

ALERTS AND UPDATES

Pa. Supreme Court to Address Exclusivity of Pa. Workers' Compensation Act in Asbestos Cases

June 9, 2011

The Supreme Court of Pennsylvania recently accepted petitions for allowance of appeal in two similar cases—*Landis v. A.W. Chesterton Co.*¹ and *Tooev v. AK Steel Corp.*²—to address whether the exclusivity provision in the Pennsylvania Workers' Compensation Act ("WC Act") bars the tort claims of former employees who develop occupational diseases more than 300 weeks after employment. If, under the plain language of the statute, the court finds that the WC Act bars recovery in tort for such claims, the state supreme court will also be addressing whether the WC Act is constitutional.

Background of Cases

The WC Act bars employees' tort claims against their former employers for injuries defined and covered by the WC Act. The WC Act, however, provides limitations on such compensation. One of these limitations is that an employee is not entitled to compensation for an occupational disease that manifests 300 weeks after the date of last employment in the industry where the employee was exposed to the hazards causing the disease.³

The *Landis* and *Tooev* cases involve individuals seeking damages against their former employers for injuries resulting from contracting mesothelioma, an occupational disease caused by exposure to asbestos. However, the plaintiffs did not contract mesothelioma within 300 weeks of their last date of employment and are, thus, not entitled to compensation under the WC Act.

Although the WC Act bars tort claims against employers for injuries covered under the WC Act, the plaintiffs in *Landis* and *Tooev* contend they are nevertheless permitted to assert civil actions against their former employers. First, they assert that the WC Act's 300-week disease manifestation requirement should be read as creating an exception to the WC Act's bar to tort claims, excepting diseases that do not occur within 300 weeks after employment from the WC Act's exclusivity provision. Second, they maintain that if their occupational disease is covered under the WC Act and they are barred from either receiving compensation under the WC Act or pursuing a tort claim, then the WC Act is unconstitutional, as the Pennsylvania Constitution requires that employees receive reasonable compensation for their injuries.

Pennsylvania Appellate Court Decisions

The Superior Court of Pennsylvania rejected the employees' claims in both *Landis* and *Tooev*, as well as in several other cases that raised the same issues. To date, Pennsylvania appellate courts have found that the WC Act's statutory language is plain in barring occupational diseases that do not manifest within 300 weeks of employment. Furthermore, all constitutional challenges to the WC Act have been unsuccessful.

Supreme Court Schedule

The state supreme court recently established a briefing schedule that will be completed by the end of August 2011. A decision will likely be rendered sometime in 2012.

About Duane Morris

The authors of this *Alert*, Kenneth M. Argentieri and Gerald J. Schirato, Jr., represent the former employers who are defendants in the *Landis* case and are representing other employers in cases with similar claims.

For Further Information

If you have any questions about the information addressed in this *Alert*, please contact [Kenneth M. Argentieri](#), [Gerald J. Schirato](#), any [member](#) of the [Products Liability and Toxic Torts Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

Notes

1. *Landis v. A.W. Chesterton Co.*, 2011 Pa. LEXIS 1143 (Pa. May 17, 2011).
2. *Tooley v. AK Steel Corp.*, 2011 Pa. LEXIS 1146 (Pa. May 17, 2011)
3. Pennsylvania Workers' Compensation Act, 77 P.S. § 411(2).

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