

## Pennsylvania Court Rejects Bid For Occupational Illness Time-Bar Reset

The Pennsylvania Superior Court recently issued rulings in two separate cases, *Riley v. Armstrong World Industries, Inc.*, 2018 Pa. Super. Unpub. LEXIS 4328 (Nov. 16, 2018); and *Moeller v. Armstrong World Industries, Inc.*, 2018 Pa. Super. Unpub. LEXIS 4329 (Nov. 16, 2018) that clarifies the scope of the Pennsylvania Supreme Court's 2013 ruling in *Tooey v. AK Steel*, 623 Pa. 60 (2013).

The PA Supreme Court decision in *Tooey* clarified the scope of the exclusivity provision of Workers' Compensation Act as it relates to asbestos cases. Specifically, that the 300-week window for bringing a claim under the Workers' Compensation Act, did not bar the filing of tort claims for diseases (such as mesothelioma) that manifest after the 300 weeks time period has expired.

The issue in *Riley* and *Moeller* is that those lawsuits were not filed until well after the two-year statute of limitations had expired. In *Riley*, the suit was not filed until almost five years after the plaintiff's decedent passed away. In *Moeller*, the law suit was not filed until over five years after plaintiff's decedent passed away. In both cases, the plaintiffs argued that the two-year statute of limitations did not begin to run until after the PA Supreme Court decided *Tooey* in 2013, clarifying the scope of the exclusivity provision of the PA Workers' Compensation Act. In both *Riley* and *Moeller*, the Pa Superior Court dismissed plaintiffs' complaints with prejudice, stating that *Tooey* did not create a new cause of action, nor did the Workers' Compensation Act bar plaintiff's claims before the *Tooey* ruling. All *Tooey* did was clarify the exclusivity provision. Accordingly, the statute of limitations for both plaintiffs began to run upon the deaths of Mr. Riley and Mr. Moeller.

**Comment:** Based on the Pennsylvania Supreme Court's decision in *Tooey*, it was only a matter of time before the right case with the right set of facts (workplace exposure that ended more than 300 weeks before diagnosis) came to trial. However, these latest two decisions clarify that *Tooey* did not cause a change to existing filing deadlines, otherwise applicable. All employers should be on notice that if any of their former employees were exposed to asbestos, asbestos-containing products or worked in proximity of other persons working with or on asbestos-containing products, then those employers may be vulnerable to similar lawsuits, but the traditional rules for timely filing of asbestos claims still apply and will be enforced in Pennsylvania.

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