

THE PENNSYLVANIA APPELLATE CASE REVIEW

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REPORTING STATE COURT DECISIONS THROUGH FEBRUARY 17, 2023

PENNSYLVANIA APPEALS COURT OPINIONS

I. Civil Litigation

A. *Aiding and Abetting Fraud Cause of Action*

- [Marion v. Bryn Mawr Trust Co., No. 72 MAP 2021 \(Pa. January 19, 2023\)](#)

- **Holding:** An occupational disease that manifests more than four years after the employee's last exposure to hazards causing the disease is not subject to the exclusive remedy mandate of the Occupational Disease Act, 77 P.S. §§ 1401(c) and 1403.

B. *Administrative Termination of Civil Actions*

- [Myers v. Geer, 2023 PA Super 12 \(Pa.Super. January 25, 2023\)](#)

- **Holding:** A trial court may not administratively terminate a matter when (1) the plaintiff's attorney was disbarred, and (2) there is no notice of record that the plaintiff was advised of or aware of the trial court's notice of its intent to dismiss the matter because of inactivity.

C. *Intervention by Workers' Compensation Carrier*

- [Loftus v. Decker \(Appeal of Eastern Alliance Insurance Group\), 2023 PA Super 14 \(Pa.Super. February 1, 2023\)](#)

- **Holding:** A workers' compensation insurer does not have a legally enforceable interest to file suit on its own behalf or to compel an injured worker who received workers' compensation benefits to file a complaint to protect its subrogation lien.

D. *Statutory Employer*

- [Yoder v. McCarthy Construction, Inc., 2023 PA Super 13 \(Pa.Super. January 31, 2023\)](#)

- **Holding:** A general contractor is a statutory employer that is immune from civil liability if its relationship with the injured worker's employer meets the five-part test in *McDonald v. Levinson Steel Co.*, 153 A. 424 (Pa. 1930): (1) An employer who is under contract with an owner or one in the position of an owner; (2) Premises occupied by or under the control of such employer; (3) A subcontract made by such employer; (4) Part of the employer's regular business is entrusted to the subcontractor; and, (5) An employee of such subcontractor.

E. *Occupational Disease Claims*

- [*Herold v. University of Pittsburgh*, No. 998 C.D. 2021 \(Pa.Cmwlt. February 16, 2023\)](#)
 - **Holding:** A default judgment will be stricken when (1) the Complaint and the judgment notices are served on a non-existent address, and (2) the Notice of Intent to Enter a Default Judgment does not substantially comply with Pa.R.Civ.P. 237.5 and 237.1.

II. Workers' Compensation

A. *Fee Review Proceedings*

- [*Philadelphia Surgery Center v. Excalibur Insurance Management Services, LLC \(BWCFRHO\)*, No. 420 C.D. 2022 \(Pa.Cmwlt. January 27, 2023\)](#)
 - **Holding:** The Bureau of Workers' Compensation Fee Review Section and a Fee Review Hearing Officer may determine the fact and amount of an overpayment. However, absent legislative authority permitting the Bureau to direct a provider to reimburse an insurer for an overpayment of fees for medical services, neither the Hearing Office nor a court may create such authority in contravention of the Workers' Compensation Act.

Attorneys Daniel Siegel & Christa Frank High were appellate counsel in this matter.

III. Allocatur Petitions

A. *The Pennsylvania Supreme Court has granted an appeal in the following matter based upon the issues stated:*

- [*Sicilia v. API Roofers Advantage Program \(WCAB\)*, No. 287 MAL 2022 \(Pa. Feb. 15, 2023\)](#)
 - Did the Commonwealth Court impermissibly expand the holdings in *Duffey v. WCAB (Trola-Dyne, Inc.)*, 152 A.3d 984 (Pa. 2017) . . . as to usurp the authority of the Workers' Compensation Judge to determine the nature and extent of the compensable injury?
 - Did the Commonwealth Court err in reversing the Workers' Compensation Appeal Board by substituting [its] assessment of the credible testimony for that of the fact finder?