

**[J-61-2014] [OAJC: Todd, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

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|--------------------------------|---|-----------------------------------------|
| DAVID CRUZ | : | No. 69 MAP 2012 |
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| | : | Appeal from the order of the |
| v. | : | Commonwealth Court at No. 636 CD 2011 |
| | : | dated October 19, 2011, reconsideration |
| | : | denied December 7, 2011, affirming the |
| WORKERS COMPENSATION APPEAL | : | order of the Worker's Compensation |
| BOARD (KENNETT SQUARE | : | Appeal Board, at No. A10-0632 dated |
| SPECIALTIES AND PMA MANAGEMENT | : | March 16, 2011. |
| CORPORATION) | : | |
| | : | |
| | : | ARGUED: November 28, 2012 |
| | : | RESUBMITTED: June 23, 2014 |
| APPEAL OF: KENNETT SQUARE | : | |
| SPECIALTIES AND PMA MANAGEMENT | : | |
| CORPORATION | : | |

CONCURRING AND DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: July 21, 2014

I agree claimant carried his burden of establishing he suffered an injury in the course of employment that resulted in a loss of earning power. See Majority Slip Op., at 12-16. I respectfully dissent because I remain of the opinion workers' compensation benefits "should yield to the injunction of [c]ongressional policy against employment of unauthorized aliens ... [and] we should assume that the legislature did not intend to reward those who violate federal law in obtaining employment by allowing them to participate in a social insurance scheme for Pennsylvania workers." Reinforced Earth Company v. Workers' Compensation Appeal Board (Astudillo), 810 A.2d 99, 111-12 (Pa. 2002) (Newman, J., dissenting, joined by Eakin, J.). I thus believe that if an employer puts a claimant's immigration status at issue, the claimant must establish he or she is legally entitled to work in the United States as a prerequisite to obtaining benefits under

the Workers' Compensation Act.¹ Since the claimant here failed to do so by refusing to testify regarding his immigration status, I would reverse the order of the Commonwealth Court.

Mr. Justice Stevens joins this concurring and dissenting opinion.

¹ I am not incognizant of the likelihood employer was aware of claimant's immigration status at the time claimant was hired and of the concomitant policy in permitting employer to "have its cake and eat it too" by shielding it from liability under the Workers' Compensation Act for being complicit in, if not an accomplice to, hiring unauthorized aliens contrary to federal immigration law. However, tougher employer sanctions for engaging in such behavior are to be found in the General Assembly, not this Court, and unauthorized aliens are not without recourse for injuries caused by their employer's negligence, because "[i]f an unauthorized alien is ineligible for benefits under the [Act], it follows that the employer should not enjoy the immunity from suit granted by 77 P.S. § 481 ... and [the employee] may sue the employer for injuries caused by the negligence of the employer." *Id.*, at 111 n.4; see also 77 P.S. § 481(a) (emphasis added) (stating "liability of an employer under this act shall be exclusive and in place of any and all other liability to such employes").