

A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH AUGUST 31, 2012

PENNSYLVANIA APPELLATE COURT DECISIONS

I. CIVIL LITIGATION

A. *Medical Malpractice Jury Instructions*

- [Cooper v. Lankenau Hospital, No. 22 MAP 2011 \(Pa., August 20, 2012\)](#)

- **Holding:** In a medical malpractice claim based upon the battery/lack of informed consent, the trial court did not err by instructing the jury on the technical elements of battery. The inclusion of such language, accompanied by a clear directive that a battery occurred if consent was lacking, was not an erroneous statement of the law warranting the grant of a new trial. Justice Todd filed a [dissenting opinion](#).

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 decision for you to read in its entirety. Try it!

B. *Medical Malpractice – Jurisdiction*

- [Mendel v. Williams, 2012 PA Super 171 \(August 20, 2012\)](#)

- A Pennsylvania court may not assert personal jurisdiction over an out-of-state doctor, or corporate healthcare provider, in a medical malpractice action by a Pennsylvania resident who receives negligent treatment in a foreign jurisdiction.

B. *Quantum Meruit*

- [Durst v. Milroy General Contracting, Inc., 2012 PA Super 179 \(August 28, 2012\)](#)

- **Holding:** When a statute requires a written agreement, a claim seeking compensation for unjust enrichment and quantum meruit is proper, even if the contract was verbal.

C. *Rescue Doctrine*

- [Bole v. Erie Insurance Exchange, No. 24 WAP 2011 \(Pa., August 20, 2012\)](#)

- **Holding:** Under the rescue doctrine, a volunteer firefighter is not entitled to underinsured motorist benefits when the claimant, who is responding to a crash, sustains injuries as a result of a superseding cause. Justice McCaffrey filed a [dissenting opinion](#).

D. *Underinsured Motorist Coverage*

- [Olender v. National Casualty Co., No. 11-4098 \(U.S. Dist. Ct., E.D. Pa., August 21, 2012\)](#)

- **Holding:** When there is ambiguity about the amount of underinsured motorist coverage because an individual signed next to two different amounts in the contract, and the insurance company did not resolve the ambiguity by requesting the insured to submit a reduction in benefits, the contract must be construed against the insurance company for the greater amount. The potential ambiguity of a contract is a good faith reason for a carrier to refuse to tender the undisputed UIM coverage, however, unless it first obtained a release of the undisputed portion of the UIM claim.

II. WORKERS' COMPENSATION

A. *Mutual Mistake of Fact*

- [Hoang v. Workers' Compensation Appeal Board \(Howmet Aluminum Casting, Inc.\), 2277 C.D. 2011, \(Pa.Cmwlt., August 20, 2012\)](#)
 - **Holding:** A Compromise and Release Agreement will not be rescinded because of a mutual mistake of fact when claimant presents no credible evidence that the employer knew or should have known of claimant's "mistake" about the impact of the C&R on medical bills.

B. *Scope of Employment*

- [The Pennsylvania State University v. Workers' Compensation Appeal Board \(Rabin\), 2224 C.D. 2011, \(Pa.Cmwlt., August 15, 2012\)](#)
 - **Holding 1:** When an individual leaves work to go to a restaurant during work hours to discuss work-related topics, the individual is within the scope of his employment.
 - **Holding 2:** A WCJ is not prohibited from making an inference that an event contributed to a person's death merely because it is not labeled as a "substantial" contributing factor.

III. ALLOCATUR GRANTED

A. The Pennsylvania Supreme Court has granted allocatur in the following matters on the issues stated:

- [Cruz v. Workers' Compensation Appeal Board \(Kennett Square Specialties and PMA Management Corporation\), No. 41 MAL 2012 \(Pa., August 15, 2012\)](#)
 - Did the Commonwealth Court err in placing the burden of proof in a claim petition on the Employer, when the Claimant failed to establish his ongoing entitlement to benefits by providing information on his documented status to the Employer and to the court?
 - Did the Commonwealth Court err in failing to consider its own holding in *Brehm v. WCAB (Hygienic Sanitation Co.)*, 782 A.2d 1077 (Pa. Cmwlt. 2001) which states that a claimant who refuses to provide either the court or his employer with information necessary to make a determination, may have his workers' compensation benefits suspended until such information is provided?
 - Did the Commonwealth Court err in concluding that [the] Workers' Compensation Judge[s] [d]ecision was not supported by substantial competent evidence where the record, in its totality, together with an adverse inference, does support the contention that the Claimant is an undocumented worker, thereby entitling the Employer to a suspension of benefits?
- [Meyer v. Community College of Beaver County, Nos. 626 and 627 WAL 2011 \(Pa., August 3, 2012\)](#)
 - Whether the Commonwealth Court's reliance on the manner in which the legislature has used "person" within the UTPCPL as the sole means of establishing legislative intent contradicts existing standards of statutory construction and creates new law requiring that a general reference to a "person" shall now be considered to include government entities, contradicting the Pennsylvania Supreme Court's opinion remanding this matter to consider precisely that standard, requires reversal?

IV. FLORIDA DISCIPLINARY MATTER OF INTEREST

A. *Inadvertent Disclosure of Information*

- [Moriber v. Dreiling, No. 3D12-300 \(Fla. Dis. Ct. App., August 22, 2012\)](#)
 - **Holding:** The recipient of a document that was inadvertently transmitted by opposing counsel does not violate the Rules of Professional Conduct when the recipient did not know that the document was confidential and this lack of knowledge was reasonable under the circumstances because there was nothing inherent about the document that would automatically place a recipient on notice of the statement's confidential nature.