



## **WORKERS' COMPENSATION CASE LAW UPDATES**

**July 2017**

### **SUBROGATION:**

**Kalmanowicz v. WCAB (Eastern Industries, Inc.)**, (Pa. Cmwlth. 2017) July 7, 2017.

The Employer's challenge of a Claim Petition for an alleged work injury does not constitute a waiver of its subrogation rights.

### **COURSE OF EMPLOYMENT:**

**Wilgro Services, Inc. v. WCAB (Mentusky)**, (Pa. Cmwlth. 2017) June 28, 2017.

The Commonwealth Court found that the Claimant's injuries sustained while jumping off of a two-story roof were compensable and sustained in the "course of employment" as the Claimant's actions were not "so unreasonable and removed from his job to constitute abandonment". Critical to the Commonwealth Court was the fact that the Claimant's ladder he had used to get on the roof had been removed while he was on the roof and was not available for him to use at the end of his shift.

### **IRE:**

**Protz v. WCAB (Derry Area School District)**, (Pa 2017) June 20, 2017.

The PA Supreme Court found Section 306(a.2) of the Act, which provides for Impairment Rating Evaluations (IRE), an unconstitutional delegation of legislative authority by the General Assembly to the AMA. Accordingly, the IRE process is no longer constitutional and employers may no longer pursue an IRE as a means to cap wage loss benefits at 500 weeks.

### **CLAIM PETITION:**

**Holy Redeemer Health System v. WCAB (Lux)**, (Pa. Cmwlth. 2017) June 6, 2017.

A claimant sustains a loss of earning power attributable to a work-related injury when she returns to work in a modified duty position with her pre-injury employer and thereafter accepts a permanent position specifically created and offered to her by her pre-injury employer at a loss of wages.

**FATAL CLAIM:**

**Kimberly Clark Corporation v. WCAB (Bromley)**, (Pa. Cmwlth. 2017) May 4, 2017.

The Commonwealth Court found that the Claimant met her burden of proof on the Fatal Claim Petition under §301(c)(1) of the Act by proving that decedent's death was caused by exposure to carcinogenic agents in the workplace over an extended period of time.

**NOTICE STOPPING COMPENSATION PAYABLE:**

**Jones v. WCAB (Villanova University)**, (Pa. Cmwlth. 2017) March 30, 2017.

The Employer properly issued the Notice Stopping Compensation Payable within five (5) days of payment being sent to the Claimant. Claimant's argument that the Notice Stopping Compensation Payable must be issued within 5 days for which compensation is payable, was rejected by the Court.

**CALCULATION OF AVERAGE WEEKLY WAGE (AWW):**

**Lidey v. WCAB (Tropical Amusements, Inc.)**, (Pa Cmwlth. 2017) March 17, 2017.

Where the Claimant's wages are fixed weekly *at the time of the work injury*, the Claimant's pre-injury Average Weekly Wage (AWW) is the amount of the fixed weekly wage in accordance with Section 309(a) of the Act, regardless of what the Claimant may have been earning in the months prior to the work injury.