

# A Summary of Recent Pennsylvania Appellate Court Decisions

By Daniel J. Siegel, Esquire

LAW OFFICES OF DANIEL J. SIEGEL, LLC

66 W. Eagle Road • Suite 1 • Havertown, PA 19083-1425  
(610) 446-3457 • Fax (610) 471-0570 • E-mail [dsiegel@danieljsiegel.com](mailto:dsiegel@danieljsiegel.com)

REPORTING DECISIONS THROUGH AUGUST 5, 2010

## PENNSYLVANIA APPELLATE COURT DECISIONS

### I. Allocatur Petition Granted

The Pennsylvania Supreme Court has granted allocatur in the following matter on the issue stated:

#### A. *Government Employees Insurance Co. v. Ayers, No. 442 WAL 2008 (July 27, 2010)*

- Does the application of a household vehicle exclusion violate Section 1738 of the Motor Vehicle Financial Responsibility Law (“MVFRL”), where the same insurance company insures all vehicles owned by an insured, and where the exclusion denies inter-policy stacking to the insured who has paid for stacking and has not executed a stacking waiver?

All decisions are “[hyperlinked](#)” to the slip opinion. All you have to do is “[click](#)” (or “ctrl + click”) on the title of the case, and if connected to the Internet, your browser will open up the decision for you to read in its entirety. Try it and see!

### II. Causes of Action

#### A. *Corporate Liability - Nursing Homes*

##### □ *Scampone v. Grane Healthcare Co., 2010 PA Super 124 (July 15, 2010)*

- **Holding:** A nursing home may be liable under a corporate negligence theory applicable to hospitals. In addition, understaffing may be evidence of negligence, *i.e.*, the nursing home's inability to "formulate, adopt, and enforce adequate policies to ensure quality care for patients."

#### B. *Strict Liability - Asbestos Litigation*

##### □ *Summers v. Certainteed Corp., Nos. 19, 20, 21 and 22 EAP 2006 (Pa., July 21, 2010)*

- **Holding 1:** A trial court's decision to grant summary judgment is subject to a de novo, not an "abuse of discretion" standard, for purposes of appellate review.
- **Holding 2:** When a plaintiff has symptoms that could arise from exposure to asbestos or from another malady, and the issues of causation are supported by "reasonably certain expert opinions," summary judgment is not appropriate, and the jury should determine causation. This case overrules *Quate v. American Standard, Inc.*, 818 A.2d 510 (Pa.Super., 2003).

Justice Saylor filed a [concurring opinion](#); Justice Eakin filed a [dissenting opinion](#).

C. *Failure to Warn*

□ [\*Cochran v. Wyeth, Inc., 2010 PA Super 131 \(July 27, 2010\)\*](#)

- **Holding:** In a failure to warn case involving prescription drugs, a plaintiff must establish not only a duty and a failure to warn, but also establish proximate causation by showing that the defendant had issued a proper warning to a learned intermediary, *i.e.*, the patient's physician. Thus, a plaintiff cannot prove proximate causation when the non-disclosed risk did not cause a physical injury.

D. *Pharmaceuticals – Causes of Action*

□ [\*Lance v. Wyeth, Inc., 2010 PA Super 137 \(August 2, 2010\)\*](#)

- **Holding:** Strict liability causes of actions in pharmaceutical cases are limited to (1) manufacturing defect claims, or (2) failure to warn claims. Failure to warn cases will be analyzed, however, in accordance with the negligence standard under Section 388 of the *Restatement of Torts (Second)* and not under Section 402A of the *Restatement*. The Court did permit plaintiff to proceed with a claim that the drug was negligently designed, but refused to allow a claim for negligent failure to withdraw/recall a drug from the market.

III. Motor Vehicle Insurance

A. *Uninsured Motorist Coverage - Unidentified Vehicles*

□ [\*Vanderhoff v. Harleysville Insurance Co., No. 123 Map 2006 \(Pa., July 6, 2010\)\*](#)

- **Holding:** In order to deny a claim for uninsured motorist benefits for an accident involving an unidentified vehicle that was reported to the police, an insurer must demonstrate that it was prejudiced by any late reporting to the carrier. Justice Eakin filed a [dissenting opinion](#) in which he argued that an insurer should not be required to show actual prejudice before denying a claim in which the claimant provide untimely notice to the insurance company.

B. *Uninsured Motorist Coverage - Waivers*

□ [\*Sackett v. Nationwide Mutual Insurance Co., 2010 PA Super 129 \(July 21, 2010\)\*](#)

- **Holding:** When insured adds a vehicle to an existing automobile insurance policy through an endorsement, the insurer must obtain new UM and UIM stacking waivers.

IV. Workers' Compensation

A. *Notice of Injury*

□ [\*Allegheny Ludlum Corp. v. Workers' Compensation Appeal Board \(Holmes\), No. 1623 C.D. 2009 \(Pa.Cmwlth., July 9, 2010\)\*](#)

- **Holding:** The 120 day notice period for a cumulative or repetitive injury begins to run on the last day of aggravation (generally, the last day of work) or from the date claimant should have reasonably known that the condition was work-related.

B. *Statute of Limitations*

□ [\*Fitzgibbons v. Workers' Compensation Appeal Board \(City of Philadelphia\), No. 2041 C.D. 2008 \(Pa.Cmwlth., July 16, 2010\)\*](#)

- **Holding:** A party seeking to either correct a Notice of Compensation Payable, or to add additional consequential injuries to a claimant's compensable, work-related injuries under Section 413 of the Act, must file a petition within three years of the date of the most recent payment of compensation.

C. *Job Availability - Underlying Medical Evidence*

- [\*Verizon Pennsylvania, Inc. v. Workers' Compensation Appeal Board \(Guyders\)\*, No. 2477 C.D. 2009 \(Pa.Cmwlt., July 19, 2010\)](#)
  - **Holding:** There is no set time frame, *e.g.*, 6 months, after which the results of a medical examination become "stale," and cannot be used *per se* to establish whether work is available to an injured worker.

D. *Statutory Employer*

- [\*Six L's Packing Co. v. Workers' Compensation Appeal Board \(Williamson\)\*, No. 686 C.D. 2009 \(Pa.Cmwlt., July 23, 2010\)](#)
  - **Holding:** When an entity is deemed a worker's statutory employer under Section 302(a) of the Act, a claimant need not satisfy the requirements of Section 302(b). Under Section 302(a), a contractor who subcontracts all or any part of a contract and his insurer are liable for payment of compensation to employees of a subcontractor unless the subcontractor maintains workers' compensation insurance.

E. *Recovery Fees*

- [\*Commonwealth, Dept. of Labor & Industry, v. Workers' Compensation Appeal Board \(Old Republic Insurance Co.\)\*, No. 1762 C.D. 2009 \(Pa.Cmwlt., July 28, 2010\)](#)
  - **Holding:** Recovery fees incurred by an employer pursuant to Section 319 of the Act in order to recover the proceeds of a third-party settlement are compensation as defined by Section 443(a) of the Act and are recoverable from the Supersedeas Fund.

F. *Pension Offsets*

- [\*Gaughan v. Workers' Compensation Appeal Board \(Pennsylvania State Police\)\*, No. 2472 C.D. 2009 \(Pa.Cmwlt., July 28, 2010\)](#)
  - **Holding:** Because the Commonwealth is both the entity funding an employee's pension benefits and the entity paying the worker's workers' compensation benefits, and the all of the funding comes from the State Treasury, the Commonwealth is entitled to an offset against the claimant's pension benefits for that portion of the pension that it funded.

G. *Jurisdiction*

- [\*Williams v. Workers' Compensation Appeal Board \(Pohl Transportation\)\*, No. 2422 C.D. 2009, \(Pa. Cmwlt., July 29, 2010\)](#)
  - **Holding:** When determining whether a claimant may receive benefits under Section 305.2(d)(4)(iii) of the Act for an out-of-state injury, the WCJ must focus on the nature of claimant's employment, in particular whether claimant spent a "substantial part of his working time" in Pennsylvania.

---

**Remember, visit [Pennsylvania Legal Research Links](http://www.palegallinks.com),  
and make [www.palegallinks.com](http://www.palegallinks.com) your home page for Pennsylvania research.**

