

Docket Number: 3982

MARTHA KALKO, individually and in her
capacity as the Executrix of the Estate
of Charles Kalko

Ronald M. Bugaj, Esquire

VS.

RODGERS-OLVER-POLLEY, INC. and
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF LABOR AND INDUSTRY,
STATE WORKERS' INSURANCE FUND

James D. Jordan, Esquire

January 6, 2010

By Order of the Court of Common Pleas of Wayne County, case filed, Order as follows: "AND NOW, this 6th day of January, 2010 it appearing to the Court that Counts IV and V of the Second Amended Complaint alleges contract actions against a Commonwealth agency, it is therefore ORDERED that the Preliminary Objection of the Department of Labor and Industry, State Workers' Insurance Fund, alleging lack of subject matter jurisdiction is SUSTAINED, and Counts IV and V of the Second Amended Complaint be TRANSFERRED to the Board of Claims for disposition.

THE FOLLOWING FILED IN THE COURT OF COMMON PLEAS OF WAYNE COUNTY

June 29, 2009

Caption: Martha Kalko individually and in her capacity as Executrix for the Estate of Charles Kalko vs. Rodgers-Olver-Polley, Inc. and Department of Labor and Industry, State Worker's Insurance Fund (SWIF).

June 29, 2009

Complaint CTS. **File scanned**

July 29, 2009

Entry of Appearance - Marc L. Bogutz, Esquire and Michael H. Malin, Esquire on behalf of Defendant, Rodgers-Olver-Polley, Inc./Certificate of Service. **Scanned**

August 5, 2009

Defendant, Rodgers-Olver-Polley, Inc.'s Preliminary Objections to Plaintiff's Complaint/Certificate of Service. *Scanned*

August 11, 2009

Praecipe for Appearance - James D. Jordan, Esquire on behalf of Department of Labor and Industry, State Workers' Insurance Fund. *Scanned*

August 11, 2009

Preliminary Objections of Department of Labor and Industry, State Workers' Insurance Fund/Certificate of Service. *Scanned*

August 11, 2009

Brief in Support of Preliminary Objections of Department of Labor and Industry, State Workers' Insurance Fund/Certificate of Service. *Scanned*

August 17, 2009

Defendant, Rogers-Olver-Polley, Inc.'s Memorandum of Law in Support of Preliminary Objections/Certificate of Service. *Scanned*

August 25, 2009

Administrative Order - AND NOW, to wit, this 25 day of August 2009, it is the Order of this Court that a status conference is scheduled for Wednesday October 7, 2009 at 10:00 AM in the Judge's Chambers, fourth floor, Wayne County Courthouse, Honesdale, Pennsylvania...Linus H. Myers, C.A. served 8/26/09 EGS. *Scanned*

August 26, 2009

Notice - Argument on Preliminary Objections of Defendant, Rodgers-Olver-Polley, Inc. and Off Defendant, Department of Labor and Industry, State Workers' Insurance fund set down for October 7, 2009, 10:00. Edward G. Sandercock Prothonotary served 8/27/09 EGS. *Scanned*

August 27, 2009

Amended Complaint. *Scanned*

September 4, 2009

Certificate of Service. *Scanned*

September 22, 2009

Defendant Rodgers-Olver-Polley, Inc.'s Preliminary Objections to Plaintiff's Amended Complaint/Certificate of Service. *Scanned*

September 22, 2009

Defendant Rodgers-Olver-Polley, Inc.'s Memorandum of Law in Support of Preliminary Objections to Amended Complaint/Certificate of Service. *Scanned*

September 23, 2009

Preliminary Objections of Department of Labor and Industry, State Workers' Insurance Fund/Certificate of Service. *Scanned*

September 23, 2009

Brief in Support of Preliminary Objections of Department of Labor and Industry, State Workers' Insurance Fund/Certificate of Service. *Scanned*

October 10, 2009

Sheriffs Return of Service - Rodgers-Olver-Polley, Inc. served by Danene Vanhorn Deputy to person in charge Laurie Stookey, Office Mgr. July 16, 2009/Department of Labor & Industry, State Workers' Compensation Fund served by Deputized Service, Lackawanna County to person in charge Carol Levanoski, Clerk August 3, 2009. *Scanned*

October 8, 2009

Administrative Order - AND NOW this 7 day of October 2009 it is the Order of this Court that arguments on Defendant, Rodgers-Olver-Polley, Inc.'s Preliminary Objections to Plaintiff's Amended Complaint and Preliminary Objections of Department of Labor and Industry, State Workers' Insurance Fund are scheduled for Friday, November 20, 2009 11:15 AM, Courtroom No. 2, fourth floor, Wayne County Courthouse. Further it is ORDERED that the Status Conference is continue from October 7, 2009 to Friday, November 20, 2009 11:15 AM. Linus H. Myers C.A. served 10/8/09 EGS. *Scanned*

October 13, 2009

Second Amended Complaint. *Scanned*

October 16, 2009

Certificate of Service - Second Amended Complaint. *Scanned*

October 28, 2009

Defendant, Rodgers-Oliver-Polley, Inc.'s Preliminary Objections to Plaintiff's Second Amended Complaint/Certificate of Service. *Scanned*

October 28, 2009

Defendant, Rodgers-Oliver-Polley, Inc.'s Memorandum of Law in Support of Preliminary Objections to Second Amended Complaint/Certificate of Service. *Scanned*

November 2, 2009

Certificate of Service - Second Amended Complaint. *Scanned*

November 2, 2009

Preliminary Objections of Department of Labor and Industry, State Workers' Insurance Fund/Certificate of Service. *Scanned*

November 2, 2009

Brief in Support of Preliminary Objections of Department of Labor and Industry, State Workers' Insurance Fund/Certificate of Service. *Scanned*

November 16, 2009

Answer to Defendant Rodgers-Oliver-Polley, Inc.'s Preliminary Objections to Plaintiff's Second Amended Complaint *Scanned*

November 16, 2009

Answer to Preliminary Objections of Department of Labor and Industry, State Workers' Insurance Fund. *Scanned*

November 16, 2009

Plaintiff's Brief Contra Defendant Rodgers-Oliver-Polley's Preliminary Objections to Plaintiff's Second Amended Complaint. *Scanned*

November 16, 2009

Plaintiff's Brief Contra Defendant SWIF's Preliminary Objections to Plaintiff's Second Amended Complaint. *Scanned*

November 18, 2009

Certificate of Service - Plaintiff's Answer to Preliminary Objections of Department Labor and Industry, State Workers' Insurance Fund, Plaintiff's Brief Contra Defendant SWIF's Preliminary Objections to Plaintiff's Second Amended Complaint. *Scanned*

November 24, 2009

Order - AND NOW this 20 day of November 2009 after conference, this Court issues the following Order with respect to the above-caption case: All discovery proceedings, including depositions shall be completed by May 23, 2010; expert reports of Defendant due by June 25, 2010; outstanding motions or other procedural matters shall be disposed of by July 2, 2010; this case is hereby listed for trial during special August term of Court, jury selection to commence August 23, 2010; Pre-Trial Conference is scheduled for July 16, 2010, 11:00 AM. Linus H. Myers, C.A. served 11/24/09 EGS. *Scanned*

November 24, 2009

Administrative Order - AND NOW this 24 day of November 2009, it is the Order of this Court that the case is scheduled for a special August Trial Term 2010. The Pre-Trial Conference is scheduled for Friday, July 16, 2010, 11:00 AM, Judge's Chambers, fourth floor, Wayne County Courthouse. This case is scheduled for the special August Trial Term 2010 at which time counsel are attached for the jury selection/trial to commence on Monday, August 23, 2010, 9:30 AM, main courtroom, third floor, Wayne County Courthouse. Pre-Trial Memorandum shall be filed five days prior to conference. Linus H. Myers, C.A. served 11/24/09 EGS. *Scanned*

November 30, 2009

Notice - Argument on Defendants' Preliminary Objections to Plaintiff's Second Amended Complaint set down for January 6, 2010, 10:00 AM. Edward G. Sandercock, Prothonotary served 12/3/09 EGS. *Scanned*

December 22, 2009

Administrative Order - AND NOW this 22 day of December 2009, it is the Order of this Court that in addition to the November 24, 2009 Scheduling Order, it is the Order of this Court that original Pre-Trial Conference memo is to be filed in the Prothonotary and Clerk of Courts Office and a copy to be emailed to the Court. Linus H. Myers, C.A. served 12/22/09 KD. *Scanned*

January 6, 2010

Order - AND NOW this 6 day of January 2010, it appearing to the Court that Counts IV and V of the Second Amended Complaint alleges contract actions against a Commonwealth agency, it is therefore Ordered that the Preliminary Objection of the Department of Labor and Industry, State Workers' Insurance Fund, alleging lack of subject matter jurisdiction is SUSTAINED and Counts IV and V of the Second Amended Complaint be TRANSFERRED to the Board of Claims for disposition. Raymond L. Hamill, P.J. served 1/7/10 EGS. *Scanned*

January 6, 2010

Order - AND NOW this 6 day of January 2010, after argument and submission of Briefs, it appearing to the Court that there are different parties and issues in the case sub judice that were present in the workers compensation case (Sherry Bucelli v. Charles and Martha Kalko d/b/a Mortonhouse, Defendant and SWIF Insurance Carrier Workers Compensation Bureau of Adjudication, Case No. A07-1768) it is therefore ORDERED that the Defendant's, Rodgers-Olver-Polley, Inc.'s Preliminary Objection for failure to state a claim in Counts I-III of the Second Amended Complaint is DENIED. If further appearing to the Court there can be no cause of action for fraud in this matter, it is therefore ORDERED that the Defendant's Preliminary Objection for failure to properly plead fraud under PA RCP 1019(A) and (B) is SUSTAINED and Count III of the Second Amended Complaint is DISMISSED with prejudice. It is further ORDERED that the Defendant, Rodgers-Olver-Polley, Inc. shall file an answer to the Second Amended Complaint within twenty (20) days of this Order. Raymond L. Hamill, PJ served 1/7/10 EGS. *Scanned*

January 25, 2010

Notice of Service - Plaintiff's Request for Production of Documents and Plaintiff Martha Kalko's First Set of Interrogatories. *Scanned*

January 26, 2010

Defendant Rodgers-Oliver-Polley, Inc.'s Answer and New Matter to Plaintiff's Second Amended Complaint/Certificate of Service.
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BEFORE THE BOARD OF CLAIMS

January 6, 2010

The Court of Common Pleas of Wayne County transferred record.

February 8, 2010

Board of Claims received file from the Court of Common Pleas of Wayne County. Amount of Claim: \$50,000.00+.

February 10, 2010

Board issued letter to Plaintiff requesting Restated Claim, proof of mailing and filing fee.

February 17, 2010

Defendant transmitted via facsimile a letter advising Board that two weeks after the transfer the parties settled this case and Defendant request the Board accept discontinuance.

February 18, 2010

Board forwarded letter to Plaintiff requesting Praecipe to Discontinue.

February 24, 2010

Plaintiff filed letter concurring with Defendant's request for discontinuance of case.

June 14, 2010

Plaintiff filed Praecipe to Discontinue.

June 15, 2010

Board rendered Order. Order as follows: "**AND NOW**, this 15th day of June, 2010, upon receipt of a Praecipe executed by Ronald M. Bugaj, Esquire, on behalf of Plaintiff, Martha Kalko, individually and in her capacity as Executrix for the Estate of Charles Kalko, requesting that the Board mark the above-captioned matter discontinued and ended against the Commonwealth of Pennsylvania, Department of Labor and Industry, State Workers' Insurance Fund (hereinafter "SWIF"), docketed with this Board under date of June 14, 2010, it is **ORDERED** and **DIRECTED** that the above-captioned matter be marked discontinued and ended with prejudice against the Commonwealth of Pennsylvania, Department of Labor and Industry, State Workers' Insurance Fund (hereinafter "SWIF").

With discontinuance of this claim against SWIF, there is now no Commonwealth entity involved in this matter. Therefore, because it appears that this Board no longer has subject matter jurisdiction over the case given the parties remaining, it is further **ORDERED** and **DECREED** that pursuant to 42 Pa. C.S. §5103 (a) and Pa. R.C.P. 213 (f), this matter and the record thereof is **TRANSFERRED** to the Court of Common Pleas of Wayne County, Pennsylvania." Copy forwarded to all parties on record.

June 18, 2010

Plaintiff filed Acceptance of Service of Order dated June 15, 2010. Receipt of same acknowledged June 16, 2010.

June 21, 2010

Rodgers-Oliver-Polley, Inc. filed Acceptance of Service of Order dated June 15, 2010. Receipt of same acknowledged June 18, 2010.
