

PA SUPREME COURT: THE ACT DOES NOT ALLOW FOR A REFUND OF UNREASONABLE CONTEST ATTORNEY'S FEES TO THE EMPLOYER BY CLAIMANT'S COUNSEL

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County of Allegheny v. WCAB (Parker), No. 28 WAP 2017; No. 29 WAP 2017; Decided January 18, 2018; By Justice Baer

In early 2017, the Commonwealth Court held that unreasonable contest attorney's fees paid by an employer that were ultimately found to be erroneously awarded could be reimbursed to the employer by claimant's counsel. See, *County of Allegheny v. WCAB (Parker)*, 151 A.3d 1210 (Pa.Cmwlth. 2017). The case in question involved a 2007 Suspension Petition filed by the employer. A Workers' Compensation Judge (WCJ) granted the petition, but the Workers' Compensation Appeal Board later reversed the decision and ordered payment of unreasonable contest counsel fees. On remand from the Board, the WCJ awarded counsel fees, which the Board then affirmed on appeal. The employer then appealed to the Commonwealth Court and requested supersedeas as to the fees. The request was denied, however, and the court reversed the Board's decision, concluding that it erred in reversing the suspension of the claimant's benefits and in awarding counsel fees. The employer attempted to recoup payment of the fees by applying for supersedeas fund reimbursement. However, the fees were excluded from the reimbursement amount, since they were not reimbursable under §443 of the Act. The employer then filed a petition seeking to recover the fees directly from the claimant's attorney who received them. The petition was denied by the WCJ and the Board affirmed. However, the Commonwealth Court reversed, concluding that since the law allowed for an employer to recover erroneously-awarded litigation costs from claimant's counsel, they could also directly recover from claimant's counsel erroneously-awarded unreasonable contest attorney's fees.

In a unanimous decision, the Pennsylvania Supreme Court reversed the Commonwealth Court, holding that there was no mechanism under the Act to allow for an employer to recover directly from claimant's counsel unreasonable contest attorney's fees that were ultimately found to be not payable. According to the court's interpretation of the Act, there was no legislative intent to provide for disgorgement or reimbursement of attorney's fees, if the fees are ultimately found to be unwarranted. In the court's view, §440 of the Act was designed to discourage employers from contesting liability where doing so was questionable, and requiring a claimant's attorney to disgorge unreasonable contest fees previously paid in litigation would "chill" claimants' attorneys from bringing such claims and make employers more prone to bringing unreasonable challenges. ||



Francis X. Wickersham, Esq.
Shareholder
Workers' Compensation

620 Freedom Business Center
Suite 300
King of Prussia, PA 19406
Direct: (610) 354-8263
Fax: (610) 354-8299
Email: fxwickersham@mdwgc.com