

Alpini v. WCAB, 2MAP 2022 (Pa. May 16, 2023)

The Supreme Court held that claimant's dramshop act claims arose out of the maintenance or use of a motor vehicle. Therefore, Section 1720 of the Motor Vehicle Financial Responsibility Law precludes employer from subrogating against claimant's third-party settlement.

Claimant, a police officer, sustained work-related injuries on April 17, 2011, when a drunk driver struck claimant's patrol car with his vehicle. Employer issued a TNCP, accepting liability for claimant's injuries. Employer paid him Heart and Lung Act benefits, and he signed over his workers' compensation wage loss benefits to employer.

In addition to suing the drunk driver, claimant sued two tavern owners for violating the Dramshop Act by serving a visibly intoxicated person. On September 16, 2013, claimant settled his claims against the driver and the tavern owners. The employer filed a Modification Petition, seeking subrogation from claimant's recovery relative to the tavern owners. The WCJ granted employer's petition, and both the employer and claimant appealed to the Board. The Board affirmed the WCJ's decision but remanded it to the WCJ to determine how the employer could recoup its subrogation lien. On remand, the WCJ determined that employer was entitled to subrogation plus an appropriate grace period against future wage loss and medical benefits until the third-party recovery was exhausted. Claimant again appealed to the Board, and the Board affirmed that the employer had a subrogation interest in claimant's settlement with the tavern owners.

The claimant petitioned the Commonwealth Court to review the Board's Order. The Commonwealth Court concluded that the Board did not commit an error of law. The Supreme Court granted discretionary review to consider whether employer, who paid the Heart and Lung Act benefits, was entitled to subrogation from a third-party settlement of Dramshop Act claims.

The Supreme Court reversed the decision of the Commonwealth Court and concluded that the claimant's Dramshop Act claims against the tavern owners "arose out of" the use of a motor vehicle because it stemmed from the driver's vehicular collision with claimant; therefore, Section 1720 of the Motor Vehicle Financial Responsibility Law precludes employer from subrogating payment from its Heart and Lung Act benefits against claimant's settlement with the tavern owners.

What is interesting about this case is that both Justice Wecht and Justice Todd filed dissenting opinions. The dissent opined that public employers are prohibited from subrogation only if they are self-insured for workers' compensation.

