

A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH APRIL 6, 2012

PENNSYLVANIA APPELLATE COURT DECISIONS

I. CIVIL LITIGATION

A. *Preemption - Fair Credit Reporting Act*

- [*Dietz v. Chase Home Finance, LLC, 2012 PA Super 79 \(Pa.Super., April 2, 2012\)*](#)

- **Holding:** The Fair Credit Report Act, 15 U.S.C. § 1681t(b), preempts causes of action for defamation and negligence. A plaintiff may assert common law causes of action for defamation, invasion of privacy, or negligence against a furnisher of allegedly false information if the plaintiff pleads that the false information was furnished with malice or willful intent to injure that plaintiff.

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!

B. *Products Liability - Risk-Utility Balancing*

- [*Beard v. Johnson and Johnson, Inc., No. 35 WAP 2010 \(Pa., March 22, 2012\)*](#)

- **Holding:** In a products liability case, in a which a strict liability design defect theory is asserted, a trial court is not restricted to considering a single use of multi-use product in design defect, threshold risk-utility balancing. Justice Baer filed a [concurring opinion](#) in which Justices Todd and McCaffery joined.

C. *Statutory Employer*

- [*Patton v. Worthington Associates, Inc., 2012 PA Super 74 \(Pa.Super., March 27, 2012\)*](#)

- **Holding:** Before a contractor may be considered the statutory employer of another contractor’s employees, the five elements in the *McDonald v. Levinson Steel Co.*, 153 A. 424 (Pa. 1930), test must be met; therefore a master-servant relationship must exist. Further, because an independent contractor can never be a statutory employer, the elements of the *McDonald* test cannot be met when a “contractor” is an independent contractor. Finally, a trial court does not abuse its discretion by submitting the question of determining an employee’s status to the jury.

D. *Medical Records Act*

- [*Landay v. Rite Aid, 2012 PA Super 73 \(Pa.Super., March 23, 2012\)*](#)

- **Holding:** A person who obtains pharmacy records from a pharmacy is a “patient” under the Medical Records Act (MRA), 42 Pa.C.S.A. §§ 6150-60, and the pharmacy is a “health care provider” or “health care facility.” Accordingly, the MRA applies to pharmacies.

E. Personal Jurisdiction

- [*Schiavone v. R.J. Aveta*, 2012 PA Super 68 \(Pa.Super., March 20, 2012\)](#)
 - **Holding:** An employee driving directly home from work in a company-owned vehicle for which all travel expenses are paid for by the employer is acting within the scope of his employment for the purpose of establishing a court's jurisdiction under the Pennsylvania Long-Arm Statute, 42 Pa.C.S.A. § 5322(a)(3).

F. Venue

- [*Wimble v. Parx Casino*, 2012 PA Super 62 \(Pa.Super., February 21, 2012\)](#)
 - **Holding:** When analyzing whether venue is proper, a parent and a wholly-owned subsidiary are recognized as separate and distinct legal entities.

II. WORKERS' COMPENSATION

A. Compensation - Definition

- [*Giant Eagle, Inc. v. Workers' Compensation Appeal Board \(Givner\)*, No. 14 WAP 2010 \(Pa., March 13, 2012\)](#)
 - **Holding:** The term "compensation," as used in Section 314(a) of the Workers' Compensation Act, 77 P.S. § 651(a), does not *per se* include medical benefits as well as wage loss benefits. Rather, the majority held that the General Assembly did not intend that "compensation" under Section 314(a) must always be restricted to wage loss benefits because Article III of the Act does not restrict "compensation" to wage loss benefits in all cases. However, neither does Article III always use the term "compensation" to include medical benefits. Therefore, "compensation" need not always include medical benefits as well as wage loss benefits. In other words, under the proper circumstances, "compensation" under Section 314(a) may include medical benefits as well as wage loss benefits. Justice Eakin filed a [concurring opinion](#). Justice Saylor filed a [dissenting opinion](#) in which Chief Justice Castille and Justice Orié Melvin joined.

B. Modification of the Injury Description

- [*Dillinger v. Workers' Compensation Appeal Board \(Port Authority of Allegheny County\)*, No. 770 C.D. 2011 \(Pa.Cmwlt., March 1, 2012\)](#)
 - **Holding:** A Review Petition seeking to expand the description of the injury work-related injury must be filed within three years of the date of the most recent payment of compensation.

C. Pension Benefit Offsets

- [*Glaze v. Workers' Compensation Appeal Board \(City of Pittsburgh\)*, No. 1122 C.D. 2010 \(38 Consolidated Cases\) \(Pa.Cmwlt., March 1, 2012\)](#)
 - **Holding:** When analyzing a pension offset against workers' compensation benefits, a claimant must establish how, if at all, the use of the data or sources upon which claimant and claimant's expert relies would materially impact the extent of the employer's contributions, as determined by the employer's expert.

D. *Res Judicata*

- [*Cytemps Specialty Steel v. Workers' Compensation Appeal Board \(Crisman\), No. 42 C.D. 2011 \(Pa.Cmwlt., March 15, 2012\)*](#)
 - **Holding:** When the nature and extent of a claimant's work injuries and disability status have been litigated as of a specific date, then the doctrines of res judicata and/or collateral estoppel bar further litigation on the question of whether the claimant was injured as of the specific date.

E. *Utilization Review*

- [*Leca v. Workers' Compensation Appeal Board \(Philadelphia School District\), No. 679 C.D. 2011 \(Pa.Cmwlt., March 7, 2012\)*](#)
 - **Holding 1:** In an appeal from a Utilization Review determination, a medical witness is not required to review the records relating to the treatment for the period under review. Rather, when, as here, the treatment under review was repetitive and ongoing, review of the specific records at issue is not *per se* required.
 - **Holding 2:** In an appeal from a Utilization Review determination, a party is not required to present medical expert testimony from a physician in the same specialty as the treatment under review. Thus, pursuant to Section 306(f.1)(6)(i) of the Act, 77 P.S. § 531(6)(1), a physician is competent to testify in specialized areas of medicine, even though the physician is neither a specialist nor certified in those fields.

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