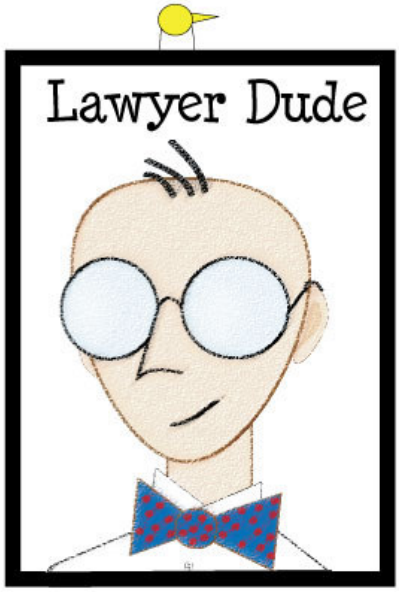
PENNSYLVANIA DEFENSE INSTITUTE
FALL 2009 ADVANCED WORKERS' COMPENSATION
PRACTICE SYMPOSIUM
November 12, 2009: Pittsburgh
November 18, 2009: Philadelphia



THE ARGOT OF WORKERS' COMPENSATION: THE LAW & PRACTICE BEHIND FIVE SLANG EXPRESSIONS

David B. Torrey, WCJ*

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* WC Judge, Allegheny County, PA (dtorrey@state.pa.us). All opinions are solely those of the author.

I. Introduction

Workers' compensation practice is full of obscure terminologies that the lawyer and insurance professional must learn and master. It is easy to think of such words and phrases, and the following are just a few examples:

- "Supersedeas request";
- "Section 410 Order";
- the "*Kachinski* requirements";
- a "*Cyclops* case."

In time, the workers' compensation veteran comes to utilize terms such as these as a matter of second nature.

These examples all have a solid grounding in the law. Both the lawyer and the layman can enter the law library – or, in the modern day, the web – and, with a bit of effort, find definitions and explanations of these terms in statute, regulation, or court precedent.

Other terms and phrases that have only *tenuous* grounding in the law are also routinely utilized in workers' compensation practice. These terms are *not* found in statute, though some have made their way into regulations, and they can also be found repeated in the precedents. As to this terminology, both lawyer and layman are presented with a challenge in ascertaining exact sources, intents, and hence complete meanings.

These terms and phrases are the slang, or colloquial expressions, of workers' compensation.

In this paper and presentation, I identify five of these slang expressions. I discuss these in the following narrative, and I provide a table at the end for easy reference. I seek to define these expressions, explain their meaning, and identify instances where their use has had an effect on law or practice. Ultimately, I try to reach some conclusions with regard to the genesis of this slang and its acceptance by the workers' compensation community and the law. As a postscript, I have added a second table, setting forth another collection: loose, misunderstood, and unusual phraseologies of workers' compensation law and practice.

II. "Course and Scope"

A. The Basic Test of Compensability under the Pennsylvania Act

The basic test of compensability under the Pennsylvania Act is found in section 301(c)(1).[1] A compensable injury is one "arising in the course of his employment and

[1] Section 301(c)((1) of the Act, 77 P.S. § 411(1).

related thereto …." The word "arising" has been interpreted as meaning that a causal connection must exist between the activities of claimant's work and the injury that follows. "Course" has been interpreted as requiring that the activity ultimately have its genesis in the time and place, or premises, of claimant's work.

The Commonwealth Court's breakdown of Section 301(c)(1) is as follows:

> Injuries may be sustained in the course of employment in two distinct situations: (1) where the employee, whether on or off the employer's premises, is injured while actually engaged in the furtherance of the employer's business or affairs, or (2) where the employee though not actually engaged in the furtherance of the employer's business or affairs (a) is on the premises occupied or under the control of the employer, or upon which the employer's business is being carried on; (b) is required by the nature of his employment to be present on his employer's premises; and (c) sustains injuries caused by the condition of the premises or operation of the employer's business or affairs thereon.[2]

The "related thereto" requirement, meanwhile, has been construed to mean that claimant must, in the end, demonstrate medical causation between the injury and his work.

All of these tests are discussed in the landmark case *Krawchuk v. WCAB (Philadelphia Electric Co.)*.[3] There, claimant experienced significant mental stress at work. His heart attack, however, occurred only later, while he was off the clock and at home. The employer opposed the claim, arguing that even if medical causation existed between stress and the heart attack, the location of claimant's heart attack, and the fact that he was not furthering the employer's business at the time, made the claim not compensable. The court rejected this argument:

> A straight forward reading of the Act demonstrates there are only *two* requirements for compensability—(1) that the injury arose in the course of employment, and (2) that the injury was related to employment ....
>
> Nowhere does the Act create a dichotomy between injuries which manifest themselves *on* the employer's premises and those which manifest themselves *outside of* the normal work area ....
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> The *inclusion* of injuries sustained while actually engaged in the

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[2] *Workmen's Compensation Appeal Board v. United States Steel Corp*., 31 Pa.Cmwlth. 329, 376 A.2d 271 (1977).

[3] *Krawchuk v. Philadelphia Electric Co.*, 497 Pa. 115, 439 A.2d 627 (1981).

> furtherance of the employer's business whether on or off the premises cannot be read to create a classification *excluding* all off premises injuries occurring while not so engaged ....
>
> The location should be, therefore, merely a *factor* for the referee to consider [in concluding whether the heart attack was work-related] .... "Arising" [in the course of employment, as used in the Pennsylvania Act] connotes origin, not completion or manifestation ....[4]

B. "Course and Scope" not a Part of Section 301(c)(1)

In contrast, the popular phrase, "course and scope of employment," does not appear in Section 301(c)(1). The "course and scope" phrase is slang.

"Scope of employment" addresses the issue of whether the employee was, at the moment that he commits some tort, furthering the employer's interest. If he was, vicarious liability will apply. As noted by the courts (see above), however, under the Workers' Compensation Act an employee need not necessarily be furthering his employer's interest at the moment of an injury to be eligible for workers' compensation.

Thus, inquiry into the "scope of employment" is not part of the pivotal Pennsylvania test.

Still, "course and scope" is a popular slang. Under the Pennsylvania practice, it is used by most members of the workers' compensation community to roughly capture the statutory "arising in the course of employment" idea, but also to take into account those circumstances – such as violation of law and "reasons personal" – that would take a claimant *out* of the realm of compensability.

C. Modern Popularity of the "Course and Scope" Phrase; "Course and Scope": Borrowed from Tort Law Principle of *Respondeat Superior*

"Course and scope" is, in fact, perhaps the most widely used slang phrase in the entire system of state workers' compensation laws. Only one state, Texas, seems to actually maintain "course and scope" as the pivotal statutory criterion, [5] yet the reported precedents, professionally-written headnotes, insurance professionals, judges, lawyers, and analysts[6] all routinely employ this term.

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[4] *Krawchuk v. Philadelphia Electric Co.*, 497 Pa. 115, 439 A.2d 627 (1981).

[5] TEX. LAB. CODE § 406.031; TEX. LAB. CODE § 401.011.

[6] *See*, *e.g.*, "Worker Wins Benefits for Injury Sustained at Fitness Club," WORKER'S COMPENSATION REPORT (LRP Publications), Vol. 20, No. 16 (September 9, 2009). In this news bulletin, the analyst states that a New York court held that 'the employee's injury while exercising at his employer's recommendations and encouragement was within the course and scope of employment." However, a reading of the decision reveals no such terminology. Instead, the court meticulously undertakes an analysis

That this phrase is a slang expression, at least in workers' compensation, is evident from a number of easily accessible sources. The eminent Larson treatise devotes entire chapters to the varying definitions of course of employment, and the many interpretations of the "arising" test, but never once treats "course and scope." The leading Pennsylvania treatise from the 1920's to the 1960's, authored by William Skinner, meanwhile, never *once* refers to "course and scope." The Barbieri treatise, first published in 1974, similarly has no chapter, or even an index reference, to "course and scope." The encyclopedic PBI manual, finally, entitles Chapter Six "Course and Scope of Employment," but then abandons the term – as it must – and thereafter dutifully treats the actual statutory language.

The phrase is actually pivotal in another realm: that of tort law and the doctrine of *respondeat superior*. Pennsylvania tort law is clear that the master is not liable for the torts of its servant unless he or she is in the "course and scope of employment" at the time of the tortious act, and this has long been the law in the state.

As applied in Pennsylvania workers' compensation, use of this negligence lingo, at least in court opinions and treatises, is largely a phenomenon of the last thirty years. From 1916 to 1970, the Superior Court used this phrase in compensation cases on only a couple occasions, and the Pennsylvania Supreme Court never applied the phrase. (In those years, the only statutory test was whether the injury occurred "in the course of employment." The "arising" language was added only in 1972).

However, in the 1970's the Commonwealth Court (1977)[7]; and the Supreme Court (1978),[8] started to use the phrase routinely despite the fact that the law set forth a markedly *distinct* test.

By September 2009, the Commonwealth Court had applied the phrase in 238 cases.

D. "Course and Scope": An Inaccurate Phrase that Should be Retired

I have determined that, at least as far as the Pennsylvania Workers' Compensation Act is concerned, the phrase "course and scope" has no independent meaning apart from "arising in the course" of employment. I cannot locate a Pennsylvania workers' compensation case where the court defined "scope" and then used the concept to determine that a particular claimant was covered or not covered because of the particular circumstances of his injury. To the contrary, the "course and scope" phrase is used as a synonym for "course of employment." Indeed, decisions can be found where the

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of whether the injury arose out of and in the course of his employment. *See Torre v. Logic Technology*, 881 N.Y.S.2d 675 (N.Y. App. Div. 2009).

[7] *Peoples Gas Heating Co. v. WCAB (Fitzmaurice)*, 382 A.2d 484 (Pa. Commw. 1977).

[8] *Turner v. J&L Steel Corp*., 389 A.2d 42 (Pa. 1978).

draftsman indiscriminately uses the phrases "course of employment," "scope of employment," and "course and scope of employment," all in one opinion. [9]

One might argue, accordingly, that the use of this inaccurate phrase is harmless, and that "course and scope" constitutes an adequate shorthand to capture the Pennsylvania law relative to compensability. I submit, however, that the relatively recent adoption of this tort-law term is unsatisfactory and its use should be retired by the insurance and legal communities and the courts.

First, the phrase does not reflect the statute in its present or in any past manifestation. Second, the phrase does not reflect how Pennsylvania courts spoke for the first sixty years of interpretation. Third, it confuses the analysis by incorrectly implying that, for the law to apply, the injury must always have been suffered in the scope of employment.

As submitted above, this is not the law. Consider, in this regard, the definition of "scope of employment" as it is properly used in the tort realm:

> 'The phrase 'scope of employment' means the extent of [the subject matter of the employment] and denotes the field of action within which one is a servant. The manifestations of the master determine what conduct may be within the scope of employment, since it includes only acts of the kind authorized, done within limits of time and space which approximate those created by the authorization."[10]

This definition is different from the workers' compensation test of "arising in the course of employment."

Many tort precedents, for example, can be found where the "servant" commits assault and battery, the tort victim sues the "master" on the basis of *respondeat superior*, and the court concludes, reasonably, that vicarious liability cannot exist, as an assault cannot be considered as having been within the scope of the servant's duties. [11] The compensation act may also bar injuries suffered via assault, but many workers who have been assaulted – even those who have instigated an altercation – have been found entitled to workers' compensation. That conclusion typically follows as the fight was not exclusively personal but instead "arose" in the course of employment. [12]

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[9] *See*, *e.g.*, *Kulik v. Mash*, ___ A.2d ___ (Pa. Super. 2009), 2009 Pa. Super. LEXIS 3285 (Pa. Super. 2009).

[10] *Ferrell v. Martin, Huston et al.*, 419 A.2d 152 (Pa. Super. 1980) (quoting Restatement, Agency 2d, § 228, comment a).

[11] *See*, *e.g.*, *Maier v. Patterson et al.*, 553 F. Supp. 150 (M.D. Pa. 1982) (Teamsters Union not vicariously liable for assault committed by steward (Patterson) who became angry with fellow union member (Maier) over representation issue); *MacPhail v. Pinkerton's Nat'l Detective Agency*, 3 A.2d 968 (Pa. Super. 1939) (agent of creditor, a repossession company, not vicariously liable for assault committed by repo man, its employee, who had become angry with and violent against hectoring wife of owner of repossessed car).

Other servants have been held outside the "scope" of their employment in circumstances where, had they themselves suffered injury, *workers' compensation* coverage *would* apply. This is so because the reach of the workers' compensation test of "arising in the course of employment" is broader than "scope of employment."

In a 1980 case, *Ferrell v. Huston*,[13] for example, the plaintiff, Ferrell, was a gas station attendant who had been run over by a car driven by a young woman. The young woman, Martin, had been employed by a Mr. and Mrs. Huston to baby sit their young children while they went on a brief vacation. Martin was supposed to watch the children at the Huston residence, but she decided to take them to her mother's house. On the way there, she stopped for gas and struck the attendant. Ferrell's attempt to sue the Hustons on a theory of *respondeat superior* was rejected by the Superior Court, which held that Martin was not in the necessary "scope" of her employment.

Martin's "employment," the court declared, "was to be performed at [the Huston] home, and it was neither necessary nor within the contemplation of the Hustons that Barbara would be required to use her automobile to provide either food or entertainment for these small children…. Clearly [Martin's] use of her automobile was not within the contemplated scope of her duties as a babysitter …."

The court's conclusion was certainly reasonable. However, all would agree that if Martin herself had been injured in the accident she would have suffered an injury "arising in the course of her employment …." Even if Martin was engaging in some level of misconduct by seeking to baby-sit at a different venue, misconduct of this sort is not a defense in a workers' compensation case. In short, her injury would have arisen in the course of employment for workers' compensation purposes.

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[12] *See*, *e.g.*, *Helm v. Workmen's Compensation Appeal Board (U.S. Gypsum Co.)*, 139 Pa.Cmwlth. 587, 591 A.2d 8 (1991) (claimant injured after admonishing co-employee not to smoke marijuana in employer's locker room may have suffered injury arising in the course of employment, if assault did not have its genesis in reasons personal); *Wills Eye Hosp. v. Workmen's Compensation Appeal Board (Dewaele)*, 135 Pa.Cmwlth. 6, 582 A.2d 39 (1988), *aff'd*, 525 Pa. 504, 582 A.2d 857 (1990) (claimant injured in a clubbing by a co-worker, occurring after a lunch-break verbal altercation concerning a news item on a political subject, did suffer injury arising in the course of employment); *Schreckengost v. Workmen's Compensation Appeal Board*, 43 Pa.Cmwlth. 587, 403 A.2d 165 (1979) (claimant, a truck driver laying over in Cleveland, was in course of employment when, having left warehouse at which he was to pick up load to go get a snack, was accosted by a thief who proceeded to shoot him); *Repco Products Corp. v. Workmen's Compensation Appeal Board*, 32 Pa.Cmwlth. 554, 379 A.2d 1089 (1977) (claimant injured by another worker in course of dispute over whether labor union responsibilities of claimant/victim were being undertaken zealously enough, did suffer injury arising in the course of employment).

Compare also The Baby's Room v. Workers' Compensation Appeal Board (Stairs), 860 A.2d 200 (Pa.Cmwlth.2004) (court stating that a traveling employee is within the course of his employment, "unless what he was doing at the time of the accident is so foreign and removed from his usual employment as to constitute an abandonment of his duties.").

[13] *Ferrell v. Martin, Huston et al.*, 419 A.2d 152 (Pa. Super. 1980).

E. The 2003 "Good Samaritan" Amendment and its use of "Course and Scope of Employment"

Although "course and scope" is not found in section 301(c)(1), in 2003 the legislature amended section 601 (pertaining to volunteer firefighters and related positions) and added "Good Samaritans" to the potential list of "persons covered." As discussed below, the legislature in so doing utilized, for the first time, the "course and scope" phraseology.

Section 601(a)(10),[14] signed into law on December 23, 2003, provides that, "In addition to those persons included within the definition of the word 'employe' in section 104 [of the Act], such term shall also include":

> (10) An employe who, while in the course and scope of his employment, goes to the aid of a person and suffers injury or death as a direct result of any of the following:
>
> (I) Preventing the commission of a crime, lawfully apprehending a person reasonably suspected of having committed a crime[,] or aiding the victim of a crime. For purposes of this clause, the terms "crime" and "victim" shall have the same meanings as given to them in section 103 of the Act of November 24, 1998, known as the "Crime Victims Act."
>
> (II) Rendering emergency care, first aid or rescue at the scene of an emergency.

Thus, a lawyer on his way from his office to the court house, who rescues a third person from the results of an assault or accident, and is himself injured in doing so, is not a mere volunteer, but is considered to have suffered a work injury. Likewise, an over-the-road truck driver who comes upon the scene of a motor vehicle accident, renders aid, and is injured in doing so, is not a mere volunteer, but is considered to have suffered a work injury. The entity responsible as the employer in these situations is the employee's original employer, and not the victim's employer, or the local municipality and/or its volunteer fire company, under some theory that the claimant was acting as some sort of *ad hoc* police officer or EMT.[14.1] In other words, the amendment establishes that an employee's *regular job* workers' compensation insurance coverage follows him into

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[14] Section 601(a)(10) of the Act, 77 P.S. § 1031(10).

[14.1] The statute takes for granted that the individual who suffers an injury *is someone actively going about his or her work duties*, and not a mere bystander. For the leading bystander cases, see *Haines v WCAB (Clearfield County)*, 606 A.2d 571 (Pa. Commw. 1992) (bystander who witnessed deputy sheriff pursuing and subduing escaped prisoner and who gratuitously injected himself into the fray to help, suffering injury, was not deemed employee of the municipality). *Compare Borough of Phoenixville v WCAB (Colledge)*, 606 A.2d 571 (Pa. Commw. 1992) (bystander who was summoned by firefighter and requested to run up hill, and who broke his leg in the course of doing so, was deemed employee of fire company/municipality).

emergent, Good-Samaritan-type situations.

As discussed above, the phrase "scope of employment," a term from common law that has been used loosely in the Pennsylvania practice, has – *outside* workers' compensation – always connoted some *narrower* field of endeavor than the liberal "arising in the course of employment" language of section 301(c)(1) of the law.

The use of the "course and scope" phraseology in Section 601 may have real implications. Employers may argue that a worker merely *preparing* for work duties, who suffers a Good Samaritan-type injury, is not covered. Likewise, employers may argue that workers undertaking personal comforts, eating meals, engaging in recreation and amusements, attending parties or other social events, and participating in employer-sponsored sporting events are not "in the course and scope of employment" at the time of suffering such injuries.

An irony connected to the 2003 amendment is that it may supersede the leading court precedent in this area of the law. That Commonwealth Court case, *Brind Leasing Corp. v. WCAB (Dougherty)*,[15] *already* set forth a liberal rule in the area of Good Samaritan rescues. In *Brind Leasing*, fatal claim benefits were awarded where the deceased worker, after having left work one and one-half hours before, returned to his employer's premises, having observed that his supervisor was being accosted by a group of men. The helpful worker was murdered in the process of "aiding" the supervisor. Benefits were awarded to the widow on the grounds that the deceased was still in the vicinity at a reasonable time after the injury. The irony is that, under the amendment, the deceased would not likely be regarded as being within the "*scope* of his employment" at the time, as that term is usually interpreted at common law.

F. The Texas Statute: Where "Course and Scope" Rules

The Texas workers' compensation law does make "course and scope" the operative criteria to define compensability. Two statutes form the critical basis for understanding the law. Texas Labor Code § 406.031 provides as follows:

> *Liability for Compensation*
>
> (a) An insurance carrier is liable for compensation for an employee's injury without regard to fault or negligence if:
>
> (1) at the time of injury, the employee is subject to this subtitle; and
> (2) the injury arises out of and in the course and scope of employment.

Texas Labor Code § 401.011 (2009), setting forth definitions, meanwhile, provides as follows:

[15] *Brind Leasing Corp. v. WCAB (Dougherty)*, 584 A.2d 1102 (Pa. Commw. 1990). This case was disapproved of, or seriously limited by, the Supreme Court. *See Kmart Corporation v. WCAB (Fitzsimmons)*, 748 A.2d 660 (Pa. 2000).

(12) "Course and scope of employment" means an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. The term includes an activity conducted on the premises of the employer or at other locations. The term does not include:

(A) transportation to and from the place of employment unless:
(i) the transportation is furnished as a part of the contract of employment or is paid for by the employer;
(ii) the means of the transportation are under the control of the employer; or
(iii) the employee is directed in the employee' s employment to proceed from one place to another place; or

(B) travel by the employee in the furtherance of the affairs or business of the employer if the travel is also in furtherance of personal or private affairs of the employee unless:
(i) the travel to the place of occurrence of the injury would have been made even had there been no personal or private affairs of the employee to be furthered by the travel; and
(ii) the travel would not have been made had there been no affairs or business of the employer to be furthered by the travel.

G. An Alternate View?

I have posited above that the phrase "course and scope" constitutes a slang expression. The phrase is not found in the Pennsylvania statute, and most states, with the exception of Texas, utilize the classic formulation that couple "arising in the employment" and "in the course of employment" as the pivotal criteria of coverage. Academics, meanwhile, shun the phrase as one borrowed inappropriately from tort law.

One Internet-based commentator has, however, posited that "there is one workers' compensation concept on which every state agrees and to which **every** state subscribes; to be compensable, ***injury or illness must arise out of and in the course and scope of employment***."[16] (Emphasis in original.) While this statement is inaccurate and unsatisfactory, the writer's further statement with regard to the meaning of "scope of employment" in the workers' compensation context is worthy of note.

> **"Scope of employment**…" serves to more specifically define the first two tests [of 'arising out of' and 'in the course of'] by 1) analyzing the motivations of the employee; 2) analyzing the employer' s direction and

[16] C. Boggs, "The Course and Scope Rule" (July 16, 2008), *available at* http://www.mynewmarkets.com/article_view.php?id=91908

control over the actions of the employee; and 3) analyzing the employer's foreseeability of the activities of the employee. Employee actions which ultimately lead to an accident or injury must be motivated, in whole or in part, by the "desire" to further the interests of the employer. Motivation or desire can be out of fear that failure to perform will result in the loss of a job, or from a more altruistic desire to do well for the employer. The basis for the motivation or desire is irrelevant; it is the fact that the motivation exists that leads to compensability. Further, the actions must, to some extent, be at the presumed direction of the employer or potentially foreseen by the employer.

Injury may, in fact, arise out of employment and may even occur in the course of the employment but still be outside the scope of employment, negating compensability under workers compensation law. While he is entertaining clients, a company executive gets into an argument with a group sitting at another table because they are being too loud. A fight breaks out and the executive is severely injured. Such injury is not likely compensable under workers compensation. Yes, the injury arose out of and in the course of employment (entertaining clients to further the employer's business), but was outside the scope of employment. The employer's goals were not furthered by the fight (nor was that the motivation), and the employer likely never directed nor foresaw the need for the employee to be involved in a fist fight as a result of his employment.[17]

III. "Specific Loss"

A. The Statutory Test for Amputations and other Body Part/Function Losses

Section 306(c) of the Act[18] sets forth a list of various body parts which, if subject to amputation or complete loss, are compensated for on the basis of a particular number of weeks' worth of benefits. The list commences with the following statement:

> For all disability resulting from permanent injuries of the following classes, the compensation shall be exclusively as follows ….:

Loss of the index finger, for example, entitles the injured worker to an award of 50 weeks of benefits[19] at the rate paid for temporary total disability.

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[17] C. Boggs, "The Course and Scope Rule" (July 16, 2008), *available at* http://www.mynewmarkets.com/article_view.php?id=91908

[18] 77 P.S. § 513.

[19] Section 306(c)(10), 77 P.S. § 513(10).

B. The Slang: "Specific Loss"

While the law refers to this "disability from permanent injury," the defined-period compensation of the list has long been known by the slang term "specific loss." The Superior Court first seems to have used the phrase in 1940,[20] and the Supreme Court first applied the term in referring to hearing loss compensation in the landmark decision *WCAB v. Hartleib*.[21]

The term also seems to be used widely in the Illinois and Michigan practices. However, most states refer to defined-period injuries, or "specific losses," as "schedule," or "scheduled," benefits. "Schedule benefits" is the term applied, for example, by Larson in his treatise. This is also the term applied by workers' compensation scholar John Burton in his classic book on permanent partial disability benefits.[22]

C. Hazards of the Slang

Use of the term is harmless, but on a number of occasions lawyers and courts have stumbled by grasping onto the slang term and at once failing to read the statute.

In one case, for example, a claimant had a hearing loss claim (Section 306(c)(8)) of such severity that his award, if found compensable, would be 54 weeks. Claimant offered into evidence a signed medical report vouching for causation. The WCJ awarded benefits. On appeal, the employer unsuccessfully argued "that, for a specific loss claim, the WCJ should not have allowed Claimant to submit expert evidence comprised solely of medical reports because the legislature has limited this procedure to claims for disability benefits."[23] In this regard, section 422 of the Act provides that if the claim is in excess of 52 "weeks of disability," signed reports are to be excluded on objection and the offering party must make available the expert for cross-examination.[24]

Of course, the employer's argument in this case was egregiously misguided, as a hearing loss claim *is* a disability claim.[25]

In another case, the claimant had suffered the partial amputation of his finger. He was thereupon fired for testing positive for drug use. The employer contested his

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[20] *Michetti v. SWIF*, 17 A.2d 712 (Pa. Super. 1940).

[21] *WCAB v. Hartleib*, 348 A.2d 746 (Pa. 1975).

[22] M. Berkowitz & J. Burton, PERMANENT DISABILITY BENEFITS IN WORKERS' COMPENSATION, pp. 99-122 (Upjohn 1987).

[23] *Nabisco Brands, Inc. v. WCAB (Tropello)*, 763 A.2d 555 (Pa. Commw. 2000).

[24] *See* Section 422(c) of the Act, 77 P.S. § 835.

[25] The court ultimately held that employer had waived the argument, as it had not preserved this allegation of error before the WCJ

disability claim, arguing that the proximate cause of his loss of earnings was the *termination*, not his injury. The court, however, rejected this argument, remarking, quite inaccurately, "Claimant's claim is for specific loss benefits, not indemnity benefits." [26] While allowing the award was correct, the more accurate response would have been, "Claimant's claim is for a disability resulting from permanent injury, also known colloquially as 'specific loss,' and such benefits are paid regardless of actual loss of earning power."

D. The Section 306(c) Schedule as Compensating Disability, Including for Disfigurement

My sense is that some members of the community cling to the term "specific loss," as opposed to recognizing the listed entitlements as reflecting *disability* resulting from permanent injury, because such benefits are payable without regard to loss of earning power, and in Pennsylvania disability has long been synonymous with loss of earning power.[27] However, the schedule of section 306(c) *was* intended to compensate loss of earning power, if only by crude proxy. A federal court has set forth the definitive analysis:

> While it is true that section 306(c) does not take into account the extent of an individual' s loss of earning power in calculating the amount of the workers' compensation award, it does not follow that a 306(c) award does not compensate the claimant for a loss of earning power. The Act's structure simply reflects the Pennsylvania legislature's intention to create an irrebuttable presumption that the permanent injuries listed in section 306(c), by their very nature, cause the claimant to suffer a disability that results in a fixed loss of earning power, rather than a loss of earning power that varies depending on the extent of the disability.[28]

"Specific loss" claims limited in terms of weeks may seem an anomaly, but such limitations may also be conceived of as historical artifacts. In this regard, all claims, including total disability, were originally limited.[29] As indicated by the federal court, the original justification for listed awards under § 306(c) was to account – however crudely – for projected loss of earning power.

The Larson treatise is in accord with these assertions. According to Larson, the regime of scheduled injuries "is not, however, to be interpreted as an erratic deviation from the underlying principle of compensation law – that benefits relate to loss of earning

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[26] *Scott v. WCAB (Ames Tru Temper, Inc.)*, 957 A.2d 800 (Pa. Commw. 2008).

[27] *See, e.g., Republic Steel Corp. v. Workmen' s Compensation Appeal Board (Petrisek)*537 Pa. 32, 640 A.2d 1266 (1994).

[28] *Romansky v. Shalala*, 885 F. Supp. 129 (W.D. Pa. 1995).

[29] Total disability was limited to 700 weeks until the 1956 amendments.

capacity and not to physical injury as such. The basic theory remains the same; the only difference is that the effect on earning capacity is a conclusively presumed one, instead of a specifically proved one…" [30] The treatise at one time also stated: "To avoid [the] protracted administrative task [of litigating the issue of loss of earning power from lost limbs], the apparently cold-blooded system of putting average price tags on arms, legs, eyes, and fingers has been devised."

This same reasoning applies to disfigurement awards, codified in the schedule at section 306(c)(22).[31] Some in the workers' compensation community have characterized disfigurement awards as the "pain and suffering" of workers' compensation, and awards for the same are for "specific losses" that are not keyed to disability and loss of earning power. Once again, however, this is a colloquial formulation that is supported neither by the language of the statute – which in fact refers to *disability* from permanent injury – nor by theory.

In this latter regard, the original idea of compensating disfigurement was that by becoming disfigured, the worker would lose the ability to gain reemployment. As noted by a Maryland court, 'the Legislature granted the right to awards for disfigurement because 'a disfigurement may constitute an economic loss in the sense of diminished power to produce, …may very probably have a harmful effect upon the ability of the disfigured person to retain or secure employment, …[and] may render the person repulsive or offensive to the sight and displeasing to his employer, fellow employees and customers.'" [32]

IV. Independent Medical Examination ("IME")

A. "IME" not in Section 314

The ubiquitous term, "Independent Medical Examination," does not appear in section 314 of the Act.[33] Section 314 is the provision which establishes the employer's

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[30] Larson, WORKERS' COMPENSATION, § 86.02.

[31] 77 P.S. § 513(22).

[32] *Bethlehem Steel v. Hughes*, 161 A.2d 451 (MD S. Ct. 1959).

Professor Burton, in his book on permanent disability, notes that compensation for disfigurements can be found as far back as the medieval law in England, during the reign of King Ethelbert (860-866). "The amount of tariff to be paid was determined to a large extent by the public shame that attended the wound: 'If the bruise be black in part not covered by the clothes, let bot be made with thirty scaetts. If it be covered by the clothes, let bot be made for each with twenty scaetts.' Such pronouncements sound much like current provisions of state compensation statutes, which specify dollar amounts due for highly visible scars but often leave less obvious scars uncompensated." M. Berkowitz & J. Burton, *supra*, at p. 104. The authors candidly note, however, "We can find no organic connection between these ancient and primitive valuations and modern-day compensation schedules…"

[33] Section 314 of the Act, 77 P.S. § 651.

right, upon request, to schedule a "physical examination" of the claimant "by an appropriate health care provider or other expert, who shall be selected and paid for by the employer."

B. "IME" added, as to "IRE's", in Act 57 and Regulations

The term was first formally introduced into the law with Act 57 of 1996, in the context of Impairment Rating Evaluations (IRE's). Section 306(a.2)(6) of the Act[34] provides that, "Upon request of the insurer, the employe shall submit to an independent medical examination in accordance with section 314 to determine the status of impairment …" Both the Act 57 and Act 44 regulations now also include the term, also in the "IRE" context. [35]

As the term is now part of the Act, and has been linked to Section 314, "IME" can probably no longer be deemed a "slang" term, as it most certainly was before Act 57. Still, as to the common non-IRE evaluations, Section 314 of the Act still does not refer to the "physical examination" as an independent medical examination. Thus, the term is at least used in a colloquial fashion.

C. Establishment Definition of "IME"

The term itself is nowhere defined in the Act. The IME physician, on cross-examination, is commonly queried as to what the "independent" means, and given the lack of statutory definition, the inquiry is reasonable. The savvy and thoughtful physician will respond that it means "independent of the treater."

In yielding this response, the witness will answer consistently with the definition of the American Board of Independent Medical Examiners (ABIME). According to the group's website:

> Independent medical examinations (**IME**s) are evaluations performed by an evaluator not involved in the care of the examinee, for clarifying clinical and case issues. **IME**s are an important component of workers' compensation systems, and are also used to clarify other disability or liability associated cases. Impairment evaluations are often used to provide a more objective understanding of the impact of an injury or illness.[36]

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[34] Section 306(a.2)(6), 77 P.S. § 511.2(6).

[35] *See*, *e.g.*, 34 Pa. Code § 123.102(g) ("The insurer maintains the right to request and receive an IRE twice in a 12-month period. The request and performance of IREs may not preclude the insurer from compelling the employe's attendance at independent medical examinations or other expert interviews under section 314 of the act …").

[36] The introductory page of the ABIME website also provides the following basic information:

The term "IME" is used in both workers' compensation and personal injury systems throughout the country.[37] For members of the workers' compensation community, it is always distinguished from an "impartial medical examination," which is an exam usually directed by the agency or judge.[38]

Aggressive members of the trial bar have objected to the term "IME" on the grounds that it implies to the layperson, that is, the plaintiff or claimant, that the examination is independent of all interests, and that he or she can expect an impartial opinion not subject to any outside influence. Trial lawyers typically argue that the type of evaluation defined in section 314 (and in civil practice by Pa. R.C.P. 4000.6) should be termed, instead, a "defense medical evaluation."

D. "IME" as a Term of Recent Vintage; Is "IME" or "DME" More Accurate?

The term "IME" is in fact of somewhat recent vintage, and was probably advanced by defense interests to dilute the negative connotations of "defense exam" – or the like – terminology. In 1988, as a newly hired associate, I was assisting the senior partner in discovery in a medical malpractice case. When I referred to the imminent examination of the plaintiff as an "IME," he inquired what I meant, and when I told him that it was an "Independent Medical Evaluation," he was surprised and told me that the

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> The foundation of mission of the American Board of Independent Medical Examiners (**ABIME**) is the belief that certification of independent medical examiners benefits the public good. This belief is based on the tenet that credentialed physicians have demonstrated that they possess the knowledge, skills, experience, and abilities required for the attainment of their certification as a Certified Independent Medical Examiners, (**CIME**)^{TM}. Credentials, therefore, are reliable indicators of the professional's capacity to perform independent medical and impairment evaluations according to the profession's performance standards. Certification enables the public to make informed decisions regarding the selection and use of independent medical examiners…
>
> The quality of examinations and examiners varies widely, and it has been often difficult to identify skilled, thorough and unbiased examiners, especially before an examination. Training is provided by several professional societies, however before **ABIME** there has been no national quality certification process.
>
> **ABIME** certification was created to establish and maintain standards of conduct and performance among independent medical examiners. **ABIME** is recognized by the American College of Occupational and Environmental Medicine, which sponsors state-of-the-art training courses in impairment and disability evaluation.

http://www.abime.org/node/9.

[37] Some states do use the term in their statutes. These states include Oregon, Washington, Indiana, and Wisconsin.

[38] The Pennsylvania Act empowers the WCJ to appoint an impartial expert in a litigated case. *See* Section 420(a) of the Act, 77 P.S. § 831.

term was new to him. To this day, the extensive examination provisions of the Pennsylvania Rules of Civil Procedure still do not apply the term "IME," although they certainly establish a myriad of conditions and procedural rules on the examination.

The Commonwealth Court, notably, never reproduced the term "IME" until 1983.[39] The term is not found in older Superior or Supreme Court cases discussing either workers' compensation or personal injury discovery.

In the present day, however, all courts have adopted the use of the "IME" phraseology, despite it absence from the law. In the well-known case *Cooper v. Schoffstall*,[40] the Supreme Court uses the terms "independent medical examination" and "defense medical examination" interchangeably, at one point using both within the same paragraph.

Trial lawyers who object to the "IME" term reject the idea that IME physicians, because selected and paid for by insurance companies, can ever fulfill the ABIME mission of being "unbiased."[41] Informed by this thinking, they necessarily disparage the idea that the word "independent" should be in the title of any expert retained by the defendant for litigation.

Law firm websites can easily be found discounting the concept of the IME,[42] or aggressively placing conditions on the carrier or defendant requesting an exam. Perhaps one such lawyer has slyly provided (or modified) the "Wikipedia" definition of "IME," which at first accurately sets forth the familiar concept of the IME, but then sardonically reduces the examination to charade:

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[39] *D'Eletto v. DPW*, 463 A.2d 1214 (Pa. Commw. 1983).

[40] *Cooper v Schoffstall*, 905 A.2d 42 (Pa. 2006) (Supreme Court allowing some level of discovery by plaintiff into finances of defense examination expert physician). According to a Lexis reference, *Cooper* "is a leading case dealing with discovery as it relates to potential bias of non-party expert witnesses. The case disallowed a request for personal tax information and specifically Forms 1099 but, at the same time, lists several areas of inquiry which are permissible through written interrogatories."

[41] For a constructive criticism along these lines, see McLaren, *"Defense Medical Examinations": The Fallacy of Impartiality*, HAWAII BAR JOURNAL (September 2000) (available on Lexis).

[42] *See, e.g.*, http://www.attorneys-usa.com/lawsuit/IME.html:

> When a plaintiff in personal injury litigation puts an aspect of his or her physical or mental health into issue, such as by claiming to suffer disability from a back injury, or claiming to suffer emotional distress and depression as a result of an accident, the defense will seek evidence to challenge the claimed damages or disability. In personal injury and *workers' compensation* cases, the defense will often seek to do this by obtaining what is commonly deemed an "IME" or "Independent Medical Examination". Within this context, a more accurate name would be "Defense Medical Examination" or "Adverse Medical Examination".

Id. (last visited September 29, 2009).

An **independent medical examination** (IME) occurs when a doctor who has not previously been involved in a patient's care examines the patient.

IMEs may be conducted to determine the cause, extent and medical treatment of a work-related injury; whether a worker has reached maximum benefit from treatment; and whether any permanent impairment remains after treatment. An IME may be conducted at the behest of an employer or an insurance carrier suspicious of fraud to verify a claimed work-related injury. Workers' compesnation insurance carriers and self-insured employers have a legal right to this request. Should the doctor performing the IME conclude that a patient's medical condition is not work-related, the insurer may deny the claim and refuse payment.

Basically it's an employer's way of getting out of paying for something that they know they should.[43]

V. "Labor Market Survey"

Under the Pennsylvania Act, the claimant's disability status may be changed from total to partial, upon petition, by the employer proving claimant's restored earning power via "expert opinion evidence." The expert opinion evidence, which must come from an approved expert, "includes job listings with agencies of the department, private job placement agencies and advertisements in the usual employment area…" So that "earning power" can be "accurately assess[ed]," the claimant is obliged, upon employer's request, to submit to an expert evaluation.[44]

This language, and the process it created, was added to the law as part of Act 57 of 1996. At that time, many lawyers characterized this new process as "proving earning power via an earning power assessment." The Act 57 regulations, meanwhile, defined the corresponding regulations as those governing "Earning Power Determinations."[45]

The Earning Power Assessment (or "EPA"), terminology was, however, promptly overtaken in many circles by a slang term to describe the process: the "Labor Market Survey." This term, common throughout the workers' compensation and disability insurance worlds,[46] does not appear in the Act. (The term *is* found in the new vocational

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[43] http://en.wikipedia.org/wiki/Independent_medical_examination (last visited September 28, 2009).

[44] Section 306(b)(2) of the Act, 77 P.S. § 512(2).

[45] 34 Pa. Code §§ 123.301 et seq.

[46] *See*, *e.g.*, *Economy Packing Co. v. Illinois WC Comm'n*, 2008 Ill. App. Lexis 1209 (December 9, 2008) (federal law does not prohibit a vocational expert from conducting a labor market survey to determine what suitable jobs, if any, are available that an undocumented alien might be able to obtain but for her immigration status; thus, claimant was not disqualified from continuing benefits because of her undocumented status).

expert regulations of 2007).[47] Still, once insurance carriers started to retain vocational experts to develop the required expert evidence, these experts naturally used the familiar "labor market survey" term, and lawyers and judges simply followed along.

Commonwealth Court has followed suit, using the phrase on nine occasions from 1996 to the present.

The generally accepted definition of "Labor Market Survey" appears on a webs ite of the Aetna Insurance Company:

> Labor Market Survey – Analysis of job availability and labor market trends in a particular geographical area. Data is obtained from the U.S. Labor Department, and is supplemented by random telephone interviews of local employers. This information is obtained to determine if a job market will support a particular job or skill.[48]

A number of ironies exist with regard to use of this slang term. First, when the Pennsylvania Supreme Court, in *Kachinski*, ratified the pre-Act 57 Commonwealth Court doctrine holding that an employer must actually locate and connect the worker with a job, it positively *sneered* at the labor market survey idea. Prior to *Kachinski*, labor market surveys were common in the Pennsylvania practice,[49] but the court, in extinguishing the practice, admonished:

> One injured at work, stranded into partial disability, deserves more than a generic list describing where he might find some suitable work.[50]

Second, the Act does not really describe a "labor market survey" in the first place, but instead points the expert to *agencies* and *advertisements*. One enterprising claimant noted this irony, and unsuccessfully tried to have Commonwealth Court throw out an employer's expert evidence, as the expert had performed a survey of the labor market instead of resorting to agencies and advertisements.[51]

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[47] *See* 34 Pa. Code § 123.204(c) ("A vocational expert who authors additional written reports, including earning power assessments or labor market surveys, shall simultaneously serve copies of these written reports upon the employee and counsel, if known, when the expert provides the written reports to the insurer or its counsel.").

[48] *See* http://www.aetna.com/groupinsurance/employers_disability_rtw_glossary.htm

[49] Torrey, *The Common Law of Partial Disability and Vocational Rehabilitation Under the Pennsylvania Workmen's Compensation Act: Kachinski and the Availability of Work Doctrine*, 30 DUQUESNE LAW REVIEW 515, 534 (1992) ("In lieu of firm guidelines, [before *Kachinski*] a variety of approaches were undertaken by …vocational experts and counselors. 'Market surveys' of sedentary or other modified duty work were typically requested by employers or insurance carriers with regard to partially recovered workers.").

[50] *Kachinski v. WCAB (Vepco Constr. Co.)*, 532 A.2d 374 (Pa. 1987).

The WCJ agreed and denied the petition on this ground, but the Board and court reversed. It was true that the section in question refers to determination of earning power by undertaking an expert analysis "which includes job listings with agencies of the Department, private job placement agencies and advertisements in the usual employment area." The term "includes," however, is a "word of enlargement, not limitation." According to the court, in utilizing the term "includes," which term is "followed by three items, the Legislature offered examples of sources from which experts could obtain job listings, not a restrictive or mandatory list. The expert is free to use any of those three sources, or more sources, in its market survey."[52]

VI. "Statutory Employer"

The term "statutory employment" is not found in the Act. However, certain provisions of the law *create* employer status in the principal-independent contractor context. This device is common among all state workers' compensation laws.

Under the "statutory employer" provisions, [53] certain entities, usually general contractors at construction or other building or maintenance sites, may be deemed employers for workers' compensation purposes of the employees of sub-contractors which have not secured compensation insurance. This "statutory employer" status results in liability for workers' compensation purposes on the part of such a "statutory employer"; and coextensive immunity from common law suit. By an arguable curiosity of the law, this immunity applies even when the sub-contractor has secured compensation insurance.[54]

Unlike many of the colloquial terms discussed above, use of the term "statutory employer" has been current for many years. The renowned 1930 landmark *McDonald v. Levinson Steel Co*.,[55] a case which definitively refined the statutory test of employer liability, uses the term matter-of-factly. The treatise writer William Skinner, meanwhile, in his Fourth Edition (1947), uses the term freely.[56] The term is so engrained in law and practice that one is hesitant to refer to it as "slang."

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[51] *Readinger v. Workers' Compensation Appeal Board (Epler Masonry)*, 855 A.2d 952 (Pa.Cmwlth.2004).

[52] *Readinger v. Workers' Compensation Appeal Board (Epler Masonry)*, 855 A.2d 952 (Pa.Cmwlth.2004).

[53] *See* Section 302(a) et seq. of the Act, 77 P.S. § 461 et seq.

[54] *Fonner v. Shandon, Inc*., 555 Pa. 370, 724 A.2d 903 (1999). *See generally* Jurewicz, Bugay, Parcells & Sandler, *The Statutory Employer Defense in Pennsylvania Third-Party Actions*, 64 PA. BAR ASS'N Q. 29 (1998).

[55] *McDonald v. Levinson Steel Co.*, 153 A. 424 (Pa. 1930).

[56] W. Skinner, THE WORKMEN'S COMPENSATION LAW OF PENNSYLVANIA, p.90 et seq. (Bisel 4th ed. 1947).

VII. Conclusion

A danger of slang usage in any field or context is that inexact use of language has the potential to muddle meanings or even to completely defeat effective communication. This danger seems particularly troublesome in a legal field like workers' compensation, where a goal should be for the law to be accessible and understandable to all, including injured worker claimants who are not learned in the law.

Other hazards exist as well, as a review of the five examples above shows.

The phrase "course and scope" is perhaps the most unsatisfactory slang expression. The term does not reflect the language of the Act, and it is in fact a phrase that belongs in the realm of tort law and the *respondeat superior* analysis. The term is ahistorical, and it was never used in the cases until the modern day, when insurance interests apparently began to deftly insert this limiting phrase into the law. So popular has the slang become that the "Good Samaritan" reformers of 2003 errantly used this language in the amendment of section 601. This legislative action has left the Pennsylvania Act with an anomaly. Section 301(c)(1), defining the basic test of compensability, utilizes a traditional "arising in the course of employment" test, whereas section 601 uses the jarring "course and scope" criteria.

More troublesome is the use of "scope of employment" on the Bureau of Workers' Compensation's "Denial" form, to be used under the authority of §406.1 of the Act.[57] The form provides, as one of the bases of denial, the defense that the injury complained of was not suffered in the "scope" of employment.

The term "Independent Medical Examination," another term injected into the law via business and insurance interests,[58] is potentially confusing. The unrepresented worker may well be lulled into believing that the "independent" of IME means "independent of all party interests," when that is not the meaning of "independent." The trial lawyers bar, though often shrill about this issue, has a meritorious argument when it asserts that "Defense Medical Examination" is more accurate and less likely to mislead.

The term "specific loss" can be highly misleading. The better phraseology would encompass that of the statute: "scheduled compensation for 'disability from permanent injury.'" Were this phrase to be used by the industry and bar, employers would likely no longer make inapposite arguments premised on the misguided idea that scheduled-benefit awards "are not disability claims, but are instead specific loss claims."

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[57] Section 406.1 of the Act, 77 P.S. § 717.1.

[58] As noted above, the phrase is now part of the law in the IRE context as a result of the business-driven Act 57 reform effort.

The term "Labor Market Survey," which has also been added to the law via regulation (2007), is inoffensive, but reveals the law and practice of workers' compensation being driven by the practices of vendors, as opposed to the statute itself.

I cannot, finally, identify any negative with regard to use of the colloquialism "statutory employer," a universal term common to all state workers' compensation laws. The term is accurate, neutral, historical, and there seems to be no better alternative.

TABLE I

FIVE SLANG EXPRESSIONS
PENNSYLVANIA WORKERS' COMPENSATION PRACTICE

SLANG	ACTUAL	STATUTE	ILLUSTRATIVE CASE EXAMPLE OR NOTE
"Course and scope" of employment	"Arising in the course of employment and related thereto"	Section 301(c)(1) of the Act, 77 P.S. § 411(1). *But see* Section 601 of the Act, 77 P.S. § 1031(a)(1) ("Good Samaritan" amendment utilizes "course and scope" phraseology).	*Krawchuk v. Philadelphia Electric Co.*, 497 Pa. 115, 439 A.2d 627 (1981) (leading precedent explaining the phrase "arising in the course of employment"). *Kulik v. Mash*, ___ A.2d ___, 2009 Pa. Super. LEXIS 188 (2009) (court alternately using "scope," "course," and "course and scope" indiscriminately).
"Specific Loss"	"Disability resulting from permanent injuries"	Section 306(c) of the Act, 77 P.S. § 513.	*Nabisco Brands, Inc. v. WCAB (Tropello)*, 763 A.2d 555 (Pa. Commw. 2000) (employer unsuccessfully arguing that hearing loss claim was not a disability claim, but, instead, a "specific loss" claim).
"Independent Medical Exam" (IME)	"[A] physical examination …by an appropriate health care provider …who shall be selected and paid for by the employer …" Act 57 of 1996, with its Impairment Rating Evaluation (IRE) proviso and regulations, did introduce the term to the Act.	Section 314 of the Act, 77 P.S. § 651. Section 306(a.2)(6) of the Act, 77 P.S. § 511.2(6). 34 Pa. Code §§ 123.102 (Act 57 reg.); 127.462, 127.610 (Act 44 regs.).	*Cooper v. Schoffstall*, 905 A.2d 482 (Pa. 2006) (court using the term "independent medical examination" and "defense medical examination" in same paragraph, though neither term appears in Rules of Civil Procedure).
"Labor Market Survey"	"'Earning power' shall be determined …based upon expert opinion evidence … In order to accurately assess the earning power …, the insurer may	Section 306 (b)(2) of the Act, 77 P.S. § 512(2).	Since the creation of Act 57 in 1996, the Commonwealth Court has used the term

	require the employe to submit to an interview by an expert …" An Act 57 regulation, enacted in 2007, does use the term "labor market survey," though it is not found in the Act.	34 Pa. Code § 123.204 (dealing with conduct of vocational experts and tender requirements).	"Labor Market Survey" on nine occasions. *See*, *e.g.*, *Riddle v. WCAB (Allegheny City Elec., Inc.)*, 940 A.2d 1251 (Pa. Commw. 2008) (*appeal granted*) ("To establish earning power, an employer may (1) offer to claimant a specific job that is available; or (2) establish earning power through expert opinion of a labor market survey.").
"Statutory Employer"	"A contractor who contracts all or part of a contract and his insurer shall be liable for the payment of compensation to the employes of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured its payment as provided for in this act."	Section 302(a) of the Act, 77 P.S. § 461.	*John T. Gallaher Timber Transport v. Hamilton*, 932 A.2d 963 (Pa. Super. 2007) (noting that WCJ had found as fact that defendant was a "statutory employer under Section 302(d) of the Pennsylvania Workers' Compensation Act.").

TABLE II

LOOSE, MISUNDERSTOOD, OR UNUSUAL PHRASEOLOGIES OF PENNSYLVANIA WORKERS' COMPENSATION

PHRASE OR TERM	ACTUAL	STATUTE(S)	ILLUSTRATIVE CASE EXAMPLE OR NOTE
"Indemnity Payments"	"Disability compensation benefits" at §306(a), though the statute providing for Admin. Fund assessments refers to "wage loss indemnity and payments for medical expenses …." Also, Act 44 (1993) included this retroactivity clause: "No changes in indemnity compensation payable by this act shall affect payments of indemnity compensation for injuries sustained prior to the effective date of this	Section 306(a) of the Act, 77 P.S. § 511(1). Section 446(g) of the Act, 77 P.S. §1000.2(g). Section 26 of Act 44 of 1993 (not codified).	*Thompson v. WCAB (USF&G et al.)*, 781 A.2d 1146 (Pa. 2001) (court referring to a motion *in limine* by plaintiff seeking to suppress, at trial, mention of claimant having received "medical or indemnity benefits paid by USF&G as workers' compensation carrier …").

	section."		
"Casual employment": often said to be *excluded*, but it is only *certain forms* of such employment that are excluded.	"Employe" … exclu[des] … persons whose employment is casual in character and not in the regular course of the business of the employer …."	Section 104 of the Act, 77 P.S. § 22.	*Industrial Valley Bank & Trust Co. v. WCAB*, 332 A.2d 882 (Pa. Commw. 1975) (worker retained by bank to move file cabinets once per year was an excluded casual, as his work was both casual and not in the regular course of bank business).
TTD TPD PPD PTD	Appears only at Section 306(d) (specific loss awards only payable at end of TTD) Does not appear in Act Appears only at Section 306.1 (Second Injury Fund statute) Does not appear in Act	Section 306(d) of the Act, 77 P.S. § 513. NA Section 306.1 of the Act, 77 P.S. § 516. NA	These terms and their abbreviations are universally used in the field, but oddly appear only cursorily in the Act itself. Often used, in the past, in occupational disease cases
Injured worker as "damaged goods"	Actually a *valuable phrase* found in a court case	NA	*Eljer Industries v. WCAB (Evans)*, 707 A.2d 564 (Pa. Commw. 1998)("Claimant here, as with any claimant that continues to receive partial disability benefits, remains 'damaged goods' with a continuous impairment of earning power present since the work-related injury. Claimant continues to experience partial disability and was not released to full duty *without any disability* …").
Workers' compensation as a remedy intended to "make the injured worker whole"	Actually an egregiously incorrect phrase; a remedy that only pays, by design, a *percentage* of loss, is the *antithesis* of one intended to "make the injured worker whole."	NA	*Cohen v. WCAB (City of Philadelphia)*, 909 A.2d 1261 (Pa. 2006) ("Claimant asserts that the ultimate goal of the workers' compensation program is to make injured workers whole ....").
Dependent widow, upon remarriage, receives a "dowry"	"… If a widow [or widower] remarries, [he or] she shall receive one hundred four weeks of compensation …in a lump sum after which compensation shall cease[.]"	Section 307(7) of the Act, 77 P.S. § 562.	*Todd v. WCAB (NCR Corp. et al.)*, 692 A.2d 1086 (Pa. 1997) (referring to the "widow' s dowry provision in § 307(7).).
"Petition to Compel Physical Examination"	Petition for Physical Examination	Section 314 of the Act, 77 P.S. § 651. 34 Pa. Code § 1123.102(f), (g)	*Davis v. WCAB (Woolworth Corp.)*, 928 A.2d 429 (Pa. Commw. 2007) (referring to employer's petition to "compel a physical examination …").

		(refers to compelling an employee to attend an IRE).	This phrase has always been utilized, and it is referred to in the Skinner treatise. Even then, however, neither the law nor the Bureau form utilized the term "compel."
"Mandatory Mediation"	"Each [WCJ] … shall set forth a mandatory trial schedule at the first hearing…. Every trial schedule shall include a specific date and time for a mediation conference. Mediations shall take place no later than thirty (30) days prior to the date set for filing proposed findings of fact and conclusions of law or legal briefs or memoranda unless, upon good cause shown, the workers' compensation judge determines mediation would be futile."	Section 401.1 of the Act, 77 P.S. § 77 P.S. § 710.	
"Seasonal employee"	"in occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the average weekly wage [shall be specially calculated] …."	Section 309(e) of the Act, 77 P.S. § 582(e).	*Am. Mut. Ins. Co. v. W.C.A.B.*, 530 A.2d 121 (Pa. Commw 1987) ("marble setter" not an exclusively seasonal occupation, as it can be performed throughout the year).