

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RICHARD BAKSALARY, WILLIAM
JONES, MORRIS TUCKER and
CHARLES SAMUEL, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

PAUL J. SMITH, et al.,
Defendants.

Civil Action No. 76-429

MEMORANDUM/ORDER

August 9, 2005

Before this court is a motion filed by certain defendants,¹ pursuant to Federal Rule of Civil Procedure 60(b)(5), to vacate the consent decree entered in this action in 1984.

The consent decree enjoined members of the defendant class from invoking the “automatic supersedeas” provision in § 413(a) of the Pennsylvania Workers’ Compensation Act, 77 Pa. Stat. Ann. § 774 (1983), to unilaterally terminate payment of workers’ compensation indemnity benefits. Because the statutory provision at issue has

¹The moving defendants are private insurers who write workers’ compensation insurance in Pennsylvania. They are all members of the defendant class certified in this action.

since been repealed, the consent decree will be vacated.

I.

Under Pennsylvania's Workermen's Compensation Act, employers are required to compensate workers injured in the course of their employment for lost wages or "indemnity benefits." Employers may satisfy this obligation by purchasing workers' compensation insurance from licenced insurers. The obligation to pay indemnity benefits ends when the worker has recovered from the injury or returned to work. Therefore, when an insurer, or self-insured employer, believes that an injured employee has resumed work or recovered, it will typically seek to terminate the benefits. *See Baksalary v. Smith*, 579 F. Supp 218, 220-21(E.D. Pa. 1984). Under the Pennsylvania Workers' Compensation Act as it existed at the time this action was filed, the "automatic supersedeas" provision in § 413(a) permitted insurers to terminate benefits by filing a petition with the Pennsylvania Bureau of Workers' Compensation that included either (1) an affidavit from a doctor averring that the worker had recovered completely; or (2) a recital that the employee had returned to work earning a wage at least equal to his prior wage.

This action was brought on February 12, 1976 by six named plaintiffs whose workers' compensation benefits had been terminated under the § 413(a) automatic supersedeas provision. The plaintiffs alleged that § 413(a) deprived them of due process by permitting an insurer to unilaterally terminate payment of benefits without a prior

hearing. A three-judge panel certified the case as both a plaintiffs' and defendants' class action² and ruled that the automatic supersedeas provision violated the due process clause. In reaching this decision, the court found that private insurers who terminated benefits were state actors. Since the act required insurers to "file a petition on a form provided by the state," the court concluded that the state was a "joint participant" with the insurer in terminating benefits. *Baksalary*, 579 F. Supp at 231.³ Under the consent decree approved by the court on July 30, 1984 (and amended August 8, 1984), members of the defendant class are "enjoined now and in the future from invoking in any way the automatic supersedeas provision of Section 413(a) of the Pennsylvania Workers' Compensation Act to terminate the payment of workers' compensation benefits." *Baksalary v. Smith*, 591 F. Supp. 1279, 1294 (E.D. Pa. 1984). The court retained continuing jurisdiction over the

²The defendants' class was defined as "all insurance carriers and self-insured employers who had invoked, or would in the future invoke, the automatic supersedeas procedure of section 413(a)."

³As defendants argue, the constitutional reasoning supporting the court's state action determination has been repudiated by decisions from both the Supreme Court and the Third Circuit. In *American Mfrs. Mut. Ins. Co. v. Sullivan*, the Court held that a private employer or insurer who withholds disputed workers' compensation medical benefits pending an independent review are not state actors who are subject to the Fourteenth Amendment. 526 U.S. 40, 44 (1999). In particular, the Court rejected the notion that state action existed when an insurer "must first obtain 'authorization' or 'permission' from the Bureau before withholding payment." *See id.* at 54-55. The Court also rejected a "joint participation" theory of state action. *See id.* at 57-58. In *Kreschollek v. Southern Stevedoring Co.*, the Third Circuit relied on *Sullivan* in holding that private employers and insurers who terminated Longshore and Harbor Workers' Compensation Act (LHWCA) benefits without notice were not state actors and therefore did not violate the due process clause. 223 F.3d 202 (3d. Cir. 2000).

decree, but provided for the termination of jurisdiction “either upon the court’s own motion, or upon motion of any party, at such time as the court concludes that the rights and remedies accorded by the Decree have been satisfied.” *Id.* at 1299.

The automatic supersedeas provision of § 413 has been repealed. In 1996, the Pennsylvania Workers’ Compensation Act was amended to require a pre-termination hearing procedure before benefits can be suspended under § 413(a). *See* 77 Pa. Stat. Ann. § 774 (2000). Under the amended provision, a petition to modify or terminate benefits “operates as a request for a supersedeas to suspend the payment of compensation.” Within 21 days of the petition, a hearing is held before a workers’ compensation judge, who must rule within 7 days of the hearing. The insurer or employer must continue to pay benefits until the judge has made a determination. If the judge determines that the employee is ineligible for continued benefits, the insurer or employer will be reimbursed by the Workers’ Compensation Supersedeas Fund. However, the fund is financed by assessments against insurers who, therefore, bear the full cost of the payments to ineligible workers.

II.

Federal Rule of Civil Procedure 60(b)(5) states:

On motion and upon such terms as are just, the court may relieve a party or a party’s legal representative from a final judgment, order, or proceeding for the following reasons ... (5) ... a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.”

Consent decrees are subject to this rule. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 378-79 (1992). A party seeking modification or termination of a consent decree must show “a significant change either in factual conditions or in law.” *Id.* at 384. Furthermore, “A court may recognize subsequent changes in either statutory or decisional law. A court errs when it refuses to modify an injunction or consent decree in light of such changes.” *Agostini v. Felton*, 521 U.S. 203, 215 (1997) (internal citations omitted).

In *Brown v. Philadelphia Housing Authority*, the Third Circuit had occasion to consider whether a consent decree entered in 1974 should be vacated “(1) where statutes and regulations have been enacted and promulgated curing the alleged due process deficiencies addressed by the Consent Decree, and (2) where no originally named plaintiff remains a party to the Complaint and Consent Decree and no class was ever certified?” 350 F.3d 338, 340 (3d. Cir. 2003). While the court vacated the consent decree on the second ground, it took the opportunity to provide guidance on “the test for determining when a court ordered decree challenged under Rule 60(b) should be set aside as having lost its utility,” stating:

The District Court in this case looked to whether a conflict existed between the provisions of the Consent Decree and the subsequently enacted regulations and statute. Having determined that no conflict existed, the Consent Decree's operation was continued and the challenge to it was rejected.

Under the teachings found in *Building & Construction Trades Council v. NLRB*, 64 F.3d 880 (3d Cir.1995), and *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 378, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992), there need not be a “conflict” to justify vacatur of a consent decree; a “significant change” with no attendant conflict constitutes sufficient grounds for vacatur. Our review of the federal statute and regulations promulgated after 1974 reveals that not only did they significantly

change the relevant due process landscape (originally sought to be cured by the Consent Decree) but that they gave broader and more comprehensive protection to PHA residents than had been available under the Consent Decree. Thus, the Consent Decree no longer had force or utility, and there was no reason for the Consent Decree to remain operative. *Id.* at 348, n. 6.

Brown applies squarely to the case at bar. Now that the automatic supersedeas provision at issue has been repealed, the consent decree no longer has force or utility.

III.

Accordingly, defendants' Rule 60(b)(5) motion is hereby **GRANTED** and the consent decree is **VACATED**.

BY THE COURT:

Pollak, J.