[J-38A-2012, J-38B-2012 and J-38C-2012]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, ORIE MELVIN, JJ.

KATHLEEN TOOEY, EXECUTRIX OF THE ESTATE OF JOHN F. TOOEY, DECEASED, AND KATHLEEN TOOEY IN HER OWN RIGHT, Appellant v. AK STEEL CORPORATION (INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO ARMCO STEEL CORPORATION); CROWN CORK & SEAL COMPANY, INC. (INDIVIDUALLY, AS SUCCESSOR TO MUNDET CORK COMPANY, AND AS SUCCESSOR TO VAN DORN IRONWORKS COMPANY); E. E. ZIMMERMAN COMPANY; FOSECO, INC.; GEORGE V. HAMILTON, INC.; HEDMAN MINES, LTD; INSUL COMPANY, INC.; I.U. NORTH AMERICA, INC.; MCCANN SHIELDS PAINT COMPANY; OGLEBAY NORTON COMPANY (INDIVIDUALLY AND ON BEHALF OF ITS FERRO ENGINEERING DIVISION); TASCO INSULATIONS, INC. (INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO ASBESTOS SERVICE COMPANY); THE GAGE COMPANY (FORMERLY PITTSBURGH GAGE AND SUPPLY CO.); THEIM CORPORATION, AND ITS DIVISION UNIVERSAL REFRACTORIES CORPORATION; AND UNITED STATES STEEL CORPORATION, Appellees	: No. 21 WAP 2011 : : Appeal from the Order of the Superior Court entered August 31, 2010 at No. 1540 WDA 2009, reversing the Order of the Court of Common Pleas of Allegheny County entered June 10, 2008 at No. GD 08-005721 and remanding. : : ARGUED: April 10, 2012

SPURGEON E. LANDIS AND MARY A. LANDIS, HIS WIFE, Appellants v. A.W. CHESTERTON COMPANY; UNION CARBIDE CORPORATION; CBS CORPORATION, FORMERLY KNOWN AS VIACOM, INC., AS SUCCESSOR-BY-MERGER TO CBS CORPORATION, SUCCESSOR-IN-INTEREST TO WESTINGHOUSE ELECTRIC CORPORATION; INGERSOLL-RAND COMPANY; GRINNELL CORPORATION; GOULDS PUMPS, INC.; GREENE TWEED & COMPANY; HEDMAN MINES, LTD.; GARLOCK SEALING TECHNOLOGIES, LLC; CRANE COMPANY; CERTAINTEED CORPORATION; SAFETY FIRST INDUSTRIES, INC., IN ITS OWN RIGHT AND AS SUCCESSOR-IN-INTEREST TO SAFETY FIRST SUPPLY, INC.; ALLOY RODS CORPORATION, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO ALLOY RODS COMPANY; CHEMETRON CORPORATION, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO ALLOY RODS CORPORATION AND ALLOY ROD COMPANY; THE ESAB GROUP, INC., INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO ALLOY RODS CORPORATION, ALLOY RODS COMPANY AND CHEMETRON CORPORATION; SAINT GOBAIN ABRASIVES, INC. (F/K/A NORTON COMPANY-SAFETY PRODUCTS DIVISION-USA NORTH COMPANY); AND HAJOCA CORPORATION, Appellees	: No. 22 WAP 2011 : : Appeal from the Order of the Superior Court entered August 31, 2010 at No. 1541 WDA 2009, reversing the Order of the Court of Common Pleas of Allegheny County entered June 10, 2008 at No. GD 08-002317 and remanding. : : ARGUED: April 10, 2012

SPURGEON E. LANDIS AND MARY A. LANDIS, HIS WIFE, Appellants v. A.W. CHESTERTON COMPANY; UNION CARBIDE CORPORATION; CBS CORPORATION, FORMERLY KNOWN AS VIACOM, INC., AS SUCCESSOR-BY-MERGER TO CBS CORPORATION, SUCCESSOR-IN-INTEREST TO WESTINGHOUSE ELECTRIC CORP.; INGERSOLL-RAND COMPANY, GRINNELL CORPORATION; GOULDS PUMPS, INC; GREENE TWEED & COMPANY; HEDMAN MINES LTD.; GARLOCK SEALING TECHNOLOGIES, LLC; CRANE COMPANY; CERTAINTEED CORPORATION; SAFETY FIRST INDUSTRIES INC., IN ITS OWN RIGHT AND AS SUCCESSOR-IN-INTEREST TO SAFETY FIRST SUPPLY, INC., ALLOY RODS CORPORATION, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO ALLOY RODS COMPANY; CHEMETRON CORPORATION, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO ALLOY RODS CORPORATION AND ALLOY RODS COMPANY; THE ESAB GROUP INC., INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO ALLOY RODS CORPORATION, ALLOY RODS COMPANY AND CHEMETRON CORPORATION; SAINT GOBAIN ABRASIVES, INC. (F/K/A NORTON COMPANY - SAFETY PRODUCTS DIVISION-USA NORTH COMPANY); AND HAJOCA CORPORATION, Appellees	: No. 23 WAP 2011 : : Appeal from the Order of the Superior Court entered August 31, 2010 at No. 1542 WDA 2009, reversing the Order of the Court of Common Pleas of Allegheny County entered June 10, 2008 at No. GD 08-002317 and remanding. : : ARGUED: April 10, 2012

OPINION

MADAME JUSTICE TODD **DECIDED: NOVEMBER 22, 2013**

In these consolidated appeals, we consider whether the manifestation of an occupational disease outside of the 300-week period prescribed by Section 301(c)(2) of the Workers' Compensation Act (the "WCA" or the "Act"),[1] 77 P.S. § 411(2), removes the claim from the purview of the Act, such that the exclusivity provision of Section 303(a) of the Act, 77 P.S. § 481, does not apply. For the reasons that follow, we conclude that claims for occupational disease which manifests outside of the 300-week period prescribed by the Act do not fall within the purview of the Act, and, therefore, that the exclusivity provision of Section 303(a) does not apply to preclude an employee from filing a common law claim against an employer. Accordingly, we reverse the decision of the Superior Court.

John Tooey worked for Ferro Engineering ("Ferro"), a division of Oglebay-Norton Co. ("Oglebay"), as an industrial salesman of asbestos products from 1964 until 1982, during which time he was exposed to asbestos dust. In December 2007, Tooey developed mesothelioma and died less than one year later. Spurgeon Landis worked for Alloy Rods, Inc. ("Alloy"), predecessor in interest to Chemetron Corp. ("Chemetron"), and ESAB Group, Inc. ("ESAB"), from 1946 until 1992. He, too, was exposed to asbestos throughout his employment, and, in July 2007, was diagnosed with mesothelioma.

In 2008, Tooey, Landis, and their spouses (hereinafter "Appellants") filed separate tort actions against multiple defendants, including their respective employers (collectively, "Employers"). Employers filed motions for summary judgment, alleging

[1] Act of June 2, 1915, P.L. 736 (as amended, 77 P.S. §§ 1-1041.1; 2501-2626).

Appellants' causes of action were barred by the exclusivity provision of Section 303(a) of the Act.[2] Appellants responded that the Act, the federal and state constitutions, and precedent from this Court, permit a tort action against an employer where, as here, a disease falls outside the jurisdiction, scope, and coverage of the Act. The trial court agreed with Appellants, and denied Employers' motions for summary judgment.

Employers filed an interlocutory appeal with the Superior Court, which reversed in an unpublished memorandum decision. In so doing, the court concluded it was bound by its recent decisions in Ranalli v. Rohm & Haas Co., 983 A.2d 732 (Pa. Super. 2009), and Sedlacek v. A.O. Smith Corp., 990 A.2d 801 (Pa. Super. 2010). In Ranalli, the Superior Court determined that the fact that the plaintiff's injuries, which resulted from his exposure to vinyl chloride and manifested more than 300 weeks after his last employment, were not compensable under the Act did not render the exclusivity provision of Section 303(a) inapplicable. The Superior Court reasoned that application of Section 303(a) "does not deny access to the courts, rather it limits recovery as contemplated by the legislative scheme." Ranalli, 983 A.2d at 735. Similarly, in Sedlacek, the Superior Court observed that both the WCA and the Occupational Disease Act ("ODA"), 77 P.S. §§ 1201 *et seq.*, contain provisions which purport to limit

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[2] Section 303(a) of the Act provides:

> The liability of an employer under this act shall be exclusive and in place of any and all other liability to such employes, his legal representative, husband or wife, parents, dependents, next of kin or anyone otherwise entitled to damages in any action at law or otherwise on account of any injury or death as defined in section 301(c)(1) and (2) or occupational disease as defined in section 108.

77 P.S. § 481(a) (footnotes omitted). Pursuant to Section 108 of the Act, the term "occupational disease" includes, *inter alia*, "[a]sbestosis and cancer resulting from direct contact with, handling of, or exposure to the dust of asbestos in any occupation involving such contact, handling or exposure." 77 P.S. § 27.1(l).

compensation for disability or death resulting from occupational disease to injuries that occur within a defined period from the date of last employment, and the court determined that such provisions do not violate the federal Due Process or Equal Protection Clause, or the Remedies Clause of the Pennsylvania Constitution.

Although the Superior Court in the instant case acknowledged Appellants' position that Ranalli and Sedlacek "improperly expanded the application of the exclusivity provision," the court concluded it lacked authority to overrule its prior decisions. Tooey v. AK Steel, 1540-42 WDA 2009, unpublished memorandum at 7 (Pa. Super. filed Aug. 31, 2010). Appellants filed a petition for allowance of appeal with this Court, and we granted review to determine (1) whether, under the plain language of Section 301(c)(2), the definition of "injury" excludes an occupational disease that first manifests more than 300 weeks after the last occupational exposure to the hazards of such disease, such that the exclusivity provision of Section 303(a) does not apply; (2) whether Section 301(c)(2), in conjunction with the exclusivity provision of Section 303(a), results in an unconstitutional denial of reasonable compensation under Pa. Const. Art. III, § 18; and (3) whether the substitution of an exclusive statutory remedy for a common law remedy for an occupational disease which is "invariably non-compensable" under the statutory remedy violates the Open Court and Remedies Clause of Pa. Const. Art. I, § 2 and the Due Process and Equal Protection Clauses of the federal and state constitutions. Tooey v. AK Steel Corp., 610 Pa. 405, 20 A.3d 1184 (2011) (order).

As it is this Court's policy to resolve claims on non-constitutional grounds when it is possible to do so, see, e.g., Commonwealth v. Long, 592 Pa. 42, 50, 922 A.2d 892, 897 (2007), we first consider Appellants' argument that, because their injuries are excluded from the definition of injury set forth in Section 301(c)(2), their claims do not

fall within the parameters of the Act, and, therefore, the exclusivity provision of Section 303(a) of the Act does not preclude them from pursuing common law claims against Employers. As this issue raises a question of law, our standard of review is *de novo* and our scope of review is plenary. Dechert LLP v. Commonwealth, 606 Pa. 334, 340, 998 A.2d 575, 579 (2010).

The WCA was designed "to compensate claimants for earnings loss occasioned by work-related injuries." City of Erie v. W.C.A.B. (Annunziata), 575 Pa. 594, 601, 838 A.2d 598, 602 (2003). The Act seeks "to provide recompense commensurate with the damage from accidental injury, as a fair exchange for relinquishing every other right of action against the employer." Id. Indeed, Section 303(a) of the Act specifies that "liability of an employer under the act shall be exclusive and in place of any and all other liability to such employes." 77 P.S. § 481(a). We have further explained that "[t]he goal of the workers' compensation legislative scheme is to relieve the employee 'from the economic consequences of his injury and make [those consequences] a part of the cost of operation of the business, to be paid ultimately by the consuming public.'" Annunziata, 575 Pa. at 601, 838 A.2d at 602 (quoting Rudy v. McCloskey Corp., 348 Pa. 401, 35 A.2d 250, 253 (1944)).

Relevant to the case *sub judice*, Section 301(c)(2) of the Act provides, in pertinent part:

> The terms "injury," "personal injury," and "injury arising in the course of his employment," as used in this act, shall include . . . occupational disease as defined in section 108 of this act [i.e., 77 P.S. § 27.1]: *Provided, That whenever occupational disease is the basis for compensation, for disability or death under this act, it shall apply only to disability or death resulting from such disease and occurring within three hundred weeks after the last date of employment* in an occupation or industry to which he was exposed to hazards of such disease: And provided further, That if the employe's

> compensable disability has occurred within such period, his subsequent death as a result of the disease shall likewise be compensable.

77 P.S. § 411(2) (emphasis added).

Appellants argue that, under the plain language of Section 301(c)(2), an occupational disease which first manifests more than 300 weeks after the last occupational exposure to the hazards of the disease does not fall within the definition of injury set forth in Section 301(c)(2); that the Act, therefore, does not apply to employees seeking compensation for such diseases; and, accordingly, that the exclusivity provision of Section 303(a) does not preclude an employee from seeking recovery for such disease through a common law action against an employer. Appellants contend their interpretation of the statutory language is supported by general rules of grammar, and, to the extent the statute may be deemed ambiguous, that their interpretation is consistent with the humanitarian purposes of the Act, as well as precedent from this Court.

Employers, conversely, assert that Section 303(a), by its express language, "unequivocally precludes current or former employees from making civil claims for damages against their employers for work-related injuries," including occupational disease claims. See, e.g., ESAB/Chemetron Brief at 9-10. Employers, like Appellants, argue their interpretation is supported by recognized principles of grammar, the underlying purpose of the Act, and this Court's prior decisions interpreting the Act. Additionally, Employers emphasize the distinction between compensability and coverage under the Act, and they contend that Section 301(c)(2) is a valid statute of repose that serves as a temporal limitation on recovery, rather than a jurisdictional limitation of the Act.

It is well settled that "[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall

be construed, if possible, to give effect to all its provisions." 1 Pa.C.S.A. § 1921(a). Further, "[i]n giving effect to the words of the legislature, we should not interpret statutory words in isolation, but must read them with reference to the context in which they appear." Giant Eagle, Inc. v. W.C.A.B. (Givner), 614 Pa. 606, 39 A.3d 287, 290 (Pa. 2012) (citation omitted). When construing statutory language, "[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage." 1 Pa.C.S.A. § 1903. Furthermore, when reviewing issues concerning the Act, we are mindful that the Act is remedial in nature and its purpose is to benefit the workers of this Commonwealth. Thus, the Act is to be liberally construed to effectuate its humanitarian objectives, and borderline interpretations are to be construed in the injured party's favor. Sporio v. W.C.A.B. (Songer Const.), 553 Pa. 44, 49, 717 A.2d 525, 528 (1998).

Turning to the pertinent language of Section 301(c)(2) − "whenever occupational disease is the basis for compensation, for disability or death under this act, it shall apply only to disability or death resulting from such disease and occurring within three hundred weeks after the last date of employment in an occupation or industry to which he was exposed to hazards of such disease" − Appellants contend that the word "it" in the phrase "it shall apply," refers to "this act" and not to "the basis for compensation." Thus, they read Section 301(c)(2) as follows: "whenever occupational disease is the basis for compensation, for disability or death under this act, this act shall apply only to disability or death resulting from such disease and occurring within three hundred weeks after the last date of employment."

In support of their argument, they rely on "an elementary rule of grammar, [that] a pronoun may substitute for or refer to an immediately preceding noun." Appellants' Brief at 16 (citing The Chicago Manual of Style, § 5.34 (15th ed. 2003)). They further

assert that, while a legislative act is frequently said to "apply," the phrase "basis for compensation" is not ordinarily used in the same manner.

Employers, on the other hand, argue that the term "it" in the phrase "it shall apply only to disability or death," refers to the term "compensation," an interpretation they contend is supported by the rules of grammar concerning restrictive and nonrestrictive clauses. Specifically, Employers assert:

> A restrictive clause is a clause that is essential to the meaning of a sentence, including the identification of nouns or pronouns in the sentence. It is not set off by commas.
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> By contrast, nonrestrictive clauses, which contain non-essential and mere explanatory information, are set apart from the rest of the sentence by a pair of commas. Nonrestrictive clauses "do not restrict the meaning of the word or words they relate to …; they could be removed from the sentence without changing the [sentence's] basic meaning." The pair of commas around a nonrestrictive clause act exactly like a pair of parentheses.

Brief for ESAB/Chemetron, at 20 (citations omitted). Applying these grammatical rules to Section 301(c)(2), Employers argue that the phrase "for disability or death under this act," is nonrestrictive, such that the word "it" clearly refers to the word "compensation," and not "act." Id. at 21. Thus, Employers read Section 301(c)(2) as follows: "whenever occupational disease is the basis for compensation, for disability or death under this act, compensation shall apply only to disability or death resulting from such disease and occurring within three hundred weeks after the last date of employment."[3]

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[3] Employers, in arguing that the word "it" refers to the word "compensation," and not "act," ignore the possibility that the word "it" might refer to the word "act," as contained in the preamble, which states: "The terms 'injury,' 'personal injury,' and 'injury arising in the course of his employment,' as used in this act, shall include . . . occupational disease as defined in section 108 of this act."

Upon review, we find Appellants' interpretation of the language of Section 301(c)(2) to be the most reasonable one. Although both Appellants and Employers make grammatical arguments based on punctuation placement, the common and approved usage of the terms in Section 301(c)(2) clearly support Appellants' interpretation of the statute. While an act generally is described as applying or not applying in certain situations, the term "compensation" is not invoked in the same manner. Indeed, our research reveals no published decision in which any Pennsylvania court has utilized the verb "apply" to describe the term "compensation." Similarly, there are no Pennsylvania statutes which invoke the terms "apply" and "compensation" in this manner. Thus, we conclude that the term "it" applies not to "compensation," but to the term "act," as contained in (1) the phrase "for disability or death under this act" immediately preceding "it"; and/or (2) the phrase "as used in this act" in the preamble to Section 301(c)(2). Accordingly, we construe Section 301(c)(2) as follows: "whenever occupational disease is the basis for compensation, for disability or death under this act, [the act] shall apply only to disability or death resulting from such disease and occurring within three hundred weeks after the last date of employment."

Assuming, for purposes of argument, that Employers' interpretation of Section 301(c)(2) also is reasonable, such that there exists an ambiguity, see Giant Eagle, 39 A.3d at 294 (where there are at least two reasonable interpretations of statutory text, there exists an ambiguity), we turn, as the parties do in the alternative, to further principles of statutory construction. See 1 Pa.C.S.A. § 1921(c). In determining the intent of the legislature with regard to Section 301(c)(2), we are guided primarily by consideration of the occasion and necessity for the statute; the object to be attained; and the consequences of the proposed interpretations.

This Court has recognized that the Act "substitutes a quick and inexpensive scheme to provide compensation for work-related injuries in place of the common law process where the employee must sue the appropriate parties for damages. Employers pay benefits at a set rate and they are immune from common-law liability." Sporio, 553 Pa. at 53, 717 A.2d at 530 (citation omitted); see also Markle v. W.C.A.B. (Caterpillar Tractor Co.), 541 Pa. 148, 153, 661 A.2d 1355, 1357 (1995) ("Worker's Compensation can best be understood as a replacement of common law tort actions between employees and employers as a means for obtaining compensation for injuries.").

With regard to the exclusivity provision of Section 303(a), this Court, in Alston v. St. Paul Ins. Cas., explained that Section 303(a):

> reflects the historical quid pro quo between an employer and employee whereby the employer assumes liability without fault for a work-related injury, but is relieved of the possibility of a larger damage verdict in a common law action. The employee benefits from the expeditious payment of compensation, but forgoes recovery of some elements of damages.

531 Pa. 261, 267, 612 A.2d 421, 424 (1992).[4] We have repeatedly stressed, however, that the Act is "remedial in nature and intended to benefit the worker, and, therefore, the

[4] Notably, the Act did not always provide the exclusive remedy for workplace injuries. Prior to 1974, participation in the Workers' Compensation system was elective, although there existed a rebuttable presumption that the employer and its employees accepted the compensation scheme. See, e.g., Bowman v. Sunoco, Inc., 65 A.3d 901, 907-08 (Pa. 2013); see also McKinney Mfg. Corp. v. W.C.A.B., 305 A.2d 59, 61 (Pa. Cmwlth. 1973) (interpreting prior version of Act and noting "[o]ften forgotten or overlooked is the fundamental premise that when the employer and the employee accept the provisions of the Act[,] their relations become contractual and the employee receives the right to compensation under the statute."); Fonner v. Shandon, Inc., 555 Pa. 379, 375, 724 A.2d 903, 905 (1999) (observing that 1974 amendments made it mandatory for employers and employees to participate in the workers' compensation scheme).

Act must be liberally construed to effectuate its humanitarian objectives." Giant Eagle, 39 A.3d at 290; see also Lancaster Gen. Hosp. v. WCAB (Weber-Brown), 47 A.3d 831, 839 (Pa. 2012).

In the case *sub judice*, Appellants contend that, as a result of the 300-week time provision contained in Section 301(c)(2), in cases involving latent, asbestos-related mesothelioma, "the quid pro quo contemplated by the Act cannot be effectuated. The employee does not benefit from 'expeditious payment of compensation,' and in fact has no reasonable opportunity to obtain compensation at all." Appellants Brief at 19. Thus, according to Appellants, "[i]t would violate the spirit of the Act to . . . grant the employer full immunity based on the illusion that the employer bears 'no-fault' liability for the worker's non-compensable occupational injury." Id.

In support of their position, Appellants rely on this Court's prior decisions in Lord Corp. v. Pollard, 548 Pa. 124, 695 A.2d 767 (1997), Boniecke v. McGraw-Edison Co., 485 Pa. 163, 401 A.2d 345 (1979), and Greer v. U.S. Steel Corp., 475 Pa. 448, 380 A.2d 1221 (1977). In Lord Corp., the plaintiff filed a wrongful death action on behalf of her deceased husband, alleging he died as a result of complications from malignant nodular lymphoma caused by his exposure to toxic and deadly chemicals during his employment with Lord Corp.'s chemical products division. Lord Corp. filed preliminary objections to the complaint, alleging that the claim was barred by the exclusivity provisions of the WCA and the ODA. The trial court granted the preliminary objections and dismissed the complaint. On appeal, the Superior Court reversed, reasoning "the trial court's order granting a demurrer was premature because there had been no determination of compensability and this question could not be resolved from the pleadings." 548 Pa. at 127, 695 A.2d at 768.

On further appeal to this Court, an equally divided Court determined that an employee's common law action is not barred by the exclusivity provision of either the WCA or the ODA until there has been a final determination that the injury or disease in question is cognizable under either Act. The Opinion in Support of Affirmance provided, in relevant part:

> This Court has previously examined the question of whether an employee's common law action is barred under circumstances similar to those presented here. In Boniecke v. McGraw-Edison Co., 485 Pa. 163, 401 A.2d 345 (1979), an employee commenced an action in trespass against his employer after being denied relief under the ODA. The employer then filed a motion for summary judgment, contending, as Lord does in the present case, that the ODA and WCA bar all common law actions by an employee against his employer for occupational diseases. This Court rejected the employer's argument, holding that the employee's claims were not barred because although the employee had been denied relief under the ODA, there had been no adjudication of the employee's rights under the WCA, and "there [was] nothing in the record, aside from [the employer's] mere allegations, which would indicate that [the employee was] entitled to relief under the Acts. Boniecke, 485 Pa. at 167, 401 A.2d at 347.
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> We reached a similar conclusion in Greer [v. U.S. Steel Corp., 475 Pa. 448, 380 A.2d 1221 (1977)], wherein an employee sought common law recovery for a disease allegedly contracted in the course of employment due to the negligence of the employer. The employer's answer to the complaint claimed, in part, that the employee's exclusive remedy was under the ODA. In rejecting the employer's claim, we reasoned that:
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> > [i]n the pleadings we have no assertion by either side as to whether the existence of [the applicable conditions of the ODA] can or cannot be demonstrated nor have we had any argument by counsel as to who has the

> burden of proof on the issue. In any event, the uncertainty of this factual question makes it inappropriate for the grant of judgment on the pleadings.

Greer, 475 Pa. at 453, 380 A.2d at 1223.

> In accordance with our decisions in Boniecke and Greer, we would hold that an employee's common law action is not barred by the exclusivity provisions of either the WCA or the ODA until there has been a final determination that the injury or disease in question is cognizable under either Act. See Boniecke; Greer. Thus, in the present case, if it is determined that decedent's nodular lymphoma is compensable, then Pollard's common law action is barred. Conversely, if the facts do not warrant such a finding, her common law cause of action may be maintained.

Lord Corp., 548 Pa. at 128-29, 695 A.2d at 769 (Opinion in Support of Affirmance) (footnote omitted). According to Appellants, this Court's decisions in Lord Corp., Boniecke, and Greer support the conclusion that, because their claims are not compensable under the Act, the exclusivity provision of Section 303(a) does not bar their common law claims against Employers.

Employers, however, insist that the workers' compensation system was not intended to provide, in every case, either compensation for a workplace injury or an opportunity to seek redress at common law. Employers contend there is a difference between coverage and compensability under the Act, and they further suggest that individuals who contract mesothelioma or other latent asbestos-related diseases are not completely without a remedy at common law, as such individuals still may seek compensation from non-employer defendants. Employers additionally maintain that Section 301(c)(2) is a statute of repose which serves as a legitimate temporal limitation on recovery, as opposed to a jurisdictional limitation of the Act.

In support of their argument that the Act's remedies are exclusive, even where compensation is unavailable, Employers cite, *inter alia*, this Court's decision in Kline v. Arden H. Verner Co., 503 Pa. 251, 469 A.2d 158 (1983). In Kline, the plaintiff, a painter, was injured when he fell from a ladder. He applied for, and received, workers' compensation benefits for the month he was disabled. Subsequently, the plaintiff sought workers' compensation benefits for impotency resulting from his fall. When he was denied benefits, the plaintiff filed suit against his employer, alleging negligent conduct by another employee as the cause of his injury. Summary judgment was granted in favor of the employer, and, on appeal, this Court held the Act was the exclusive avenue of compensation. We explained:

> To change, alter or abolish a remedy lies within the wisdom and power of the legislature and in some instances, the courts. Access to a tribunal is not denied when the tribunal has no jurisdiction to entertain either the claim or the remedy. Time and circumstances require new remedies to adjust to new and unforeseen losses and conditions. To do so, facets of the society often require new immunities or larger responsibility, as the legislature may determine. The workmen's compensation law has deprived some of rights in exchange for surer benefits, immunized some, to make possible resources to benefit many, who where [sic] heretofore without possible or practical remedies.

Id. at 255, 469 A.2d 160.

Employers additionally assert that this Court "recognized the crucial distinction between 'coverage' and 'compensation' under the WCA in Moffett v. Harbison-Walker Refractories Co., 339 Pa. 112, 14 A.2d 111 (1940)." Brief for Oglebay at 29; see also Brief of ESAB/Chemetron at 25. In Moffett, a partially-disabled employee sought relief at common law for work-related silicosis because the WCA and the ODA provided relief only for total disability. In holding the WCA provided the exclusive avenue of compensation, this Court stated:

> the original act, providing for accidental injuries, allowed no compensation until after a definite period, provided no compensation to nonresident dependents, and allowed nothing for disfigurement. That was the legislative policy and was well understood when the supplement of 1937 was passed. In harmony with that policy, the legislature, in providing for compensation for silicosis, made other exceptions: section 5(a) provided it 'shall be paid only when it is shown that the employe has had an aggregate employment of at least two years in the Commonwealth of Pennsylvania, during a period of eight years next preceding the date of disability, in an occupation having a silica or asbestos hazard.' It is inconceivable that the legislature intended, for example, that a person recently come into the state, and becoming totally disabled, within two years, should have the right to sue in tort and that after two years he should be subject only to the compensation statute. We think in each case the employe's contract resulted from the statute and in each case was the same; he gave up his right to sue in tort for the absolute certainty provided by the Act of receiving the compensation on bringing himself within its compensatory clauses. By coming under the Act, plaintiff surrendered his right, in the words of the Act 'to any method of determination thereof, other than as provided, in article three.'

339 Pa. at 115-16, 14 A.2d at 113.

Upon review, it is evident that this Court's decisions in Lord, Greer, and Boniecke support Appellants' construction of the Act. See Sporio, supra. Moreover, we find neither Kline, nor Moffett, compels the conclusion for which Employers advocate. With respect to Employers' reliance on Moffett, we note that Moffett was decided prior to 1974, when participation in the workers' compensation system was elective, and employees could opt out of a system which might deprive them of compensation for an entire category of injuries. See supra note 4. Employees no longer have that option, and are required to participate in a system that likely will deny them the opportunity to seek compensation from their employer for any late-manifesting work-related injuries.

Furthermore, in Kline, this Court recognized that "the injury suffered was clearly within the scope of the Act and the appellant was fully compensated under the Act." 503 Pa. at 255, 469 A.2d at 160. Unlike the plaintiff in Kline, Appellants herein did not and, indeed, *could not* seek any compensation under the Act, given the fact that their injuries did not manifest until nearly 780 weeks (in the case of Mr. Landis), and 1300 weeks (in the case of Mr. Tooey), after their employment-based exposure to asbestos. Indeed, the average latency period for mesothelioma is 30 to 50 years. See Daley v. A.W. Chesterton, Inc., 37 A.3d 1175, 1188 (Pa. 2012). Even mesothelioma that manifests at the lower end of this average will not occur for decades following an employee's exposure to asbestos. Thus, Section 301(c)(2)'s 300-week time window operates as a *de facto* exclusion of coverage under the Act for essentially all mesothelioma claims.[5]

Recently, in Bowman, supra, this Court again considered the historical development of the Act. In Bowman, we addressed the issue of whether a third-party workers' compensation release signed by an employee as a condition of her employment was void against public policy to the extent the language of the release conflicted with the language of Section 204(a) of the Act. We determined that the release was enforceable and not against public policy, as Section 204(a) prohibits agreements to waive workers' compensation claims only against the employer, not third parties. In reaching our conclusion, we observed:

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[5] The dissent, challenging our *de facto* exclusion conclusion, is correct in noting that the latency period is measured from the first exposure, whereas the 300-week time period is measured from the last exposure, and that, as a result, some mesothelioma claims could theoretically be covered by the Act for persons "who have had a long occupational history of exposure." Dissenting Opinion at 17 n.11. However, we question the size of such a group, as, essentially, such persons would have to have had asbestos exposure at the beginning, and continuously up and towards the end (less 300 weeks), of a 30 to 50 year period of employment.

> The Act, as originally conceived, established a dual system of recovery for injured employees against their employers−principally through the Article III schedule, but, barring that, through an action at law under Article II.
>
> Article II remains in the Act, although modified considerably. Section 204(a) now contains a series of provisions pertaining only to offsets enjoyed by the employer to be applied to specific compensation benefits an employer is obligated to pay under §§ 108 or 306 of the Act. In addition, § 305(d) explicitly provides an action at law pursuant to Article II continues to be available to any employee whose employer is either uninsured or not an approved self-insurer. See 77 P.S. §501(d) ("When any employer fails to secure the payment of compensation under this act as provided in sections 305 and 305.2, the injured employee or his dependents may proceed either under this act or in a suit for damages at law as provided by article II.").

Bowman, 65 A.3d at 908 (footnote omitted). We noted that the Act, in providing for a dual system of recovery, "made it a violation of public policy for an employer to avoid *both* recovery tracks." Id. Were this Court to interpret Section 301(c)(2) as Employers suggest, and hold that Appellants are precluded from seeking damages at common law for their injuries, notwithstanding their inability to seek compensation under the Act, we would enable exactly what this Court in Bowman recognized the Act was intended to prohibit − an employer's avoidance of liability through both recovery tracks.

Indeed, the consequences of Employers' proposed interpretation of the Act to prohibit an employee from filing an action at common law, despite the fact that employee has no opportunity to seek redress under the Act, leaves the employee with *no remedy* against his or her employer, a consequence that clearly contravenes the Act's intended purpose of benefitting the injured worker. It is inconceivable that the legislature, in enacting a statute specifically designed to benefit employees, intended to

leave a certain class of employees who have suffered the most serious of work-related injuries without any redress under the Act or at common law.

The dissent suggests that allowing employees to seek damages at common law when they cannot proceed under the Act "would expose employers to potentially unlimited liability for occupational diseases, an exposure that could undermine the compromise of interests" between the employers and employees manifest in the Act. Dissenting Opinion at 14. The dissent fails to acknowledge, however, as we have repeatedly emphasized, that the Act is "remedial in nature and intended to benefit the worker, and, therefore, the Act must be liberally construed to effectuate its humanitarian objectives." Giant Eagle, 39 A.3d at 290; see also Lancaster Gen. Hosp., 47 A.3d at 839. Thus, close interpretations should be resolved in favor of the employee.

Furthermore, we recognize that Section 301(c)(2), which requires that an occupational disease-based disability manifest within 300 weeks of an employee's last exposure to the hazards of the disease, "was intended to prevent stale claims, and prevent speculation over whether a disease is work-related years after an exposure occurred." Sporio, 553 Pa. at 50, 717 A.2d at 528 (citation omitted). However, allowing an employee to seek recovery for occupational disease-based injuries at common law when the disease does not manifest within 300 weeks of the last employment-based exposure does not, in and of itself, malign this objective. Employers, like any other entity not covered by the Act, will be subject to traditional tort liability requiring a showing by the plaintiff of, *inter alia*, negligence on the part of the employer, and employers will retain all of their common law defenses. Plaintiffs, in turn, will bear the higher burden of proof in terms of causation and liability.[6] As a result, contrary to the

[6] As this Court recognized in Daley v. A.W. Chesterton, Inc., 614 Pa. 335, 37 A.3d 1175 (Pa. 2012), mesothelioma is an extremely rare disease, even among persons exposed (continued…)

dissent's claim, employers are not exposed to "potentially unlimited liability." Dissenting Opinion at 14.

Thus, consideration of the relevant factors set forth in 1 Pa.C.S.A. § 1921(c), particularly the remedial purpose of the Act and the consequences of both Employers' and Appellants' proposed interpretations, indicates the legislature did not intend the Act to apply to claims for disability or death resulting from occupational disease which manifests more than 300 weeks after the last occupational exposure.

For the above reasons, we conclude the Act does not apply to Appellants' claims. As a result, we hold that the exclusivity provision of Section 303(a) does not preclude Appellants from seeking compensation for their injuries via a common law action against Employers, and, therefore, we reverse the Superior Court's decision reversing the trial court's denial of Employers' motion for summary judgment.[7]

Reversed. Case remanded to Superior Court for remand to the trial court for further proceedings.

Former Justice Orie Melvin did not participate in the decision of this case.

Mr. Chief Justice Castille and Messrs. Justice Eakin, Baer and McCaffery join the opinion.

Mr. Justice Saylor files a dissenting opinion.

(…continued)
to asbestos, and only between 1000 and 2000 cases of mesothelioma are diagnosed in the United States each year. 37 A.3d at 1188-89.

[7] In light of our holding, we need not address Appellants' constitutional claims.