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Workers' Compensation - Occupational Diseases - Statute of Limitations

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WORKERS' COMPENSATION—OCCUPATIONAL DISEASES—STATUTE OF LIMITATIONS—The Supreme Court of Pennsylvania held that the statute of limitations begins to run on claims for total disability due to occupational diseases under the Pennsylvania Workers' Compensation Act when the claimant knew or should have known that he or she suffered from total disability due to occupational disease.

Price v. Workmen's Compensation Appeal Board, 626 A.2d 114 (Pa. 1993).

John Price ("Appellant") was employed for thirty-five years as a maintenance employee at Metallurgical Resources ("Employer"), a lead refining and smelting plant.[1] Appellant routinely was exposed to lead-laden dust and loud noise in the scope of his employment.[2] Consequently, Appellant was unable to work for approximately one month as a result of a disability causally related to lead absorption.[3] Accordingly, Appellant was appropriately paid workers' compensation benefits for the one month period of alleged disability pursuant to the Pennsylvania Workmen's Compensation Act ("Act").[4] Appellant's lead poisoning disability terminated at the end of the one month period.[5]

Subsequently, Appellant resigned from his job with the Employer.[6] Appellant, upon resignation, notified Employer's plant physician that he was no longer capable of working as a result of

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1. Price v. Workmen's Compensation Appeal Board, 626 A.2d 114 (Pa. 1993). The smelting plant was located in Philadelphia, Pennsylvania. *Price*, 626 A.2d at 115.

2. *Id.*

3. *Id.* Specifically, Appellant did not work from April 25, 1979 to May 29, 1979. *Id.*

4. *Id.* The Pennsylvania Workers' Compensation Act, 77 PA. CONS. STAT. ANN. §§ 1 to 1031 (1991), states, in pertinent: "Every Employer shall be liable for compensation for personal injury to, or for the death of each employee, by an injury in the course of his employment, and such compensation shall be paid in all cases by the employer, without regard to negligence. . . ." 77 PA. CONS. STAT. ANN. § 431 (1991).

In order to obtain workers' compensation benefits under the Act, an employee must either enter into a compensation agreement with the employer or file a claim petition. 77 PA. CONS. STAT. ANN. § 751 (1991).

In 1993, the title of "The Pennsylvania Workmen's Compensation Act" was changed to "The Pennsylvania Workers' Compensation Act." 1993 Pa. Laws 44.

5. *Price*, 626 A.2d at 117. Specifically, Appellant's disability terminated on May 29, 1979, with the formal execution of a final receipt of workers' compensation benefits signed by the Appellant on May 30, 1979. *Id.*

6. *Id.* at 115. Appellant resigned in August of 1979. *Id.*

physical ailments emanating from adverse employment conditions at the plant.[7] Appellant specifically complained of overexposure to lead.[8] However, Appellant further informed Employer's plant physician that he could continue to work as long as he was not required to perform employment duties within the lead plant.[9] Thereafter, Employer's plant physician instructed Appellant to apply for unemployment compensation benefits[10] while he searched for a new source of future employment.[11] Hence, Appellant received two months of unemployment compensation because he was allegedly capable of full time employment outside of lead exposure and, as such, was neither partially nor totally disabled for work at that particular period in time.[12]

In March of 1983, Appellant was examined by a physician and diagnosed as suffering from severe physical impairments and disease as a result of the lead exposure.[13] Appellant's treating physician concluded that Appellant was totally disabled as a result of his work-related ailments.[14] Accordingly, Appellant filed a petition for workers' compensation benefits under the occupational disease provisions of the Act.[15] The workers' compensation referee[16] ac-

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7. *Id.*

8. *Id.*

9. *Id.*

10. *Price*, 626 A.2d at 115. Section 401 of the Unemployment Compensation Act, 43 PA. CONS. STAT. ANN. §§ 751 to 914 (1991), sets forth the qualifications required to secure compensation and provides in pertinent part as follows:

> Compensation shall be payable to any employee who is or becomes unemployed, and who: (c) has made a valid application for benefits with respect to the benefit year for which compensation is claimed and has made a claim for compensation in the proper manner and on the form prescribed by the department; (d)(1) is able to work and available for suitable work. . . .

43 PA. CONS. STAT. ANN. § 801 (1991).

11. *Price*, 626 A.2d at 115.

12. *Id.* The Act was designed specifically to compensate employees incapable of performing requisite employment duties as a result of injuries arising in the scope of employment; if an employee is capable of full time employment with the current employer then workers' compensation benefits are not an appropriate remedy. 77 PA. CONS. STAT. ANN. § 411 (1991).

The fact that the Appellant applied for unemployment compensation benefits provided the basis for the inference that he considered himself employable, and that unemployment authorities in granting benefits considered him able to accept suitable employment. *See* Masouskie v. Hammond Coal Co., 94 A.2d 55, 57 (Pa. Super. Ct. 1953).

13. *Price*, 626 A.2d at 115. Specifically, Appellant suffered from lead encephalopathy, peripheral neuropathy, noise-induced hearing loss, lead nephropathy, and severe chronic obstructive lung disease. *Id.*

14. *Id.*

15. *Id.* Section 411 of the Act provides in pertinent part as follows:

> The terms "injury" and "personal injury", as used in this act, shall be construed to

cepted the expert medical testimony of Appellant's treating physi-

mean an injury to an employe, regardless of his previous physical condition, arising in the course of his employment and related thereto, and such disease or infection as naturally results from the injury or is aggravated, reactivated or accelerated by the injury; and wherever death is mentioned as a cause for compensation under this act, it shall mean only death resulting from such injury and its resultant effects, and occurring within three hundred weeks after the injury. . . .

77 PA. CONS. STAT. ANN. § 411 (1991).

All claim petitions and all papers requiring action by the Department of Labor and Industry and its referees shall be sent to the Department at its principal office. 77 PA. CONS. STAT. ANN. § 714 (1991). Following proper filing of the claim petition with the Department of Labor and Industry, "the Department shall, in fulfillment of its responsibilities under [the] Act, enforce the time standards and other performance standards herein provided for the prompt processing of injury cases. . . ." 77 PA. CONS. STAT. ANN. § 710 (1991).

Section 717.1 of the Act provides in pertinent part as follows:

The employer and insurer shall promptly investigate each injury reported or known to the employer and shall proceed promptly to commence the payment of compensation due either pursuant to an agreement upon the compensation payable or a notice of compensation payable as provided in section 407, on forms prescribed by the department and furnished by the insurer.

77 PA. CONS. STAT. ANN. § 717.1 (1991).

However, if, after the injury, the potentially liable employer and the aggrieved employee "fail to agree upon the facts thereof or the compensation due under this Act, the employee or his defendants may present a claim petition for compensation to the [Department of Labor and Industry]." 77 PA. CONS. STAT. ANN. § 751 (1991). See also note 4 for the remedy provided to injured employees under the Act.

16. The entire administration of the Act is regulated by the Department of Labor and Industry which has extensive rule and regulation making powers. 77 PA. CONS. STAT. ANN. §§ 710, 836, 991(a) (1991). Referees are appointed to conduct workers' compensation hearings by and subject to the general supervision of the Secretary of the Department of Labor and Industry. 77 PA. CONS. STAT. ANN. § 701 (1991). Referees are civil service employees and are not required to have law degrees. *Id.*

Section 751 of the Act provides in pertinent part:

Whenever any claim for compensation is presented and the only issue involved is the liability between the defendant or the carrier or two or more defendants or carriers, the referee of the department to whom the claim in such case is presented shall forthwith order payments to be immediately made by the defendants of the carriers in said case. After the department's referee or the board on appeal, render a final decision, the payments made by the defendant or carrier not liable in the case shall be awarded or assessed against the defendant or carrier liable in the case, as costs in the proceedings, in favor of the defendant or carrier not liable in the case.

77 PA. CONS. STAT. ANN. § 751 (1991).

In further detail of the hearing procedure for workers' compensation claims, section 771 provides:

A referee of the department may, at any time, review and modify or set aside a notice of compensation payable and an original or supplemental agreement or upon petition filed by either party with the department, or in the course of the proceedings under any petition pending before such referee, if it be proved that such notice of compensation payable or agreement was in any material respect incorrect.

77 PA. CONS. STAT. ANN. § 771 (1991).

Under the Act, the referee must make, in writing, findings of fact, conclusions of law, and award or disallowance of compensations as the petition before him and the provisions of the Act require. 77 PA. CONS. STAT. ANN. § 833 (1991).

cian; however, the referee concluded that Appellant suffered from the alleged symptoms of occupational disease four years earlier.[17] The referee further concluded that since Appellant was aware that his subsequent physical ailments were causally related to his work activities at the time of his resignation, his workers' compensation claim petition filed nearly four years after his resignation was effectively barred by the three-year statute of limitations requirement set forth in the Act.[18]

The Workers' Compensation Appeal Board ("Board")[19] and the Commonwealth Court of Pennsylvania,[20] affirmed the referee's decision denying benefits to Appellant on the grounds that his claim was barred by the three-year statute of limitations.[21] Appellant petitioned the Supreme Court of Pennsylvania for a writ of allocatur.[22] The Supreme Court granted allocatur to address two specific issues raised by Appellant: (1) when the statute of limitations begins to run on a claim for total disability under the occupational disease provisions of the Act, and (2) when a claimant is charged with knowledge that he or she suffered total disability as the result of an occupational disease.[23]

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17. *Price*, 626 A.2d at 115.

18. *Id.* at 116. Section 315 of the Pennsylvania Workers' Compensation Act provides in pertinent part as follows: "In cases of personal injury all claims for compensation shall be forever barred, unless, within three years after the injury. . . . The term 'injury' in this section means, in case of occupational disease, disability resulting from occupational disease." 77 PA. CONS. STAT. ANN. § 602 (1991).

19. Each decision of a referee is subject to appeal to the Workers' Compensation Appeal Board. 77 PA. CONS. STAT. ANN. § 853 (1991). An appeal must be taken within 20 days after notice of a referee's award or disallowance of compensation has been served upon a party. 77 PA. CONS. STAT. ANN. § 853 (1991). The standard hearing conducted before the Workers' Compensation Appeal Board is an appellate hearing whereby briefs are appropriately filed and oral arguments are presented; hence, it is not an evidentiary hearing. 42 PA. CONS. STAT. ANN. § 763(a)(1) (1981).

20. Any party may appeal any action of the Board regarding a matter of law to the commonwealth court. 42 PA. CONS. STAT. ANN. §§ 763(a)(1), 5105(a)(2) (1981).

21. *Price*, 626 A.2d at 115.

22. Allocatur is the term used to denote that a writ or order is allowed. BLACK'S LAW DICTIONARY 75 (6th ed. 1990).

23. *Price*, 626 A.2d at 115. On appeal to the supreme court, Appellant acknowledged that he knew upon resignation that he was partially disabled as a result of lead absorption, but that he was not totally disabled from his work-related ailments. *Id.* at 116. Appellant claimed that he only became aware of his total disability through the medical examination by his treating physician. *Id.* Appellant further asserted that his claim petition for workers' compensation benefits fell within the three-year statutory period because the petition was timely filed within 30 days of the treating physician's diagnosis of total disability. *Id.* Further, Appellant argued that without a competent medical diagnosis, a claimant for occupational disease benefits under the Act should not be expected to realize he or she is totally disabled as a result of the occupational disease. *Id.*

The Supreme Court of Pennsylvania reversed the decisions of the Board and of the commonwealth court.[24] In so doing, the court clearly established that the statute of limitations begins to run on claims for total disability when the claimant knows or should know that he or she suffers from total disability due to occupational disease.[25] Consequently, the court maintained that the claimant's knowledge of total disability would likely follow a medical diagnosis.[26] Further, the court emphasized that although a medical diagnosis is not the only means by which a claimant could acquire knowledge of total disability due to occupational disease, a strong and persuasive presumption existed that the discovery of an occupational disease resulting in total disability initially resulted when the claimant became aware of such condition through competent medical diagnosis.[27]

The Supreme Court of Pennsylvania focused considerable attention on the commonwealth court's failure to consistently rule according to its own established precedent.[28] Previously, the commonwealth court had asserted that the statute of limitations did not begin to run on a claimant's claim petition for total disability benefits under the occupational disease provisions of the Act until the onset of total disability.[29] Therefore, the supreme court disagreed with the commonwealth court to the extent that its decision conflicted with its own previously established law.[30]

Additionally, the supreme court deemed it necessary to evaluate

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24. *Id.* at 116. Justice Papadakos wrote the opinion for the court. *Id.* at 115.

25. *Id.* at 117.

26. *Id.* The court relied on its previous decision in Ciabattoni v. Birdsboro, 125 A.2d 365 (Pa. 1956), for this proposition. *Ciabattoni* involved a claimant's appeal from the referee's decision dismissing a claim petition for compensation under the Pennsylvania Occupational Disease Act ("ODA"), 77 PA. CONS. STAT. ANN. §§ 1201 to 1603 (1991), on the ground that it was not filed within the time limits prescribed by the ODA. *Ciabattoni*, 125 A.2d at 366. The *Ciabattoni* court held that the statute of limitations period commences when a claimant knows by competent medical diagnosis that a disability was caused by an occupational disease. *Id.* at 367. See notes 66-70 and accompanying text for a discussion of *Ciabattoni*.

27. *Price*, 626 A.2d at 117.

28. *Id.* at 116. The court was referring to the prior commonwealth court decision in Findlay Refractories v. Workmen's Compensation Appeal Board, 415 A.2d 1270 (Pa. Commw. Ct. 1980). The commonwealth court had noted in *Findlay Refractories* that if partial disability triggered the three year period for filing a total disability claim, then an undesirable outcome could result since the onset of partial disability could transpire more than three years before disability became total. *Findlay Refractories*, 415 A.2d at 1274. See notes 72-77 and accompanying text for a discussion of *Findlay Refractories*.

29. *Price*, 626 A.2d at 116 (citing *Findlay Refractories*, 415 A.2d at 1274).

30. *Id.*

the method for determining Appellant's awareness that his total disability was work-related under the occupational disease provisions of the Act.[31] The court concluded that Appellant's claim for occupational disease benefits under the Act commenced after the medical diagnosis by his treating physician four years after his resignation.[32] Thus, although Appellant's symptoms existed prior to his resignation, the court reasoned that it did not necessarily follow that Appellant was totally disabled from his cumulative exposure.[33]

Moreover, the court focused on the fact that Appellant was still employable, although in a restricted capacity, on the day in which he last worked for his employer.[34] Furthermore, Appellant was also employable for the months following his voluntary resignation when he qualified and received unemployment benefits.[35] Further, the court reasoned that Appellant's disabling condition was not likely to be self-diagnosed as a total disability.[36] Hence, the supreme court concluded that it was unreasonable to infer that Appellant could, or should, have known that he was suffering from a

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31. *Id.* The court relied on the standard previously set forth in Jones & Laughlin Steel Co. v. Workmen's Compensation Appeal Board (Feiertag), 496 A.2d 412 (Pa. Commw. Ct. 1985), as well as part of the rationale enunciated in *Ciabattoni*. The commonwealth court concluded in *Feiertag* that the three-year filing period under the Act would commence when the claimant knew or should have known of the occupational disease disability. *Feiertag*, 496 A.2d at 415. See notes 78-89 and accompanying text for a discussion of *Feiertag*. The Supreme Court of Pennsylvania reasoned in *Ciabattoni* that because an occupational disease is often difficult to determine, the three-year statute of limitation could not commence until a competent medical evaluation had made claimant aware of the disability. *Ciabattoni*, 125 A.2d at 367.

32. *Price*, 626 A.2d at 117. The court did not distinguish total disability under the ODA, 77 PA. CONS. STAT. ANN. § 1201 (1991), and that arising under the occupational disease provision of the Act, 77 PA. CONS. STAT. ANN. §§ 411, 27.1 (1991), because in both instances a three-year statute of limitations applied. *Price*, 626 A.2d at 117. Section 1201 of the ODA reads in part as follows:

> [The Pennsylvania Occupational Disease Act] shall apply to disabilities and deaths by occupational disease as defined in this act, resulting from employment within this Commonwealth, irrespective of the place where the contract of hiring was made, renewed, or extended, and still not apply to any such disabilities and deaths resulting from employment outside the Commonwealth.

77 PA. CONS. STAT. ANN. § 1201 (1991).

33. *Price*, 626 A.2d at 117. In support of this conclusion, the court specifically noted that Appellant's lead poisoning disability had terminated as of May 29, 1979, when Appellant signed the final receipt of workers' compensation benefits paid on May 30, 1979. *Id.*

34. *Id.* Specifically, the court commented that the claimant was employable on August 31, 1979, the last day he worked for the Employer. *Id.*

35. *Id.* The supreme court adopted the reasoning set forth by Judge Barbieri in his dissent of the commonwealth court's opinion. Price v. Workmen's Compensation Appeal Board, No. 1205 C.D. 1987, slip op. at 4-6 (Pa. Commw. Ct. 1990) (Barbieri, J., dissenting).

36. *Price*, 626 A.2d at 117.

total disabling occupational disease prior to the medical diagnosis by his treating physician.[37] Therefore, the court asserted that Appellant was not required to file a claim petition until March of 1983, when he was first informed of the extent of his disability by a competent medical physician.[38] Because Appellant's claim petition for workers' compensation benefits was timely filed within one month of the diagnosis of total disability, it was in compliance with the time requirements of the Act.[39] Accordingly, the Supreme Court of Pennsylvania reversed and remanded the case to the Workers' Compensation Appeal Board for the appropriate award of workers' compensation benefits.[40]

The first Pennsylvania Workmen's Compensation Act addressing the issue of employment-related injuries and disabilities was originally enacted on June 2, 1915.[41] The enactment of the Pennsylvania Workmen's Compensation Act effectively eliminated the employee's common law tort cause of action against the employer for alleged work-related injuries.[42] The Act represented a compromise agreement between the employee and the employer; in exchange for the employee surrendering the right to file a civil action against the employer, the employer forfeited the right to raise the employee's potential contributory negligence or assumption of risk as affirmative defenses.[43] The sacrifice of common law affirmative defenses exposed the employer to the potential of increased liabilities and forced the legislature to institute strict time restrictions requiring the injured employee to assert a claim of disability within a specified period of time.[44]

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37. *Id.*

38. *Id.*

39. *Id.* The applicable section of the Act is 77 PA. CONS. STAT. ANN. § 602 (1991). See note 18 for the applicable statutory language.

40. *Price*, 626 A.2d at 118.

41. A. F. BARBIERI, PENNSYLVANIA WORKMEN'S COMPENSATION AND OCCUPATIONAL DISEASE § 2.01 at 4 (1975). Section 1 of the Act on June 2, 1915, reads as follows: "This act shall be called and cited as the Pennsylvania Workmen's Compensation Act of 1915, and shall apply to all accidents occurring within the Commonwealth, irrespective of the place where the contract of hiring was made, renewed or extended." 77 PA. CONS. STAT. ANN. § 1 (1915) (current version at 77 PA. CONS. STAT. ANN. § 1 (1991)).

42. David B. Torrey, *Time Limitations in the Pennsylvania Workmen's Compensation Act and Occupational Disease Acts: Theoretical Doctrine and Current Applications*, 24 DUQ. L. REV. 975, 978 (1986).

43. Torrey, cited at note 42, at 978. *See also* BARBIERI, cited at note 41, § 507 at 227 (stating that an employee cannot sue an employer for alleged injuries caused by deliberate derelictions of the employer).

44. Torrey, cited at note 42, at 979. Section 602 of the Act provides, in pertinent part, as follows:

In 1937, the Pennsylvania Legislature passed the first occupational disease act.[45] However, the original 1937 occupational disease law was repealed in 1939 when the legislature enacted an entirely separate statutory system for occupational diseases.[46] The Occupational Disease Act ("ODA") was designed to create an exclusive remedy for employees suffering from occupational disease arising in the course of employment.[47] Occupational diseases had

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> In cases of personal injury all claims for compensation shall be forever barred, unless, within three years after the injury the parties shall have agreed upon the compensation payable under this article; or unless within three years after the injury, one of the parties shall have filed a petition as provided in article four hereof.

77 PA. CONS. STAT. ANN. § 602 (1991).

45. Act of July 2, 1937, Pub. L. 552, 2714 (repealed 1939). The inaction of the Pennsylvania Legislature from 1915 to 1937 was attributable in part to the significant influence from major industries, especially those with known occupational hazards, which kept constant pressure upon state congressmen to avoid any changes to the status quo. BARBIERI, cited at note 41, § 7.01 at 9. Currently in the United States, all 50 states now provide general compensation coverage for occupational diseases. ARTHUR LARSON, WORKMEN'S COMPENSATION FOR OCCUPATIONAL INJURIES AND DEATH, § 41 at 7-480 (1993). Historically, occupational disease coverage always "lagged" behind general workers' compensation coverage for work-related accidents in the United States. LARSON, § 41.20 at 7-487.

46. BARBIERI, cited at note 41, § 2.01 at 4. The Occupational Disease Act reads, in pertinent part, as follows:

> This act shall be called and may be cited as the Pennsylvania Occupational Disease Act. It shall apply to disabilities and deaths caused by occupational disease as defined in this act, resulting from employment within this Commonwealth, irrespective of the place where the contract of hiring was made, renewed, or extended, and shall not apply to any such disabilities and deaths resulting from employment outside the Commonwealth.

77 PA. CONS. STAT. ANN. § 1201 (1991).

A large number of the coal mining companies in Pennsylvania strongly opposed the first Occupational Disease Act passed in 1937. BARBIERI, cited at note 41, § 7.01 at 9. In response to the influential opposition, the 1939 legislature created a separate occupational disease statute as a complete compensation system. *Id.* In order to avoid the burden of occupational disease liability upon the hazardous coal mining industry, special advantages were created in the law which limited liability on certain lung disease, including "silicosis, anthro-silicosis, coal worker's pneumoconiosis, or asbestos." *Id.* Specifically, section 1401 of the ODA reads as follows:

> Compensation for silicosis, or anthro-silicosis, coal worker's pneumoconiosis and asbestos, shall be paid only when it is shown that the employee has had an aggregate employment of at least two years in the Commonwealth of Pennsylvania, during a period of ten years next preceding the date of disability, in an occupation having silica, coal, or asbestos hazard.

77 PA. CONS. STAT. ANN. § 1401(d) (1991).

Through the enactment of "unusually restrictive defenses", the Pennsylvania legislature exhibited a strong desire to protect Pennsylvania industries from substantial occupational disease liability. BARBIERI, cited at note 41, § 7.01 at 11.

47. 1939 Pa. Laws 566, No. 284 (codified at 77 PA. CONS. STAT. ANN. § 1201 (1991)). The original title of the Occupational Disease Act stated that it was: "[An] act defining the liability of an employer to pay damages for occupational disease contracted by an employer arising out of and in the course of employment; establishing an elective schedule of compen-

not previously qualified for workers' compensation in Pennsylvania and could only be compensated by traditional tort actions at common law.[48] The ODA provided benefits for specifically enumerated occupational diseases, primarily diseases of the lungs.[49] Both the Act and the ODA were given a liberal interpretation by the courts in favor of the employee.[50]

No significant or substantial amendments were made to the Act following the 1937 and 1939 amendments until the legislature instituted the most sweeping changes by passing the 1972 amendments ("1972 amendments").[51] The 1972 amendments were instituted "to correct procedural deficiencies and assure the full payment of compensation when due."[52] Accordingly, the ODA of

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sation; providing procedure for the determination of liability and compensation thereunder." 1939 Pa. Laws 566, No. 284 (codified at 77 PA. CONS. STAT. ANN. § 1201 (1991)).

48. BARBIERI, cited at note 41, § 2.04 at 6.

49. 77 PA. CONS. STAT. ANN. § 1208 (1991). Section 1208 of the ODA provides in part as follows:

> The term "occupational disease," as used in this act, shall mean only the following diseases:
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> (k) Silicosis, anthraco-silicosis or coal-worker's pneumoconiosis (the latter two commonly known as Miner's Asthma and hereinafter referred to as anthraco-silicosis or coal worker's pneumoconiosis) in any occupation involving direct contact with, handling of, or exposure to the dust of anthracite or bituminous coal and or dust of silicon dioxide. . . .

77 PA. CONS. STAT. ANN. § 1208(k) (1991).

See also Kline v. Arden H. Verner Co., 469 A.2d 158 (Pa. 1983). The court in *Kline* concluded that the ODA did not automatically bar litigation involving alleged claims not covered by the ODA. *Kline*, 469 A.2d at 159. Furthermore, the legislature gradually liberalized the areas of coverage under the ODA to include additional new disease coverage after 1939. BARBIERI, cited at note 41, § 7.05 at 35.

50. Roschak v. Vulcan Iron Works, 42 A.2d 280 (Pa. Super. Ct. 1945). The court in *Roschak* concluded that the Occupational Disease Act was to be liberally construed in favor of the employee. *Roschak*, 42 A.2d at 284. See notes 58-65 and accompanying text for a discussion of *Roschak*.

The court's liberal interpretation of the ODA was especially significant in the adjudication of issues pertaining to the date when the statute of limitations began to run in cases of disability resulting from an occupational disease. BARBIERI, cited at note 41, § 7.05 at 35.

51. BARBIERI, cited at note 41, § 2.02 at 5.

52. BARBIERI, cited at note 41, § 2.03 at 6. The preamble statement of the Act of February 8, 1972 explains part of the motivation for the changes. *Id.* The preamble provides:

> Statutory limits on the amount of compensation payable for wage loss resulting from work-connected disabilities are so low that they prevent the majority of injury victims from receiving reasonable indemnity for their injuries and defeat the declared purpose of the law, namely to compensate injury victims to the extent of two thirds of their wage loss.

1972 Pa. Laws 159, No. 61 (codified at 77 PA. CONS. STAT. ANN. § 1 (1972) (current version at 77 PA. CONS. STAT. ANN. § 1 (1991)).

1939 was not repealed in any manner by the 1972 amendments.[53] The 1972 amendments also dramatically changed the definition of accident by substituting the word "injury" for "accident" as the basis of the cause of action.[54] The 1972 amendments further consolidated the provisions of the ODA into the Act.[55] The Act expanded the term "injury" to include the scheduled occupational diseases previously covered under the separate occupational disease system enacted in 1939.[56] The 1972 amendments also required that recovery for work "injury" must have been based upon either the suffering of an actual trauma or upon an enumerated occupational disease.[57]

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53. BARBIERI, cited at note 41, § 7.01(2) at 12. However, section 1000 of the Workers' Compensation Act provided that:

> No person who is qualified for or is receiving compensation under this [A]ct shall, with respect to the same period, receive compensation under the Pennsylvania Occupational Disease Act [77 PA. CONS. STAT. ANN. § 1201 (1991)]: Provided, however, that any person may pursue, in the alternative, a claim for compensation under this act and a claim for compensation under the Pennsylvania Occupational Disease Act.

77 PA. CONS. STAT. ANN. § 1000 (1991).

The maximum weekly compensation rate payable in occupational disease cases for total disability benefits under the 1939 Occupational Disease Act in the year 1973 was $60.00 per week, whereas the 1972 amendments substituted a compensation rate equal to two-thirds of the state-wide average weekly wage as the maximum; the average weekly wage was fixed at $150.00 in 1973. BARBIERI, cited at note 41, § 7.04(1) at 29.

54. BARBIERI, cited at note 41, § 3.04 at 8. See note 15 for the statutory definition of the term "injury." Under the 1972 amendments, section 411 of the Act seemingly provided that if there exists sufficient work causation, the employer's injury is compensable under the Act "regardless" of his previous physical condition. *See also* Lawrence B. Abrams, Comment, *Pennsylvania Workmen's Compensation: An Analysis Of Persistent Problems And Recent Legislative Reform*, 76 DICK. L. REV. 445, 465 (1972). The 1972 amendments compelled the courts to base compensability on causation with regard to the claimant's symptomology. *Id.*

55. Section 411(2) of the Act provides that: "The terms 'injury', 'personal injury', and 'injury arising in the course of his employment', as used in this act, shall include, unless the context clearly requires otherwise, occupational disease as defined in section 108 of this act." 77 PA. CONS. STAT. ANN. § 411(2) (1991).

Section 108 of the Act provides in pertinent part as follows:

> The term "occupational disease," as used in this act, shall mean only the following diseases:
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> (a) Poisoning by arsenic, lead, mercury, manganese, or beryllium, their preparations or compounds, in any occupation involving direct contact with, handling thereof, or exposure thereto . . . .
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> . . .
>
> (q) Coal worker's pneumoconiosis, anthraco-silicosis and silicosis (also known as miner's asthma or black lung) in any occupation involving direct contact with, handling of or exposure to the dust of anthracite or bituminous coal.

77 PA. CONS. STAT. ANN. § 27.1(a) and (q) (1991).

56. BARBIERI, cited at note 41, § 3.06 at 12.

57. *Id.* at 13. In Dunn v. Merck and Co., Inc., 345 A.2d 601 (Pa. 1975), the supreme court noted that the ODA was designed to be a vehicle for compensation in situations where

In *Roschak v. Vulcan Iron Works*,[58] the Superior Court of Pennsylvania addressed for the first time the issue of whether notice of occupational disease disability was given within the proper time requirement.[59] The workers' compensation referee had found that the claimant's disability and death were predominantly caused by an occupational disease.[60] However, in finding for the defendant, the referee disallowed compensation on the ground that notice of disability had not been given the employer within the time limit prescribed by the Act.[61] In so holding, the superior court was required to determine the point of time at which the disability began for purposes of the ODA.[62] The court emphasized that an occupational disease was insidious and the time of the resultant disability was often difficult to ascertain.[63] Consequently, the superior court opined that the claimant had no knowledge of his true disabling condition until he was properly diagnosed by a competent physi-

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the disease, though not enumerated specifically in the Act, was still generated by a compensable occupational hazard. *Dunn*, 345 A.2d at 603.

Furthermore, the 1972 amendments increased the statute of limitation period from sixteen months to two years. Act of February 8, 1972, 25 Pub. L. No. 12, § 2 (1972)(codified as 77 PA. CONS. STAT. ANN. § 602 (1972)). However, in 1974, the legislature changed the limitation period from two years to three years. Act of December 5, 1974, 782 Pub. L. No. 263, § 13 (1974) (codified as 77 PA. CONS. STAT. ANN. § 602 (1991)).

58. 42 A.2d 280 (Pa. Super. Ct. 1945).

59. *Roschak*, 42 A.2d at 281. The court stated that the Pennsylvania appellate courts had not previously addressed this specific issue. *Id.*

60. *Id.* at 280. The claimant was employed in defendant's foundry for approximately five years during which he was routinely exposed to dusty conditions from constant sand blasting. *Id.* The claimant notified the defendant/employer that he would be absent from work for an indefinite period of time as a result of an undiagnosed illness. *Id.* Claimant was absent from work for approximately seven months when he was diagnosed by a competent medical physician as suffering from advanced anthraco-silicosis. *Id.* at 281. Claimant filed a claim petition shortly thereafter under the applicable section of the ODA. *Id.*

61. *Id.* at 280. Specifically, section 311 of the ODA provided:

> Unless the employee or someone in his behalf, or some of the dependents or someone in their behalf, shall give notice of disability to the employer liable for compensation under this article, within fourteen (14) days after the disability begins, no compensation shall be due until such notice be given,and unless such notice be given within ninety days after the beginning of disability no compensation shall be allowed.

77 PA. CONS. STAT. ANN. § 1411 (1939) (current version at 77 PA. CONS. STAT. ANN. § 1411 (1991)).

The court decided that the time from when the period of ninety days was computed under the Act was the date of the "accident" and "injury"; whereas, under the ODA, the time was from the date the "disability begins" and "the beginning of the disability". *Roschak*, 42 A.2d at 282. The court opined that the time which starts the running of the statute of limitations was not easily fixed under the ODA. *Id.*

62. *Id.* at 281.

63. *Id.* at 282.

cian.[64] Hence, the court liberally interpreted the time of tolling of the statute of limitations for purposes of the ODA.[65]

Subsequently, the Supreme Court of Pennsylvania re-examined the issue of when the statute of limitations begins to run on claims filed under the ODA. In *Ciabattoni v. Birdsboro Steel Foundry and Machine Co.*,[66] the injured employee was found to be totally disabled from an occupational disease but was denied workers' compensation benefits by the referee because the appropriate claim petition was not timely filed.[67] On appeal, the court adopted the rationale introduced in *Roschak*.[68] The court reasoned in *Ciabattoni* that the statute of limitations ran from the date when the compensable disability, due to the occupational disease, began and that date was necessarily a variable one depending upon when the pertinent medical diagnosis was competently established to the knowledge of the claimant.[69] In finding for the claimant, the court further noted that an accident was distinguishable from an occupational disease in that an accident arose from a definite event, the time and place of which could invariably be determined; however, an occupational disease developed gradually over a long period of time.[70]

The Commonwealth Court of Pennsylvania addressed the issue of whether the three-year statute of limitations requirement could be triggered by partial disability.[71] In *Findlay Refractories v. Workmen's Compensation Appeal Board*,[72] the employer acknowledged that the claimant was totally disabled, but sought to avoid potential liability on the contention that the employee's claim petition was not timely filed.[73] The employer argued that the three-

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64. *Id.* Upon learning of his condition, the claimant in *Roschak* immediately filed his claim petition alleging total disability as a result of anthraco-silicosis in accord with the stringent time requirements of the Act. *Id.*

65. *Id.* at 284.

66. 125 A.2d 365 (Pa. 1956).

67. *Ciabattoni*, 125 A.2d at 366.

68. *Id.* at 368. The referee in *Ciabattoni* found that the claimant was totally disabled as a result of silicosis on December 22, 1952, but failed to file the appropriate claim petition until January 4, 1954. *Id.* at 367. Section 602 of the ODA required that all claims for compensation be filed within one year after the disability began. *Id.* (citing 77 PA. CONS. STAT. ANN. § 602). The claimant contended that the statute of limitations did not commence until the claimant knew or should have known that his disability was due to silicosis. *Id.*

69. *Ciabattoni*, 125 A.2d at 367.

70. *Id.* at 368.

71. See note 55 for the statutory definition of an injury regarding recognition of potential compensability under the ODA.

72. 415 A.2d 1270 (Pa. Commw. Ct. 1980).

73. *Findlay Refractories*, 415 A.2d at 1274. Claimant had been employed for 14 years

year period for filing a claim petition for total disability was triggered by claimant's prior partial disability.[74] However, the court responded that the onset of partial disability could easily have occurred more than three years before disability became total.[75] Therefore, if the claim-filing period commenced prior to the onset of total disability, the statutory right to file the claim could likely have expired before it accrued.[76] The court ruled accordingly, that the statute of limitations requirement was triggered only by the onset of total disability.[77]

The court applied the same rationale with respect to the statute of limitations and occupational disease in *Jones and Laughlin Steel Corporation v. Workmen's Compensation Appeal Board (Feiertag)*.[78] In *Feiertag*, the employer appealed an order of the Workmen's Compensation Appeal Board affirming the referee's award of benefits to claimant for disability resulting from occupational disease under the Act.[79] The court found that the claimant was disabled as of February 1976, when he was hospitalized.[80] However, the claimant was unaware of his disability and its work-related cause until he received his treating physician's medical report approximately five years later.[81] The employer argued that

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as a laborer for the defendant's refractories industry. *Id.* at 1271. As a result of adverse employment conditions, claimant experienced breathing difficulties throughout his last year of work. *Id.* Approximately four months after his last day of employment with the defendant, claimant filed a claim petition under the ODA claiming total disability due to silicosis. *Id.* The defendant employer argued that a tentative medical diagnosis of June 17, 1974, sufficiently informed the claimant of his disability; therefore, the claimant's amendment of the claim petition in November 1977, to proceed under the Act, was more than three years after the "injury" or knowledge of such injury. *Id.* at 1272.

74. *Findlay Refractories*, 415 A.2d at 1274.

75. *Id.*

76. *Id.*

77. *Id.*

78. 496 A.2d 412 (Pa. Commw. Ct. 1985). Senior Judge Barbieri wrote the opinion for the commonwealth court. *Id.* at 414.

79. *Feiertag*, 496 A.2d at 414. Claimant was employed with defendant from 1945 to January 17, 1974, whereby he was routinely exposed to arc-welder fumes, acid fumes and smoke. *Id.* Claimant was diagnosed in February 1976 as being totally disabled due to a work-related lung disease. *Id.* However, the examining physician failed to inform the claimant of his expert opinion. *Id.* Claimant was later examined by a second physician and diagnosed as suffering from work-related pneumoconiosis. *Id.* The second physician's report was forwarded to claimant's attorney who failed to divulge the information to claimant. *Id.* at 414. Upon learning of the contents of the medical report, claimant secured new legal counsel and proceeded to file a claim petition on January 13, 1981. *Id.* at 415. The referee awarded claimant compensation for a disability resulting from occupational disease. *Id.*

80. *Id.* at 416.

81. *Id.* The claimant received his treating physician's report on December 23, 1980. *Id.* at 416.

the claim petition[82] was filed outside of the three-year limitation period of the Act[83] and the claimant's request for compensation was therefore barred.[84] The court's rationale distinguished the two limitation periods enumerated in the Act.[85] The court noted that the starting point for the limitation period under the occupational disease provision of the Act was the date of a claimant's last employment wherein he or she was exposed to the hazard causing the occupational disease.[86] The court determined that the starting point for the limitation period for non-occupational diseases under the Act was the occurrence of the disability itself.[87] Therefore, the commonwealth court concluded that the three-year period in which a claimant must file a claim petition under the Act commenced at the time when a claimant knew, or should have known through reasonable diligence, of his or her disability and knew that it was causally related to an occupational disease.[88] Accordingly,

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82. *Id.* The claimant filed the appropriate claim petition on January 13, 1981, approximately three weeks after he became aware of his disabling condition through an expert medical opinion. *Id.*

83. *Id.* Specifically, the employer was referring to section 315 of the Act. *Id.* See note 18 for the applicable statutory language regarding the statute of limitations restriction.

84. *Feiertag*, 496 A.2d at 417. The court referred to the long-established principle that the compensation laws are remedial legislation and are to be broadly construed to effectuate their remedial and humanitarian purposes. *Id.* at 419.

85. *Id.* at 417. Specifically, the court distinguished section 301(c)(2) of the Act, codified at 77 PA. CONS. STAT. ANN. § 411(2) (1991), and section 315 of the Act, codified at 77 PA. CONS. STAT. ANN. § 602 (1991). Section 301(c)(2) of the Act reads, in part, as follows:

> The terms "injury," "personal injury," and "injury arising in the course of his employment," as used in this act, shall include, unless the context clearly requires otherwise, occupational disease as defined in section 108 [77 PA. CONS. STAT. ANN. § 27.1 (1991)] of this act: 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 [or she] was exposed to hazards of such disease. . . .

77 PA. CONS. STAT. ANN. § 411(2) (1991).

Section 315 of the Act reads, in part, as follows:

> In cases of personal injury all claims for compensation shall be forever barred, unless, within three years after the injury, the parties have agreed upon the compensation payable under this article; or unless within three years after the injury, one of the parties shall have filed a petition as provided in article four hereof.—Where, however, payments of compensation have been made in any case, said limitations shall not take effect until the expiration of three years from the time of the making of the most recent payment prior to date of filing such petition. . . .

77 PA. CONS. STAT. ANN. § 602 (1991).

86. *Feiertag*, 496 A.2d at 417. The court was referring to section 301(c) of the Act. *Id.* See note 85 for the text of section 301(c) of the Act.

87. *Id.* The court based this conclusion on section 315 of the Act. *Id.*

88. *Id.* at 419. The court relied on its prior decision in *Findlay Refractories* for this

the commonwealth court reasoned that the legislature could not possibly have intended to bar claims when the presence of an occupational disease could not be discerned by the aggrieved claimant.[89]

The decision of the Supreme Court of Pennsylvania in *Price*[90] was wholly consistent with the court's tendency to liberally construe the Act.[91] Indeed historically the court has consistently construed the Act liberally;[92] however, the decision in *Price* represents an extreme extension of the court's avowed liberal philosophy. Specifically, the court concluded that Appellant was completely unaware that he was totally disabled from thirty-five years of routine lead exposure when he resigned from employment with his Employer.[93] However, upon resignation Appellant specifically told Employer's plant physician that he was no longer capable of working inside the lead refining plant because of physical ailments caused by his working conditions.[94] Appellant's admission to Employer's plant physician regarding his health status seemingly contradicts the court's conclusion that Appellant's condition was not susceptible to self-diagnosis.[95]

If upon resignation, Appellant was incapable of performing his regular job duties due to physical ailments caused by routine expo-

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proposition. *Id.* (citing *Findlay Refractories*, 415 A.2d 1274 (Pa. Commw. Ct. 1980)).

89. *Feiertag*, 496 A.2d at 419. *See also* Torrey, cited at note 42, at 1041. Furthermore, according to the general rule, a cause of action does not accrue until all its elements are present. *Id.* Therefore, it is not fair for a statute of limitations to begin to run when the potential claimant is not fully aware of his specific ailment. *Id.* Both *Ciabattoni* and *Feiertag* represent that notion. *Id.*

90. See note 23 and accompanying text.

91. *See* Krawchuk v. Philadelphia Electric Co., 439 A.2d 627 (Pa. 1981), in which the Supreme Court of Pennsylvania remarked that the Act was remedial in nature and intended to benefit the injured worker; thus, the Act was to be liberally construed to effectuate its humanitarian purpose. *Krawchuk*, 439 A.2d at 630. The Commonwealth Court of Pennsylvania adopted the reasoning of the supreme court in the drafting of its opinions. *Feiertag*, 496 A.2d at 419. See note 85 for an explanation of the court's reasoning in *Feiertag*.

Furthermore, the court's continual liberalization of occupational disease provisions was most noticeable in connection with statute of limitations on notice and claim petitions. ARTHUR LARSON, WORKMEN'S COMPENSATION (desk edition), § 41.10 at 7-80 (1983).

92. As early as 1946, the supreme court declared that the Act was to be liberally construed in favor of injured employees. Kransky v. Glen Alden Coal Co., 47 A.2d 645, 647 (Pa. 1946).

93. *Price*, 626 A.2d at 117.

94. *Id.* at 115.

95. The court in *Price* concluded that it was unreasonable to infer that Appellant should have known of his disabling condition prior to the medical diagnosis of his treating physician. *Price*, 626 A.2d at 117. See note 31 for an explanation of similar holdings in *Feiertag* and *Ciabattoni*.

sure to lead, a fact which Appellant undeniably acknowledged when he spoke to the plant physician, then according to established precedent[96] Appellant was totally disabled until it could be demonstrated that alternative employment existed within his capabilities.[97] Furthermore, approximately three months prior to Appellant's resignation, Appellant received compensation benefits for a disability causally related to lead absorption.[98] Hence, Appellant's receipt of compensation benefits for a disability causally related to lead absorption further reinforces the argument that Appellant could have been aware of a disabling condition at the time of his resignation; after all, he was in fact disabled from lead absorption for over thirty days during the last four months of his employment.[99]

The court reasoned that because Appellant signed a final receipt of compensation payable,[100] Appellant's prior disability was effectively terminated.[101] Hence, the court assumed that if Appellant's disability had not terminated, then a final receipt would never had been executed.[102] However, the court found that Appellant's symp-

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96. *See* Pellegrino v. Baldwin-Lima-Hamilton Corp., 289 A.2d 531 (Pa. Commw. Ct. 1972), (holding that the employer must prove that work which the claimant is capable of performing was in fact available to the claimant; absent such proof the claimant must be compensated for total disability).

97. *See* Republic Steel Corp. v. Workmen's Compensation Appeal Bd., 422 A.2d 228 (Pa. Commw. Ct. 1980). If the injured employee can perform only limited job duties fitted to his specific physical condition, then the employer must prove that alternative work was available which the employee was capable of performing. *Republic Steel Corp.*, 422 A.2d at 230. If alternative employment was not available, the employer must compensate the injured employee for total disability. *Republic Steel Corp.*, 422 A.2d at 230. Under the provisions of the Act, compensation for total disability equals a certain specified percentage of the wages of the disabled employee for the duration of the disability, but not to exceed a specified maximum per week nor less than a specified minimum. 77 PA. CONS. STAT. ANN. § 1406 (1991). After total disability ceases, liability for further payment of compensation also ceases. 77 PA. CONS. STAT. ANN. § 511 (1991).

98. *Price*, 626 A.2d at 115. Undoubtedly, Appellant had suffered from disabling lead exposure prior to his resignation. *Id.* See note 3 for the exact dates of Appellant's pre-resignation disability.

99. *Price*, 626 A.2d at 115.

100. Under the Act, a final receipt is an acknowledgement of all payments due under a workers' compensation agreement. McGahen v. General Elec. Co., 177 A.2d 85 (Pa. 1962). Furthermore, a final receipt is a method to terminate a compensation agreement. *McGahen*, 177 A.2d at 90.

101. *Price*, 626 A.2d at 117. Specifically, the court agreed with the referee's finding that Appellant's lead poisoning disability had terminated as of May 29, 1979, as certified by the signing of a final receipt on May 30, 1979. *Id.* However, the execution of a final receipt does not preclude an employee from subsequently seeking additional compensation. Kissel v. Harbison-Walker Refractories Co., 41 A.2d 434 (Pa. Super. Ct. 1945).

102. *Price*, 626 A.2d at 117.

toms were in fact present prior to his resignation.[103] Although the court found that Appellant was aware of his symptoms prior to his resignation, the court concluded that Appellant was not necessarily aware of his disability from cumulative lead exposure.[104] It is difficult to reconcile the court's ultimate conclusion with the finding that Appellant's symptoms were present prior to his resignation. Furthermore, it seems unreasonable to conclude that Appellant assumed his disabling lung condition effectively ceased to exist and resolved itself with the execution of a final receipt of compensation payable approximately three months prior to his resignation.

The issue presented in *Price* was seemingly resolved in 1986 by the Commonwealth Court of Pennsylvania in *Feiertag*.[105] Interestingly, the court in *Price* concluded that a medical diagnosis was not the only way an injured claimant for occupational disease benefits could become aware of the disability.[106] The court's decision seemed to suggest that a strong presumption existed that discovery of the occupational disability occurred when the medical diagnosis was made known to the injured claimant.[107] The reason for not tolling the statute of limitations until the injured employee had knowledge of the work-related injury rested upon an accurate characterization of the problems associated with occupational diseases.

An occupational disease is both latent and insidious and the resultant disability is often very difficult to determine.[108] Unlike a

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103. *Id.*

104. *Id.*

105. The *Price* court relied in part on the commonwealth court's analysis in *Feiertag*, 496 A.2d 412. *Price*, 626 A.2d at 117. The court in *Feiertag* held that the discovery rule applied to all occupational disease claims under the Act. *Feiertag*, 496 A.2d at 418. The discovery rule refers to when the injured employee was considered to have knowledge of his disabling condition. *Id.* See also notes 31 and 79 for further detailed explanation of the court's rationale in *Feiertag*.

The Supreme Court of Pennsylvania had previously only applied the discovery rule to claims brought under the ODA and not claims under the occupational disease provision of the Act. *Ciabattoni*, 125 A.2d at 367. The discovery rule required that the time fixed for filing a claim petition for occupational disease causing disability would not begin to run until the "pertinent medical diagnosis is competently established to the knowledge of the claimant." *Id.*

106. *Price*, 626 A.2d at 117.

107. *Id.* Furthermore, the court concluded that the distinction between total disability arising under the ODA and that arising under the occupational disease provision of the Act was no longer necessary because in both instances a three year statute of limitations applies. *Id.* See note 32 for the specific sections setting forth the total disability definitions under the Act and the ODA.

108. *Id.* The court in *Price* adopted the characterization of occupational diseases first set forth by the supreme court in *Ciabattoni*. *Id.* See note 31 for the supreme court's characterization of an occupational disease in *Ciabattoni*.

broken arm or a twisted ankle incurred during the scope of employment, which constitute compensable injuries under the Act, occupational diseases are not as obvious to the aggrieved employee. Thus, the court readily justified a liberalization of the statute of limitation provisions for occupational disease because of the very nature of the injury.[109] The three-year limitation is only to run from when the claimant knew of the work-related cause of his injury and that he was totally disabled from the occupational disease.[110] Nonetheless, the court in *Price* failed to adequately explain the fact that Appellant was unaware of his disabling lung condition for four years following resignation when the disabling symptoms were in fact present at the time of his resignation from employment with his Employer.

The Supreme Court of Pennsylvania's decision in *Price* does not represent a pronounced intention of the court to relax the strict standards traditionally associated with statute of limitation requirements. Rather, the court was compelled to adopt a liberal interpretation of the limitation requirements to effectuate the humanitarian purpose of the Act. Throughout the history of the Act, Pennsylvania courts have attempted to construe its provisions in favor of the injured employee.[111] In ruling that the statute of limitations did not begin to run until the injured claimant became aware of the full and total extent of his disability through competent medical diagnosis, the Supreme Court of Pennsylvania has once again affirmed the remedial nature of the Act. In so doing, the court may have effectively adopted a rule whereby occupational diseases will never be susceptible to self-diagnosis.

Brian Dixon Walters

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109. *Id.* at 116. The court in Price adopted the analysis employed by the commonwealth court in *Findlay Refractories*, acknowledging the predicament of having the statute of limitations period triggered by partial disability. *Id.* See notes 72-77 and accompanying text for a discussion of *Findlay Refractories*.

110. *Price*, 626 A.2d at 117. The supreme court distinguished partial disability from total disability. *Id.* The court concluded that since the Appellant was still employable when he resigned and received unemployment benefits, he was not "totally disabled". *Id.* However, under the *Republic Steel Corp.* analysis, the appellant would have been entitled to total disability benefits under section 1406 of the Act. 77 PA. CONS. STAT. ANN. § 1406 (1991). See note 97 for a detailed explanation of the *Republic Steel Corp.* analysis.

111. Builders Exchange, Inc. v. Workmen's Compensation Appeal Bd., 439 A.2d 215, 217 (Pa. Commw. Ct. 1982). The commonwealth court explained that the Pennsylvania Legislature clearly intended the Act to be remedial in nature and to be liberally construed, with "borderline interpretations" resolved in favor of the injured employees. *Builders Exchange, Inc.*, 439 A.2d at 217.