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IN THE COURT OF COMMON PLEAS  
BUTLER COUNTY, PENNSYLVANIA

JOE MYERS

CIVIL DIVISION - LAW

VS.

2019-10516

TIMOTHY F. McCUNE, JOSEPH H. CHIVERS,  
JACK W. MURTAUGH JR., GRAYDON BREWER,  
CARL V. NANNI, JACK LEWIS, JIM GALLAGHER,  
HANK LEYLAND, GREG LOVERICK, EDWARD  
TASSEY, AK STEEL, et al, UAW (formerly  
Butler Armco Independent Union) et al.

**ORAL ARGUMENT**

Held Before

**THE HON. WILLIAM R. CUNNINGHAM,**

**Senior Judge**

Butler County Courthouse

Butler, Pennsylvania

OCTOBER 22, 2019

**A P P E A R A N C E S**

JOE MYERS, Appearing *pro se*.

MICHAEL LETTRICH, ESQUIRE,  
On behalf of Defendant McCune.

NICHOLAS KOCH, ESQUIRE,  
On behalf of Defendant AK Steel.

ADAM HOBAUGH, ESQUIRE  
On behalf of Defendants UAW.

Susan Lynn West  
Official Court Reporter

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PROCEEDINGS COMMENCED

(WHEREUPON, A PHONE CONNECTION WAS MADE WITH ATTORNEY KOCH.)

THE COURT: Well, good morning, Attorney Koch.  
You are here on behalf --

MR. KOCH: Good morning, Your Honor.

THE COURT: You are here on behalf of AK Steel and Edward Tasse, is that correct?

MR. KOCH: That's correct, Your Honor.

THE COURT: Okay. Can you hear us all right?

MR. KOCH: I can hear you, Your Honor, yes.

THE COURT: Okay. All right. The record should reflect this is the time set aside on various preliminary objections filed by several Defendants. This is the time scheduled for oral argument, and let's just take a roll call to see who else is here. And you are?

MR. MYERS: Joe Myers.

THE COURT: Okay. You are the Plaintiff in this case, Joe Myers?

MR. MYERS: Yes.

THE COURT: Okay. Sir?

MR. LETTRICH: Good morning, Your Honor. My name is Michael Lettrich on behalf of Timothy McCune.

THE COURT: Okay. Thank you.

MR. HOBAUGH: Good morning, Your Honor. Adam

1           Hobaugh on behalf of the UAW Defendants. I can  
2           identify them each if...

3           THE COURT: Why don't you just for the record.

4           MR. HOBAUGH: Sure. UAW Local 3303, James C.  
5           Gallagher, Hank Leyland, John Murtaugh, Jr., Greg  
6           Loverick, Carl Nanni and Jack Lewis.

7           THE COURT: Okay. All right. Well, technically  
8           you are the moving party, so while you are standing I  
9           will give you chance -- I want the record to reflect  
10          that I have read the preliminary objections filed by  
11          the parties, I have read the responsive pleadings filed  
12          by Mr. Myers. But this is your opportunity to be  
13          heard, so go ahead.

14          MR. HOBAUGH: Thank you, Your Honor. I think that  
15          our preliminary objections can be succinctly stated as  
16          Mr. Myers' complaint is barred in a number of ways.  
17          The first is the statute of limitations. We are well  
18          beyond any recognized statute of limitations and,  
19          therefore, Mr. Myers' complaint fails to state a claim  
20          as a matter of law.

21          The second reason being collateral estoppel. This  
22          has been adjudicated, both at a labor arbitration and  
23          then later at an appeal to Federal District Court that  
24          was then appealed further to the Third Circuit and  
25          dismissed in 2005.

1 THE COURT: I saw the reference to that.

2 MR. HOBAUGH: Yes, sir. It's around --

3 THE COURT: Do you have, because I don't have it,  
4 it's not a matter of record here, the filings? The  
5 Orders from the District Court and the Third Circuit  
6 Court?

7 MR. HOBAUGH: I do not have them with me but we  
8 can supplement the record with them certainly.

9 THE COURT: That would be helpful just in terms of  
10 what was litigated there versus what remains, if  
11 anything, here.

12 MR. HOBAUGH: Sure. The crux of that case as well  
13 as this case was the termination of employment from AK  
14 Steel for Mr. Myers. And that was decided in both  
15 labor arbitration that was appealed as a matter of an  
16 appeal under the NLRA and then appealed to the Third  
17 Circuit on the matter of statute of limitations.

18 THE COURT: Okay. Who were the named Defendants  
19 in that lawsuit?

20 MR. HOBAUGH: In that case it was the UAW, the  
21 Butler Armco Independent Union which is the predecessor  
22 to the UAW Local 3303, and AK Steel.

23 THE COURT: Okay.

24 MR. HOBAUGH: He simply added additional  
25 individuals who were all acting in their official



1 capacity under those, under those other umbrellas that  
2 were litigated previously.

3 THE COURT: Okay.

4 MR. HOBAUGH: And finally, Your Honor, we believe  
5 that this demur is appropriate in this case because we,  
6 there is not a significant or a discernable number of  
7 facts here that would allow us to even determine what  
8 the cause of action is that wouldn't have already been  
9 precluded or resolved by those prior proceedings.

10 THE COURT: What was your impression of what the  
11 complaint says?

12 MR. HOBAUGH: Well, Your Honor, I believe that he  
13 is contesting his termination from AK Steel of which  
14 none of my Defendants actually represent or can act on  
15 behalf of AK Steel. It appears that he may perhaps be  
16 making a malpractice claim against some attorneys,  
17 although it's not entirely clear the basis for which,  
18 and there has been a no certificate of merit filed for  
19 those claims.

20 THE COURT: I saw that.

21 MR. HOBAUGH: And I believe that he's suggesting  
22 that there was somehow someone misled him into  
23 believing that, that his termination was being fought.  
24 This from our, from the Defendants that I represent's  
25 perspective, we fought this through the labor

1 arbitration which is our, our only legal right, and we  
2 did that on his behalf as do any other terminated  
3 employee. And there is no fraud here in any way, shape  
4 or form, and it hasn't been pled with any kind of  
5 specificity.

6 THE COURT: Okay.

7 MR. HOBAUGH: Even trying to give, give Mr. Myers  
8 the benefit of the doubt as a *pro se* representative, I  
9 can't determine a cause of action that I could even  
10 slot into a statute of limitations, sir.

11 THE COURT: Okay. That's why I asked you.

12 MR. HOBAUGH: Thank you.

13 THE COURT: Let me ask you one other question.

14 MR. HOBAUGH: Sure.

15 THE COURT: That's why I'd like to look at the  
16 Federal pleadings, because there is some appellate  
17 authority that the statute of limitations is a jury  
18 question, or it can be.

19 MR. HOBAUGH: Can be; yes, sir.

20 THE COURT: But if it's already been litigated in  
21 this case --

22 MR. HOBAUGH: I believe in this case the fact that  
23 the claim arose 18 years ago, that it was litigated and  
24 that it was determined as a final and binding decision  
25 by the Third Circuit Court of Appeals, I think that you

1 can take judicial notice of that, sir, and it's no  
2 longer a jury question.

3 THE COURT: Okay. All right. I think it might be  
4 helpful in fairness to you, Mr. Myers, is that after,  
5 that you respond at this time to the arguments made by  
6 Mr. Hobough and on behalf of the various UAW  
7 Defendants.

8 MR. MYERS: Yes. I was wrongly directed to go to  
9 arbitration. And whenever I was discharged, it wasn't  
10 a criminal/civil -- or it wasn't a labor law issue, it  
11 was a criminal/civil matter. I had rolled a truck over  
12 in '98 and whenever I did I was disciplined because I  
13 didn't chain the load down. Come to find out after  
14 that happened there was another truck driver that the  
15 same thing happened to him, they never told me about  
16 it. Put me, put me in danger. So then whenever I,  
17 tried to follow their, their own written documents and  
18 own written law of their, of public policy and of their  
19 --

20 THE COURT: Of whom?

21 MR. MYERS: Of AK Steel.

22 THE COURT: Okay.

23 MR. MYERS: So I was following whenever I got  
24 discharged, trying to obey their policy that I was  
25 warned to not, not violate before. So it wasn't, it



1        was a criminal/civil matter because I contacted the  
 2        P.A. Attorney General's Office before I got fired.  
 3        Defendant Ed Tassej knew that; I talked to him about  
 4        it. So basically I was fired for whistle blowing what  
 5        is happened.

6                And then the -- whenever I, after I hired  
 7        Defendant Chivers he ended up saying he talked to  
 8        Defendant Murtaugh who is a union representative, said  
 9        that I had to go to labor, I had to go through  
 10       arbitration before, I couldn't go through civil court.  
 11       And so then, you know, Defendant Chivers never even  
 12       pled the case. And he sent two demand letters on my  
 13       behalf that I didn't agree to.

14               And so this is, as far as the, whether it is a  
 15       jury issue, it is a jury issue because I was never  
 16       allowed a jury trial after --

17               THE COURT: By the Federal Court?

18               MR. MYERS: Well, it should never went to Federal  
 19       Court because I never gave Angelo Papa permission to go  
 20       to Federal Court. I only asked him to file a jury  
 21       trial.

22               THE COURT: Who is Angelo Papa?

23               MR. MYERS: Angelo Papa was a Defendant. The  
 24       Defendant Angelo Papa that I hired after Chivers  
 25       wouldn't do his job, so then I hired Angelo Papa. He



1 filed the complaint in Butler County Court here but it  
2 was dismissed. He didn't fight and demand the jury  
3 trial that, that the Constitution guarantees me to  
4 have, and went to Federal Court without my permission  
5 or knowledge. I didn't know it until after he went to  
6 it and then he told me, he said: Well a jury trial  
7 doesn't, isn't under a civil action, and it is.

8 THE COURT: Well, I don't see him as a named  
9 defendant in this case.

10 MR. MYERS: He is. I added him in one of the  
11 pleadings. And he, I just got his mailing.

12 THE COURT: How did you add him without leave of  
13 Court?

14 MR. MYERS: I'm sorry?

15 THE COURT: How did you add him without leave of  
16 Court, because the Rules require leave of Court when,  
17 you add somebody.

18 MR. MYERS: Well, I sent a motion adding him to  
19 the -- he was already part of the initial complaint.  
20 He was named in the body of the complaint; I just  
21 didn't have his name in the header.

22 THE COURT: Okay. Any other response to the UAW  
23 preliminary objections?

24 MR. MYERS: Yes. I disagree that, all their  
25 arguments are, it flies in the face of the

1        Constitution. Because the Constitution says I am  
2        guaranteed a jury trial. And Miranda versus Arizona  
3        says: Where rights secured by the Constitution are  
4        involved there can be no rule making or legislation  
5        which would abdicate them.

6                THE COURT: Okay. All right. Thank you. Mr.  
7        Lettrich is it?

8                MR. LETTRICH: It is, Your Honor. May it please  
9        the Court, I am here on behalf of Timothy McCune, not  
10       in his capacity as a Judge, but in his capacity, prior  
11       capacity, as the District Attorney.

12               The claim against him is somewhat different than  
13       the claim against the other Defendants. My  
14       understanding of the claim against him is that Mr.  
15       Myers went to him seeking to have certain adversaries  
16       prosecuted, some of the AK Steel people. He decline to  
17       prosecute them, and that it the basis for the claim.

18               THE COURT: Right.

19               MR. LETTRICH: A prosecutorial discretion issue to  
20       not prosecute them. That's a claim that's barred by  
21       immunity in several different ways, Your Honor.  
22       There's state law claim, there's high public official  
23       immunity. A district attorney is very clearly a high  
24       public official as indicated by a number of cases cited  
25       in our brief. This is within his prosecutorial

1 discretion. This is not a claim. I think the case law  
2 is fairly clear. To establish what could be  
3 characterized as the 1983 claim, citing federal rights,  
4 absolute prosecutorial immunity applies. The decision  
5 to, whether or not to initiate prosecution is, is  
6 really the core prosecutorial function. You can't sue  
7 someone for that even it was motivated by some sort of  
8 improper animus or the decision was bad. Or really any  
9 reason why, why a person chooses to prosecute or not  
10 prosecute. It's something for which the prosecutor is  
11 immuned and can't be sued.

12 Further, there is an issue of lack of standing.  
13 You know, a prosecution like this is commonwealth  
14 versus the defendant. A person doesn't have standing  
15 to assert a claim saying: I think this person should  
16 have been prosecuted and wasn't. So Mr. Myers also  
17 lacked, would lack standing, even in the absence of  
18 these limited defenses, to assert a claim against a  
19 prosecutor for deciding not to prosecute someone.

20 I understand the claim is being characterized as  
21 fraud. It doesn't meet any of the elements of fraud,  
22 to decide not to prosecute someone. And statute of  
23 limitations would also apply to him as well, as they  
24 were approximately I think 18 years ago or 19 years ago  
25 when it occurred.



1 THE COURT: Okay. Thank you, Counsel. Your  
2 response, Mr. Myers?

3 MR. MYERS: Yes. I go again back to the  
4 Constitution. The jury can decide whether the case law  
5 or any, any other statute is legal or not legal.  
6 That's our right as a, as We the People. And that's,  
7 the jury trial is, is the equalizer whenever things  
8 are, laws are passed, may or may not be Constitutional.

9 THE COURT: Okay. I think it's appropriate at  
10 this time that I address the case against Mr. McCune,  
11 because it is different from the other Defendants.

12 MR. HOBAUGH: Yes, sir.

13 THE COURT: And it is clearly as a matter of law  
14 not a viable claim whatsoever. And, Mr. Myers, you  
15 need to understand something, because you don't really  
16 understand and you haven't through your pleadings and  
17 filings in this case, understood the right to Counsel,  
18 the right to a jury trial and the context of a civil  
19 proceeding.

20 You just moments ago cited the Miranda case which  
21 is a right to counsel case in a criminal setting. But  
22 your right to a jury trial in a civil matter is not  
23 absolute. It is subject to the gate-keeping function  
24 of a Judge to determine whether there is a factual or  
25 legal basis for a claim that could get to a jury for a



1 jury to determine.

2 As it relates to the Defendant, Timothy McCune, in  
3 the capacity that you have sued him, there is no claim  
4 whatsoever, and there can never be a claim because he  
5 is indeed protected by several forms of immunity,  
6 including high official immunity, qualified immunity.  
7 And there is nothing in this record that you can or  
8 ever will be able to establish a claim against Attorney  
9 McCune and so the law recognizes that he should not  
10 have to bear the expense of going to a jury and having  
11 a jury trial when there is absolutely no legal claim  
12 against him. So you need to understand that, as it  
13 relates to Mr. McCune.

14 So I will be issuing an Order dismissing the case  
15 against Mr. McCune, in large part based on the matters  
16 set forth in the preliminary objections because they  
17 are true and accurate as a matter of law. And as a  
18 matter of law there is not, and cannot be, a claim  
19 against this Defendant, whether now or by amendment.

20 So, all right. Now we've got Attorney Koch I  
21 believe is on, had filed on behalf of AK Steel and Ed  
22 Tasseey.

23 MR. KOCH: Yes. Nicholas Koch on behalf of AK  
24 Steel Corporation and Edward Tasseey, Your Honor. First  
25 of all I'd like to thank the Court for allowing me to

1 appear via telephone. I know it's unusual and it's  
2 probably more for Plaintiff's convenience than mine,  
3 but I am greatly appreciative.

4 AK Steel and Mr. Tassej moved to dismiss  
5 Plaintiff's claims pursuant to Pennsylvania Rules of  
6 Civil Procedure 1028(a)(2)(3)(4) and (6) as covered by  
7 UAW's Counsel quite succinctly. Plaintiff's complaint  
8 is nonsensical, lacks specificity and devoid of any  
9 contactable claims. Any claims that Plaintiff may have  
10 ever had were litigated in both his labor and then his  
11 subsequent civil claim between 15, 18 years ago. They  
12 are, therefore, barred by the statute of limitations  
13 and the doctrine of collateral estoppel to the extent  
14 they ever existed in the first place.

15 I would also note in response to AK's and Tassej's  
16 preliminary objections Plaintiff has not set forth any  
17 real argument against our position, that he simply  
18 reiterates his demand for a jury trial as he has done  
19 in response to the other Defendants' preliminary  
20 objections.

21 And he also accused AK Steel of playing procedural  
22 gymnastics. I would simply note that Plaintiff has not  
23 properly served this complaint or included a notice to  
24 plead so if AK Steel and Mr. Tassej really wanted to  
25 play procedural games they could have forced Plaintiff

1 to incur additional costs, but they have not done so.  
2 They have moved to get to the merits, or lack thereof,  
3 of these claims as soon as possible.

4 And, finally, Your Honor, I would just note that  
5 since there's alleged Constitutional issues here,  
6 Article V Section 10(c) of the Pennsylvania  
7 Constitution grants the Pennsylvania, the Supreme Court  
8 of Pennsylvania the power to prescribe procedural rules  
9 including Rule 1028 which I am moving under here, which  
10 allows a dismissal of a claim based on preliminary  
11 objections that there is no possible way for a  
12 Plaintiff to recover. Thank you.

13 THE COURT: Okay. Your response, Mr. Myers?

14 MR. MYERS: Yes. He mentioned about the  
15 Pennsylvania Constitution. It also says in Article I,  
16 Declaration of Rights, trial by jury shall not, shall  
17 heretofore, and right thereof, remain inviolate. So  
18 that flies in the face of me having a jury trial, too.  
19 And to have my, to have all of the issues of the  
20 case -- I was fired illegally, whistle blowing, I  
21 mean...

22 THE COURT: Were those all addressed in the  
23 Federal lawsuit?

24 MR. MYERS: I'm sorry?

25 THE COURT: Those were all addressed in the

1 Federal lawsuit, correct?

2 MR. MYERS: But -- well, I don't think all of them  
3 were. But the other thing is I didn't --

4 THE COURT: What was?

5 MR. MYERS: -- give permission to go to Federal  
6 Court. I wanted to be in, in Butler County here having  
7 a jury trial not, not having one Judge decide  
8 everything.

9 THE COURT: Okay. So what was decide in Federal  
10 Court?

11 MR. MYERS: They dismissed it. One of the things  
12 was estoppel. But again, whenever a person like me  
13 hires an attorney and they don't do their job and I am  
14 trying, trying to do what I am supposed to do, I  
15 can't -- and they, now they want to claim statute of  
16 limitations. That's something I believe the jury also  
17 can set aside and they can rule and juries have where  
18 they can set aside or, you know, rule a law  
19 unconstitutional.

20 THE COURT: Okay. I am not sure you listened to  
21 what I said earlier but I am going to repeat it for  
22 you. Okay? Your right to a jury trial is not  
23 absolute. All right? Because if it were, then our  
24 system would be chaos. Anybody could come in at any  
25 time, make allegations of any type against anybody and



1 then claim I have a right to a jury trial, that's  
2 inviolate, and a jury has to be summoned to hear the  
3 case.

4 And the law recognizes, and has for years, and  
5 when you filed this lawsuit in Butler County you, you  
6 invoked a jurisdiction in this County and of the State  
7 of Pennsylvania, and it has long been the law that  
8 there is a gate-keeping function that people that have  
9 been sued have the right to contest any basis of the  
10 lawsuit and if there is not a legal claim or a factual  
11 basis establishing a legal claim, then to have that  
12 dismissed rather than have to bear the expense of going  
13 to a trial.

14 And you need to understand that. Because all of  
15 your pleadings and filings so far have, are of a  
16 misguided assumption that you have a Constitutional  
17 right to a jury trial that from the moment you file  
18 your complaint, the next thing that has to happen is  
19 the Judge has to schedule the jury trial. You may want  
20 to consult with legal counsel to confirm what I am  
21 telling you.

22 All right. Well, what I will do is I would like  
23 to get a copy of the Federal pleadings.

24 MR. HOBAUGH: Yes, sir.

25 THE COURT: The complaint.

1 MR. HOBAUGH: Both District and Third Circuit?

2 THE COURT: And the complaint that was filed.

3 MR. HOBAUGH: Yes, sir.

4 THE COURT: And then I will get out an Order.

5 MR. HOBAUGH: I believe that was filed in Butler  
6 County, removed under the NLRA. I will do my best to  
7 receive a copy of that. I don't know that I have a  
8 copy of the actual complaint.

9 THE COURT: Okay.

10 MR. HOBAUGH: The complaint by Mr. Myers was filed  
11 here, removed under the NLRA, but I will attempt.

12 THE COURT: Okay. Thank you.

13 MR. KOCH: Thank you, Your Honor.

14 PROCEEDINGS CONCLUDED

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C E R T I F I C A T E

I, Susan Lynn West, do hereby certify that I took the foregoing proceedings in stenotype at the time and place hereinbefore set forth and thereafter reduced the same to typewritten form, and that the foregoing is a true, full, and correct transcript of my said stenotype notes.

*Susan Lynn West*  
Susan Lynn West  
Official Court Reporter