Court of Appeals, Division One

Civil Appeal

1 CA-CV 12-0315 KOBOLD v. AETNA

Appellate Case Information

Case Filed: 11-May-2012

Case Closed:

Dept/Composition

Dept. A (1/7/2016)

Hon. Patricia A Orozco
Hon. Peter B Swann
Hon. Kent E Cattani

Side 1. MATTHEW KOBOLD, a single man, Plaintiff/Counterdefendant/, Plaintiff/Appellee

(Litigant Group) MATTHEW KOBOLD

- **Matthew Kobold, Plaintiff, Counter-Defendant, Appellee**

Co-Counsel: Plaintiff/Counterdefendant/Appellee

Neal S Sundeen, Esq. (AZ Bar No. 3475)

David L Abney, Esq. (AZ Bar No. 9001)

Side 2. THE AETNA LIE INSURANCE COMPANY, a foreign insurer, Appellant, Appellant

(Litigant Group) AETNA LIFE INSURANCE COMPANY

- **Aetna Life Insurance Company, Third-Party Defendant**

Attorneys for: Third-Party Defendant/Appellant

John C West, Esq. (AZ Bar No. 7233)

Miguel A Estrada, Esq. (NY Bar No. 2132629)

Jonathan C Bond, Esq. (DC Bar No. JBOND)

Side 3. UNITED STATES, Amicus Curiae

(Litigant Group) UNITED STATES

- **United States of America**

Attorneys for: Amicus Curiae United States

Robert L Miskell, Esq. (AZ Bar No. 15198)

Henry Charles Whitaker, Esq. (DC Bar No. 499210)

CASE STATUS

Dec 30, 2016....Stayed (until 1/18/17)

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
MAR CV2008-023699			John A Buttrick, Authoring Judge of Order		

DESCENDENT CASE(S)

ASC CV-13-0299-PR

ASC CV-16-0082-PR

2 CASE DECISIONS

05-Sep-2013 OPINION

Vacated
(Dept A)
Vacated by USSC 6/29/15

Filed: **05-Sep-2013** Mandate:

Decision Disposition

Affirmed

Peter Swann.....Author

Patricia Orozco.....Concur

Kent Cattani.....Concur

31-Mar-2016 OPINION

Peter Swann.....Author

Patricia Orozco.....Concur

Kent Cattani.....Concur

Filed: **31-Mar-2016** Mandate:

Decision Disposition

Reversed
Remand with Instructions

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Court of Appeals, Division One

Civil Appeal

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71 PROCEEDING ENTRIES

1.	11-May-2012	FILED: Index of Record, Notice of Appeal from Maricopa County Superior Court filed 04/03/12 Bond filed in Superior Court: 4/10/12 Docketing Statement filed in Superior Court: 4/17/12
2.	11-May-2012	FILED: e-Record on Appeal: Instruments/Minute Entries
3.	17-May-2012	FILED: Notice to Counsel re: Appellant's Fee/Brief Due
4.	31-May-2012	FILED: Notice of Filing Appellant's Filing Fee; Certificate of Service (Appellant)
5.	21-Jun-2012	FILED: Motion for Extension of Time to File Opening Brief; Certificate of Service (Appellant)
6.	21-Jun-2012	RECEIPT No.: 2012-00907 ; $280.00, Check Number: # 055018398, Applied to: AETNA LIFE INSURANCE COMPANY - Appellant's Filing Fee Paid for: Brownstein Hyatt Farber Schreck LLP - By Integrated Resource Systems IN
7.	25-Jun-2012	ORDERED: Motion for Extension of Time to File Opening Brief (Appellant) = GRANTED. Due date EXTENDED from Tuesday, 06-26-2012 to Thursday, 07-26-2012. Absent compelling circumstances, no further extension will be granted. Melina Brill ProTem Judge - Author
8.	25-Jun-2012	FILED: Appellee's Notice re: Appellee's Fee/Appellant's Brief Due
9.	6-Jul-2012	FILED: Notice of Appearance; Certificate of Service for Notice of Appearance (Appellee)
10.	13-Jul-2012	RECEIPT No.: 2012-01017 ; $140.00, Check Number: #055815236, Applied to: MATTHEW KOBOLD - Appellee's Filing Fee Paid for: David L Abney - By Integrated Resource Systems IN
11.	26-Jul-2012	FILED: Opening Brief of Appellant; Certificate of Compliance; Certificate of Service (Appellant)
12.	26-Jul-2012	FILED: Appendix to Opening Brief of Appellant (Appellant)
13.	10-Sep-2012	FILED: Answering Brief; Certificate of Compliance for Answering Brief; Certificate of Service for Answering Brief (Appellee)
14.	12-Sep-2012	ORDERED: Clerk of Maricopa County Superior Court to transmit any portion of record on appeal unavailable in electronic format, including but not limited to reporter's transcripts and exhibits, to clerk of the Court of Appeals, Division One on or before 9/27/12. Ruth Willingham - Author
15.	27-Sep-2012	Record Receipt Noted - ENTIRE RECORD eFILED - There is no physical record to be transmitted from lower court
16.	28-Sep-2012	FILED: Stipulation for Extension of Time to File Reply Brief; Certificate of Service (Appellant)
17.	2-Nov-2012	ORDERED: extending the time for filing the reply brief to and including 11/8/12. Absent unforseen and extraordinary circumstances, no further extension will be granted. Melina Brill ProTem Judge - Author
18.	8-Nov-2012	FILED: Reply Brief of Appellant; Certificate of Compliance; Certificate of Service (Appellant)
19.	28-Feb-2013	CLNDR: CONFERENCE, Department A, 4-23-13, COURTROOM 1.
20.	5-Sep-2013	OPINION (Affirmed) Hon Peter B Swann - Author; Hon Patricia A Orozco - Concur; Hon Kent E Cattani Judge - Concur (Dept A)
21.	5-Sep-2013	FILED: Opinion Distribution List
22.	11-Sep-2013	FILED: Application for Out-of-Pocket Expenses on Appeal; Certificate of Service for Application for Out-of-Pocket Expenses on Appeal (Appellee)
23.	25-Sep-2013	FILED: ASC Order, 9/25/13, re: granting an extension of time to file the Petition for Review on or before November 6, 2013. No further extensions of time shall be granted absent extraordinary circumstances. This matter is subject to dismissal if the Petition for Review is not filed by November 6, 2013.
24.	7-Nov-2013	FILED: Email Notice from ASC re: Petition for Review filed 11/6/13; request for partial record
25.	12-Nov-2013	FILED: Letter forwarding partial record to Arizona Supreme Court

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71 PROCEEDING ENTRIES

26.	19-Nov-2013	FILED: ASC Order, 11/19/13, re: granting the Motion and authorizing Miguel A. Estrada, Robert E. Johnson and Jonathan C. Bond to appear Pro Hac Vice on a temporary basis before the Court in this matter up to and including November 25, 2013.
27.	26-Nov-2013	FILED: ASC Order, 11/26/13, re: granting the Motion and authorizing Miguel A. Estrada, Robert E. Johnson and Jonathan C. Bond to appear Pro Hac Vice before this Court in this matter for a period not to exceed one year from the date of this Order.
28.	20-Dec-2013	FILED: ASC Order, 12/20/13, re: granting the Unopposed Motion for Leave to File Amicus Curiae Brief. The brief shall be filed as of December 20, 2013.
29.	21-Mar-2014	FILED: Letter from ASC, 3/21/14, re: Petition for Review DENIED on 3/21/14. FURTHER ORDERED: Request for Attorneys Fees (Appellee Kobold) = DENIED.
30.	7-Apr-2014	FILED: Request to Stay Issuance of Mandate; Certificate of Service (Appellant)
31.	14-Apr-2014	FILED: Response to Request to Stay Issuance of Stay; Certificate of Service for Response to Request to Stay Issuance of Mandate (Appellee)
32.	8-May-2014	ORDERED: granting the motion and staying the issuance of the mandate in this case for 90 days from the date of this order. Hon Peter B Swann - Author
33.	2-Jul-2014	FILED: Notice of Filing Petition for Writ of Certiorari; Certificate of Service (Appellant)
34.	18-Sep-2014	ORDERED: awarding Appellee costs in the amount of $152.00. Hon Peter B Swann - Author
35.	2-Jul-2015	FILED: Letter, 6/29/15, to COA1 from United States Supreme Court re: writ of certioriari granted. Judgment vacated; Case remanded to Supreme [sic] COA1, for further consideration.
36.	7-Jul-2015	FILED: Notice of Grant of Writ of Certiorari, of Vacation of Judgment, and of Remand by the United States Supreme Court and Motion to Set Briefing and Oral-Argument Schedule and Motion to Reconstitute Appellate Panel; Certificate of Service (Appellee)
37.	17-Jul-2015	FILED: Appellant's Response to Appellee's Motion to Set Briefing and Oral Argument Schedule; Certificate of Service (Appellant)
38.	29-Jul-2015	FILED: Reply in Support of Motion to Set Briefing and Oral-Argument Schedule and Reply in Support of Motion to Reconstitute Appellate Panel; Certificate of Service (Appellee)
39.	31-Jul-2015	FILED: US Supreme Court Mandate and letter, dated 7/31/15
40.	11-Aug-2015	ORDERED: Lifting the stay and reinstating this appeal. FURTHER ORDERED: Dept A (Judges Orozco, Swann, Cattani) be reconvened for purpose of reconsideration of court's earlier decision. Ruth Willingham - Author
41.	11-Aug-2015	FILED: Motion to Appear Pro Hac Vice; Certificate of Service (Appellant)
42.	11-Aug-2015	ORDERED: appellant shall file a supplemental opening brief w/ COA w/in 30 days from issuance of this Order. FURTHER ORDERED: Appellee shall file a supplemental answering brief w/in 20 days of filing of appellant's supplemental opening brief. Appellant shall have 10 days thereafter to file its supplemental reply. FURTHER ORDERED: Parties' briefs shall address issue of whether Federal Employees' Health Benefits Act preempts Arizona state law prohibiting Aetna as a FEHBA carrier, from seeking subrogation or reimbursement. FURTHER ORDERED: Upon conclusion of supplemental briefing, matter will be scheduled for conference and oral argument by Dept. A, Judges Orozco, Swann and Cattani, and a written decision shall follow in due course. Hon Patricia A Orozco - Author
43.	18-Aug-2015	ORDERED: Motion to Appear Pro Hac Vice (Appellant) = GRANTED. Hon Patricia A Orozco - Author
44.	10-Sep-2015	FILED: Supplemental Opening Brief of Appellant; Certificate of Compliance; Certificate of Service (Appellant)
45.	10-Sep-2015	FILED: Appendix to Supplemental Opening Brief of Appellant (Appellant)
46.	30-Sep-2015	FILED: Supplemental Answering Brief; Certificate of Compliance for Supplemental Answering Brief; Certificate of Service for Supplemental Answering Brief (Appellee)
47.	15-Oct-2015	FILED: Supplemental Reply Brief of Appellant; Certificate of Compliance; Certificate of Service
48.	2-Nov-2015	FILED: Unopposed Motion for Leave to File Amicus Curiae Brief; Certificate of Service (Amicus Curiae)

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49.	2-Nov-2015	FILED: Amicus Curiae Brief of the United States in Support of Appellant; Certificate of Compliance; Certificate of Service; (Appendix to Amicus Curiae Brief of the United States in Support of Appellant) Appeal from the United States District Court filed on 10/29/15
50.	6-Nov-2015	FILED: Supplemental Citation of Legal Authority of Appellant Aetna Life Insurance Co.; Certificate of Service (Appellant)
51.	6-Nov-2015	FILED: Notice of Change of Firm Affiliation; Certificate of Service (Appellant)
52.	19-Nov-2015	ORDERED: Unopposed Motion for Leave to File Amicus Curiae Brief; (Amicus Curiae) = GRANTED. Hon Patricia A Orozco - Author
53.	19-Nov-2015	FILED: Notice of Oral Argument
54.	23-Nov-2015	FILED: Appellee's Response to Amicus Curiae Brief of the United States in Support of Appellant; Certificate of Compliance for Appellee's Response to Amicus Curiae Brief of the United States in Support of Appellant; Certificate of Service for Appellee's Response to Amicus Curiae Brief of the United States in Support of Appellant
55.	23-Nov-2015	FILED: Notice of Filing Return Receipt for Notice of Oral Argument; Certificate of Service for Notice of Filing Return Receipt for Notice of Oral Argument (no enclosure) (Appellee)
56.	23-Nov-2015	FILED: Amended Notice of Filing Return Receipt for Notice of Oral Argument; Return Receipt for Notice of Oral Argument signed by David L Abney on 11/19/15; Certificate of Service for Amended Notice of Filing Return Receipt for Notice of Oral Argument (Appellee)
57.	4-Dec-2015	FILED: Unopposed Motion for Leave to Participate in The Oral Argument; Certificate of Service (Amicus Curiae)
58.	7-Dec-2015	ORDERED: Unopposed Motion for Leave to Participate in The Oral Argument (Amicus Curiae) = GRANTED. FURTHER ORDERED: Third-Party Defendant/Appellant, Aenta Life Insurance, shall cede seven of its allotted twenty minutes times at oral argument for Amicus Curiae to present its oral argument. Hon Patricia A Orozco - Author
59.	15-Dec-2015	FILED: Return Receipt for Notice of Oral Argument signed by Jonathan C Bond on 11/19/15; Certificate of Service for Return Receipt for Notice of Oral Argument (Appellant)
60.	30-Dec-2015	FILED: Motion to Appear Pro Hac Vice on a Temporary Basis; Certificate of Service; Whitaker PHV application (Amicus Curiae)
61.	31-Dec-2015	FILED: Notice Of Filing Of Return Receipt For Notice Of Oral Argument; Certificate of Service; Return Receipt Re Oral Argument, signed by Henry Whitaker, on 12/07/15 (Amicus Curiae)
62.	5-Jan-2016	ORDERED: Granting the motion to appear pro hac vice on a temporary basis (Henry C. Whitaker). Hon Patricia A Orozco - Author
63.	7-Jan-2016	FILED: Sign-in Sheet/Case is Under Advisement (Dept A)
64.	31-Mar-2016	OPINION (Reversed, Remand with Instructions) Hon Peter B Swann - Author; Hon Patricia A Orozco - Concur; Hon Kent E Cattani Judge - Concur
65.	31-Mar-2016	FILED: Opinion Distribution List
66.	11-Apr-2016	FILED: ASC Order filed 4/11/16 re: extending time for filing of Petition for Review to 6/1/16
67.	1-Jun-2016	FILED: Email Notice from ASC re: Petition for Review filed 6/1/16; request for partial record
68.	1-Jun-2016	FILED: Letter forwarding partial record to Arizona Supreme Court
69.	19-Oct-2016	FILED: Letter from ASC, 10/19/2016, re: Petition for Review DENIED on 10/18/2016
70.	3-Nov-2016	FILED: Motion for Stay of Issuance of Mandate; Certificate of Service for Motion for Stay of Issuance of Mandate (Appellee)
71.	30-Dec-2016	ORDERED: Motion for Stay of Issuance of Mandate (Appellee) = GRANTED/staying the issuance of the mandate until 01/17/2017. Hon Peter B Swann - Author

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