

# Audrey L. Copeland

Senior Counsel

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Audrey Copeland, who joined the firm in 1986, is a member of the Post-Trial Appellate Advocacy Practice Group. She concentrates her practice in the state and federal appellate courts and has litigated matters involving a wide range of substantive and procedural issues including professional liability, civil rights claims, land use, coverage, medical malpractice, product liability, workers' compensation and premises liability.

## Practices

- Appellate Advocacy & Post-Trial Practice

## Education

- William & Mary Law School (J.D., 1983)
- Colgate University (B.A., *cum laude*, 1980)

## Admissions

- Pennsylvania, 1985
- U.S. Court of Appeals 3rd Circuit, 1986

## Honors & Awards

- Pennsylvania Super Lawyer (2018-2021)

## Associations & Memberships

- Bar Association for the Third Federal Circuit
- Pennsylvania Bar Association

## Published Works

- "Did the Commonwealth Court Decide the Retroactive Effect of 'Protz'?" *Pennsylvania Law Weekly*, October 12, 2017
- "Protz: Problems for Practitioners and Politicians," *Pennsylvania Law Weekly*, August 22, 2017
- "Land Use Litigation – Trends, Exposures and Moral Hazards," *Defense Digest*, Vol.

22, No. 3, September 2016

- "Running Afoul of the Appellate Rules," *The Pennsylvania Lawyer*, March-April, 2006
- "On Line Is On Target: the Astonishing Utility of Computer Research," *Pittsburgh Legal Journal*, Vol. 121, No. 114, June, 1995
- "The Empire Strikes Back: Payback for the Costs of Proving Yourself Right, " *Defense Digest*, July, 1995
- "Pennsylvania Supreme Court Declines Review in Bad-Faith Case, " *Defense Digest*, July, 1995
- "Hurry Up and Wait: Consequences for Defendants Under the New Appellate Rules, " *Defense Digest*, Summer, 1994
- "High Court Reins in Repose Defense, " *Defense Digest*, Spring, 1994
- "Services or Sales? Hospitals, Physicians and Pharmacists and 402A Liability, " *Defense Digest*, Spring, 1994
- "Live Birth of a Non-Viable Fetus is Line of Demarcation in Wrongful Death and Survival Act Cases, " *Defense Digest*, Winter 1993, 1994
- "Third Circuit Applies "Inferred Intent" in Sexual Abuse of Minors Case, " *Defense Digest*, Fall, 1993
- "Third Circuit Affirms Swimming Pool Judgment, " *Defense Digest*, Summer, 1993
- "The Sexual Abuse of Minors: Coverage Issues, " *Defense Digest*, Spring, 1992

## Classes/Seminars Taught

- *In a Pickle: The Implications of Protz*, Marshall Dennehey Workers' Compensation Seminar, October 19, 2017

## Significant Representative Matters

- *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F. 3d 253 (3d Cir. 2007) was initiated by plaintiff, a self-described "church," to challenge the defendant City's zoning ordinance and superseding Redevelopment Plan. The Third Circuit affirmed the dismissal of the RLUIPA, 40 U.S.C. 2000cc et seq. claim as to the City's Redevelopment Plan holding that the "Equal Terms" provision of RLUIPA requires a plaintiff to show that it was treated less well than a secular organization that has a similar negative impact on the aims of the challenged land-use regulation and reasoning that the purported church was not treated on less than equal terms from secular entities, largely because of a New Jersey State statute which prohibits the issuance of a liquor license to establishments located within 200 feet of a church. The Court also affirmed the dismissal of the alleged church's Free Exercise claim as to both the Redevelopment Plan and the original C-1 Ordinance because its religious exercise was not burdened by the fact that it was excluded from this area of the City. The Third Circuit reversed the grant of summary judgment for the City as to Lighthouse's RLUIPA Claim as to the original, since superseded C-1 Ordinance.
- In *Essex Ins. Co. v. Kennedy*, 60 Fed. Appx. 367, 368 (3d Cir. 2003), the Assault and Battery exclusion in insurance policy applied and insurance company was not required to defend or indemnify its insured; additionally, the exclusion applied even though it appeared in an unsigned addendum, thus insurance company was entitled to summary judgment.
- *Micromanolis v. Woods Sch., Inc.*, 989 F.2d 696, 697 (3d Cir. 1993) concerned a plaintiff who climbed over a defendant property owner's fence and dove into an unlit "winterized" pool at night, without checking its water level, and who was rendered a quadriplegic. The Third Circuit held that even assuming that the plaintiff was a foreseeable trespasser, the property owner could not be charged with actual or

constructive knowledge that a trespasser might dive into the unlit pool without checking the water level and could not be liable for wanton misconduct in failing to take steps to prevent the injuries caused by this activity.

- *Heath v. Workers' Comp. Appeal Bd. (Pa. Bd. of Prob. & Parole)*, 860 A.2d 25 (Pa. 2004), remanding to *Heath v. Workers' Comp. Appeal Bd. (Pa. Bd. of Prob. & Parole)*, 867 A.2d 776 (Pa. Cmwlth. 2005) concerned a claim for workers' compensation benefits for psychological injury brought by a claimant who alleged that she was sexually harassed by her supervisor. The Pennsylvania Supreme Court held that although the personal animus exception could not be raised *sua sponte*, a remand was required, whereupon the Commonwealth Court denied the claim due to the claimant's failure to provide the objective evidence necessary for corroboration.
- In *Rossino v. Kovacs*, 718 A.2d 755 (Pa. 1998) summary judgment was affirmed for the defendant property owners, who neither knew nor had reason to know that a police officer was going to enter their property in order to aid the execution of a search warrant, were not liable for the injuries sustained by the officer, who was not a licensee but rather a trespasser on the property under a privilege.
- *Bethea v. Phila. AFL-CIO Hosp. Ass'n*, 871 A.2d 223 (Pa. Super. 2005), appeal denied, 934 A.2d 71 (Pa. 2007) involved the retroactive application of the MCARE Act and the Superior Court affirmed the trial judge's dismissal of the case. The Superior Court held that qualifications for a medical expert under the Act must be met even though the medical malpractice claim was filed prior to the enactment of the Act and the expert's testimony was heard after the enactment. The practical consequences of this ruling were that the expert, who did not possess a valid medical license at the time of trial, was barred from testifying and the plaintiff could not sustain her action.
- In *Brown v. Philadelphia College of Osteopathic Med.*, 760 A.2d 863 (Pa. Super. 2000) the judgment on jury verdict for the plaintiffs vacated and case remanded for entry of judgment notwithstanding the verdict in favor of defendant-appellant PCOM, where plaintiffs failed to prove that defendant's conduct in erroneously informing plaintiff that her infant daughter had been born with syphilis was a proximate cause of the alleged harm or show the requisite physical impact to recover for emotional harm as to claims that the diagnosis caused the breakdown of the couples' marriage, physical violence, and loss of employment.
- In *Armstrong v. W.C.A.B. (Haines and Kibblehouse)*, 931 A.2d 827 (Pa. Cmwlth. 2007) a work injury was deemed accepted by the employer by virtue of a notice of temporary compensation payable acknowledging the injury and a notice of compensation denial disputing length and extent of disability, but not the occurrence or nature of the injury, pursuant to 77 Pa. Stat. Ann. 717.1.
- *Schachter v. Workers' Comp. Appeal Bd. (SPS Technologies)*, 910 A.2d 742 (Pa. Cmwlth. 2006) involved the effect of a disability rating. The Commonwealth Court held that the workers' compensation employer was not precluded from seeking termination of disability benefits by virtue of prior 6 % impairment rating and the reversal of the Judge's attorney's fees award was not error.

## Representative Cases

- *Ball v. Bayard Pump & Tank Co.*, 2013 Pa. LEXIS 1039 (Pa. May 28, 2013)
- *Krushaukus v. WCAB (General Motors)*, 56 A.3d 64 (Pa. Commw. Ct. 2012)
- *Papadoplos v. Schmidt, Ronca & Kramer, PC*, 21 A.3d 1216 (Pa. Super. 2011)
- *Rossino v. Kovacs*, 718 A.2d 755 (1998)
- *Nationwide Mutual Insurance Company v. Johnson*, 704 A.2d 127 (1998)

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## Results

### **Successfully Affirmed Workers' Compensation Decision Before the Appeal Board**

We convinced the Commonwealth Court to affirm the decision of the Workers' Compensation Appeal Board in favor of our client, the employer, which upheld the workers' compensation judge's denial of a claim petition. By memorandum opinion, the court found that the judge's credibility findings were neither contradictory nor arbitrary and capricious, and the decision was reasoned. The court agreed with the employer that the defense experts' opinions constituted substantial evidence, also noting that the Social Security Administration's findings of disability were irrelevant to the issue of work-relatedness. The court concluded that the claimant failed to sustain her burden of proving a work-related injury, and since the causal connection between her "lingering symptoms and her work duties" was not obvious, she was required to present unequivocal medical evidence establishing that connection, which she failed to do.

### **Successfully Represented an Insurance Company in a Workers' Compensation Appellate Matter**

We successfully represented an insurance company before the Commonwealth Court of Pennsylvania. The court agreed with our argument that the claimant needed to provide notice of his work-related injury to the defendant insurance company within 120 days of the occurrence of the injury due to his combined status as sole proprietor/owner and also the employee in this matter. The judges distinguished the facts of the case due to the fact that the claimant was a sole proprietor, owner and the only employee of his own business. The court agreed that allowing the claimant to pursue a claim, by claiming that he provided notice to himself immediately when the accident occurred, but did not bother to report the injury to the insurance company for over a year thereafter, would result in an absurdity and put the insurance company at a disadvantage in the investigation of the claim. The court also noted that the definition of "employer" in certain portions of the Act includes not only the actual employer as a business itself, but also the employer's duly authorized agent or its insurer, if such insurer has assumed the employer's liability. Since the claimant failed to provide notice to the insurance company within 120 days of his injury, the court held that the Claim Petition was barred. The Claim Petition was dismissed, and the claimant was not entitled to any benefits at all.

### **Establishing Failure to Well-Plead Secures a Win for the Defense**

In our successful appeal to the Commonwealth Court, the workers' compensation judge had awarded a closed period of benefits and then terminated all benefits, despite the employer's late answer. The judge found that the description of injury was not well-pled and, therefore, not deemed admitted. The Appeal Board reversed the judge on the full termination of benefits, saying that, since our IME physician did not acknowledge a work-related psychiatric injury, his testimony was in conflict with the admitted injury due to the late answer. They reversed the judge and ordered reinstatement of temporary total disability benefits. The Commonwealth Court found in our favor and reversed. The court

held that the judge was correct that the injury was not well-pled and that we were not deemed to have admitted a psychiatric injury. Therefore, they reinstated the judge's decision which terminated benefits.

### **The Commonwealth Court Stands Firm on Employer Credit/Retroactivity**

The Pennsylvania Commonwealth Court ruled in favor of our employer client, holding that it was error to "erase" the 500-week employer credit provided by Act 111 for partial disability benefits paid beginning in 2008, and that the claimant's 2019 reinstatement to total disability status did not retroactively convert those prior partial disability benefits into total disability benefits.

The claimant's work injury, a contusion to the low back, occurred in 2006. Based on the results of a 2008 IRE that assigned a zero percent impairment rating, the claimant's benefits were modified from total to partial. The employer filed a Notice of Change of Workers' Compensation Disability Status, which was not challenged by the claimant. Following the Supreme Court's decision in Protz, however, the claimant filed a modification petition in 2018, seeking reinstatement of his total disability benefits. The petition was granted, and it was noted at the time that the claimant had not exhausted his 500 weeks of partial disability.

The employer filed a petition for modification, based on the results of a December 2019 IRE performed on the claimant, that was granted by the Workers' Compensation Judge. The IRE was performed pursuant to Act 111. The parties cross-appealed, and the claimant took the position that Act 111 cannot be applied retroactively to injuries sustained prior to Act 111's October 24, 2018, effective date and that Act 111 constituted an unlawful delegation of legislative authority. The employer cross-appealed the judge's failure to award a 500-week credit and to suspend the claimant's benefits.

Citing prior cases that consistently held that Act 111 applies retroactively with respect to a calculation of a claimant's weeks of partial disability paid prior to the effective date of the Act, the claimant's appeal was dismissed.

The employer prevailed on its cross-appeal and the Appeal Board's order was reversed to the extent that it denied a credit for the previously paid weeks of partial disability.

### **Successful Appeal of Summary Judgment in Favor of Insurer**

We successfully appealed a summary judgment in favor of an insurance client that had been sued by another insurance carrier for more than \$1.6 million in damages arising out of a fire loss to an insured auto repair facility. The opposing insurance company had paid \$1.6 million in damages and intended to pursue a product liability claim against a vehicle manufacturer, alleging a defectively manufactured vehicle had caused the fire. Our client insured the vehicle that was allegedly defective. After the insurance companies conducted a preliminary expert evaluation, the vehicle was destroyed by a salvage yard in the normal course of business. A claim was made against our client for promissory estoppel where it was alleged the vehicle was destroyed despite a promise to preserve. The Pennsylvania Superior Court affirmed the Court of Common Pleas of Erie County's

rejection of the claims against our client and agreed with our contention that the promissory estoppel claim was a disguised claim for negligent spoliation, which the Supreme Court of Pennsylvania does not recognize.

#### **Workers' compensation judge's decision affirmed.**

We convinced the Commonwealth Court to affirm a workers' compensation judge's decision. The judge had denied the claimant's petition to review a Utilization Review (UR) determination and rejected the claimant's argument that the judge was barred from ruling on UR petitions by the rules of collateral estoppel and issue preclusion.

#### **PA Supreme Court denies petition for allowance of appeal.**

We persuaded the Pennsylvania Supreme Court to deny a claimant's petition for allowance of appeal. In this workers' compensation matter, the claimant challenged the constitutionality of Act 111 and its Impairment Rating Evaluation (IRE) provisions.

#### **Denial of Nationwide and Pennsylvania-Wide Class Certification Affirmed**

Our attorneys prevailed on an appeal to the Third Circuit, which affirmed the district court's rejection of the plaintiffs' request for class certification in a product liability and warranty action. The named plaintiffs are several property owners and communities of common ownership who allege they have yellow-jacketed, corrugated stainless steel tubing (CSST) transporting natural gas through their structures. The flexible, yellow CSST is the modern heir to the black iron pipe formerly universal in the building industry. The flexible CSST offers advantages, including ease of installation, but the plaintiffs asserted there are latent product defects that risk failure in the event an electrical surge makes its way to the tubing, either from an in-house event or nearby lightning strike. The district court denied the plaintiffs' request for nationwide and Pennsylvania-wide class certification of their disparate claims because of a failure of record proof on the elements of ascertainability of a sufficiently numerous class, predominance of typical and common claims, and an inability to demonstrate proof of liability and damages issues on a class-wide basis. The Third Circuit granted the plaintiffs' request for interlocutory review of the class certification decision, but nevertheless affirmed the district court's ruling on largely the same bases. Without passing on the merits of the product defect claims, the Third Circuit recognized that there was no basis to grant class-wide treatment given the differences in everything from notification to putative class members, liability and damages proofs, and the law governing claims. The denial of class certification was affirmed, and the case will proceed on an individual basis only.

#### **Newspaper Beats Suit Alleging Employee Status**

The Pennsylvania Supreme Court denied a newspaper delivery person's petition for allowance of appeal on March 30, 2021. The claimant filed a claim petition in 2018, alleging that he suffered serious injuries to his right leg after slipping and falling on ice when he was delivering newspapers. The newspaper asserted that the claimant was an independent contractor. The case was bifurcated to determine whether the claimant was an employee. After fully litigating the issue, the Workers' Compensation Judge found in favor of the newspaper and found that the case was not so different than the seminal case of *Johnson v. WCAB (DuBois Courier Express)*, 631 A.2d 693 (Pa. Cmwlth. 1993).

The *Johnson* court held that a newspaper carrier was an independent contractor because the newspaper did not exercise substantial control over his activities.

The claimant appealed to the Workers' Compensation Appeal Board. After hearing argument and reviewing the parties' briefs, the Board affirmed the judge's decision and order. The claimant appealed to the Commonwealth Court, urging the court to consider the evolving nature of the newspaper delivery business in rendering its decision. The court refused to do so and highlighted the lack of control by the newspaper because there was no prohibition on delivering competing newspapers or enlisting a substitute without prior notice or permission. The Commonwealth Court's decision, which was issued as a non-precedential opinion, is the latest in an unbroken line of similar cases holding that newspaper carriers are independent contractors.

The claimant's suit ended when the Pennsylvania Supreme Court denied the petition for allowance of appeal.

### **Defense verdict on appeal of a workers' compensation claim petition to the Commonwealth Court.**

We initially successfully defended a bifurcated claim petition filed by the claimant, an independent contractor. Opposing counsel appealed, and the Workers' Compensation Appeal Board reversed and remanded the decision for evidence on the medical component of the claim. However, contrary to the defendant's argument, on remand, the judge granted the claim petition, finding she was "constrained" to reaffirm the Board on the independent contractor issue. The defendant once again appealed, and the Board re-affirmed the claim petition. We took the case up on appeal, and the Commonwealth Court agreed that the record did not demonstrate a "high level of control" such that an employment relationship has been established. Accordingly, the court reversed the order affirming the claim petition.

### **Successful Resolution of Premises Liability Action**

We successfully tried a premises liability action to a defense verdict in favor of a resident's association in the Chester County Court of Common Pleas, and also successfully defended against the plaintiff's appeal. The plaintiff, who was a community resident (formerly married to a unit owner but not an owner herself), claimed that she tripped and fell on a tree branch on common area steps at night as a result of a burned out PECO-owned lamp, and that the Association failed to ensure that the light was fixed. The plaintiff had asked for either invitee status or a hybrid charge on duty, but the court agreed with the defense that she was able to use the common areas by permission, not by invitation, making her a licensee only. This resulted in the duty owed being only to make the property as safe as it appeared. The defense presented multiple instances of notice to PECO of the burned-out light, and the plaintiff conceded the defense contention that it could not change the bulb itself because PECO owned the lamp. The plaintiff also conceded that she had been aware of the light being out for some time. The jury unanimously found in favor of the Association and, on appeal, the Superior Court affirmed the judgment on the jury verdict, finding that the trial court did not err by charging the jury that the plaintiff was entitled only to the care due to a licensee on the

property, and not an invitee.

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## Thought Leadership

March 1, 2026

**On the Pulse...Recent Appellate Victories\***

June 10, 2024

**What's Hot in Workers' Comp – Special PA Alert**