

Declaratory Judgment and Injunctive Relief (Petition) filed by Liberty Mutual Insurance Company (Liberty Mutual) and Charles Pike Construction Company, Inc. (Employer) (collectively, Petitioners). We sustain in part and overrule in part Respondents' POs.

On November 10, 2010, Craig Mociak (Claimant) was seriously injured while working for Employer at a construction site in Wynnewood, Pennsylvania. Liberty Mutual insured Employer for claims arising under the New Jersey workers' compensation statute, but the Pennsylvania State Workers' Insurance Fund (SWIF) insured Employer for claims arising under the Pennsylvania Workers' Compensation Act (Act).² Employer reported the injury to Liberty Mutual which paid \$326,650.57 in medical and indemnity benefits.

Claimant then filed a claim petition under the Pennsylvania Act with the Bureau of Workers' Compensation (Bureau) for benefits arising out of his work-related injury. After receiving the claim petition, Liberty Mutual notified SWIF and asked it to assume jurisdiction over and responsibility for payment of the claim as the workers' compensation insurer of Employer's Pennsylvania business operations. In May 2011, Claimant, Employer and SWIF executed a stipulation to which Liberty Mutual was not a party. By decision dated July 18,

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doubt exists as to whether the preliminary objections should be sustained, the doubt must be resolved in favor of overruling the preliminary objections. *Id.*

² Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §1-1041.4, 2501-2708.

2011, a Workers' Compensation Judge (WCJ) approved the stipulation under which SWIF admitted liability for the work injury. Against its liability, SWIF was credited with Liberty Mutual's payment of medical and indemnity benefits.

Liberty Mutual then filed a Petition to Review Compensation Benefits with the Bureau under Section 319 of the Act,³ seeking reimbursement from SWIF for all of the benefits that it paid to Claimant for which SWIF received a credit. The WCJ denied reimbursement, determining that she did not have jurisdiction to order SWIF to reimburse Liberty Mutual for payments made under the New Jersey workers' compensation statute.

Liberty Mutual did not appeal the WCJ's decision to the Workers' Compensation Appeal Board. Rather, by three separate letters, Liberty Mutual demanded reimbursement from SWIF for the medical and indemnity benefits that it paid to Claimant under the New Jersey statute. (Petition at Exhibits C, D, E.) After receiving no response, Liberty Mutual filed the instant Petition in our original jurisdiction.

³ 77 P.S. §671. Section 319 states, in pertinent part:

Where an employe has received payments for the disability or medical expense resulting from an injury in the course of his employment paid by ... an insurance company on the basis that the injury and disability were not compensable under this act in the event of an agreement or award for that injury the ... insurance company who made the payments shall be subrogated out of the agreement or award to the amount so paid, if the right to subrogation ... is established at the time of hearing before the referee or the board.

In its Petition, Liberty Mutual contends that its payments to Claimant were a mistake of fact because SWIF admitted through the stipulation that SWIF was the responsible carrier for the loss, and that it was entitled to reimbursement for the amount that it erroneously expended under Section 319 of the Act as well as for unjust enrichment. It asks this court to order SWIF to reimburse Liberty Mutual for all sums paid under the New Jersey statute or \$326,650.57; to order SWIF to pay 10% statutory interest under Section 406.1 of the Act;⁴ and to award counsel fees for SWIF's unreasonable contest to the Review Petition.

Respondents then filed the instant preliminary objections alleging that:

(1) this Court is without jurisdiction because jurisdiction over Petitioners claims lies with the Board of Claims under Section 1724 of the Commonwealth Procurement Code;⁵

(2) this Court is without jurisdiction because Petitioners failed to exhaust their statutory remedy by filing an appeal of the WCJ's decision dismissing their Petition to Review Compensation Benefits with the Workers' Compensation Appeal Board; and

⁴ Added by the Act of February 8, 1972, P.L. 25, *as amended*, 77 P.S. §717.1.

⁵ 62 Pa. C.S. §1724. Section 1724(a)(1) states, in pertinent part, that “[t]he board shall have exclusive jurisdiction to arbitrate claims arising from ... [a] contract entered into by a Commonwealth agency in accordance with this part and filed with the board in accordance with section 1712.1 (relating to contract controversies)....” 62 Pa. C.S. §1724(a)(1).

(3) relying in part on Section 305.2 of the Act,⁶ that Petitioners failed to allege any legal⁷ or factual⁸ basis to

⁶ Section 305.2 of the Act, added by the Act of December 5, 1974, P.L. 782, states, in pertinent part:

(b) The payment or award of benefits under the workmen's compensation law of another state ... to an employe ... shall not be a bar to a claim for benefits under this act; provided that claim under this act is filed within three years after such injury.... If compensation is paid or awarded under this act:

(1) The medical and related benefits furnished or paid for by the employer under such other workmen's compensation law on account of such injury ... shall be credited against the medical and related benefits to which the employe would have been entitled under this act had claim been made solely under this act.

(2) The total amount of all income benefits paid or awarded the employe under such other workmen's compensation law shall be credited against the total amount of income benefits which would have been due the employe under this act, had claim been made solely under this act....

Nothing in this act shall be construed to mean that coverage under this act excludes coverage under another law or that an employe's election to claim compensation under this act is exclusive of coverage under another state act or is binding on the employe ... except, perhaps to the extent of an agreement between the employe and the employer or where employment is localized to the extent that an employe's duties require him to travel regularly in this State and another state or states.

77 P.S. §411.2 (b).

⁷ Specifically, Respondents aver that Petitioners did not allege that Claimant was not eligible for benefits under the New Jersey statute and that there was not concurrent jurisdiction over his claim, or any legal basis for SWIF to be responsible for the payment of benefits under the New Jersey statute or for this Court to order reimbursement plus interest and counsel fees.

⁸ Specifically, Respondents aver that Petitioners did not allege that they were obligated or believed that they were obligated to pay benefits to Claimant under the New Jersey statute or that **(Footnote continued on next page...)**

support a claim for declaratory judgment or for an order for reimbursement, interest, or counsel fees.

A.

Citing *Hanover Insurance Company v. State Workers' Insurance Fund*, 35 A.3d 849 (Pa. Cmwlth. 2012), Respondents argue that jurisdiction over Liberty Mutual's claims lies with the Board of Claims under Section 1724 of the Commonwealth Procurement Code because indemnification is like a contractual claim with a Commonwealth agency. However, Respondents' reliance on *Hanover Insurance Company* is misplaced because that case involved construing indemnification under a policy in which a general liability carrier sought SWIF's defense and indemnity of that carrier's insured that was named as an alternate employer under the actual employer's workers' compensation and liability policy issued by SWIF. In this case, there is no procurement contract between Liberty Mutual and SWIF or any other Commonwealth agency thereby conferring jurisdiction upon the Board of Claims under Section 1724 of the Commonwealth Procurement Code. *Scientific Games International, Inc. v. Commonwealth*, ___ Pa. ___, ___ A.3d ___ (Nos. 42 MAP 2012, 43 MAP 2012, filed March 25, 2013). Accordingly, the Board of Claims does not have jurisdiction under Section 1724 of the Commonwealth Procurement Code. *Id.*

(continued...)

SWIF is responsible for their decision to pay benefits to Claimant under the New Jersey statute. Respondents also aver that Petitioners' factual allegations are not sufficiently specific to establish that their payment to Claimant was not the result of ignorance or carelessness or a claim for declaratory judgment or for an order for reimbursement, interest, or counsel fees.

B.

As to Respondents' assertion that we lack jurisdiction due to Petitioners' failure to pursue an adequate administrative remedy, "it is fundamental that prior to resorting to judicial remedies, litigants must exhaust all the adequate and available administrative remedies." *County of Berks, ex rel. Baldwin v. Pennsylvania Labor Relations Board*, 544 Pa. 541, 550, 678 A.2d 355, 360 (1996). "The additional element required to confer equitable jurisdiction is either the absence of a statutorily-prescribed remedy or, if such a remedy exists, then a showing of its inadequacy in the circumstances." *Muir v. Alexander*, 858 A.2d 653, 660 (Pa. Cmwlth. 2004) (quoting *Borough of Green Tree v. Board of Property Assessments, Appeals and Review of Allegheny County*, 459 Pa. 268, 276, 328 A.2d 819, 823 (1974)).

While Petitioners allege, in part, that they are entitled to reimbursement under Section 319 of the Act, it is clear that Section 319 is not a basis for recovery in this case and any claim made by Petitioners is dismissed. As this Court has previously explained:

"The first paragraph is applicable only to those situations where a third party, unrelated to the employer, has been wholly or partially responsible for causing the work related injury." *Baierl Chevrolet v. Workmen's Compensation Appeal Board (Schubert)*, [613 A.2d 132, 134 n.3 (Pa. Cmwlth.),] *appeal denied*, 533 Pa. 662, 625 A.2d 1195 (1992). "The second paragraph only applies where an employer or insurance company has made payments either for disability or medical expense under some non-workmen's compensation program with the subsequent determination that the payments were compensable under the Act." *Id.*

State Workers' Insurance Fund v. Workers' Compensation Appeal Board (Shaughnessy), 837 A.2d 697, 702 (Pa. Cmwlth. 2003), *aff'd*, 583 Pa. 60, 874 A.2d 1158 (2005). Thus, the second paragraph of Section 319 would only apply when, after Employer or SWIF had made payments to Claimant for an injury under a non-workers' compensation program, it was subsequently determined that those payments by Employer or SWIF were compensable under the Act and does not apply to payments made by Liberty Mutual under a mistake of fact and with no relation to payments or the proceedings under the Act. *Id.*

In essence then, the WCJ was correct in finding that she did not have jurisdiction meaning that there was no adequate administrative remedy that Petitioners could pursue and that Petitioners could properly raise the unjust enrichment claim in this case. *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 10-11, 383 A.2d 791, 795-96 (1977).

C.

Finally, Respondents aver that Petitioners have failed to allege any legal or factual basis to support their unjust enrichment claim seeking reimbursement for all sums paid under the New Jersey statute or \$326,650.57. As this Court has explained:

Unjust Enrichment is an equitable doctrine. Under the doctrine, the law implies that a contract exists when a party is found to have been unjustly enriched; the doctrine requires the offending party to pay the plaintiff the value of the benefit he has conferred on the defendant. A party alleging that a defendant has been unjustly enriched must establish the following: (1) plaintiff conferred a benefit on the defendant; (2) the

defendant appreciated the benefit; and (3) acceptance and retention by the defendant of the benefits, under the circumstances, would make it inequitable for the defendant to retain the benefit without paying for the value of the benefit. Further, a defendant need not have accepted and appreciated the benefit intentionally; instead, the focus remains on the question of whether the defendant has been unjustly enriched. Additionally, the plaintiff bears the burden of establishing either that the defendant wrongfully secured the benefit or passively received a benefit that it would be unconscionable to retain.

Com. ex rel. Pappert v. TAP Pharmaceutical Products, Inc., 885 A.2d 1127, 1137 (Pa. Cmwlth. 2005) (citations omitted). The Petition filed in this case clearly sets forth a legal and factual basis with respect to all of the foregoing elements in that it paid obligations that were those of SWIF.

Moreover, SWIF's reliance on Section 305.2 of the Act to avoid liability for the sums paid by Liberty Mutual is misplaced. First, by its terms, Section 305.2 only applies to injuries occurring outside of Pennsylvania and provides that such injuries may be covered by the Act if the employment is deemed to be "principally localized" in Pennsylvania under its provisions. Section 305.2(a) of the Act, 77 P.S. §411.2(a) ("If an employe, while working outside the territorial limits of this State, suffers an injury on account of which he ... would have been entitled to the benefits provided by this act had such injury occurred within this State, such employe ... shall be entitled to the benefits provided by this act..." if one of four enumerated conditions is present.); *McIlvaine Trucking, Inc. v. Workers' Compensation Appeal Board (States)*, 570 Pa. 662, 669-72, 810 A.2d 1280, 1284-86 (2002). Moreover, while Section 305.2(b) provides for a credit for

medical and income benefits paid under the workers' compensation law of another state, or that an award under the Act does not exclude coverage under that law, it does not preclude the reimbursement of benefits improperly paid under that law as alleged in this case.⁹

Accordingly, Respondents' preliminary objections to Petitioners' claims for declaratory and injunctive relief and counsel fees under the Act are sustained and those claims are dismissed. The remaining preliminary objections are overruled and Respondents are directed to file an answer to the Petitioners' unjust enrichment claim within thirty (30) days.

DAN PELLEGRINI, President Judge

⁹ The cases cited by SWIF are inapposite because they do not deal with the erroneous payment of compensation. *See Lesco Restoration v. Workers' Compensation Appeal Board (Mitchell)*, 861 A.2d 1002, 1004-05 (Pa. Cmwlth. 2004), *appeal denied*, 584 Pa. 711, 885 A.2d 44 (2005) (holding that the apparent purpose of Section 305.2 is to provide a claimant who is receiving, or has received, benefits from another jurisdiction with the right to file a petition under the Act for the same period to recover more generous benefits available under the Act); *Merchant v. Workers' Compensation Appeal Board (TSL, Ltd.)*, 758 A.2d 762, 768-69 (Pa. Cmwlth. 2000) (holding that while Section 322 of the Act, 77 P.S. §677, precludes double dipping, *i.e.*, receiving benefits under the Act and from another state for the same injury, it does not prohibit receiving benefits under the Act subsequent to the receiving benefits from another state for the same injury); *Robert M. Neff, Inc. v. Workers' Compensation Appeal Board (Burr)*, 624 A.2d 727, 731-32 (Pa. Cmwlth. 1993) (holding that Section 305.2 does not authorize an employer to enter an agreement with employees otherwise covered by the Act to bind them to significant lower benefit amounts or medical coverage under the laws of another state).

