



## **PA Workers' Compensation Case Law Updates**

**Thomas Ollason, Esquire**  
[tollason@laverylaw.com](mailto:tollason@laverylaw.com)  
717-233-6633 ext. 121

**Perry D. Merlo, Esquire**  
[pmerlo@laverylaw.com](mailto:pmerlo@laverylaw.com)  
717-233-6633 ext. 136

**Andrew W. Maffett, Esquire**  
[amaffett@laverylaw.com](mailto:amaffett@laverylaw.com)  
717-233-6633 ext. 141

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### **Fee Reviews:**

The Provider filed a Fee Review for Durable Medical Equipment (DME) and biofreeze pain gel prescribed to the Claimant. The Fee Review Hearing Officer denied the Fee Review on the basis that there was a lack of jurisdiction to determine the Insurer's liability for the prescribed DME and pain gel in the Fee Review arena. The Commonwealth Court Vacated the Fee Review Hearing Officer's Decision and stated that the liability for Claimant's work-related injury was established in the Compromise and Release Agreement among Claimant, Employer and Insurer because the Agreement held that the employer would be responsible for all "reasonable and necessary medical bills for the work-related injury incurred up to the date of this Agreement".

The Court Remanded the case back to the Hearing Officer to hold the case in abeyance for 30 days to allow the Employer to file a Utilization Review. In the event Employer did not file a Utilization Review, the Court held the Provider was entitled to payment. Bond Medical Services v. Bureau of WC Fee Review Hearing office (Travelers Casualty Insurance Company of America, (Pa. Cmwlt. 2020) July 31, 2020 (unreported).<sup>1</sup>

### **Subrogation:**

The Insurer paid benefits to the Claimant pursuant to the Jones Act which provides compensation for injuries for workers who are "exposed to the perils of the sea". The Insurer then attempted to pursue subrogation against the time of injury Employer for benefits paid pursuant to the Jones Act. The Court denied the Insurer's subrogation claim holding that an Insurer may not subrogate against its own Insured. The Court explained that, "subrogation can arise only with respect to the rights of an insured against third persons to whom the insurer owes no duty". Arlet v. WCAB (Cmwlt. of PA, Dpt. of L&I, Bureau of WC), (Pa. Cmwlt. 2020) July 29, 2020.

### **Interlocutory Orders:**

The Commonwealth Court upheld the Workers' Compensation Appeal Board's (WCAB's) Opinion quashing the Claimant's appeal of an Order directing the Claimant to attend an Impairment Rating Evaluation (IRE). The Commonwealth Court held that Orders directing claimants to attend medical examinations are Interlocutory and may

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<sup>1</sup> Unreported Opinions are not binding legal precedent but may be cited for persuasive authority.

not be appealed, as an Interlocutory Order is not a “final” Order. Cantanese v. WCAB (RTA Services Co., Inc.), (Pa. Cmwlth. 2020) July 21, 2020 Unreported Opinion.

### **Claim Petition:**

The WCJ granted Claimant’s Claim Petition alleging a December 8, 2017 work injury, but terminated the award of benefits as of March 15, 2018. On appeal, the WCAB reversed the WCJ’s termination of benefits as of March 15, 2018, on the basis that it was not supported by substantial evidence. The Commonwealth Court Reversed the WCAB and held that the WCAB’s Opinion improperly placed the burden on Employer to prove that Claimant was fully recovered from his work-related injuries, as if the Employer filed a Termination Petition. The Commonwealth Court further noted that the burden of proof on the Claim Petition was with the Claimant to demonstrate not only that he sustained a compensable work injury, but also that *the injury continued to cause disability throughout the pendency of the Claim Petition*. (emphasis added). City of Wilkes-Barre v. WCAB (Pachucki), (Pa. Cmwlth. 2020) July 21, 2020 Unreported Opinion.

### **Compromise and Release Agreements:**

The parties entered into a Compromise and Release Agreement which provided that the Employer would agree to accept 1/3 of the third party recovery in satisfaction of its Section 319 subrogation lien. The Claimant filed an appeal arguing that from the Employer’s 1/3 split of the subrogation lien, attorney fees and costs should be deducted. The Commonwealth Court denied the Claimant’s appeal citing the Compromise and Release Agreement as unequivocally providing for Employer’s acceptance of 1/3 of the gross third party recovery, without deduction for attorney fees or costs. Phillips v. WCAB (TTEch Holdings, Inc.), (Pa. Cmwlth. 2020) July 21, 2020 Unreported Opinion.

### **Uninsured Employers:**

The Claimant alleged a work injury while working for an uninsured employer. Prior to filing the Claim Petition, the injury was reported to the uninsured employer’s homeowners policy and the Claimant received a payment from the homeowners liability insurer. The Commonwealth Court Reversed the WCJ and WCAB which granted the Claim Petition and held that Section 305(d) of the Act requires a claimant to choose either tort damages or workers’ compensation when he suffers a work injury and his employer is uninsured. Claimant chose to pursue tort damages, and his choice foreclosed his opportunity to pursue a claim for workers’ compensation for his 2015 back injury.

The Court also noted that the WCJ and WCAB erred by holding that Claimant's occasional help with animals on Twin Spruce Farm related to the regular course of the business of his putative employer, Twin Spruce Auto Repair, which was in the business of maintaining automobiles. Twin Spruce Auto Repair v. WCAB (Tramontano), (Pa. Cmwlth. 2020) July 20, 2020.

### **Medical Testimony:**

The Employer argued on appeal that the WCJ erred in determining that Claimant suffered an exacerbation of her preexisting major depressive disorder and that the WCJ's critical finding in this regard was not supported by substantial competent evidence. The Court rejected the Employer's argument and found that Claimant's psychiatrist credibly testified that Claimant's current depression was caused by the chronic pain and lifestyle changes from the work injury. The Court also noted that the Employer's medical evidence provided additional support for the WCJ's findings that Claimant suffered an exacerbation of her preexisting major depressive disorder. Pocono Medical Center and Qual-Lynx, Inc. v. WCAB (Springer), (Pa. Cmwlth. 2020) July 16, 2020 (unreported).

### **Termination Petition:**

The Claimant appealed the WCJ's Decision Terminating workers' compensation benefits alleging that the WCJ had failed to render a reasoned decision in accordance with the Act by Terminating benefits where the Claimant had undergone a total knee replacement as a result of the work injury and still had swelling of the knee. The Commonwealth Court affirmed the WCJ's Decision Terminating benefits and held that the WCJ's mere observation of swelling in the Claimant's right knee does not establish a lack of full recovery or that Claimant is incapable of performing her pre-injury job. The Court further noted that the WCJ credited the testimony of Employer's medical expert that the Claimant had fully recovered and provided objective bases for the credibility determinations. Brown v. WCAB (The School District of Philadelphia), (Pa. Cmwlth. 2020) July 14, 2020 (unreported).