

A Summary of Recent Appellate Decisions From Pennsylvania Appellate Courts & The U.S. Supreme Court

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REPORTING DECISIONS THROUGH MAY 29, 2009

FEATURED CASE:

Supreme Court Grants Allocatur To Resolve Pension Offset

In [Commonwealth, Department of Public Welfare v. Workers' Compensation Appeal Board \(Harvey\), No. 3 EAL 2009 \(May 13, 2009\)](#), the Pennsylvania Supreme Court has granted allocatur to resolve the following issue:

When the evidence establishes that an employer has contributed very little, if anything, to a claimant's pension during [the] years in which the claimant was employed and participated in [a defined benefit] plan, did the Commonwealth Court err by:

- (1) affirming its decisions in *Pennsylvania State University/PMA Insurance Group v. WCAB (Hensal)*, 911 A.2d 225 (Pa. Cmwlth. 2006) and *Department of Public Welfare/Western Center v. WCAB (Cato)*, 911 A.2d 241 (Pa. Cmwlth. 2006), and holding that an employer meets its burden of proof by only presenting evidence of an actuarially assumed rate of annual return on an employer's contribution rather than evidence confirming the actual rate of return on the pension; and
- (2) disregarding the plain language of Section 204(a) of the Workers' Compensation Act, 77 P.S. § 71(a), which grants an employer a credit against an employee's pension only "to the extent [the pension is] funded by the employer directly liable for the payment of workers' compensation"?

[The Law Offices of Daniel J. Siegel, LLC Is Assisting the Law Offices of Marla A. Joseph On This Appeal](#)

PENNSYLVANIA APPELLATE COURT DECISIONS

I. Allocatur Granted

The Pennsylvania Supreme Court has granted allocatur in the following cases on the stated issues:

A. [Schmidt v. Boardman Co., No. 579 WAL 2008 \(May 27, 2009\)](#)

- Whether a plaintiff must prove a physical injury in order to be entitled to recover under a strict product liability theory?
- Whether the product-line exception to the general rule against successor liability should be part of Pennsylvania's strict product liability jurisprudence?

All decisions are "hyperlinked" to the slip opinion. All you have to do is "click" (or "ctrl + click") on the title of the case, and if connected to the Internet, your browser will open up the decision for you to read in its entirety. Try it and see!

- If the product line exception is recognized as part of Pennsylvania's strict product liability jurisprudence, whether the exception should be formulated to strictly require proof of the following before successor liability can be imposed: (1) the successor corporation purchased all or substantially all of the assets of the manufacturer of the product at issue; (2) the successor undertook essentially the same manufacturing operation as the manufacturer of the product alleged to have caused the plaintiff's injuries and then continued to manufacture the same product line; and (3) the transaction between the successor and the manufacturer of the product at issue caused the destruction.
- B. [Vicari v. Spiegel, No. 638 EAL 2007 \(May 27, 2009\)](#)
 - Whether respondent's medical oncology expert was qualified to render standard of care opinions against an otolaryngologist and radiation oncologist under Section 512 of the Medical Care Availability and Reduction of Error Act, 40 P.S. § 1303.512.
- C. [Kincy v. Petro, No. 596 EAL 2008 \(May 19, 2009\)](#)
 - Whether under Pa.R.C.P. 213(a) a trial court order, which states that two separately docketed cases involving different plaintiffs and different theories of liability are "consolidated for all purposes," and does not otherwise specify that a joint trial of the cases is to be held, operates automatically to merge the pleadings filed in the separate cases?
- D. [The Philadelphia Housing Authority v. American Federation of State, County and Municipal Employees, District Council 33, Local 934, No. 558 EAL 2008 \(May 18, 2009\)](#)
 - Issue 1: Whether the Arbitrator's award violates a clearly articulated public policy, as defined by the public policy exception to the essence test, established by this Court in Westmoreland?
 - Issue 2: Whether the Commonwealth Court misapplied the public policy exception by holding that public policy requires severe discipline by an employer in response to sexual harassment, notwithstanding that (a) the employee was disciplined in the form of a verbal warning; (b) the employee abided by the warning and committed no further harassment warranting discipline following the warning; and (c) federal and state regulations, cases, and policies, and the employer's own policy, do not require that an offending employee be punished, and contemplate that a warning may be a sufficient response to sexual harassment?
- E. [Pyeritz v. Commonwealth, State Police, No. 487 WAL 2008 \(April 24, 2009\)](#)
 - Issue 1: Whether the personal property exception to state sovereign immunity, 42 Pa.C.S.A. § 8522(b)(3), applies only if the property in question causes the plaintiff's injuries, or does it suffice that plaintiff's injuries are caused by the Commonwealth's care, custody, or control of the property?
 - Issue 2: Whether genuine issues of material fact exist which would preclude the entry of summary judgment?
 - Issue 3: Whether the State Police breached an implied contract for bailment of evidence which was Petitioners' personal property, thus subjecting the State Police to liability if the evidence was subsequently negligently destroyed?
 - Issue 4: Whether Pennsylvania recognizes, and if so whether Petitioners have alleged, a cause of action for negligent spoliation of evidence?

F. [*Fastuca v. Molnar*, No. 410 WAL 2008 \(April 15, 2009\)](#)

- Issue 1: Whether the arbitrator's findings of September 17, 2004 constituted a final award within the meaning of 42 Pa.C.S.A. § 7341?
- Issue 2: Whether a trial court has equitable powers to terminate a common law arbitration prior to the entry of a final award by the arbitrator?

G. [*Beil v. Telesis Construction, Inc.*, No. 483 EAL 2008 \(April 1, 2009\)](#)

- Issue 1: Did the Superior Court misapply *Farabaugh v. Pennsylvania Turnpike Commission*, 911 A.2d 1264 (Pa. 2006)?
- Issue 2: Did the Superior Court improperly fail to view the evidence in the light most favorable to Petitioners, as verdict-winners?
- Issue 3: Did the Superior Court misapply both Section 414 of the *Restatement (Second) of Torts* (1965) and this Court's opinion in *Byrd v. Merwin*, 317 A.2d 280 (Pa. 1974)?

H. [*Snead v. Society for the Prevention for Cruelty to Animals of PA*, No. 555 & 556 EAL 2007 \(February 12, 2009\)](#)

- Whether the lower court erred in disregarding the SPCA's inherently governmental functions, including enforcement of Pennsylvania's Dog Law, authority to arrest suspects and execute search warrants, and traditional animal protection and control roles, pursuant to 42 Pa.C.S. § 8541, in holding the SPCA was not entitled to sovereign or governmental immunity.

II. Causes of Action, Civil Procedure & Trials

A. Abuse of Process

[*Cruz v. Princeton Ins. Co.*, 2009 PA Super 49 \(March 24, 2009\)](#)

- **Holding:** In a claim for abuse of process, emotional harm is an element of damages to be assessed by the factfinder.

B. Arbitration Appeals

[*Dolan v. Fissell*, 2009 PA Super 82 \(May 1, 2009\)](#)

- **Holding:** Under Pa.R.Civ.P. 1311.1, which permits a party to proceed on medical reports and limit damages to \$25,000.00, it is a matter of discretion for the trial court to decide whether to permit the withdrawal of a "stipulation" under the Rule.

C. Asbestos Claims

[*Burger v. Owens Illinois, Inc.*, 2009 PA Super 26 \(February 11, 2009\)](#)

- **Holding 1:** The non-moving party may supplement the record with an affidavit to avoid the entry of summary judgment as long as the affidavit provides new information, is credible, and does not contradict previous testimony.
- **Holding 2:** In asbestos product liability cases, plaintiff must submit evidence that defendant manufactured the specific product, and that the product contained asbestos when plaintiff was exposed to it.

[*Vanaman v. Dap, Inc.*, 2009 PA Super 27 \(February 11, 2009\)](#)

- **Holding:** In an asbestos product liability case, in order to survive summary judgment, the plaintiff must meet the "frequency, regularity and proximity" test, even if the plaintiff presents direct evidence of inhalation of asbestos fibers.

□ [*Daley v. A.W. Chesterton, Inc., 2009 PA Super 71 \(April 15, 2009\)*](#)

- **Holding:** A party may maintain separate causes of action for diseases contracted as the result of asbestos exposure. The “two diseases” rule does not limit a plaintiff to a single cause of action for one malignant asbestos-related disease and a single cause of action for one non-malignant asbestos-related disease.

D. Collateral Orders

□ [*Gunn v. The Automobile Insurance Co. of Hartford, Connecticut, 2009 PA Super 70 \(April 15, 2009\)*](#)

- **Holding:** An Order does not constitute an appealable collateral order under Pa.R.A.P. 313 unless: (1) the nature of the issue to be reviewed can be addressed without the need to analyze the central issue of the case; (2) the right involved is too important to be denied review; and, (3) appellant can demonstrate that if review is postponed until the final judgment in the case, the claim will be irreparably lost. When a trial court’s decision not to stay a bad faith proceeding neither goes beyond the particular litigation at hand nor implicates a right deeply rooted in public policy, and the decision does not impose undue prejudice, the Order does not qualify as an appealable collateral order.

□ [*Pridgen v. Parker Hannifin Corp., 2009 PA Super 90 \(May 15, 2009\)*](#)

- **Holding:** An Order denying a Motion for Summary Judgment is not *per se* an appealable collateral order. Thus, when a trial court denies a motion for summary judgment because the motion raised questions of fact, the order was interlocutory and not appealable as of right.

E. Contract Construction

□ [*ADP, Inc. v. Morrow Motors Inc., 2009 PA Super 52 \(March 26, 2009\)*](#)

- **Holding:** A genuine issue of material fact exists for the jury to decide whether the parties may modify or terminate a written contract other than by the written consent of the parties where the behavior and communications of the apparent agents manifest mutual intent to modify the terms.

□ [*Zurich American Insurance Co. v. O’Hanlon, 2009 PA Super 42 \(March 16, 2009\)*](#)

- **Holding:** In order to reform a contract based upon a mutual mistake, the moving party is required to show the existence of the mutual mistake by clear, precise and convincing evidence.

F. Damages

□ [*Helpin v. Trustees of the University of Pennsylvania, 2009 PA Super 58 \(April 1, 2009\)*](#)

- **Holding:** When a jury’s damages award consists primarily of lost future earnings, the trial court does not err by denying plaintiff’s request for pre-judgment interest.

G. Delay Damages

□ [*Thompson v. T.J. Whipple Construction Co., 2009 PA Super 57 \(March 30, 2009\)*](#)

- **Holding:** When the parties enter into a voluntary high/low agreement, the total award, including Rule 238 delay damages, cannot exceed the maximum amount agreed upon by the parties in the high/low agreement.

H. Dismissal – Inactivity

□ [Kane v. Vignas, 2009 PA Super 31 \(February 13, 2009\)](#)

- **Holding:** When a case is terminated because of lack of docket activity pursuant to Pa.R.Civ.P. 230.2, the Prothonotary must serve the notice of intent to terminate the action by mail. The Court emphasized that the Supreme Court does not favor the termination of otherwise viable cases based on the mere lack of docket activity.

I. Evidence

□ [Turner v. Valley Housing Development Corp., 2009 PA Super 72 \(April 16, 2009\)](#)

- **Holding 1:** A party seeking to exclude a deceased witness's deposition because the witness was incompetent must establish the witness' incompetency by clear and convincing evidence.
- **Holding 2:** Third party statements contained in medical records are generally admissible under the business records exception to the hearsay rule.

□ [Dolan v. Fissell, 2009 PA Super 82 \(May 1, 2009\)](#)

- **Holding 1:** An expert witness may testify for either party, regardless of who hired the witness. If counsel retains an expert and does not contract to preclude the expert from testifying for the opposing side, he takes the chance that the report will be unfavorable and the other side will use it.
- **Holding 2:** The mere mention of the word insurance by a witness in a personal injury case does not require a new trial, particularly when the objecting party did not request a mistrial when the reference was made, the statement was seemingly inadvertent, and was not exploited by the party offering the witness.

□ [Helpin v. Trustees of the University of Pennsylvania, 2009 PA Super 58 \(April 1, 2009\)](#)

- **Holding 1:** Even if a letter offering employment does not provide a formula for calculating compensation, the deficiency may be cured by the parties' subsequent course of conduct, from which a court may determine a remedy for the breach.
- **Holding 2:** The opinion of a financial expert is not impermissibly speculative when it is based on facts and data, as required by Pa.R.Evid. 703.

J. General Verdict Rule

□ [Halper v. Jewish Family & Children's Service of Greater Philadelphia, No. 2 EAP 2007 \(Pa. February 19, 2009\)](#)

- **Holding:** Adopting the "general verdict rule," the Court rules that when a jury returns a general verdict based on evidence sufficient to support at least one of the theories of liability in a civil case, the verdict cannot be reversed on appeal unless the defendant has requested a special verdict slip or special interrogatories.

K. Legal Malpractice

□ [Steiner v. Markel, No. 62 MAP 2008 \(Pa., April 29, 2009\)](#)

- **Holding:** The Superior Court may not declare, *sua sponte*, that a cause of action described in a complaint as a claim for "professional malpractice" is actually a claim for breach of contract for purposes of determining which statute of limitation applies. Moreover, a Court may not recast a pleading in a way not intended by the parties.

L. Limitations of Actions – Breach of Confidentiality

- [*Burger v. Blair Medical Associates, Inc., No. 14 WAP 2008 \(Pa., February 20, 2009\)*](#)
 - **Holding:** A claim for breach of physician-patient confidentiality is governed by the two year statute of limitations under 42 Pa.C.S. § 5524(7).

M. Limitations of Actions – Contracts

- [*Prime Medica Assocs. v. Valley Forge Insurance Co., 2009 PA Super 39 \(March 5, 2009\)*](#)
 - **Holding:** Where an insured brings a claim after the time limit specified in an insurance contract's suit limitations clause, the insurer may assert the defense of waiver or estoppel. As a result, the insured must present evidence to establish that it had reasonable grounds for believing that the time limit would be extended or that the insurer would not strictly enforce a suit limitations provision.

N. Limitations of Actions – Medical Malpractice

- [*Wilson v. El-Daief, No. 39 MAP 2008 \(Pa. February 19, 2009\)*](#)
 - **Holding:** In a medical malpractice action involving the discovery rule, the statute of limitations begins to run when plaintiff's pain and disability exceed the expected post-surgical outcome and appear in close proximity to the surgery, *i.e.*, the statute begins to run when plaintiff possesses actual or constructive knowledge of the injury, even if the specific etiology of the symptoms has not been determined.

O. Medical Malpractice Actions

- [*Tindall v. Friedman, 2009 PA Super 50 \(March 24, 2009\)*](#)
 - **Holding:** Despite an agreement not to execute against the personal assets of a medical professional, the plaintiff retains the right to recover against primary and secondary insurance providers, including entities such as the MCARE Fund.
- [*Thierfelder v. Wolfert, 2009 PA Super 92 \(May 19, 2009\)*](#)
 - **Holding:** A cause of action for negligence exists for a plaintiff/wife against a defendant physician when the defendant physician had a consensual sexual relationship with the plaintiff while she was a patient who was also being treated for anxiety and depression. The Court also affirmed the dismissal of the husband/plaintiff's claims and limits the holding to physicians who are treating psychological problem/conditions.

P. Political Subdivisions

- [*Leiphart v. City of Philadelphia, No. 1147 C.D. 2008 \(Pa.Cmwlt., March 23, 2009\)*](#)
 - **Holding:** When a statute specifically designates a street as a state highway, the city/municipality no longer owns the street, and is not liable for injuries resulting from negligent maintenance of the right-of-way, except where the city/municipality agrees in a written contract to maintain the street.

- [*Meyer v. Community College of Beaver County*, No. 1141 C.D. 2008 \(Pa.Cmwlt., February 11, 2009\)](#)

and

- [*Barr v. Community College of Beaver County*, No. 1142 C.D. 2008 \(Pa.Cmwlt., February 11, 2009\)](#)

- **Holding:** A community college is a local agency subject to liability for negligence only for matters within the exceptions to governmental immunity under 42 Pa.C.S. § 8542(b). Consequently, the community college is not subject to liability for violations of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201.1-21-9.3.

Q. Premises Liability

- [*Walker v. Drexel University*, 2009 PA Super 80 \(April 27, 2009\)](#)

- **Holding:** A property owner is not relieved of the duty of reasonable care to business invitees merely because the condition was “known and obvious.”

R. Products Liability

- [*Kiak v. Crown Equipment Corp.*, 2009 PA Super 32 \(February 17, 2009\)](#)

- **Holding:** In an action in which the user, not the manufacturer, selected the safety feature appropriate to a specific work environment, and that safety feature is defective, the claim should proceed under Section 402A of the Restatement (Second) of Torts.

S. Settlements

- [*Mastroni-Mucker v. Allstate Insurance Co.*, 2009 PA Super 101 \(May 29, 2009\)](#)

- **Holding:** An oral settlement agreement is valid and binding if it is entered before the trial judge, and expresses the parties’ intent to settle for an agreed amount.

T. Welfare – Intervention into Actions

- [*Galindo v. Crozier-Keystone Health System*, No. 1136 C.D. 2008 \(Pa.Cmwlt., January 8, 2009\)](#)

- **Holding:** The Department of Public Welfare may intervene and seek reimbursement in a medical malpractice case filed by a minor who had received medical assistance benefits, even if the parents failed to bring a claim or the claim was time-barred. The five year statute of limitations under Section 1409(b)(5) of the Fraud and Abuse Control Act does not apply and the Department may intervene at any time before trial.

III. Workers’ Compensation Cases

A. Credits & Reductions

- [*Lisanti Painting Co. v. Workers’ Compensation Appeal Board \(Starinchak\)*, No. 152 C.D. 2008 \(Pa.Cmwlt., May 5, 2009\)](#)

- **Holding:** Section 306(f.1)(8) of the Workers’ Compensation Act does not authorize an employer to deduct a credit from a claimant’s future benefits as the result of the claimant’s noncompliance with the Workers’ Compensation Act. Rather, an employer who believes a claimant has refused medical treatment must file a petition seeking a suspension of benefits until claimant agrees to undergo the medical treatment at issue.

- [*Calex, Inc. v. Workers' Compensation Appeal Board \(Vantaggi\)*, No. 1788 C.D. 2008 \(Pa.Cmwlt., March 26, 2009\)](#)

- **Holding:** The Act does not require an employer to reimburse a claimant for premium payments made to secure comprehensive health insurance, e.g., COBRA premium payments.

B. Exclusivity of Remedies

- [*Minto v. J.B. Hunt Transport, Inc.*, 2009 PA Super 73 \(April 17, 2009\)](#)

- **Holding:** The exclusivity provisions of the Workers' Compensation Act preclude an action by a worker against his employer for destroying evidence, thus prejudicing his tort suit against the third parties that manufactured the truck in which he was driving at the time of his injury. Consequently, the Court ruled that the exclusivity provision of the Act limits the liability of an employer on account of injury arising in the course of the employee's employment and that these claims here are not barred by the Act.

C. Impairment Rating Evaluations

- [*Ford Motor/Visteon Systems v. Workers' Compensation Appeal Board \(Gerlach\)*, No. 1944 C.D. 2008 \(Pa.Cmwlt., April 1, 2009\)](#)

- **Holding:** When an employer files a petition seeking to modify a claimant's benefits based upon an Impairment Rating Evaluation (IRE), rather than using the administrative process under the Act, the effective date of the modification is the date on which the IRE examination occurred.

- [*Diehl v. Workers' Compensation Review Board \(IA Construction\)*, No. 1507 C.D. 2008 \(Pa.Cmwlt., April 22, 2009\)](#)

- **Holding:** An employer seeking to modify a claimant's disability status based upon an Impairment Rating Evaluation (IRE) requested more than 60 days after a claimant has collected 104 weeks of total disability benefits, must obtain an agreement from the claimant or adjudication that the employee's condition improved to an impairment rating of less than fifty percent. The employer does not need to prove both earning power and the level of impairment to effect a change in the claimant's disability status.

D. Incarceration/Suspension of Benefits

- [*Rogele, Inc. v. Workers' Compensation Review Board \(Mattson\)*, No. 1206 C.D. 2008 \(Pa.Cmwlt., April 2, 2009\)](#)

- **Holding:** An employer may suspend a claimant's benefits only during periods of incarceration following conviction.

E. Notice

- [*Matthews v. Workers' Compensation Appeal Board \(Elwyn Institute\)*, No. 1413 C.D. 2008 \(Pa.Cmwlt., March 12, 2009\)](#)

- **Holding:** A claimant must notify his or her employer of his or her belief that injuries sustained in a car accident aggravated an existing work injury and are compensable.

F. Offsets – Pensions

- [*City of Philadelphia v. Workers' Compensation Appeal Board \(Grevy\)*, No. 924 C.D. 2008 \(Pa.Cmwlt., March 27, 2009\)](#)
 - **Holding:** An employer is only entitled to an offset/credit against workers' compensation benefits only to the extent that it funded claimant's pension benefits, even if pension payments are made in lieu of workers' compensation.
- [*City of Philadelphia v. Workers' Compensation Appeal Board \(Calderazzo\)*, No. 923 C.D. 2008 \(Pa.Cmwlt., March 27, 2009\)](#)
 - **Holding:** When an employee's injury occurred prior to the 1996 amendments to Section 204(a), an employer is entitled to take an offset/credit to the extent that it funded claimant's pension benefits made in lieu of workers' compensation. Penalties are appropriate when an employer unilaterally suspends benefits without following the Act's formal procedures for suspending benefits, and contesting a Penalty Petition under these circumstances constitutes an unreasonable contest.
- [*Consolidation Coal Co. v. Workers' Compensation Appeal Board \(Albani\)*, No. 2216 C.D. 2007 \(Pa.Cmwlt., March 5, 2009\)](#)
 - **Holding:** Pursuant to *Pennsylvania State University v. Workers' Compensation Appeal Board (Hensal)*, actuarial testimony is sufficient to support an employer's right to an offset for Claimant's receipt of a multi-employer defined benefit disability pension.

G. Reasoned Decisions/Disregard of Evidence

- [*Liveringhouse v. Workers' Compensation Appeal Board \(ADECCO\)*, No. 1639 C.D. 2008 \(Pa.Cmwlt., March 19, 2009\)](#)
 - **Holding:** When all medical experts reach the same diagnosis, a WCJ's finding that the claimant did not suffer from the diagnosed condition is not supported by the record. Furthermore, when an employer's medical expert's opinions are contrary to Pennsylvania law the expert's opinion cannot be used as a basis for denying the claimant benefits.

H. Recovery of Costs of Litigation

- [*Reyes v. Workers' Compensation Appeal Board \(AMTEC\)*, No. 643 C.D. 2008 \(Pa.Cmwlt., March 16, 2009\)](#)
 - **Holding:** When the only contested issues in a case are the nature of any injury and the extent of disability, if a claimant fails to prove that a work related injury resulted in disability, the claimant fails to prevail on any contested issue. Thus, the claimant is not entitled to litigation costs.

I. Reinstatement of Benefits

- [*Ward v. Workers' Compensation Appeal Board \(City of Philadelphia\)*, No. 1755 C.D. 2008 \(Pa.Cmwlt., March 2, 2009\)](#)
 - **Holding:** A claimant bears the burden of proving that worsening of a work related condition affects his or her ability to perform a job previously found to be within his or her capabilities for which the claimant failed to apply in good faith. Absent credible and persuasive proof addressing this issue, claimant does not meet his or her burden.

J. Subrogation

- [*Fox v. Workers' Compensation Appeal Board \(Peco Energy Co.\)*, No. 1774 C.D. 2008 \(Pa.Cmwth., March 23, 2009\)](#)
 - **Holding:** Section 23 of the Act does not excuse a claimant from the Section 319 obligation to reimburse an employer for workers compensation paid when a claimant obtains tort recovery from a governmental tortfeasor.

K. Supersedeas Fund Reimbursement

- [*Department of Labor & Industry v. Workers' Compensation Appeal Board \(Ethan-Allen Eldridge Division\)*, No. 1600 C.D. 2008 \(Pa.Cmwth., May 6, 2009\)](#)
 - **Holding:** When a claimant and employer enter into a Compromise and Release Agreement (C&R) following the denial of supersedeas, and the C&R leaves a certain period open for subsequent determination, the pending suspension petition is not rendered moot, and the employer may seek reimbursement for the benefits paid during pendency of the action following denial of its supersedeas request.
- [*Henkels & McCoy, Inc. v. Workers' Compensation Review Board \(Barner\)*, No. 1396 C.D. 2008 \(Pa.Cmwth., April 15, 2009\)](#)
 - **Holding:** An insurer/employer is not entitled to reimbursement from the Supersedeas Fund if the employer violated the Act by unilaterally withholding benefits without filing an appropriate petition.

L. Suspensions of Benefits/Earning Capacity

- [*Alessandro v. Workers' Compensation Appeal Board \(Precision Metal Crafters, LLC\)*, No. 2209 C.D. 2008 \(Pa.Cmwth., April 30, 2009\)](#)
 - **Holding:** The Court affirmed the WCJ's decision suspending claimant's benefits (1) based upon the conclusion that claimant was working, despite claimant's testimony to the contrary, and (2) refusing to reinstate benefits until claimant presented evidence of his earnings or evidence that his medical condition had changed to the point where a reinstatement of benefits was warranted.

M. Suspension of Benefits/Available Work

- [*Consol PA Coal Co. v. Workers' Compensation Appeal Board \(Whitfield\)*, No. 971 C.D. 2008 \(Pa.Cmwth., January 8, 2009\)](#)
 - **Holding:** Applying *Landmark Constructors, Inc. v. Workers' Compensation Appeal Board (Costello)* 560 Pa. 618, 747 A.2d 850 (2000), the Court determined that an employer fails to carry its burden of proof under *Kachinski* if the employer does not provide evidence of work availability even if the claimant is released to any employment without conditions.

N. Utilization Reviews

- [*Sexton v. Workers' Compensation Appeal Board \(Forest Park Health Center\)*, No. 1225 C.D. 2008 \(Pa.Cmwth., May 22, 2009\)](#)
 - **Holding:** When a medical provider fails to sign a Verification attesting that the records provided constitute the true and complete medical records, the Utilization Review Organization is required to deem the treatments unreasonable and unnecessary because the records were not properly submitted by the provider.

UNITED STATES SUPREME COURT OPINION

- [Vaden v. Discover Bank, No. 07-773 \(U.S., March 9, 2009\)](#)
 - **Holding:** The determination whether a case arises under federal law must be based upon the contents of plaintiff's statement of the claim, and not from any potential defenses or counterclaims. Thus, under the well-pleaded complaint rule, a completely preempted counterclaim does not provide a key capable of opening a federal court's door.

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