



# NATIONAL ASBESTOS LITIGATION CONFERENCE

*Charleston, SC | September 16-17, 2025*

## Recent Decisions and Their Impact on Employer Liability Cases



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Introduction/Overview

Martin v. Goodrich and the status of Illinois law

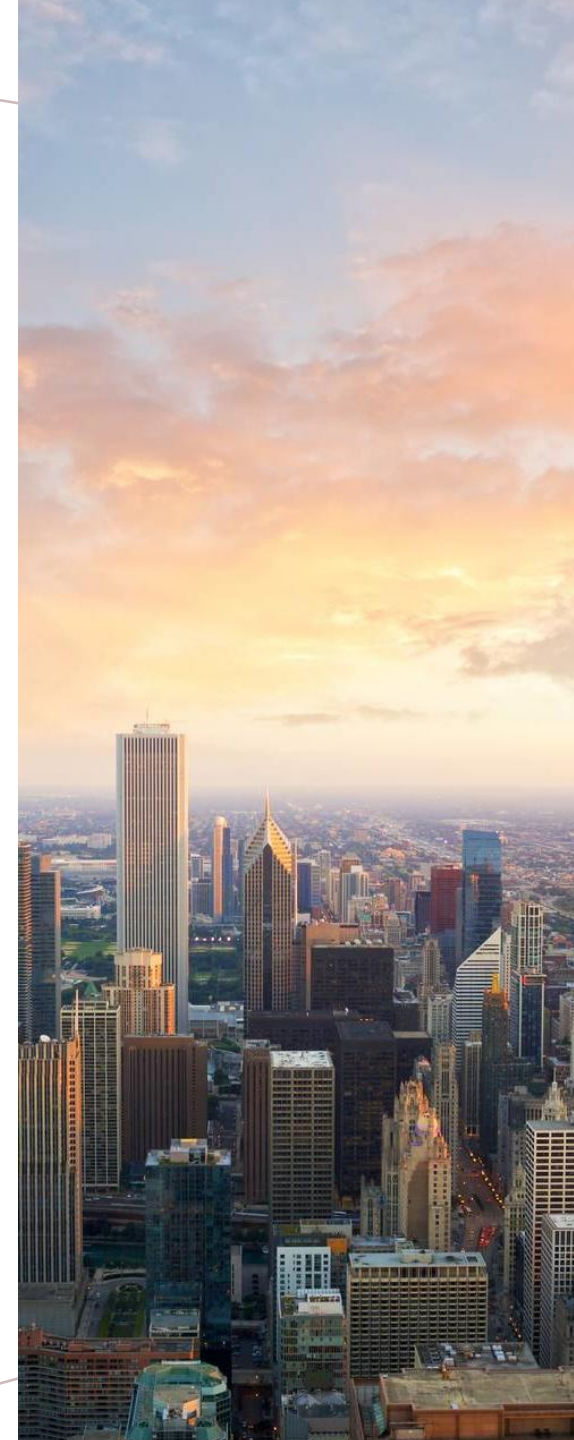
Cockrum v C.H. Murray, et al

Tooey; Herold

Exceptions

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# Reichs-Gesetzblatt.

№ 19.

Inhalt: Unfallversicherungsgesetz. §. 69. — Gesetz, betreffend die Festsetzung eines zweiten Nachtrags zum Reichshaushalt-Etat für das Etatsjahr 1884/85. S. 119.

(Rr. 1552.) Unfallversicherungsgesetz. Vom 6. Juli 1884.

**Wir Wilhelm, von Gottes Gnaden Deutscher Kaiser, König von Preußen x.**

verordnen im Namen des Reichs, nach erfolgter Zustimmung des Bundesraths und des Reichstags, was folgt:

## I. Allgemeine Bestimmungen.

Umfang der Versicherung.

### §. 1.

Alle in Bergwerken, Salinen, Aufbereitungsanstalten, Steinbrüchen, Gräbereien (Gruben), auf Werften und Bauhöfen, sowie in Fabriken und Hüttenwerken beschäftigten Arbeiter und Betriebsbeamten, letztere sofern ihr Jahresarbeitsverdienst an Lohn oder Gehalt zweitausend Mark nicht übersteigt, werden gegen die Folgen der bei dem Betriebe sich ereignenden Unfälle nach Maßgabe der Bestimmungen dieses Gesetzes versichert.

Daselbe gilt von Arbeitern und Betriebsbeamten, welche von einem Gewerbetreibenden, dessen Gewerbebetrieb sich auf die Ausführung von Maurer-, Zimmer-, Dachdecker-, Steinhauer- und Brunnenarbeiten erstreckt, in diesem Betriebe beschäftigt werden, sowie von den im Schornsteinsegergewerbe beschäftigten Arbeitern.

Den im Absatz 1 aufgeführten gelten im Sinne dieses Gesetzes diejenigen Betriebe gleich, in welchen Dampfessel oder durch elementare Kraft (Wind, Wasser, Dampf, Gas, heiße Luft u. s. w.) bewegte Triebwerke zur Verwendung kommen, mit Ausnahme der land- und forstwirtschaftlichen nicht unter den Absatz 1 fallenden Nebenbetriebe, sowie derjenigen Betriebe, für welche nur vorübergehend eine nicht zur Betriebsanlage gehörende Kraftmaschine benutzt wird.

State	Workers' Compensation Statute	State Workers' Comp Department	Exemptions and Special Rules
Kansas	Kansas Statutes Annotated §44-501 et seq.	<a href="#">Department of Labor</a>	No exceptions. Applies to anyone who has entered into service or apprenticeship

State	Workers' Compensation Statute	State Workers' Comp Department	Exemptions and Special Rules
Montana	Mont. Code Ann. §39-71-101, <del>et seq</del>	<a href="#">Department of Labor and Industry</a>	<p>Doesn't apply to:</p> <ul style="list-style-type: none"><li>• Casual employment</li><li>• Cosmetologist or barbers</li><li>• Dependent member of the employer's family</li><li>• Domestic servants</li><li>• Direct sellers</li><li>• Freelance photographers and authors</li><li>• Jockeys</li><li>• Managers of a ditch company</li><li>• Newspaper deliverers</li><li>• Ordained ministers</li><li>• People working solely within the boundaries of Indian reservations</li><li>• Petroleum land workers</li><li>• Real estate brokers or salesmen</li><li>• Some officials at athletic events</li><li>• Some sole proprietors</li></ul>

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**PENNSYLVANIA OCCUPATIONAL DISEASE ACT**

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“THE PENNSYLVANIA OCCUPATIONAL DISEASE ACT”  
Act of 1939, P.L. 566, No. 284

**AN ACT**

Defining the liability of an employer to pay damages for occupational disease contracted by an employe arising out of and in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; imposing duties on the Department of Labor and Industry, the Workmen’s Compensation Board, Workmen’s Compensation Referees, and deans of medical schools; creating a medical board to determine controverted medical issues; establishing an Occupational Disease Fund in custody of the State Workmen’s Insurance Board; imposing upon the Commonwealth a part of the compensation payable for certain occupational diseases; making an appropriation; and prescribing penalties.

**ARTICLE I**  
**Interpretation and Definitions**

Sec 101 This act shall be called and may be cited as The Pennsylvania Occupational Disease Act. It shall apply to disabilities and deaths caused by occupational disease as defined in this act, resulting from employment within this Commonwealth, irrespective of the place where the contract of hiring was made, renewed, or extended, and shall not apply to any such disabilities and deaths resulting from employment outside of the Commonwealth.

## **(820 ILCS 310/) Workers' Occupational Diseases Act.**

(820 ILCS 310/1) (from Ch. 48, par. 172.36)

Sec. 1. This Act shall be known and may be cited as the "Workers' Occupational Diseases Act".

(a) The term "employer" as used in this Act shall be construed to be:

1. The State and each county, city, town, township, incorporated village, school district, body politic, or municipal corporation therein.
2. Every person, firm, public or private corporation, including hospitals, public service, eleemosynary, religious or charitable corporations or associations, who has any person in service or under any contract for hire, express or implied, oral or written.
3. Where an employer operating under and subject to the provisions of this Act loans an employee to another such employer and such loaned employee sustains a compensable occupational disease in the employment of such borrowing employer and where such borrowing employer does not provide or pay the benefits or payments due such employee, such loaning employer shall be liable to provide or pay all benefits or payments due such employee under this Act and as to such employee the liability of such loaning and borrowing employers shall be joint and several, provided that such loaning employer shall in the absence of agreement to the contrary be entitled to receive from such borrowing employer full reimbursement for all sums paid or incurred pursuant to this paragraph together with reasonable attorneys' fees and expenses in any hearings before the Illinois Workers' Compensation Commission or in any action to secure such reimbursement. Where any benefit is provided or paid by such loaning employer, the employee shall have the duty of rendering reasonable co-operation in any hearings, trials or proceedings in the case, including such proceedings for reimbursement.



Martin v.

Goodrich

and

the status of

Illinois law

# Martin v. Goodrich Corp., et. al.

2025 IL 130509, Opinion Filed January 24, 2025

(1) Is the period referenced in section 1(f) a “period of repose or repose provision” for purposes of the exception provided in section 1.1?

YES

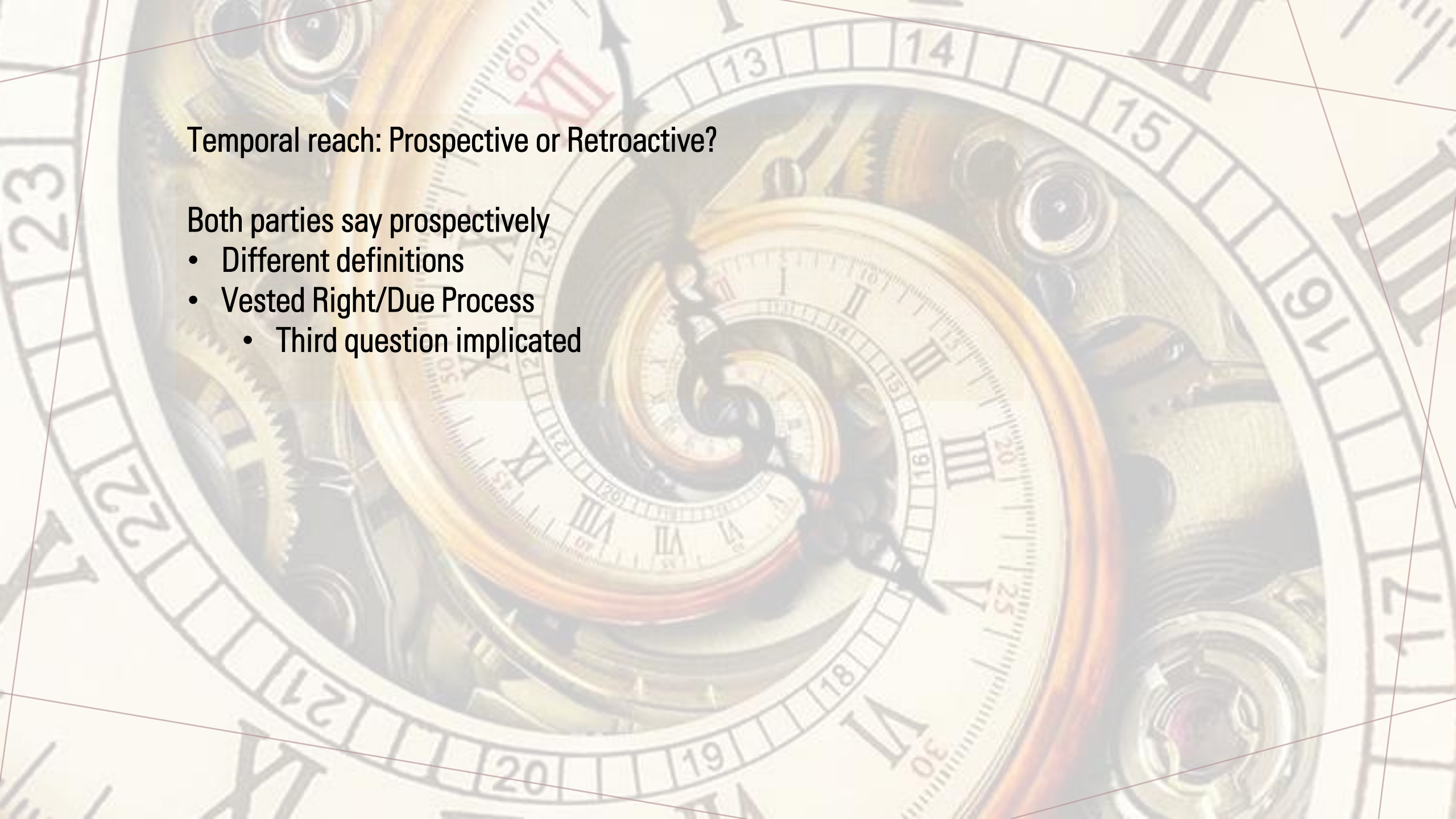
(2) If section 1(f) falls within the section 1.1 exception, what is its temporal reach—either by its own terms or through section 4 of the Statute on Statutes (5 ILCS 70/4 (West 2022))?

Applies  
prospectively

(3) Would the application of the exception in section 1.1 to past conduct offend Illinois’s due process guarantee?

No because  
prospective only

Is Section 1(f) of the Occupational Diseases Act a Statute of Repose?



## Temporal reach: Prospective or Retroactive?

Both parties say prospectively

- Different definitions
- Vested Right/Due Process
  - Third question implicated

For the current opinion, go to <https://www.lexisnexis.com/clients/wa/waopns/>

**FILE**

IN CLERK'S OFFICE  
SUPREME COURT, STATE OF WASHINGTON  
MAY 29, 2025

*Stevens, C. J.*  
CHIEF JUSTICE

THIS OPINION WAS FILED  
FOR RECORD AT 8 A.M. ON  
MAY 29, 2025  
*Sarah R. Pendleton*  
SARAH R. PENDLETON  
SUPREME COURT CLERK

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

JEFFERY L. COCKRUM )

Petitioner, )

v. )

C.H. MURPHY/CLARK-ULLMAN, )  
INC.; NORTH COAST ELECTRIC )  
COMPANY; METROPOLITAN )  
LIFE INSURANCE COMPANY; )  
PFIZER, INC.; P-G INDUSTRIES, )  
INC., as successor-in-interest to )  
PRYOR GIGGEY CO., INC.; )  
THERMO FISHER SCIENTIFIC, )  
INC.; and UNION CARBIDE )  
CORPORATION, )

Defendants, )

HOWMET AEROSPACE, )  
INC., f/k/a/ ARCONIC, INC., as )  
corporate successor to ALCOA, )  
INC., )

Respondent. )  
\_\_\_\_\_ )

No. 102881-4

EN BANC

Filed: May 29, 2025

could not satisfy the deliberate injury exception. The issue before this court is whether the evidence Cockrum presented creates a genuine issue of material fact that Alcoa had actual knowledge an injury was certain to occur. Under this court's prior decision in *Walston v. Boeing Co.*, 181 Wn.2d 391, 334 P.3d 519 (2014), no employee could sue for a latent disease like mesothelioma because they could never satisfy the level of certainty required there; Howmet would prevail and latent diseases like cancer would not be injuries any employee could sue for, regardless of their employer's intent. This court does not lightly set aside precedent, but justice requires us to admit our mistakes when we make them and to overrule precedent that is demonstrably incorrect and harmful. For the reasons explained below, we now recognize *Walston* to be such a decision and must be overruled.

We conclude that in latent disease cases, virtual certainty is sufficient to prove the employer's actual knowledge that injury was certain to occur. This does not alter the standard of actual knowledge injury is certain to occur that is generally required to satisfy the deliberate injury exception for immediate and visible types of injuries; this virtual certainty standard is limited only to latent disease cases. We recognize

In 1911, in a time of burgeoning industry, Washington enacted what later became the IIA as the result of a “grand compromise” between employers and employees, granting injured employees “swift, no-fault compensation” for on-the-job injuries and granting employers immunity from civil suits arising from such injuries. *Birklid v. Boeing Co.*, 127 Wn.2d 853, 859, 904 P.2d 278 (1995) (citing *Stertz v. Indus. Ins. Comm’n*, 91 Wash. 588, 590-91, 158 P. 256 (1916));

Our case law has treated an injury in the form of disease that takes time to manifest (like cancer) distinct from other types of injury, like rashes or burns that occur very quickly after exposure. Further, when workplace exposures result in

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<sup>5</sup> There is only one case post-*Birkliid* where facts were sufficient to justify a finding that an employer deliberately intended to injure an employee that did *not* involve exposure to toxic chemicals causing continuous immediate and visible injury. In *Michelbrink v. Washington State Patrol*, 191 Wn. App. 414, 419-20, 363 P.3d 6 (2015), the court found that there could have been deliberate intent when the Washington State Patrol, the plaintiff's employer, shot the plaintiff with a Taser during a work training and he eventually developed a fracture in his vertebrae and a bulged disc as a result of the electric shock. The court reasoned that the employer physically assaulted the plaintiff by shooting him with the Taser, and it knew in doing so that *an injury* was certain to occur, even if it did not foresee that specific injury. *Id.* at 430.

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For the current opinion, go to <https://www.lexisnexis.com/clients/wareports/>.

*Cockrum v. C.H. Murphy/Clark-Ullman, Inc.*  
No. 102881-4

disease, our precedent has rendered it *impossible* to prove the actual knowledge prong of *Birkliid*'s test for deliberate injury. In 2014, this court closed the door on proving actual knowledge injury was certain to occur in asbestos-related diseases—and all latent diseases—when it decided *Walston*.

In *Walston*, the plaintiff-employee was exposed to asbestos throughout the decades he worked for Boeing; he was later diagnosed with mesothelioma, as “caused by inhaling asbestos fibers.” 181 Wn.2d at 394. It was undisputed that Boeing was aware of the hazards of asbestos exposure by the time of the plaintiff’s exposure; that asbestos exposure could manifest into diseases like cancer, even decades after exposure; and that recommended safety precautions could be taken to reduce asbestos exposure. *Id.* at 395. Despite such knowledge, the court concluded that the plaintiffs could not show the employer had *actual knowledge that injury was certain* to occur because, as the plaintiff’s expert testified, asbestos exposure is never *certain* to cause mesothelioma or any other disease. *Id.* at 394, 397. Additionally,

Although we do not lightly set aside precedent, we will do so upon clear showing it is both incorrect and harmful. *State v. Crossguns*, 199 Wn.2d 282, 290, 505 P.3d 529 (2022); *State v. Scherf*, 192 Wn.2d 350, 379, 429 P.3d 776 (2018) (“A decision is incorrect if it is based on an inconsistency with the court’s precedent, with the State’s constitution or statutes, or with public policy considerations. A decision is harmful if it has a detrimental impact on the public interest.”). Thus, today we conclude *Walston*’s exclusion of diseases from recovery under RCW 51.24.020 incorrectly contradicts the plain text of the statute and public policy behind the IIA. The holding in *Walston* is also harmful because it denies relief to employees who happen to be injured in the form of disease that may take years to

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**For the current opinion, go to <https://www.lexisnexis.com/clients/wareports/>.**

*Cockrum v. C.H. Murphy/Clark-Ullman, Inc.*  
No. 102881-4

manifest rather than immediate and visible injuries. Therefore, *Walston* must be overruled.

*Tooev v. AK Steel Corp.*, 81 A.3.d 851 (Pa. 2013)

Former employee can bring a common law claim against an employer when the employee has an occupational disease with a latency period greater than 300 weeks.

*Herold v. University of Pittsburgh*, 305 A.3d 957 (Pa. 2025)

Court decided that a disability or death resulting from an occupational disease that occurs beyond the four-year limitations period in the Occupational Disease Act removes the claim from exclusivity, extended *Tooev's* holding.

*Herold v. University of Pittsburgh*, 305 A.3d 957 (Pa. 2025)

Footnote 6 is the current area of interest: The parties disagree regarding whether the date of last employment or the date of last exposure triggers [the] limitations period. . . . we need not resolve this dispute in this appeal, but remand the issue for the trial court's resolution.

- Can this be "written around?"

## West Virginia

West Virginia Code Section 23-4-2(d)(2)(A) & (B)(i-v)

### CHAPTER 23. WORKERS' COMPENSATION.

Article 3

All Articles

#### ARTICLE 4. DISABILITY AND DEATH BENEFITS.

**§23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer; legislative declarations and findings; "deliberate intention" defined.**

## Two Methods:

Specific Intent: “consciously, subjectively, and deliberately formed intention” to cause the specific injury or death. [evidence of intentional harm]

Five-Factor Test: More common, “[t]he trier of fact determines, either through specific findings of fact made by the court in a trial without a jury, or through special interrogatories to the jury in a jury trial, that all of the following facts are proven:”

- Specific unsafe working condition existed that presented a high degree of risk and strong probability of serious injury or death.
- Actual knowledge of the unsafe condition and its risks before the injury occurred.
- Violated a specific state or federal safety statute, rule, regulation, or industry-recognized safety standard.
- Intentionally exposed the employee to the unsafe condition despite this knowledge.
- Suffered a serious compensable injury or death as a direct result.

## Other Requirements

Unanswered questions:

- Will the new judge make findings?
- Will the presence of a new Intermediate Court of Appeals change anything?

Medical Marijuana Inc., et al v. Horn

4/2/2025