[J-45-1999]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CITY OF MCKEESPORT,	:	No. 76 W.D. Appeal Docket 1998
	:	
	:	Appeal from the Order of the
	:	Commonwealth Court entered July 17,
v.	:	1998 at No. 2081 C.D. 1997 reversing the
	:	Order of the Workers' Compensation
	:	Appeal Board at No. A96-1447 entered
WORKERS' COMPENSATION APPEAL	:	July 1, 1997.
BOARD (MILETTI),	:	
	:	715 A.2d 532 (Pa. Comw. 1998)
	:	
	:	ARGUED: March 9, 1999
APPEAL OF: BEATRICE MILETTI	:	
	:	
	:	

DISSENTING OPINION

MR. JUSTICE NIGRO **DECIDED: JANUARY 19, 2000**

I respectfully dissent. While I, too, sympathize with the unfortunate unfolding of events that preclude Mrs. Miletti from collecting death benefits on behalf of her husband, no amount of sympathy can overcome the constraints of the operative statute of repose.

Dispositive of this matter is the application of § 301(c)(2) of the Workers' Compensation Act (Act), which states in pertinent part:

> (2) The terms "injury," "personal injury" and "injury arising in the course of employment," shall include occupational disease as defined in section 108

> of this act [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 employe's compensable disability had occurred within such period, his subsequent death as a result of the disease shall likewise be compensable. . . .

77 P.S. § 411(2)(emphasis added).

Section 301(c)(2) is a statute of repose because it requires that the compensable disease or death "occur[ ] within three hundred weeks after the last date of employment." A statute of repose "bars a suit a fixed number of years after the defendant acts in some way . . . even if this period ends before the plaintiff has suffered an injury." BLACKS LAW DICTIONARY 1423 (7th ed. 1999). Thus,

> A statute of repose . . . limits the time within which an action may be brought and is not related to the accrual of any cause of action; the injury need not have occurred, much less have been discovered. Unlike an ordinary statute of limitations which begins running upon accrual of the claim, the period contained in a statute of repose begins when a specific event occurs, regardless of whether a cause of action has accrued or whether any injury has resulted.

Id. (citing 54 C.J.S. *Limitations of Actions* § 4 at 20-21 (1987)(emphasis added)).

Here, the controlling statute designates the last date of employment in a hazardous occupation as the specific event (i.e. employer/defendant exposes employe/plaintiff to workplace hazards) that initiates the period of repose. The period ends three hundred

[1] Section 108, under which Decedent's disease qualifies, includes, inter alia, "[d]iseases of the heart and lungs, resulting in either temporary or permanent total or partial disability or death, after four years or more of service in fire fighting . . . caused by exposure to heat, smoke, fumes or gasses, arising directly out of the employment of any such firemen." 77 P.S. § 27.1(o).

weeks later *"regardless of whether a cause of action has accrued or whether any injury has resulted"* thereby *"limit[ing] the time within which an action may be brought."* Thus, where no lifetime benefits were filed, this statute of repose allows a claimant a 300-week window during which his death must occur from an occupational disease. The enactment of this statute reflects the legislature's concern that an employer be provided timely notice and protection from stale claims, thereby preventing speculation over whether a disease is work-related years after an exposure occurred. Sporio v. Workmen's Compensation Appeal Board (Songer Construction), 553 Pa. 44, 50, 717 A.2d 525, 528 (1998). Thus, a claim under § 301(c)(2) expires within 300 weeks of a claimant's last exposure whether or not an occupational disease manifests or death occurs.

By applying the discovery rule, the majority opinion unravels the entire legislative scheme of restricting a compensable cause of action under this statute.[2] Therefore, contrary to the majority opinion, I find the discovery rule has no application in regard to the running of this statute. Rather, I would find that since no lifetime benefits were claimed, in order to be compensable, decedent's death would have to occur within 300 weeks of his last exposure.[3]

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[2] I fail to see how such construction of § 301(c)(2) does not comport with our obligation to effectuate the Act's humanitarian objectives. Sporio, 553 Pa. at 49, 717 A.2d at 528. It is *because* occupational diseases are recognized as "latent and insidious in nature, often requiring years of incubation before they are discovered," Republic Steel v. Workmen's Compensation Appeal Board (Petrisek), 537 Pa. 32, 38, 640 A.2d 1266, 1269 (1994) that, unlike for other types of workplace injuries, the Act affords the additional 300 week period within which a cause of action must accrue.

[3] Once the cause of action has accrued within the 300 weeks -- that is, once a claimant knows he is afflicted with an occupational disease or once a claimant has died from such a disease -- pursuant to 77 P.S. § 602, there is a three-year statute of limitations for filing for benefits.

Here, because Mrs. Miletti's husband died more than 300 weeks after his last exposure without timely filing for lifetime benefits, her claim is not compensable, and § 301(c)(2) prevents her from recovering his death benefits.

Mr. Justice Zappala and Madame Justice Newman join in the dissenting opinion.