

“DON’T TAKE IT PERSONALLY”: EXPLAINING THE CORRECT
INTERPRETATION OF PENNSYLVANIA WORKERS’ COMPENSATION ACT
SECTION 301(c)(1)’s “REASONS PERSONAL” EXCEPTION –
AND WHY IT’S MORE THAN JUST A MATTER OF SEMANTICS

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INTRODUCTION

Workers' compensation is meant to provide injured workers with compensation for injuries that arise out of and occur in the course of employment.¹ An injury "arises out of" employment if the origin or cause of the injury is derived from the workers' employment.² The fundamental inquiry of whether an injury arises out of employment is whether a causal nexus exists between the injuries sustained and the duties or service performed by the injured worker.³ Determining whether an injury arises out of employment depends on the type of risk of injury involved.⁴

One particular risk of injury is an assault. In all jurisdictions, a privately motivated assault does not arise out of the employment, and is therefore not compensable.⁵ However, some states, including Pennsylvania, have a separate statutory affirmative defense applicable to an injury inflicted by a third person for personal reasons.⁶ In these states, a determination of whether a privately motivated assault is compensable is analyzed using the particular wording and interpretation of those statutes.⁷ Therefore, an improper interpretation of the particular wording in question can prevent an injured employee from receiving workers' compensation.

This fact became all too clear for the Pennsylvania workers' compensation community in 2000. On April 28, 2000, Richard Baumhammers, a resident of Pittsburgh, Pennsylvania, went on a two hour shooting spree, specifically targeting minorities.⁸ Five

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¹ 1 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW § 1.01 (Matthew Bender, rev. ed. 2015).

² *Id.* § 3.01.

³ *See* Lakeside Casino v. Blue, 743 N.W.2d 169, 174 (Iowa 2007) ("The element of 'arising out of' requires proof 'that a causal connection exists between the conditions of [the] employment and the injury.'"); *see also* Miedema v. Dial Corp., 551 N.W.2d 309, 311 (Iowa 1996) ("[T]he injury must not have coincidentally occurred while at work, but must in some way be caused by or related to the working environment or the conditions of [the] employment."); *but see* Tredway v. District of Columbia, 403 A.2d 732, 736 (D.C. 1979) ("While it is true that such a causal relation is required under many state workmen's compensation acts, the rule under the federal compensation act has been much more liberal to [federal] employees.").

⁴ LARSON, *supra* note 1, § 4.

⁵ *Id.* § 8.02.

⁶ *Id.*

⁷ LARSON, *supra* note 1, § 8.02.

⁸ Donegal Mut. Ins. Co. v. Baumhammers, 938 A.2d 286, 288 (Pa. 2007).

individuals were killed and one was seriously injured.⁹ In particular, Mr. Baumhammers walked into Ya Fei Chinese Cuisine, a Chinese restaurant, and killed the restaurant manager, Ji-ye “Jerry” Sun.¹⁰ Mr. Sun’s widow sought workers’ compensation death benefits.¹¹ However, the restaurant’s insurer, Princeton Insurance Co. of Camp Hill, PA, denied the claim.¹² Princeton Insurance Co. denied the claim on the grounds that the death was excluded from compensation pursuant to Pennsylvania’s “reasons personal” exception.¹³ The pertinent law, Section 301(c)(1) of the Pennsylvania Workers’ Compensation Act, states:

The term “injury arising in the course of his employment,” as used in this article, shall not include an injury caused by an act of a third person intended to injure the employe[e] because of reasons personal to him, and not directed against him as an employe[e] or because of his employment. . .¹⁴

Princeton Insurance Co. argued that the death was for reasons personal to the *assailant* and therefore not compensable.¹⁵

The case ultimately settled,¹⁶ perhaps suggesting that the carrier thought it had a weak defense. However, according to leading case law, this interpretation of the statute by Princeton was not necessarily incorrect. Pennsylvania case law has interpreted Section 301(c)(1) of the Act to exclude injuries “caused by an act of a third person intended to injure the employe[e] because of reasons personal to [*the third person-assailant*], and not directed against [the employee-victim] as an employe[e] or because of [the employee-victim’s] employment.”¹⁷ Yet, the statute on its face, as well as case law immediately

⁹ *Id.*

¹⁰ *Shooting victim’s widow files wrongful death suit against Baumhammers*, Pittsburgh Post-Gazette, Jun. 22, 2000, at B-5, (available at <https://news.google.com/newspapers?nid=1129&dat=20000622&id=S7JRAAAIBAJ&sjid=MG8DAAAIBAJ&pg=2352,708242&hl=en>).

¹¹ *Id.*

¹² *Id.*

¹³ Interview with Workers’ Compensation Judge David B. Torrey, June 13, 2016; *see also* David B. Torrey, *New Articles*, Pennsylvania Bar Association Workers’ Compensation Newsletter, Vol. VII, No. 125, April 2016, at 45 (discussing the Baumhammers shooting spree).

¹⁴ 77 P.S. § 411(1).

¹⁵ Torrey interview, *supra* note 13.

¹⁶ *Id.*

¹⁷ *See infra* Part II(C).

following the statute's inception, support the interpretation that the reason for the assault must be for reasons personal to the *employee*.¹⁸

In any event, confusion has existed as to how Section 301(c)(1) should be interpreted.¹⁹ Before an injury or death is excluded, must the assault be for reasons personal to the assailant or to the employee? Furthermore, does the distinction even matter? This paper determines how to properly interpret and apply Section 301(c)(1)'s "reasons personal" exception. Specifically, this paper seeks to determine whether an assault should (1) not be compensable under the reasons personal exception because of reasons personal to the assailant; or (2) not be compensable because of reasons personal to the injured employee.

Part I of this paper gives a brief background in determining whether an injury arises out of one's employment. Part II discusses Section 301(c)(1) and how early cases applied the "reasons personal" exception. Part III explains the differences between proving an act personal to the assailant versus an act personal to the employee and why the distinction matters. Part IV explores how an analogous regulation supports the conclusion that, in order to be excluded from workers' compensation, the reason for the assault must be personal to the employees. Part V looks at how the fundamental insurance law principle – that it is the expectation of the *insured* that controls – supports the conclusion that injuries from an assault are excluded if the reason for the assault is personal to the employee. Part VI examines how other jurisdictions have applied their "reasons personal" exception. Part VII looks to the Pennsylvania Statutory Construction Act to determine the proper interpretation of Section 301(c)(1). In that discussion, this paper recalls the humanitarian intent of the workers' compensation law, under which ambiguous aspects of the law are liberally construed in favor of coverage.

This paper concludes by asserting that while the majority of cases have not necessarily resulted in an incorrect result, the Pennsylvania Supreme Court will be required to specifically address, in a principled fashion, the interpretation of the reasons personal exception in awarding or denying a claimant benefits. It is submitted that, based on statutory language, the policy behind excluding injuries sustained via "reasons personal," and the humanitarian purpose of the law, the court should conclude that Section 301(c)(1)'s reasons personal exception excludes injuries that arise from assaults that are for reasons personal to the *employee*.

I. BACKGROUND

The Pennsylvania Workers' Compensation Act ("the Act") provides the exclusive remedy for workplace injuries.²⁰ The Act states that an employee is entitled to workers'

¹⁸ See *infra* Part II(B).

¹⁹ See *infra* Part II.

²⁰ 77 P.S. § 481 ("The liability of an employer under this act shall be exclusive and in place of any and all other liability to such employ[ees]. . . .").

compensation for all injuries “arising in the course of his employment and related thereto. . . .”²¹ Despite this articulation, Pennsylvania courts have applied the traditional approach in basing compensability on two requirements: the injury must (1) arise out of employment, and (2) occur in the course of employment.²² “Course of employment” refers to the time, place, and circumstances of the accident.²³ “Arising out of employment” refers to the origin or cause of the injury.²⁴ That is, the origin or cause of the injury must derive from the workers’ employment.²⁵

A. Injuries That Arise Out of Employment²⁶

Determining whether an injury arises out of employment depends on the type of risk of injury involved.²⁷ There are three main categories of risks: professional risk, personal risk, and neutral risk.²⁸ “Professional risks” are those risks of injury that are

²¹ 77 P.S. § 411(1); *see also* 77 P.S. § 431 (“Every employer shall be liable for compensation for . . . an injury in the course of employment . . . without regard to negligence . . .”).

²² *See* 77 P.S. § 411(1) (The term ‘injury arising in the course of his employment,’ . . . shall include all other injuries sustained while the employe[e] is actually engaged in the furtherance of the business or affairs of the employer, whether upon the employer’s premises or elsewhere, and shall include all injuries caused by the condition of the premises or by the operation of the employer’s business or affairs thereon, sustained by the employe[e], who, though not so engaged, is injured upon the premises occupied by or under the control of the employer, or upon which the employer’s business or affairs are being carried on, the employe[e]’s presence thereon being required by the nature of his employment.”). *See generally* DAVID B. TORREY & ANDREW E. GREENBERG, WORKERS’ COMPENSATION LAW AND PRACTICE § 4:50 (3d ed. 2008) (explaining that “arising in the course of employment” refers to the time, place, and origin of the injury; and “related thereto” refers to a causal connection between claimant’s work activities and the injury); *see also* LARSON, *supra* note 1, § 1.01 (describing the typical workers’ compensation act requiring an injury arise out of and occur during the course of employment).

²³ LARSON, *supra* note 1, § 3.01; *see also* Capitol Int’l Airways, Inc. v. Workmen’s Comp. Appeal Bd., 428 A.2d 295 (Pa. Cmwlth. 1981) (classic Pennsylvania “course of employment” case, holding an airline employee who mysteriously died overseas during a work trip was apparently out with a prostitute and thus injury did not occur in course of his employment).

²⁴ *Id.*; *see also* Krawchuk v. Phila. Elec. Co., 439 A.2d 627 (Pa. 1981) (explaining that the Act was amended in 1972 to shift the focus from injuries *by accidents* in the course of employment to injuries *arising from and related to* the course of employment).

²⁵ *Id.*

²⁶ This author notes there are different risk analyses applied in each state. However, as discussed in this section, every jurisdiction accepts injuries from assault categorized as a professional risk. LARSON, *supra* note 1, § 8.01. Furthermore, if an assault is categorized as a neutral risk, a growing majority of jurisdictions will expressly apply the positional or but-for test, and recognize the injuries from the assault as compensable. *Id.* at § 8.03; *see also* Workmen’s Comp. Appeal Bd. v. Plum, 340 A.2d 637 (Pa. Cmwlth. 1975) (applying the positional risk test and asserting that but-for the employment, the claimant would not have been the victim of an unexplained assault).

²⁷ LARSON, *supra* note 1, § 4.

²⁸ *Id.* Larson also identifies a category of mixed risk. However, for this article, this risk is irrelevant.

specific to that particular job.²⁹ Injuries from these types of risk are always covered under workers' compensation.³⁰ "Personal risks" are those risks whose origins are personal and have no relation to the employment.³¹ Injuries from personal risks are never covered by workers' compensation.³² In between professional risks and personal risks are "neutral risks," which are risks of injury that are neither distinctly associated with employment, nor distinctly personal in character.³³ Instead, neutral risks are those risks to which the general public is exposed.³⁴ Whether these risks are compensable depends, in pertinent part, on the particular risk involved.³⁵

B. Assaults are a Particular Risk of Injury

One particular risk of injury is an assault. Depending on the circumstance, an assault can be either a professional, personal, or neutral risk.³⁶

In order for the assault to be a *professional* risk, the assault must be inherently occupational in origin.³⁷ Such assaults include those that grow out of work disputes,³⁸ those facilitated by the particular environment, such as a bad neighborhood,³⁹ and those

²⁹ *Id.* § 4.01.

³⁰ *Id.*

³¹ *Id.* § 4.02.

³² *Id.* However, for federal employees, personal risks of injury may be compensable. *See* *Tredway v. District of Columbia*, 403 A.2d 732, 736 (D.C. 1979) ("[Federal Employees' Compensation Act (FECA)] coverage cannot be denied on the grounds that the injury was not an inherent risk or hazard of the type of job. All that is required is that the injury result from a risk incidental to the environment in which the employment places the claimant.").

³³ LARSON, *supra* note 1, § 4.03.

³⁴ *Id.*

³⁵ *Id.* Compensability will also depend on the particular risk analysis applied in each jurisdiction. *See* LARSON, *supra* note 1, § 3.

³⁶ *Id.* § 8.03.

³⁷ *Id.*

³⁸ *See* LARSON, *supra* note 1, § 8.01 (listing the common work disputes not covered under workers' compensation); *see also* *Wills Eye Hosp. v. WCAB (Dewaele)*, 582 A.2d 39 (Pa. Cmwlth. 1988) (Claimant injured by a co-worker occurring after a lunch-break verbal altercation concerning a news item on a political subject did sustain injury arising in course of employment; reasons personal defense rejected).

³⁹ LARSON, *supra* note 1, § 8.01; *see also* *Williams v. Munford, Inc.*, 683 F.2d 938 (5th Cir. 1982) (convenience store clerk was raped during store robbery located in a high-crime area; court found rape compensable).

whose risk is accentuated by the nature of the worker's job.⁴⁰ These injuries are almost invariably considered to have arisen out of the employment and are covered.

An assault is considered a *personal* risk if it is inherently private in origin.⁴¹ Such assaults include those growing out of disputes the claimant brought into the employment premises from outside, or "imported," as distinguished from those generated on the premises in the course of employment.⁴² These injuries are invariably considered *not* to have arisen out of the employment and are not covered. The exclusion makes sense, and is consistent with workers' compensation principles. It would be illogical to make employers liable on a no-fault basis for purely imported risks. Such imposition, for example, would not capture in the price of work injuries and deaths the costs of even *marginal* work risks, or leverage employers to increased industrial safety.

An assault is considered a *neutral* risk if the assault is "in essence equivalent to blind or irrational forces, such as attacks by lunatics, drunks, small children, and other irresponsibles; completely unexplained assaults; and assaults by mistake."⁴³ Assaults that are neutral are typically covered under workers' compensation.⁴⁴

To this general categorization one must note an important Pennsylvania rule as to the *burden of proof* – however we interpret the reasons personal statute: when an employee is injured in an attack by a third party on the employer's premises, a rebuttable presumption exists that the employee is covered under workers' compensation.⁴⁵ An employer's burden to rebut this presumption is a heavy one.⁴⁶

C. The "Reasons Personal" Exception

As mentioned above, the fundamental inquiry of whether an injury arises out of employment is whether a causal nexus exists between the injuries sustained and the duties or service performed by the injured worker.⁴⁷ Because of the lack of such nexus, uniquely personal risks of injuries are properly considered not compensable.⁴⁸

⁴⁰ See LARSON, *supra* note 1, § 8.01(1)(a) (listing the type of professions with dangerous duties).

⁴¹ *Id.* § 8.02.

⁴² *Id.*

⁴³ LARSON, *supra* note 1, § 8.03; *see also* Workmen's Comp. Appeal Bd. v. Plum, 340 A.2d 637 (Pa. Cmwlth. 1975) (unexplained assault of a truck driver found compensable).

⁴⁴ *Id.*

⁴⁵ Mike v. Aliquippa, 421 A.2d 251, 254 (Pa. Super. 1980).

⁴⁶ Helm v. WCAB (U.S. Gypsum Co.), 591 A.2d 8, 10 (Pa. Cmwlth. 1991).

⁴⁷ *See* discussion in *supra* note 3.

⁴⁸ LARSON, *supra* note 1, § 4.02.

One particular type of assault that is a personal risk is one from private quarrels imported from outside the employment.⁴⁹ In general, when there is animosity between an employee and a third party that is imported into the employment from the employee's domestic or private life, and is not exacerbated by the employment, the assault does not arise out of the employment.⁵⁰ As expressed above, this is because there is no causal connection between the injury and the employment.⁵¹ That is, the employment in no way caused the injury.⁵² The employee's personal affair is the sole cause of the injury.⁵³ As also discussed above, the resultant exclusion of such a purely imported risk is consistent with workers' compensation principles.

While most states address personal assaults through the traditional "arising out of employment" analysis,⁵⁴ a handful of states have their own express statutory defense for a personal assault by a third person.⁵⁵ Known as the "reasons personal" or "third-party animus" exception, several state statutes contain language saying that an injury "arising out of employment" shall not include an injury caused by an act of a third person intending to injure the employee because of personal reasons and not directed against the employee because of his employment.⁵⁶

II. SECTION 301(C)(1) AND ITS EARLY BEGINNINGS

A. Section 301(c)(1)'s Reasons Personal Exception

Pennsylvania is one of the states with its own "reasons personal" exception.⁵⁷ Specifically, Section 301(c)(1) of the Act states:

The term "injury arising in the course of his employment," as used in this article, shall not include an injury caused by an act of a third person intended to injure the employe[e] because of reasons personal to him, and

⁴⁹ LARSON, *supra* note 1, § 8.02.

⁵⁰ *Id.*

⁵¹ *See* discussion in *supra* note 3

⁵² *Id.*

⁵³ LARSON, *supra* note 1, § 4.03.

⁵⁴ *Id.* § 8.02.

⁵⁵ *Infra* Part VI.

⁵⁶ LARSON, *supra* note 1, § 8.02.

⁵⁷ 77 P.S. § 411(1).

not directed against him as an employe[e] or because of his employment. .

..⁵⁸

On its face, all of the “him” and “his” pronouns appear to refer to the employee-victim.⁵⁹ The pronouns used in “*him* as an employe[e] or because of *his* employment” clearly refer to the employee.⁶⁰ The issue lies in who the pronoun “him” refers to in “an act of a third party intended to injure the employe[e] because of reasons personal to *him*.”⁶¹ That is, does “him” refer to the third party or the employee?⁶²

B. For About 20 Years After Section 301(c)(1)’s Enactment, Cases Said “Reasons Personal to the Employee”

The first few cases that applied Section 301(c)(1)’s reasons personal exception refer to “reasons personal to him” as “reasons personal to the employee.”⁶³ One of the first cases to address the reasons personal exception was *Keyes v. New York, Ontario & Western Ry. Co.*⁶⁴ In that case, an employee was working on the employer’s premises and

⁵⁸ *Id.* This statutory language has been the same as it was when the statute was enacted in 1915. The vagueness in the statute was also identified back in 1915 when a letter to the editor in the *Legal Intelligencer* noted that “[t]he language is so vague as to the reasons of the injury done to an employee that it would be quite easy for any strike breaker . . . to claim damages against his employment for injuries received at the hands of union men. . . .” Harold Goodwin, *Workmen’s Compensation Bill – To the Editor of Legal Intelligencer*, LEGAL INTELLIGENCER, Mar. 26, 1915, at 215.

⁵⁹ See *Cleland Simpson Co. v. Workmen’s Comp.* Appeal Bd., 332 A.2d 862, 864 (Pa. Cmwlth. 1975) (“Our initial reading of this statute yielded the impression that the pronoun ‘him’ referred to the employe[e] and not an assailant.”).

⁶⁰ See *infra* Part VII(A) (applying rules of grammar, particularly the “last-antecedent rule,” which explains that a pronoun or relative pronouns generally refers to the nearest reasonable antecedent).

⁶¹ For more discussion of the interpretation of statutes with a third-party animus exception, see Francis J. Ludes, *Injury Inflicted by Third Person for Personal Reasons*, 99 C.J.S., Workmen’s Compensation § 162 (available at <http://tera-3.ul.cs.cmu.edu/NASD/d23d381a-642a-4cb1-bd42-5373f518ed1d/lemur/6792.sgml>).

⁶² *Id.*

⁶³ See *Curran v. Vang Const. Co.*, 133 A. 261, 262 (Pa. 1926) (“[T]he referee found it was not done because of reasons personal to the employee. . . .”); *McDevitt v. Checker Cab Co.*, 136 A. 230, 231 (Pa. 1927) (“[third party] fired the fatal shot because of reasons personal to [the claimant].”); *Dalton v. Gray Line Motor Tours*, 95 Pa. Super. 289, 293 (1929) (“[T]he finding that ‘the personal violence by Heaton against the claimant was because of reasons personal to Heaton and the claimant and was not directed against the claimant as an employee or because of his employment,’ is not supported by any competent evidence.”); *Manley v. State Workmen’s Ins. Fund*, 13 Pa.D.&C. 80, 81 (C.P. Lehigh 1929) (“In order to come within the act, an injury to an employee need not arise out of his employment; all that is necessary is that it occur in the course of that employment, and this includes all such injuries, except those caused by the intentional acts of third parties, done for reasons personal to the employee and not directed against the employer, and self-inflicted injuries.”).

⁶⁴ *Keyes v. New York, Ontario & Western Ry. Co.*, 108 A. 406 (Pa. 1919).

was later found dead as a result of a bullet wound to his head.⁶⁵ The employee's dependents filed for workers' compensation benefits. The employer asserted that the injury and resulting death was caused by "the act of a third person intended to injure the employee for reasons personal to him. . . ."⁶⁶ The Supreme Court of Pennsylvania, awarding benefits, first addressed who had the burden of proving that an injury emerged from personal reasons and thus is not work related.⁶⁷ The Court explained that the reasons personal exception is an affirmative defense, and therefore the burden of proof rests upon the party asserting the defense.⁶⁸ In a workers' compensation case, as in the case under consideration, that burden is on the employer. While explaining the rule, the Court specifically identified whom the reason *must be personal to*:

A claimant's case is prima facie made out by proof of affirmative facts showing the employer's liability. . . . [I]t would impose an unreasonable burden upon claimants and defeat the beneficent purpose of the act to require them to establish the negative proposition that the injury was not inflicted by a third person because of some *reason personal to the employee*.⁶⁹

In other words, the Court made clear that the reasons personal exception is an affirmative defense, and the burden is on the party imposing the defense (that is, the employer) to prove that the injury was inflicted by a third person-assailant because of reasons personal to the *employee-victim*.⁷⁰ Subsequent decisions would go on to apply *Keyes*' "personal to the employee" interpretation.⁷¹

C. In 1938, Court Cases Began Saying "Reasons Personal to the Assailant"

The first case to explicitly state that Section 301(c)(1)'s reasons personal exception must be for "reasons personal to the *assailant*" was the Superior Court of Pennsylvania's 1938 decision in *Larkins v. Bryant Air Conditioning Corp.*⁷² In that case, the claimant was assaulted by a former employee. The employer argued that "the assault was purely personal and not directed against the employee because of his employment."⁷³

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 406-07.

⁷⁰ *Id.*

⁷¹ See discussion in *supra* note 63.

⁷² *Larkins v. Bryant Air Conditioning Corp.*, 2 A.2d 868 (Pa. Super. 1938).

⁷³ *Id.* at 869.

The court disagreed and explicitly stated that “[t]he defendant failed to meet the burden of affirmatively proving that the injury was caused solely because of *reasons personal to the assailant* and entirely disassociated from the claimant’s employment.”⁷⁴ However, *Larkins* does not give any direct citation for this formulation.⁷⁵ *Larkins* does go on to discuss two prior decisions that address the reasons personal exception.⁷⁶ However, the two cases *Larkins* relied upon actually apply the “reasons personal to the employee” interpretation.

Specifically, *Larkins* cites to *Kline v. Pennsylvania Rail Co.*⁷⁷ In that case, the employee was assaulted by a co-worker whom the employee did not personally know.⁷⁸ *Kline* never explicitly stated the assault must have been for “reasons personal to the assailant.”⁷⁹ To the contrary, *Kline* relies on *Keyes*, which as mentioned above, expressly referred to “reasons personal to the employee.”⁸⁰ *Kline* also cites to *O’Rourke v. O’Rourke*.⁸¹ The Supreme Court of Pennsylvania in *O’Rourke* also never stated the assault must be for “reasons personal to the assailant.”⁸² However, *O’Rourke* does cite to *Keyes*, and thus supports the assertion the assault must be for reasons personal to the employee. *Kline* goes on to cite to other Supreme Court of Pennsylvania cases, each supporting the assertion the assault must be for reasons personal to the employee.⁸³

Larkins also cites to *Schueller v. Armour & Co.*,⁸⁴ which is a case that does not make clear to whom the reasons personal applies. *Schueller* merely cites the same cases

⁷⁴ *Id.* (emphasis added).

⁷⁵ *Id.*

⁷⁶ *Infra* note 77 and note 84.

⁷⁷ *Kline v. Pennsylvania Rail Co.*, 101 Pa. Super. 539 (1931).

⁷⁸ *Id.* at 540.

⁷⁹ *Id.*

⁸⁰ *Keyes*, 108 A. 406.

⁸¹ *O’Rourke v. O’Rourke*, 122 A. 172 (Pa. 1923) (employee attacked by two intoxicated men; reasons personal defense rejected.).

⁸² *Id.*

⁸³ *Kline*, 101 Pa. Super. at 543-44 (citing to *Curran v. Vang Const. Co.*, 133 A. 261 (Pa. 1926); *McDevitt v. Checker Cab Co.*, 136 A. 230 (Pa. 1927); and *Dalton v. Gray Line Motor Tours*, 95 Pa. Super. 289 (1929)). *Supra* note 63 lists these three cited cases as supporting the “reasons personal to the employee” interpretation.

⁸⁴ *Schueller v. Armour & Co.*, 176 A. 527 (Pa. Super. 1935) (employee died after a physical fight with a co-worker; reasons personal defense rejected).

replied upon by *Kline*.⁸⁵ In other words, the *Larkins* court, which started the “reasons personal to the assailant” interpretation, provides no substantive legal support for this conclusion.

However, it is the Supreme Court of Pennsylvania case in *Dolan v. Linton’s Lunch*⁸⁶ that is the often-cited authority for the assertion that the assault must be for “reasons personal to the assailant.” In that case, the Court stated that “[w]e have held that where a claimant sought compensation and it was conceded that he was acting in the course of his employment, the burden was on defendant to show an intention to injure owing to *reasons personal to the assailant*.”⁸⁷ The court then goes on to cite *O’Rourke* and *Keyes* as its source for authority.⁸⁸ However, as previously discussed, both *O’Rourke* and *Keyes* say exactly the contrary.⁸⁹ That is, these two cases stand for the assertion that the assault must be for reasons personal to the employee.⁹⁰

However, *Dolan* has proceeded on to be one of the most cited cases that stand for the assertion that the reason for the assault must be personal to the assailant.⁹¹ Most court cases will indeed go on to express that an injury from an assault is excluded from the Act if the assault is for reasons personal to the assailant.⁹²

⁸⁵ *Id.* at 528-29.

⁸⁶ *Dolan v. Linton’s Lunch*, 152 A.2d 887, 893 (Pa.1959) (claimant assaulted by fellow employee; reasons personal defense rejected).

⁸⁷ *Id.* at 893 (emphasis added).

⁸⁸ *Id.*

⁸⁹ *O’Rourke*, 108 A. 406 and *Keyes*, 176 A. 527.

⁹⁰ See discussion in *supra* Part II(B).

⁹¹ See *McBride v. Hershey Chocolate Corp.*, 188 A.2d 775, 779 (Pa. Super. 1963); *Cleland Simpson Co. v. Workmen’s Comp. Appeal Bd.*, 332 A.2d 862, 865 (Pa. Cmwlt. 1975); *Kohler v. McCrory Stores*, 615 A.2d 27, 32 (Pa. 1992).

⁹² See *Larkins v. Bryant Air Conditioning Corp.*, 2 A.2d 868, 869 (Pa. Super. 1938); *McBride v. Hershey Chocolate Corp.*, 188 A.2d 775, 779 (Pa. Super. 1963); *United States Steel Corp. v. Workmen’s Comp. Appeal Bd.*, 309 A.2d 842, 843 (Pa. Cmwlt. 1973); *Scott v. Acme Wire Products, Inc.*, 319 A.2d 436, 437 (Pa. Cmwlt. 1974); *Cleland Simpson Co. v. Workmen’s Comp. Appeal Bd.*, 332 A.2d 862, 865 (Pa. Cmwlt. 1975); *Workmen’s Comp. Appeal Bd. v. Plum*, 340 A.2d 637, 638 (Pa. Cmwlt. 1975); *Gen. Elec. Co. v. Workmen’s Comp. Appeal Bd.*, 412 A.2d 196, 197 (Pa. Cmwlt. 1980); *Mike v. Aliquippa*, 390, 421 A.2d 251, 255 (Pa. Super. 1980); *D’Agata Nat., Inc. v. WCAB (D’Agata)*, 479 A.2d 98, 100 (Pa. Cmwlt. 1984); *MacNeill v. WCAB (Denny’s, Inc.)*, 548 A.2d 680, 682 (Pa. Cmwlt. 1988); *Wills Eye Hosp. v. WCAB (Dewaele)*, 582 A.2d 39, 40 (Pa. Cmwlt. 1990); *Holland v. Commonwealth, Norristown State Hosp.*, 584 A.2d 1056, 1059 (Pa. Cmwlt. 1990); *Schweitzer v. Rockwell Int’l*, 586 A.2d 383, 391 (Pa. Super. 1990); *Helm v. WCAB (U.S. Gypsum Co.)*, 591 A.2d 8, 10 (Pa. Cmwlt. 1991); *Kohler v. McCrory Stores*, 615 A.2d 27, 32 (Pa. 1992); *Hershey v. Ninety-Five Assoc.*, 604 A.2d 1068, 1070 (Pa. Super. 1992); *Lincoln v. Phila. Elec. Co.*, 25 Phila. 610, 612-13 (1993); *Mike v. Hammerstein v. Lindsay*, 655 A.2d 597, 601 (Pa. Super. 1995); *Bachman Co. v. WCAB (Spence)*, 683 A.2d 1305, 1310 n.15 (Pa. Cmwlt. 1996); *Krasevic v. Goodwill Indus. of Cent. Pa., Inc.*, 764 A.2d 561, 565 (Pa. Super. 2000); *Feidler v. Morris Coupling Co.*, 784 A.2d 812, 815 (Pa. Super. 2001); *Edwards v. WCAB (Value-Plus*,

D. Federal Court Cases Specify the Assault Must be for “Reasons Personal to the Tortfeasor”

Federal court cases have also followed the popular interpretation that the reason for the assault must be personal to the assailant.⁹³ Specifically, in cases involving sexual assault or sexual harassment, federal courts in Pennsylvania have explicitly stated that “harassment of a sexual nature in the work-place has nothing to do with work, but rather stems from *reasons personal to the party foisting his attentions on a co-worker.*”⁹⁴ For most other assault cases, the federal courts specify that Section 301(c)(1) excludes injuries caused by the intentional conduct of third parties for “*reasons personal to the tortfeasor.*”⁹⁵ Of course, in these cases the court is considering the exception not to determine compensability per se, but to inquire as to the inverse – whether a civil action is cognizable.

E. While Majority of Cases Say “Assailant,” There are Still Recent Decisions Saying “Employee”

Although the majority of cases assert that the assault must be for reasons personal to the assailant, a few cases nevertheless may be found that assert that before the defense of reasons personal applies, the assault must be for reasons personal to the employee.⁹⁶ In

Inc.), 894 A.2d 856, 860 (Pa. Cmwlth. 2006); *LeDonne v. WCAB (Graciano Corp.)*, 936 A.2d 124 (Pa. Cmwlth. 2007); *M & B Inn Partners, Inc. v. WCAB (Petriga)*, 940 A.2d 1255, 1259 (Pa. Cmwlth. 2008); *O'Rourke v. WCAB (Gartland)*, 83 A.3d 1125, 1138 (Pa. Cmwlth. 2014).

⁹⁴ *Gruver v. Ezon Products, Inc.*, 763 F. Supp. 772 (M.D.Pa. 1991) (emphasis added); *see also* *Arnold v. Kimberly Quality Care Nursing Serv.*, 762 F. Supp. 1182, 1184 (M.D. Pa. 1991); *Armbruster v. Epstein*, No. 96-CV-1059, 1996 U.S. Dist. LEXIS 7459, at *18 (E.D. Pa. May 31, 1996); *Lang v. Seiko Instruments USA*, No. 96-5398, 1997 U.S. Dist. LEXIS 167, at *9 (E.D. Pa. Jan. 10, 1997); *Rudas v. Nationwide Mut. Ins. Co.*, No. 96-5987, 1997 U.S. Dist. LEXIS 169, at *13-14 (E.D. Pa. Jan. 7, 1997).

As noted in the accompanying text, in federal court the court is analyzing the Section 301(c)(1) exception not to determine compensability, but to inquire whether a civil action is cognizable. While the overall analysis in theory should be the same, it is important to note that mental injury from sexual harassment by a co-worker has been found compensable by the Pennsylvania Supreme Court. *See RAG (Cyprus) Emerald Resources, L.P. v. WCAB (Hopton)*, 912 A.2d 1278 (Pa. 2007). *See* TORREY & GREENBERG § 4:27, 4:28.

⁹⁵ *Price v. Phila. Elec. Co.*, 790 F. Supp. 97, 99 (E.D. Pa. 1992); *Durham Life Ins. Co. v. Evans*, 166 F.3d 139, 160 (3d Cir. 1999); *McInerney v. Moyer Lumber & Hardware, Inc.*, 244 F. Supp. 2d 393, 400 (E.D. Pa. 2002); *Overall v. Univ. of Pa.*, No. 02-1628, 2003 U.S. Dist. LEXIS 23892, at *30-31 (E.D. Pa. Dec. 19, 2003); *Joyner v. Sch. Dist.*, 313 F. Supp. 2d 495, 503 (E.D. Pa. 2004); *Hancuff v. Prism Techs. & Assemblies, LLC*, 357 F. Supp. 2d 828, 830 (W.D. Pa. 2005); *Kessler v. AT&T*, No. 3:13-CV-00207, 2013 U.S. Dist. LEXIS 161314, at *13 (M.D. Pa. Nov. 12, 2013). There are also a very small number of federal court cases that state “reasons personal to the assailant.” *See Kovach v. Turner Dairy Farms, Inc.*, 929 F. Supp. 2d 477, 496 (W.D. Pa. 2013).

⁹⁶ *See* cases in *supra* note 95, *infra* notes 97 and 98; *see also* *Manley v. State Workmen’s Ins. Fund*, 13 Pa.D.&C. 80, 81 (C.P. Lehigh 1929); *Rathburn v. Sussman Bros. & Co.*, 193 A. 488, 490 (Pa. Super. 1937). *Orrs Estate v. St. Joseph Hosp.*, 2 Pa.D.&C.4th 145, 151 (C.P. Berks 1988).

1978, the Commonwealth Court made clear that “Section 301(c)(1)(1) of the Act . . . embraces all injuries arising in the course of employment other than those caused by the intentional acts of third persons because of reasons personal to the injured employee.”⁹⁷ In 1991, meanwhile, the Superior Court of Pennsylvania explained that the reason for the assault must be “for reasons personal to the attacked.”⁹⁸ In 1992, the Middle District of Pennsylvania summarized Section 301(c)(1) to say that the assault must be for “reasons personal to the employee.”⁹⁹ Even in a case as recently as 2004, a judge in the Eastern District of Pennsylvania stated the assault must be for “reasons personal to the employee.”¹⁰⁰

III. SO WHAT IS THE DIFFERENCE BETWEEN REASONS PERSONAL TO THE EMPLOYEE AND REASONS PERSONAL TO THE ASSAILANT? AND WHY DOES IT MATTER? THE PRIMACY OF “IMPORTED RISK”

The Eastern District Court of Pennsylvania in *Snyder v. Congoleum/Kinder, Inc.*¹⁰¹ expressly recognized that confusion exists in interpreting Section 301(c)(1)’s reasons personal exception.¹⁰² The court explained that “[t]he words of the statute are, at best, ambiguous. Taken on its face, the phrase ‘reasons personal to him’ appears to refer to the victim. Yet the case law repeatedly refers to reasons personal to the assailant.”¹⁰³ So what do the two different interpretations mean? In the next three subsections, this paper seeks to detail the implications of using one test or the other, and then sets forth detailed case examples showing why concentrating on the employee’s culpability, as opposed to the third-party’s motive, constitutes the correct analysis. As will be seen, the correct analysis is always to inquire whether the employee *imported* the risk of his injury or death into the workplace.

A. Reasons Personal to the Assailant Analysis

As alluded to above, many cases have interpreted Section 301(c)(1)’s reasons personal exception to read that the Act excludes “an injury caused by an act of a third

⁹⁷ *Fink v. Workmen’s Comp. Appeal Bd.*, 388 A.2d 1152, 1153 (Pa. Cmwlth. 1978).

⁹⁸ *Vosburg v. Connolly*, 591 A.2d 1128, 1129 (Pa. Super. 1991) (quoting *Brooks v. Marriott Corp.*, 522 A.2d 618 (Pa. Super. 1987)).

⁹⁹ *Rodgers v. Prudential Ins. Co.*, 803 F. Supp. 1024, 1027 n.4 (M.D. Pa. 1992) (citing *Vosburg v. Connolly*, 591 A.2d 1128 (Pa. Super. 1991)).

¹⁰⁰ *Shaup v. Jack D’s, Inc.*, No. 03-5570, 2004 U.S. Dist. LEXIS 16191, at *1 (E.D. Pa. Aug. 17, 2004).

¹⁰¹ 664 F. Supp. 975 (E.D. Pa. 1987) (employer’s motion sought to dismiss claimant’s complaint, asserting the assault was covered by the Act’s exclusive remedy; reasons personal defense rejected).

¹⁰² *Id.* at 977.

¹⁰³ *Id.*

person intended to injure the employe[e] because of reasons (1) personal to **[the third person]**, and (2) not directed against **[the employee]** as an employe[e] or because of **[the employee's]** employment.”¹⁰⁴ This interpretation would mean that the party asserting the reasons personal exception (in a workers’ compensation case, the employer), must prove (1) that the assault and resulting injury occurred because of a reason personal to the *assailant*,¹⁰⁵ and (2) that the assault was for a reason completely exclusive of the employee’s status.¹⁰⁶

The problem with this interpretation is that it does not adequately address the fundamental inquiry of whether an injury *arises* out of the injured employee’s employment.¹⁰⁷ That is, determining that the assailant assaulted the victim for a reason or reasons that were purely personal to the assailant does not prove that the injury was not caused by the employee or his employment.¹⁰⁸ It avoids the critical analysis that has been discussed above at length, to wit, whether the employee *imported* some quarrel into the work place.¹⁰⁹ Focusing on the assailant shifts the analysis away from where it should be: the behavior and potential culpability of the employee.¹¹⁰ Specifically, the interpretation shifts the focus strictly to the motive of the assailant (*i.e.*, “why did the assailant attack the employee?”), and simultaneously shifts the focus away from the critical analysis of whether the employee imported into the workplace the quarrel or some other risk of assault (*i.e.*, “how did the employee bring his personal issues to work?”).¹¹¹

In short, an analysis which focuses on “reasons personal to assailant” does not address whether the employee imported the risk into the workplace, because such interpretation asks only about the *assailant*’s motive.¹¹²

¹⁰⁴ *Supra* section Part II(C).

¹⁰⁵ *Id.*; *see also infra* note 120.

¹⁰⁶ *See supra* note 61 (“Where the statute bars compensation for injuries caused by acts of a third person for personal reasons and not directed against the employee as an employee or because of his employment, the motive of the third person must be entirely personal and exclusive of the employee’s status. . . .”).

¹⁰⁷ *See infra* note 149; *see also* Freeman v. Callow, 525 S.W.2d 371 (Mo. Ct. App. 1975), *overruled in part on other grounds* by Hampton v. Big Boy Steel Erection, 121 S.W.3d 220 (Mo. 2003) (a service station employee was burned and blinded by a customer who accused the employee of flirting with his wife; court held the assault was a private quarrel imported into the workplace and did not arise out of the employment).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *See* discussion in *infra* note 159.

¹¹¹ *Id.*

¹¹² *Id.*

B. Reasons Personal to the Employee Analysis

The “reasons personal to the employee” interpretation, in contrast, adequately addresses whether the victim imported this personal animus into the workplace. The “personal to the employee” interpretation is that the Act excludes “an injury caused by an act of a third person intended to injure the employe[e] because of reasons (1) personal to **[the employee]**, and (2) not directed against **[the employee]** as an employe[e] or because of **[the employee’s]** employment.”¹¹³

Asking whether the assault was for reasons personal to the employee does two things. First, it asks whether the assault is specific to the employee.¹¹⁴ This focusing on the employee and his or her potential culpability is the correct critical analysis. Second, (and in particular) such focusing leads to an essential inquiry which may well educate the fact-finder over whether a true reasons-personal-to-the employee exists: *whether he or she knew or should have known about the assailant’s personal animus.*¹¹⁵

In this regard, if this inquiry shows that the assault was not specific to the employee, that is, if the third party would have attacked anyone in the injured employee’s position, then the assault cannot be personal to the employee.¹¹⁶ Therefore, the injured employee did not import the personal animus into the workplace.¹¹⁷ Likewise, if the employee did not know or could not have known there to be personal animus, then the resultant act could not have been personal to the employee.¹¹⁸ In other words, if the employee did not know of the personal animus, then the plaintiff necessarily cannot import the animus into work.¹¹⁹

C. Caselaw Examples

The following cases demonstrate two things: (1) the inequity in applying the “personal to assailant” interpretation, and (2) the importance of establishing that the assault was specific to the employee and emerged because of a prior history between the assailant and employee.

¹¹³ *Supra* Part II(B).

¹¹⁴ *See supra* note 61 (“The reasons must be personal to the employee and not necessarily to the third person. The statute applies where the willful act is directed against the employee solely because of personal reasons which attached to the employee that would not be applicable to some other person in the same situation. . . .”).

¹¹⁵ *Id.*

¹¹⁶ It would be a neutral risk of assault, which is compensable. *See* LARSON, *supra* note 1, § 4.03.

¹¹⁷ *See infra* note 139.

¹¹⁸ *See infra* 144.

¹¹⁹ *Id.*

An old Texas case directly addresses the interpretation of a “reasons personal” statute identical to Pennsylvania’s. In *Southern Surety Co. v. Shook*, the employee was employed as an oil pumper for the employer.¹²⁰ The employee was viciously robbed and murdered.¹²¹ The assailant admitted that his intentions were to rob and kill the employee.¹²² The Texas statute at the time read that an “injury sustained in the course of employment” shall not include “an injury caused by an act of a third person intended to injure the employee because of *reasons personal to him* and not directed against *him as an employee*, or because of *his employment*.”¹²³

The appellant/employer argued, among other things, that the assault was personal to the assailant, and therefore the employee’s family was not entitled to death benefits.¹²⁴ Specifically, the employer construed the sentence as though the first “him” has for its antecedent “a third person,” and the second “him” and also “his” have for their antecedent “the employee.”¹²⁵ The court acknowledged that if the statute were construed that way, then the victim’s murder probably would have been for reasons personal, since the murder of the victim was for the purpose of robbery and had nothing to do with the victim’s employment.¹²⁶

However, the court explained that in order to be excluded from workers’ compensation, the assault must be for reasons personal to the employee. The court first noted that “[w]e know of no rule of grammatical construction that would not give the same antecedent to each of these three personal pronouns.”¹²⁷ Along with the lack of grammatical support, the court then went on to explain that this was the wrong interpretation, through an analogy to a bank robbery:¹²⁸

If an employee under the Workmen’s Compensation Law is employed as a night watchman at a bank, and robbers, for the purpose of making an entry into the safe, murder him, such act on the part of the robbers might be said to be personal to them in the sense that they did it to further their own

¹²⁰ 44 S.W.2d 425 (Tex. Civ. App. 1931).

¹²¹ *Id.*

¹²² *Id.* at 426.

¹²³ TEX. REV. CIV. STAT. Art. 8309, § 1 (1925). (emphasis added).

¹²⁴ 44 S.W.2d at 428-29.

¹²⁵ *Id.*

¹²⁶ *Shook*, 44 S.W.2d at 428-29.

¹²⁷ *Id.*; see also *infra* Part VII(A) (explaining the last-antecedent rule).

¹²⁸ *Id.*

purpose of robbery, but clearly the beneficiaries of the deceased watchman would be entitled to compensation. He was killed because he was a watchman, and, therefore, because of his employment, and not because of some malice harbored by the robber against him personally. This is a comparable case.¹²⁹

The bank robbery example demonstrates why merely having the assault be for reasons personal to the assailant does not explain how the assault did not arise out of the employment.¹³⁰ The lack of prior history and specificity towards the victim shows that the employee did not import any quarrel into the workplace.¹³¹ In any event, applying the bank robbery example used above, the court held that the murder of the employee was not for reasons personal to the employee, and therefore his dependents were entitled to workers' compensation.¹³²

This very robbery and murder scenario has played out in Pennsylvania. In *Brooks v. Marriott Corp.*, a store clerk was murdered by unknown persons.¹³³ The decedent's family sued the employer under a tort cause of action.¹³⁴ The plaintiff's complaint specifically alleged that:

“The acts of the unknown person or persons who beat and stabbed [the decedent] to death were intended to kill [the decedent] *because of reasons which were personal to such unknown person or persons, and were not directed against [the decedent] as an employee of the Defendant or because of this employment.*¹³⁵

The employer filed preliminary objections in the nature of a demurrer.¹³⁶ The trial court sustained the employer's preliminary objections and dismissed the plaintiff's suit, concluding that the plaintiff failed to state a cause of action not barred by the exclusive remedy provision of the Pennsylvania Workers' Compensation Act.¹³⁷

¹²⁹ *Id.*; see also *supra* note 61 (“[T]he death of an employee is compensable where, while in the course of his employment, he is killed for the purpose of robbery by a third person with whom he has had no previous difficulty.”)

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Brooks*, 522 A.2d at 619.

¹³⁴ *Id.*

¹³⁵ *Id.* at 621 (emphasis added).

¹³⁶ *Id.*

¹³⁷ *Id.*

The Superior Court reversed and remanded the trial court's decision, holding that the plaintiff's complaint did set forth allegations potentially sufficient to establish a cause of action against the employer under the reasons personal exception.¹³⁸ However, the court specified that

this exception to the Act applies to situations in which the third party's acts were motivated by a feeling of animus against the *particular person injured*. *If the third party would have attacked a different person in the same position as the injured employee, that attack falls outside the exception and is covered exclusively by the Act.*¹³⁹

In other words, while enough to overcome preliminary objections, the court held that having the assault being for reasons personal to the assailant is not enough.¹⁴⁰ The court held that the plaintiff, to ultimately avoid the exclusive remedy and assert a tort action, would have to prove "the killer had personal animus against the victim and the personal animus was the motivation for the stabbing."¹⁴¹ The court explained that the assault must be specific to the employee.¹⁴² That is, the intent to injure the employee must be for reasons personal to the employee.¹⁴³

The Commonwealth Court case of *M & B Inn Partners, Inc. v. WCAB (Petriga)*¹⁴⁴ also illustrates the importance of the assailant and the victim having a prior history before the reasons personal exception applies. In that case, a female hotel employee was sexually assaulted by a hotel guest.¹⁴⁵ The employer attempted to raise the reasons personal exception to avoid liability.¹⁴⁶ However, the court stated that the employer failed to present any evidence that suggested a pre-existing relationship between the claimant and the guest.¹⁴⁷ Since the employer failed to establish the existence of a history with the claimant and the guest, the personal animus exception did not apply, and the claimant

¹³⁸ *Id.*

¹³⁹ *Id.* (emphasis added).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *M & B Inn Partners, Inc. v. WCAB (Petriga)*, 940 A.2d 1255 (Pa. Cmwlth. 2008).

¹⁴⁵ *Id.* at 1256.

¹⁴⁶ *Id.* at 1257.

¹⁴⁷ *Id.* at 1259.

was entitled to benefits.¹⁴⁸ Therefore, personal animosity must be motivated by a history toward that particular *employee*.

A Florida decision further demonstrates the importance of a history of personal animosity before an employee is properly excluded from workers' compensation benefits. Although Florida does not have a "reasons personal" proviso, the case does explore what would be the two interpretations of Pennsylvania's "reasons personal" exception to demonstrate the fallacy of applying the "personal to the assailant" interpretation. In *Santizo-Perez v. Genaro's Corp.*,¹⁴⁹ a food store manager was fatally struck by a car in the food store parking lot.¹⁵⁰ The car was driven by a man who claimed his actions were in reaction to the decedent allegedly sexually harassing the assailant's girlfriend, a fellow store employee.¹⁵¹ The assailant confessed that he planned the attack for at least two to three weeks and knew the victim would be working that night.¹⁵² However, the decedent and the assailant had *never met*.¹⁵³ Furthermore, there was no evidence that the decedent ever sexually harassed anyone at the store, let alone the man's girlfriend.¹⁵⁴

The Judge of Compensation Claims (JCC) held that the injury did not arise out of the decedent's employment because there was no evidence that "anything in the decedent's employment was related to him being put at risk of being murdered" and because there was no evidence of a work relationship between the decedent and the assailant.¹⁵⁵ In other words, the judge believed the assault was purely personal to the *assailant* and therefore not compensable.

However, the appellate court disagreed.¹⁵⁶ The court explained that, among other things, "the decedent had no apprehension of personal animosity of a co-worker's jealous boyfriend. . . ."¹⁵⁷ That is, there was no history between the assailant and the victim.

¹⁴⁸ *Id.* at 1256.

¹⁴⁹ *Santizo-Perez v. Genaro's Corp.*, 138 So. 3d 1148 (Fla. Dist. Ct. App. 2014).

¹⁵⁰ *Id.* at 1149.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Santizo-Perez*, 138 So. 3d at 1149. The court specifically states there was "no evidence of a close proximity between the decedent and his assailant." The court means close proximity to employment. *See Tampa Maid Seafood Prods. v. Porter*, 415 So. 2d 883 (Fla. 1st DCA 1982) (discussing the "close proximity to employment" requirement in Florida).

¹⁵⁶ *Santizo-Perez*, 138 So. 3d at 1149.

¹⁵⁷ *Id.*

Meanwhile, the court held that it was the interaction of people connected only by the workplace that prompted the accident,¹⁵⁸ thus strongly *reflecting* work causation. The court further stated that “[t]his case presents a classic example of how courts can hyper focus on motive of a third party causing injury to an employee. . . .”¹⁵⁹ The court held the decedent’s death was compensable.¹⁶⁰

IV. A PENNSYLVANIA LAW IDENTICAL TO SECTION 301(C)(1)

Comparing Section 301(c)(1) with a similar law also demonstrates that Section 301(c)(1)’s reasons personal exception should be read as “reasons personal to the employee.” The Philadelphia Civil Service Regulation 32 contains many provisions similar, if not identical, to the Act.¹⁶¹ Regulation 32 is similar in intent and form to the Workers’ Compensation Act.¹⁶² Regulation 32 was adopted by the Philadelphia Civil Service Commission with the purpose of providing disability benefits for disabled employees of the City of Philadelphia.¹⁶³

Upon its adoption, Regulation 32 superseded any contrary statewide legislation insofar as any such legislation applied to Philadelphia employees.¹⁶⁴ However, Regulation 32 did not supersede the rights of employees to seek workers’ compensation benefits.¹⁶⁵ Section 32.09 of the Regulation specifically provides for situations where disabled employees are receiving workers’ compensation benefits in addition to Regulation 32 benefits.¹⁶⁶ The Commonwealth Court has held, most importantly, that the

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 1150 n.4. The court cites to LARSON, *supra* note 1, § 8.01[1][b] to illustrate the point that, when it comes to increased risk due to the nature of the job, particularly dealing with the work environment, courts make the erroneous assumption that a claimant must prove both that the environment increased the risk of the attack and that it was motivated by something related to the employment. Larson explains that the correct rule is that either one or the other is sufficient to establish the causal link.

¹⁶⁰ *Santizo-Perez*, 138 So. 3d at 1150 n.4.

¹⁶¹ *See Marvasi v. Shorty*, 70 F.R.D. 14, 18-19 (E.D. Pa. 1976) (specifically comparing and applying the Regulation 32 with the Pennsylvania Workers’ Compensation Act).

¹⁶² *Knowles v. Civil Serv. Com.*, 455 A.2d 268, 269 (Pa. Cmwlth. 1983) (citing *Smith v. Civil Serv. Comm’n*, 417 A.2d 810 (Pa. Cmwlth. 1980)).

¹⁶³ *Acevedo v. City of Phila.*, 680 F. Supp. 2d 716, 720 (E.D. Pa. 2010); *see also Santini v. Civil Serv. Com.*, 432 A.2d 301, 303 (Pa. Cmwlth. 1981) (specifying that Regulation 32 provides disability benefits for all employees in the civil service except temporary emergency, seasonal, and part-time employees, and those paid at established hourly rate).

¹⁶⁴ *Santini*, 432 A.2d at 303; *see also Philadelphia v. Hays*, 320 A.2d 406, 408 (Pa. Cmwlth. 1974).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

principles enunciated in interpreting the Workers' Compensation Act are equally applicable to Regulation 32.¹⁶⁷

While Section 301(c)(1) of the Act particularly defines "injury," Regulation 32 defines "disability."¹⁶⁸ Specifically, Regulation 32.033 defines "disability" as

a physical or mental condition caused by injury or occupational disease, including heart and lung ailments, which is service-connected and prevents an employee from performing the essential functions of the job classification to which the employee is assigned, with or without accommodation. For purposes of this section, disability does not include any condition which is self-inflicted or caused by another person *for reasons personal to the employee and not because of **this** employment.*¹⁶⁹

In other words, Regulation 32 provides that the assault must be for reasons personal to the employee. Since Regulation 32 is a regulation with a similar intent and statutory language as Section 301(c)(1), Regulation 32 supports the assertion that Section 301(c)(1)'s reasons personal exception should be read as excluding workers' compensation from assaults that were for reasons personal to the employee.

V. A GENERAL PRINCIPLE OF INSURANCE LAW SUPPORTS THE ASSERTION
THAT SECTION 301(C)(1) SHOULD BE INTERPRETED AS
"PERSONAL TO THE EMPLOYEE"

Workers' compensation is a form of insurance providing wage loss and medical benefits for injured employees.¹⁷⁰ Consulting general principles of insurance law will also help demonstrate that Section 301(c)(1) should be read as "reasons personal to the *employee.*" In this regard, one principle of insurance law is that whether an injury is a result of an accident is to be determined from the viewpoint of the insured and not from the viewpoint of the party who committed the act causing the injury.¹⁷¹ This principle

¹⁶⁷ *Knowles*, 455 A.2d at 269.

¹⁶⁸ *See Marvasi*, 70 F.R.D. at 18-19 (specifically comparing and applying the Regulation 32 with the Pennsylvania Workers' Compensation Act).

¹⁶⁹ Philadelphia, Pa., Civ. Serv. Comm'n Regs. 32, § 32.033 (emphasis added). The word used in the regulation is, indeed, "this," as opposed to "his."

¹⁷⁰ *See TORREY & GREENBERG* §1:6 (explaining that employers are required by statute to secure workers' compensation insurance).

¹⁷¹ *See* 4 APPLEMAN ON INSURANCE LAW & PRACTICE ARCHIVE § 23.4 (2d ed. 2011) (explaining that in 1972, the Comprehensive General Liability policy was changed so that "occurrence," which is used interchangeably with "accident," now means "an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured."); *see also* *Gene & Harvey Builders v. Pa. Mfrs' Asso. Ins. Co.*, 517 A.2d 910, 917 (Pa. 1986) ("An occurrence means 'an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage, neither expected nor intended from the standpoint of the insured.'").

was actually applied in a case connected with the Baumhammers hate-crime/shooting spree.

In *Donegal Mutual Insurance Co. v. Baumhammers*,¹⁷² representatives of the deceased victims from Baumhammers' shooting spree filed complaints alleging that Baumhammers' parents acted negligently in failing to take possession of Baumhammers' gun and/or alert law enforcement authorities or mental health care providers about his dangerous propensities.¹⁷³ The parents had homeowners insurance, and the policy provided coverage for claims brought against the insured for damages resulting from bodily injury caused by an "occurrence."¹⁷⁴ The policy defined "occurrence" as an "accident . . . which results in . . . [b]odily injury or [property damage]." The term "accident" was not defined in the policy.¹⁷⁵

The homeowners insurer, Donegal, filed a complaint for declaratory judgment, and later a motion for summary judgment, asserting that it was not required to defend or insure the parents.¹⁷⁶ Specifically, Donegal asserted that the shootings were not accidental in nature but were the result of intentional conduct, actions which the policy did not cover.¹⁷⁷

However, the Supreme Court of Pennsylvania explained that this was the wrong inquiry.¹⁷⁸ The Court first explained that the conclusion that "injuries caused by intentional conduct are not 'accidental' does not absolve an insurer of the duty to defend its insured when the complaint filed against the insured alleges that the intentional conduct of a third party was enabled by the negligence of the insured."¹⁷⁹ And, as noted above, in this case, the plaintiffs were alleging that the parents acted negligently in failing to take possession of Baumhammers' gun and notify authorities.¹⁸⁰ Thus, the inquiry was whether the parents' alleged negligence and the resulting injuries qualified as an "accident."¹⁸¹

¹⁷² *Donegal Mutual Insurance Co. v. Baumhammers*, 938 A.2d 286 (Pa. 2007).

¹⁷³ *Id.* at 288.

¹⁷⁴ *Id.* at 289.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Baumhammers*, 938 A.2d at 289.

¹⁷⁸ *Id.* at 291.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

The Court explained that the test of whether an injury is a result of an accident is to be determined from the viewpoint of the insured and not from the viewpoint of the party that committed the act causing the injury.¹⁸² The Court further explained that it was required to determine whether, from the perspective of the insured, the claims asserted by the plaintiffs presented the degree of fortuity contemplated by the ordinary definition of “accident.”¹⁸³ The Court held that it did.¹⁸⁴ The Court declared that “the extraordinary shooting spree embarked upon by Baumhammers resulting in injuries to Plaintiffs cannot be said to be the natural and expected result of the parents’ alleged acts of negligence. Rather, Plaintiffs’ injuries were caused by an event so unexpected, undesigned and fortuitous as to qualify as accidental within the terms of the policy. Because the alleged negligence of the parents resulted in the tragic accidental injuries to the individual plaintiffs, Donegal is therefore required to defend the parents.”¹⁸⁵

Similar to this principle that the determination of whether an injury is the result of an accident is from the viewpoint of the insured, in workers’ compensation, the determination of whether an injury is the result of a compensable work incident should be from the viewpoint of the insured, *i.e.*, the employee.¹⁸⁶ Admittedly, in an assault case, inquiry into the motive of the assailant is important.¹⁸⁷ However, the viewpoint of the assailant alone is not enough.¹⁸⁸ Inquiry into the employee’s culpability, or lack thereof, is essential.¹⁸⁹

VI. OTHER JURISDICTIONS WITH “REASONS PERSONAL” STATUTES

A comparison of other states that have their own statutory “reasons personal” exception will demonstrate that Pennsylvania’s Section 301(c)(1) should be interpreted as “reasons personal to the *employee*.” Alabama excludes from its definition of “injury” any “injury caused by the act of a third person or fellow employee intended to injure the employee because of *reasons personal to him or her and not directed against him or her*

¹⁸² *Id.* at 292.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 293.

¹⁸⁶ However, in common parlance, workers’ compensation attorneys usually say the “insured” in is the employer as opposed to the claimant. That being said, it is the claimant who is being compensated, not the employer. *See* TORREY & GREENBERG § 23:41.

¹⁸⁷ *See* Cleland Simpson Co. v. Workmen’s Comp. Appeal Bd., 332 A.2d 862, 864 (Pa. Cmwlth. 1975) (explaining that the personal motivation of the assailant is relevant).

¹⁸⁸ *See* discussion in *supra* note 159.

¹⁸⁹ *Id.*

as an employee or because of his or her employment.”¹⁹⁰ While this language is similar to the Pennsylvania statute, the “him or her” in the Alabama statute makes it clear that the reasons personal must be to the employee, as the last two references to “him or her” refer to the employee.¹⁹¹

Delaware excludes “any injury caused by the willful act of another employee directed against the employee by *reasons personal to such employee and not directed against the employee as an employee or because of the employee’s employment.*”¹⁹² Similarly, Iowa excludes injuries caused “[b]y the willful act of a third party directed against the employee for reasons personal to such employee.”¹⁹³ Georgia makes it slightly more clear than Delaware and Iowa when it states that a compensable injury “shall not include injury caused by the willful act of a third person directed against an employee for reasons personal to such employee. . . .”¹⁹⁴

As mentioned above, Texas’ former statutory exception was identical to Pennsylvania’s, and Texas courts interpreted the statute to be for reasons personal to the employee.¹⁹⁵ Texas’ new statute states that an insurance carrier is not liable for “an injury that arose out of an act of a third person intended to injure the employee because of a personal reason and not directed at the employee as an employee or because of the employment. . . .”¹⁹⁶

In other words, states that have a statutory “reasons personal” exception all make explicit that the assault must occur for reasons personal to the employee. Therefore, Pennsylvania’s statute should also be interpreted to exclude injuries from assaults that are for reasons personal to the employee.

VII. APPLICATION OF THE STATUTORY CONSTRUCTION ACT

Ultimately, when the language of a statute is ambiguous, the application of rules of statutory construction becomes necessary.¹⁹⁷ The Pennsylvania Statutory Construction

¹⁹⁰ ALA. CODE § 25-5-1(9) (emphasis added).

¹⁹¹ *Id.*

¹⁹² DEL. CODE § 2301 (19)(b) (emphasis added).

¹⁹³ IOWA CODE § 85.16.

¹⁹⁴ GA. CODE ANN. § 34-9-1(4).

¹⁹⁵ *See* citation in *supra* note 123.

¹⁹⁶ TEX. LAB. CODE § 406.032(C).

¹⁹⁷ *Ramich v. WCAB (Schatz Electric, Inc.)*, 770 A.2d 318 (Pa. 2001) (“only when the language of the statute is ambiguous does statutory construction become necessary.”). For a discussion of how the SCA has been applied in workers’ compensation cases, see TORREY & GREENBERG, § 1:74 et seq.

Act (SCA) dictates how statutes are to be interpreted.¹⁹⁸ Under the SCA, the objective of all statutory construction is to ascertain and effectuate the General Assembly's intention.¹⁹⁹ In general, the best indication of legislative intent is the plain language of a statute.²⁰⁰ Thus, if possible, statutes must be construed so that every word is given effect.²⁰¹ Furthermore, in construing statutory language, words and phrases shall be construed according to *rules of grammar* and according to their common and approved usage.²⁰²

Under the SCA, the rule of *stare decisis* requires adherence to prior decisions specifically interpreting the specific statutory language. Specifically, the law explicitly presumes that when a court of last resort has construed the language used in a statute, the General Assembly in subsequent statutes on the same subject matter intends the same construction to be placed upon such language.²⁰³ The failure of the General Assembly to change the law which has been interpreted by the courts creates a presumption that the interpretation was in accordance with the legislative intent; otherwise the legislature would have changed the law in a subsequent amendment.²⁰⁴

If ambiguity still exists, statutes that are remedial in nature are to be liberally construed in order to effectuate their humanitarian objectives.²⁰⁵ In particular, borderline interpretations of the Workers' Compensation Act (a remedial statute) are to be construed in the injured party's favor, and any restriction of the Act's application should be narrowly construed where the intent of the legislature is not clearly expressed.²⁰⁶

If a statute is still unclear after applying the foregoing principles, the General Assembly's intent may be ascertained by considering a variety of other statutory construction factors.²⁰⁷ If the words of a statute are not explicit or the rules of grammar do not give rise to the approved usage, the intention of the General Assembly may be

¹⁹⁸ See 1 PA. CONS. STAT. § 1901 (“In the construction of the statutes of this Commonwealth, the rules set forth in this chapter shall be observed, unless the application of such rules would result in a construction inconsistent with the manifest intent of the General Assembly.”).

¹⁹⁹ 1 PA. CONS. STAT. § 1921(a); *see also* *Sternlicht v. Sternlicht*, 876 A.2d 904, 905 (Pa. 2005).

²⁰⁰ *Sternlicht*, 876 A.2d at 905.

²⁰¹ *Mishoe v. Erie Ins. Co.*, 824 A.2d 1153, 1155 (Pa. 2003).

²⁰² 1 PA. CONS. STAT. § 1903; *see also* *Sternlicht*, 876 A.2d at 905.

²⁰³ 1 PA. CONS. STAT. § 1922(4).

²⁰⁴ *Id.*

²⁰⁵ *Kashuba v. WCAB (Hickox Constr.)*, 713 A.2d 169, 172-73 (Pa. Cmwlth. 1998).

²⁰⁶ *Id.*

²⁰⁷ *Mishoe v. Erie Ins. Co.*, 824 A.2d 1153, 1155-56 (Pa. 2003).

ascertained by considering several factors, such as (1) the occasion and necessity for the statute; (2) the circumstances under which it was enacted; (3) the mischief to be remedied; (4) the object to be attained; (5) the former law, if any, including other statutes upon the same or similar subjects; (6) the consequences of a particular interpretation; (7) the contemporaneous legislative history; and (8) legislative and administrative interpretations of such statute.²⁰⁸

In sum, the SCA provides four general approaches to interpreting an ambiguous statute. These are application of the statute's plain meaning, looking at precedential treatment, crediting the statute's remedial purpose, and applying other various factors as a last resort. All of these approaches will demonstrate that the reasons personal exception should exclude injuries from assaults that are for reasons personal to the employee.

A. Last-Antecedent Rule: A Rule of Grammar

One rule of grammar pertinent to statutory construction is the "Last-Antecedent Rule." The Supreme Court of Pennsylvania has recognized and applied this rule to ambiguous words or phrases in statutes.²⁰⁹ The court has explained that when a phrase follows several expressions to which it might be applied, the phrase is to be limited to the "last antecedent."²¹⁰

In the context of pronouns, the Last-Antecedent Rule provides that a pronoun, or relative pronouns, generally refer to the nearest reasonable antecedent.²¹¹ The Sixth Circuit applied the Last-Antecedent Rule to an ambiguous pronoun and held that when a pronoun points back to an antecedent or some other referent, the true referent should generally be the closest appropriate word.²¹²

In the case of Section 301(c)(1), the statute provides that "[t]he term 'injury arising in the course of his employment' . . . shall not include an injury caused by an act of a third person intended to injure the employe[e] because of reasons personal to him. . .

²⁰⁸ 1 PA. CONS. STAT. § 1921(c).

²⁰⁹ See *Rendell v. Pa. State Ethics Comm'n*, 983 A.2d 708, 715 (Pa. 2009); *McKinley v. DOT, Bureau of Driver Licensing*, 769 A.2d 1153, 1160 (Pa. 2001); *Commonwealth v. Rosenbloom Fin. Corp.*, 325 A.2d 907, 909 (Pa. 1974).

²¹⁰ *Midboe v. State Farm Mut. Auto. Ins. Co.*, 433 A.2d 1342, 1349 (Pa. 1981) (citing *Buntz v. Gen. Am. Life Ins. Co.*, 7 A.2d 93 (Pa. Super. 1939)).

²¹¹ ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 144 (2012).

²¹² *Carroll v. Sanders (In re Sanders)*, 551 F.3d 397, 398 (6th Cir. 2008). See also *In re Ohakpo*, 494 B.R. 269, 272 (Bankr. E.D. Mich. 2013) ("When a word such as a pronoun points back to an antecedent or some other referent, the true referent should generally be the closest appropriate word. Consistent with this principle, the courts ordinarily assume that a limiting clause or phrase modifies only the noun or phrase that it immediately follows. Although not an 'absolute' imperative, the "rule of the last antecedent" creates at least a rough presumption that such qualifying phrases attach only to the nearest available target.").

.²¹³ The last antecedent before “him” is “the employe[e].”²¹⁴ Therefore, “him” properly refers to the *employee*.²¹⁵ Thus, under the Last-Antecedent Rule, an injury caused by the act of a third person intended to injure the employee because of reasons personal to the *employee* are not compensable.

B. Precedent

Despite the above analysis, the SCA still requires, of course, adherence to prior decisions specifically interpreting the specific statutory language.²¹⁶ The Commonwealth Court has previously discussed how *stare decisis* has required it to apply the “reasons personal to him” interpretation. The Court in *Cleland Simpson* stated that:

Our initial reading of this statute yielded the impression that the pronoun “him” referred to the employe[e] and not an assailant. Our reading of the many cases dealing with this provision, however, shows that our appellate courts have considered the personal motivation of the assailant to be relevant, and, at this point, we are obligated to follow this approach.²¹⁷

However, as discussed above, precedents exist with conflicting interpretations of Section 301(c)(1)’s reasons personal exception.²¹⁸ Some cases, in fact, state that the ambiguous “him” refers to the employee, while other state “him” refers to the third-party assailant.²¹⁹ And notably, the *Keyes* case, the 1919 Supreme Court decision that stated the reason for the assault must be personal to the employee, was not overruled by *Dolan*.²²⁰

Thus, Section 301(c)(1) remains an ambiguous statute interpreted by conflicting Supreme Court cases. Since *stare decisis* yields *conflicting* indications on how to interpret the statute, inquiry into precedent is not dispositive of the issue.

²¹³ 77 P.S. § 411(1).

²¹⁴ See *Southern Surety Co. v. Shook*, 44 S.W.2d 425 (Tex. Civ. App. 1931).

²¹⁵ *Id.*

²¹⁶ 1 PA. CONS. STAT. § 1922(4).

²¹⁷ *Cleland Simpson Co. v. Workmen’s Comp.* Appeal Bd., 332 A.2d 862, 864 (Pa. Cmwlth. 1975).

²¹⁸ *Supra* Part II(B), (C).

²¹⁹ *Id.*

²²⁰ See citations in *supra* note 64 and note 86.

C. The Humanitarian Purpose and Other Various Factors.

The humanitarian purpose of the Act, along with the application of the various factors as identified in the SCA, supports the reasons personal exception being interpreted as “reasons personal to the *employee*.”

The humanitarian objective of the Act is to provide compensation on a no-fault basis for work-related injuries, “as a fair exchange for relinquishing every other right of action against the employer.”²²¹ The mischief, or “the evil,” the Act attempts to remedy is “uncompensated work injuries.”²²² Before the Act was created, injured workers had to rely on negligence law and the jury trial system.²²³ However, employers would often raise the common law defenses of assumption of risk, contributory negligence, and co-employee negligence.²²⁴ As a result, an employee could suffer significant injury, be left without wages, and never make any recovery of any kind.²²⁵ Furthermore, in litigating a case, a worker could quickly go bankrupt by having to litigate his case.²²⁶

The Act was created after the turn of the century given near universal resolve that workers were being ill-served by negligence law and the jury trial system.²²⁷ The Supreme Court of Pennsylvania has recognized that the Act was “enacted in response to a strong public sentiment that the remedies afforded by actions at common law . . . had failed to accomplish that measure of protection against injuries and of relief in case of accident, which it was believed should be afforded the workman.”²²⁸ The Superior Court has specified that the Act helps injured workers by (1) providing “an accessible, expert and easy forum for the handling of all claims for occupational injury or disease;” (2) providing “prompt payment of all costs for all medical expenses and reasonable income loss payments to the employee or his dependents”; and (3) reducing “the costs and delays of personal injury court trials and eliminate unnecessary payment of fees to lawyers,

²²¹ TORREY & GREENBERG § 1:16 (quoting *Rudy v. McCloskey & Co.*, 35 A.2d 250 (Pa. 1944)).

²²² *Keller v. Old Lycoming Twp.*, 428 A.2d 1358 (Pa. Super. 1981).

²²³ TORREY & GREENBERG § 1:16.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Blake v. Wilson*, 112 A. 126 (1920); *see also Tooley v. AK Steel Corp.*, 81 A.3d 851, 860 (Pa. 2013) (“This Court has recognized that the Act ‘substitutes a quick and inexpensive scheme to provide compensation for work-related injuries in place of the common law process where the employee must sue the appropriate parties for damages. Employers pay benefits at a set rate and they are immune from common-law liability.’”).

witnesses as well as time consuming trials and appeals.”²²⁹

The Act accomplishes all of these objectives without assessing fault to the employee or employer, while the employer is free from the threat of a lawsuit.²³⁰ The humanitarian objective of providing no-fault compensation to the worker is accomplished by the surrender of the common law right of action and the attendant possibility of gaining potentially unlimited damages for such things as pain and suffering, loss of consortium, and punitive relief.²³¹ The thought, in this regard, was that it was advantageous for the employer to gain the immunity from suit which came with the compensation law, because “[v]erdicts in cases of liability were growing larger, due to the prejudice of jurors.”²³² Thus, the Act benefits not only injured employees but also the employer.²³³

Apropos of the subject of this paper, the humanitarian objective of the Act is *vindicated* by applying a liberal construction to ambiguous statutory provisions.²³⁴ As previously mentioned, where a provision of a statute is ambiguous, the statute is to be read liberally so as to afford coverage, and not narrowly to disallow it.²³⁵ In other words, ambiguous statutes are meant to be read in the claimant’s favor.²³⁶

If the reasons personal exception were interpreted to read “reasons personal to the assailant,” more injured employees would be unjustly excluded from workers’ compensation and forced to litigate their cause under the common law. As a result, injured workers would face a higher likelihood of expensive litigation and the possibility of receiving no recovery of any kind. Employers will face the possibility of a lengthy trial and also the possibility of having to pay larger awards in damages. However, the interpretation of “reasons personal to the employee” would allow the humanitarian objective of the Act to be fulfilled – and facilitate the *avoidance* of these negative consequences.

²²⁹ Greer v. U.S. Steel Corp. 352 A.2d 450 (Pa. Super. 1975), *rev’d*, 380 A.2d 1221; *see also* Wagner v. Nat’l Indem. Co., 422 A.2d 1061 (Pa. 1980).

²³⁰ *Id.*

²³¹ TORREY & GREENBERG § 1:16.

²³² *Id.*

²³³ *Id.*

²³⁴ *Supra* note 205.

²³⁵ *Id.*

²³⁶ *Id.*

VIII. CONCLUSION

Conformity with other regulations and jurisdictions, proper statutory construction, and the effectuation of the Act's humanitarian purpose, support the assertion that Section 301(c)(1)'s reasons personal exception should be read to exclude only an injury caused by an act of a third person intended to injure the employee because of reasons personal to the *employee*.

Under this analysis, the victim of the Baumhammers hate-crime shootings would likely have received an award. Baumhammers targeted his victims, including the employee Mr. Sun, because of their minority status. No evidence existed – in this classic, indiscriminate hate crime – that Mr. Sun had any acquaintance whatsoever with the assailant. The assailant (Baumhammers) may have had reasons personal (hatred of Asians) to assassinate Mr. Sun while the latter was in the course of his employment, but the correct analysis makes this irrelevant. The *employee* had no culpability in his course of employment death (he imported no risk), and the reasons personal exception, as properly interpreted, only excludes a claim when the injury is for a reason personal to the *employee*. Here, that was simply not the case. As a result, the employer could not have sustained its burden of proof in the Baumhammers workplace shooting case.

In any event, Pennsylvania courts have yet to be squarely asked to address the proper interpretation of the reasons personal exception. However, just as the issue was raised and decided nearly a century ago in Texas,²³⁷ Pennsylvania courts will inevitably have to address, in a principled fashion, the proper interpretation of the exception. If and when this issue arises, it is submitted that the Court should conclude that the exception of Section 301(c)(1) should exclude only those injuries that arise from assaults that are for reasons personal to the *employee*.

²³⁷ See discussion in *supra* Part III(C).