• The Employer’s Commercial Hull Policy that paid “maintenance and cure” benefits, which included hospital, medical or other expenses, to Claimant was not entitled to subrogate against the employer, who was not insured for workers’ compensation, where the claimant slipped and fell on property owned by the employer because Insurer is unable to subrogate its own insured. It is well-settled that an insurer cannot subrogate against its own insured. This is because subrogation can arise only with respect to the rights of an insured against third persons to whom the insurer owes no duty.

• The Commonwealth Court declined to apply the law of the case doctrine to decisions rendered entirely within the workers’ compensation system. The law of the case doctrine is a body of rules regarding the concept that a court involved in the later phases of a litigated matter should not reopen questions previously decided by another judge of the same or a higher court in an earlier phase of the matter. The doctrine includes the following relevant rules:

(1) Upon remand for further proceedings, a trial court may not alter the resolution of a legal question previously decided by the appellate court in the matter; [or] (2) upon a second appeal, an appellate court may not alter the resolution of a legal question previously decided by the same appellate court.

Therefore, the law of the case doctrine did not preclude the WCAB from concluding in its second decision following a remand that the claimant was a “crewmember” under the Commercial Hull Policy of the employer where it previously concluded that the claimant was not a “seaman” under the Jones Act.

• As a matter of law, the term “crewmember” is interchangeable with “seaman” for purposes of the Jones Act. Since the remedies under the Jones Act and Workers’ Compensation Act are exclusive, the WCAB erred in concluding that Claimant was entitled to Jones Act maintenance and cure benefits and workers’ compensation benefits for the same injury.

_Arlet v. WCAB (Commonwealth of Pennsylvania, Department of Labor and Industry, Bureau of Workers’ Compensation), No. 1722 C.D. 2018 (Decision by Judge Wojcik, July 29, 2020) 7/20_