

DOCKET NO. 175

NUMBER	TERM	YEAR
342	November	1961

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Joseph Evanochko

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VERSUS

Middle Penna Coal Corp

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Penna. Thresherman & Farmers

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Mutual Casualty Ins. Co

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH EVANOCHKO	:	A P P E A L
Plaintiff	:	
(Appellee)	:	
vs.	:	
MIDDLE PENNA. COAL CORP.	:	From Decision of
Defendant	:	
(Appellant)	:	Pa. Workmen's Compensation
	:	Board
	:	No. 342 November Term, 1961

To: THE HONORABLE CARL WALKER, ESQ.  
Prothonotary  
Court of Common Pleas  
Clearfield County, Pa.

ENTRY OF APPEARANCE IN  
BEHALF OF PLAINTIFF APPELLANT

Sir:

Enter our appearance as counsel and co-counsel respectively for Joseph Evanochko, Plaintiff-Appellee in the above captioned cause of action or appeal proceedings from the Division of the Pennsylvania Workmen's Compensation Board.

Arnold D. Smorto  
Arnold D. Smorto, Esq.  
Counsel, U. M. W. of A.  
Compensation Department  
521 W. Horner St.  
Ebensburg, Pa.

a n d

KELLY, JOHNSTON & CIMINO  
8 N. Front St.  
Philipsburg, Pa.  
By Eugene L. Cimino  
Eugene L. Cimino, Esq.  
Attorneys for Plaintiff-Appellee

Dated: January 2, 1962

APPEAL  
From Decision of Pa. Workmen's  
Compensation Board  
#342 November Term, 1961

JOSEPH EVANOCHKO  
Plaintiff  
(Appellee)

vs.

MIDDLE PENNA. COAL CORP.  
Defendant  
(Appellant)

ENTRY OF APPEARANCE  
IN BEHALF OF PLAINTIFF-  
APPELLEE

*Arnold D. Smorto*  
Arnold D. Smorto, Esq.  
Counsel, U. M. W. of A.  
Compensation Department  
521 W. Horner St.  
Ebensburg, Pa.

And  
KELLEY, JOHNSTON & CIMINO  
By *Eugene L. Cimino*  
Eugene L. Cimino, Esq.  
Counsel for Plaintiff-  
Appellee, Joseph Evanochko

FILED  
JAN - 3 1962  
KELLEY, JOHNSTON & CIMINO  
ATTORNEYS AT LAW  
PHILIPSBURG, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

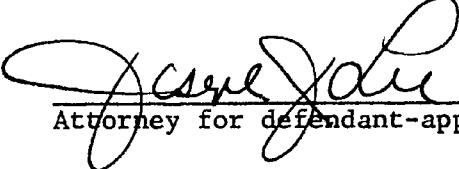
JOSEPH EVANOCHKO	:
Claimant	:
VS	:No. 342 November Term, 1961
MIDDLE PENNA. COAL CORP.,	:
Defendant	:Appeal by Defendant from decision
AND	:of the Workmen's Compensation Board
PENNSYLVANIA THRESHERMEN &	:affirming the award of Referee
FARMERS' MUTUAL CASUALTY	:Vittone, specially presiding,
INSURANCE COMPANY, Insurance	:District No. 7, on Petition to Set
Carrier	:Aside Final Receipt.
	:Petition No. 114,992
	:Compensation Agreement No. 6,631,156
	:

PRAECIPE FOR CERTIORARI

TO: WILLIAM T. HAGERTY, PROTHONOTARY

SIR:

Issue writ of certiorari to the Workmen's Compensation  
Board of Pennsylvania in the above entitled case.

  
\_\_\_\_\_  
Attorney for defendant-appellant

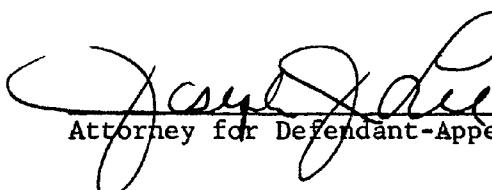
Dated: December 21, 1961

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH EVANOCKO, :  
Claimant :  
VS :No. 342 November Term, 1961  
: :  
MIDDLE PENNA. COAL CORP., :Appeal by Defendant from Decision  
Defendant : of the Workmen's Compensation Board  
: affirming the award of Referee  
AND : Vittone, specially presiding,  
PENNSYLVANIA THRESHERMEN & : District No. 7, on Petition to Set  
FARMERS' MUTUAL CASUALTY : Aside Final Receipt.  
INSURANCE COMPANY, Insurance : Petition No. 114,992  
Carrier : Compensation Agreement No. 6,631,156

A P P E A L

Enter appeal in behalf of the defendant, Middle Penna. Coal Corp., and Pennsylvania Threshermen & Farmers' Mutual Casualty Insurance Company, insurance carrier, from the decision of the Workmen's Compensation Board made December 13, 1961 in the above entitled matter.

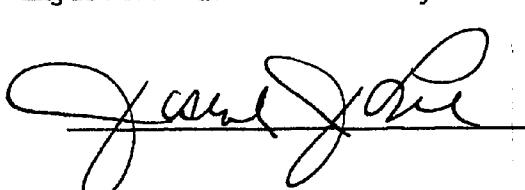
  
Attorney for Defendant-Appellant

Dated: December 21, 1961

STATE OF PENNSYLVANIA: :SS  
COUNTY OF CLEARFIELD :

JOSEPH J. LEE, counsel for the defendant, being duly sworn according to law, deposes and says that he is authorized and directed by the defendant to take this affidavit, and that the foregoing appeal from the opinion and decision of the Workmen's Compensation Board is not taken for the purpose of delay, but because the appellant believes that injustice has been done by the decision appealed from.

Sworn and subscribed to before  
me this 21st day of December, 1961

  
Joseph J. Lee

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH EVANOCHKO,	:
Claimant	:
VS	: No. 342 November Term, 1961
MIDDLE PENNA. COAL CORP.,	: Appeal by Defendant from Decision
Defendant	: of the Workmen's Compensation Board
AND	: affirming the award of Referee
PENNSYLVANIA THRESHERMEN &	: Vittone, specially presiding,
FARMERS' MUTUAL CASUALTY	: District No. 7, on Petition to Set
INSURANCE COMPANY, Insurance	: Aside Final Receipt.
Carrier	: Petition No. 114,992
	: Compensation Agreement No. 6,631,156
	:

E X C E P T I O N S

NOW, December 21, 1961, comes the defendant, Middle Penna.

Coal Corp., and Pennsylvania Threshermen & Farmers' Mutual Casualty Insurance Company, insurance carrier, and file the following Exceptions to the action of the Workmen's Compensation Board of the Commonwealth of Pennsylvania by reason of its decision dated the 13th day of December, 1961 wherein it sustained the Referee's Findings of Fact and Conclusions of Law as follows:

(1). The Workmen's Compensation Board erred in sustaining the Referee's Findings of Fact.

(2). The Workmen's Compensation Board erred in sustaining the Referee's Conclusions of Law.

(3). The Workmen's Compensation Board erred in failing to find as a fact that the claimant was only partially disabled.

(4). The Workmen's Compensation Board erred in failing to conclude that as a matter of law the claimant was only partially disabled.

(5). The Workmen's Compensation Board erred in reasoning in support of the award that the defendant should be required to present "proof of the availability" of a job which the claimant could do.

(6). The Workmen's Compensation Board erred in making the following Conclusion:

There is ample legally competent medical evidence to warrant the referee's findings that claimant has been totally disabled since he ceased working on July 26, 1957 as a result of the conditions found in his back and causing pain on any excessive movements; precluding work necessitating bending, lifting or straining and that the only kind of work available would be of a very selective character. The referee correctly modified the agreement to provide for the payment of compensation to total disability.

(7). The Workmen's Compensation Board erred in failing to make the following Conclusion:

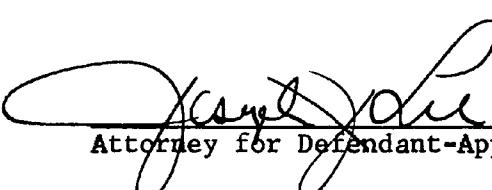
There is insufficient legally competent medical evidence to warrant the Referee's findings that the claimant has been totally disabled since he ceased working on July 26, 1957 as the result of the conditions found in his back.

(8). The Workmen's Compensation Board erred in dismissing the defendant's appeal.

(9). The Workmen's Compensation Board erred in failing to reverse the Referee and find as a fact on the testimony offered that the claimant suffers a fifty percent. partial disability.

(10). The Workmen's Compensation Board erred in sustaining the Referee's award of total disability in view of the testimony of the impartial physician appointed by the Board itself.

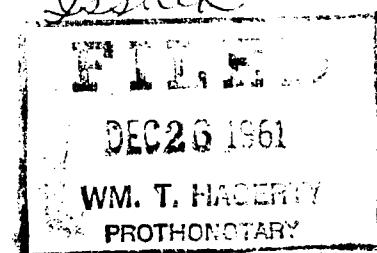
Hence, these Exceptions.

  
\_\_\_\_\_  
Attorney for Defendant-Appellant

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.  
No. 342 November Term, 1961

JOSEPH EVANOCKO  
VS  
MIDDLE PENNA. COAL CORP.  
AND  
PENNSYLVANIA THRESHERMEN &  
FARMERS' MUTUAL CASUALTY  
INSURANCE COMPANY

PRAECIPE FOR CERTIORARI  
APPEAL  
EXCEPTIONS



JOSEPH J. LEE  
ATTORNEY-AT-LAW  
CLEARFIELD, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH EVANOCHKO :  
VS : No. 342 November Term, 1961  
MIDDLE PENNA. COAL CORP. : Workmen's Compensation  
and PENNSYLVANIA THRESHERMEN :  
& FARMERS' MUTUAL CASUALTY :  
INSURANCE COMPANY :  
:

MOTION TO DISMISS APPEAL AND  
REMAND TO THE BOARD

TO THE HONORABLE JOHN J. PENTZ, PRESIDENT JUDGE OF SAID COURT:

The joint Motion of Joseph J. Lee and Arnold Smorto, attorneys at law, respectfully represents:

(1). To the above term and number Middle Penna. Coal Corp. and Pennsylvania Threshermen & Farmers' Mutual Casualty Insurance Company filed a Praecipe for Certiorari, Appeal and Exceptions through their attorney, Joseph J. Lee, from an award of the Workmen's Compensation Board in favor of Joseph Evanochko, claimant. This Praecipe for Certiorari, Appeal and Exceptions was filed December 26, 1961.

(2). Under date of January 3, 1962 Arnold D. Smorto, attorney, entered his appearance for Joseph Evanochko, the claimant and appellee.

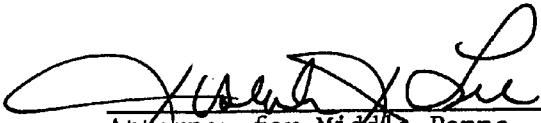
(3). Since that date the appellants and the appellee, through counsel, have made many efforts and attempts to work out a satisfactory settlement of this case to the end that the appeal might be discontinued and the case disposed of without further litigation.

(4). The parties, through counsel, have now agreed that the claimant shall be entitled to compensation for the period July 26, 1956, through and including July 24, 1961, for temporary

total disability at the rate of \$37.50 per week (being the maximum amount recoverable under the Workmen's Compensation Law in effect at the time of the claimant's injuries), together with interest at the rate of six percent, on deferred payments in accordance with the Workmen's Compensation Act; and further, that the claimant's disability has ceased as of July 25, 1961, and desire to have the Workmen's Compensation Board issue an Order reflecting said agreement.

(5). Since this Court does not have the authority to enter an Order reflecting the agreement of the appellants and the appellee, it is respectfully moved that your Honorable Court remand this case to the Workmen's Compensation Board for the purpose of effecting the settlement of this case.

Respectfully moved,



\_\_\_\_\_  
Attorney for Middle Penna. Coal Corp.  
and Pennsylvania Threshermen &  
Farmers' Mutual Casualty Insurance  
Company, Appellants

  
\_\_\_\_\_  
Attorney for Joseph Evanochko,  
Appellee

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH EVANOCHKO :  
VS : No. 342 November Term, 1961  
MIDDLE PENNA. COAL CORP. : Workmen's Compensation  
and PENNSYLVANIA THRESHERMEN :  
& FARMERS' MUTUAL CASUALTY :  
INSURANCE COMPANY :

ORDER OF COURT

NOW, to wit, this ~~5th~~ day of *March*, 1963, the foregoing Motion of Joseph J. Lee and Arnold Smorto, attorneys respectively for the appellants and the appellee in the above entitled matter, having been presented and considered, this matter is hereby ORDERED remanded to the Workmen's Compensation Board for the purpose of settlement between the parties in accordance with the foregoing Motion and in order that a proper stipulation with respect to the terms of the agreement between the parties may be filed with the Board and the Board may issue a proper Order in accordance therewith.

The Prothonotary and Clerk of Courts of Clearfield County is hereby ORDERED and DIRECTED to return the record, together with a copy of the Motion of the parties and this Order, to the Workmen's Compensation Board forthwith.

By the Court,

*John Henry*  
P.J.

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.  
No. 342 November Term, 1961  
Workmen's Compensation

JOSEPH EVANOCHKO  
VS  
MIDDLE PENNA. COAL CORP. and  
PENNSYLVANIA THRESHERMEN &  
FARMERS' MUTUAL CASUALTY  
INSURANCE COMPANY

MOTION TO DISMISS APPEAL  
AND REMAND TO THE BOARD

FILED

10/20/61

CLERK, C. J. LEE

10/20/61

CLERK, C. J. LEE  
ATTORNEY-AT-LAW  
CLEARFIELD, PA.