

PA Supreme Court Holds Occupational Disease Act Not Exclusive Remedy; Extends Tooley

By Michael Della Vecchia

Brad Lee Herold, as Executor of the Estate of William S. Herold v. University of Pittsburgh, et al., No. 22 WAP 2023, decided January 22, 2025.

In a case decided on January 22, 2025, the Supreme Court of Pennsylvania in *Brad Lee Herold, as Executor of the Estate of William S. Herold v. University of Pittsburgh, et al.* analyzed two (2) key provisions of the state's Occupational Disease Act ("ODA"). Namely, the Court was called upon to decide whether a disability or death resulting from an occupational disease (in this case, mesothelioma) and which occurs beyond the four-year limitations period set forth in Section 1401(c) of the ODA, 77 P.S. §1401(c), removes the claim from the purview of the ODA's exclusivity clause found at 77 P.S. §1403¹. The Executor was asking the Supreme Court to apply the seminal decision of *Tooley v. AK Steel Corp.*, 81 A.3d 851 (Pa. 2013) to this case. In *Tooley*, the Supreme Court allowed a civil action for injuries and/or occupational diseases which manifested outside of the Workers Compensation Act's 300-week limitations period. *Tooley* also involved a diagnosis of mesothelioma resulting from alleged exposure to asbestos in the workplace. The *Herold Court* extended *Tooley's* holding to the ODA. Two justices, Wecht and Brobson, dissented noting that the *Tooley* decision was "simply wrong."

Plaintiff's decedent, William Herold, worked for the Defendant University of Pittsburgh for decades and was allegedly exposed to asbestos. Herold retired from the University in 2015 and in 2019 he was diagnosed with mesothelioma. Herold ultimately died in April 2022 due to the mesothelioma. Importantly for the case, Herold died eighteen (18) years after he was last exposed to asbestos and seven (7) years after his last date of employment.

The Court ultimately found that the current case is similar to *Tooley*. The Court stated that while the relevant provisions of the ODA in this case and the 300-week limitation period set forth in the Workers Compensation Act at issue in *Tooley* were textually asymmetrical, the result should be the same. The Court held that "a common law action for relief for a disability or death resulting from an occupational disease covered by the Occupational Disease Act-and which occurs beyond the four-year limitations period contained in the ODA, rendering such disability or death non-compensable-**does not fall within the purview of the ODA's exclusivity provision.**" (Emphasis added.) See, *Herold* at J-28-2024, p. 4. The Court found that ODA's exclusivity provision does not preclude an injured worker such as Herold from filing a civil lawsuit against his or her employer for compensation for his or her work-related death or disability.

¹ 77 P.S. §1401(c) is definitional in nature as it defines a "compensable disability or death" for purposes of the ODA. 77 P.S. §1403, known as the exclusivity provision, operates as a "surrender by the parties thereto of their rights to any form or amount of compensation or damages for any disability or death resulting from occupational disease, or to any method of determination thereof, other than as provided in article three of this act."