

Armour Pharmacy v. Bureau of Workers' Compensation Fee Review Hearing Office (National Fire Insurance Company of Hartford)

In *Armour Pharmacy v. Bureau of Workers' Compensation Fee Review Hearing Office (National Fire Insurance Company)*, the Commonwealth Court held that the parties to a C&R Agreement can bind only each other and cannot release themselves from liability to a person who is not a party to the C&R Agreement, who has not been given notice or the opportunity to be heard on the C&R Agreement.

In *Armour Pharmacy*, the claimant sustained a low back injury in 1999. With the indemnity portion of the claim resolved via C&R Agreement, in 2015 the employer requested utilization review of a topical compound cream prescribed to treat claimant's work-related injury. The utilization reviewer determined that the compound cream was reasonable and necessary treatment for the claimant's accepted work-related low back injury. In 2016, the employer refused to pay for the compound cream "based on utilization review." The pharmacy filed a timely fee review application. The fee review section of the Bureau determined that the employer owed \$6,644.30 to the pharmacy. The employer requested a hearing to contest the fee review determination, at which time it presented a copy of the C&R Agreement approved by a WCJ three months after the fee review hearing section of the Bureau directed the employer to pay the pharmacy. **The C&R Agreement included a provision that the employer would not be responsible for payment of the compound pain cream.** The pharmacy was not a party to the C&R proceedings or privy to the settlement negotiations.

In its rationale for the above holding, the Commonwealth Court initially determined that reasonable and necessary treatment for the claimant's work-related injury did include the compound pain cream because the utilization review specifically determined that the compound pain cream was reasonable and necessary prior to the date of the C&R Agreement hearing. The Court then went on to determine that the parties to the C&R Agreement could not avoid payment for the "property rights" of Armour Pharmacy without affording the pharmacy due process of the law. Ultimately the Court remanded the matter to the fee review hearing office to consider the award of payment and interest in the fee review proceeding.