

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

PAUL DOWHOWER,	:	No. 542 MAL 2003
	:	
Petitioner	:	Petition for Allowance of Appeal from the
	:	Opinion of the Commonwealth Court at
	:	1667 CD 2002, dated May 13, 2003
v.	:	affirming the order of the Workers'
	:	Compensation Appeal Board at A00-1012,
	:	A00-2627, A00-2810, A01-0992 dated
WORKERS' COMPENSATION APPEAL	:	June 13, 2002
BOARD (CAPCO CONTRACTING),	:	
	:	
Respondents	:	

ORDER

PER CURIAM

DECIDED: April 19, 2006

AND NOW, this 19th day of April, 2006, the Petition for Allowance of Appeal in the above-captioned matter is hereby **GRANTED** and the order of the Commonwealth Court in this matter is **VACATED** and **REVERSED** based on the decision in Gardner v. Workers' Compensation Appeal Board (Genesis Health Ventures), 888 A.2d 758 (Pa. 2005).

Mr. Justice Saylor dissents, as he is of the view that Gardner does not address an employer's ability to request an IRE prior to the 104-week period set forth in Section 306 (a.2)(1) of the Workers' Compensation Act. See 77 P.S. §511.2(1). He would grant the Petition for Allowance of Appeal to allow for full briefing and argument before resolution of this specific issue.

Madame Justice Newman joins Mr. Justice Saylor's dissent.