

# A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH SEPTEMBER 30, 2012

## PENNSYLVANIA APPELLATE COURT DECISIONS

### I. CIVIL LITIGATION

#### A. *Damages in Negligence Action*

- [\*Hall v. Episcopal Long Term Care\*, 2012 PA Super 205 \(September 27, 2012\)](#)

- **Holding 1:** In a negligence action, when a party presents evidence that the opposing party acted in an outrageous fashion, in reckless disregard to the rights of others, and created an unreasonable risk of physical harm, the issue of punitive damages should be submitted to the jury.
- **Holding 2:** When a managing entity of a nursing home is vicariously liable for acts and omissions of RNs and CNAs and the RN and CNAs fail to keep patients clean and conditions hygienic, compensatory damages in a negligence action are proper.

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. *Duty of Care of General Practitioner*

- [\*Thierfelder v. Wolfert\*, 97 MAP 2009 \(Pa., September 28, 2012\)](#)

- **Holding:** A medical general practitioner who provides incidental mental health treatment to a patient, with whom he then engages in a sexual affair, may not be held to a particularized “specialist duty,” applicable to mental health professionals that prohibits consensual sexual contact with patients and is not subject to medical malpractice liability in tort. Justice Todd filed a [dissenting opinion](#).

#### C. *Post-Trial Motions*

- [\*Newman Development Group of Pottstown, LLC v. Genuardi’s Family Markets, Inc.\*, No. 101 MAP 2011 \(Pa., September 28, 2012\)](#)

- **Holding:** Rule 227.1 of Pennsylvania Rules of Civil Procedure, which requires a party to file post-trial motions with the trial judge within ten days of certain enumerated events, does not apply in a remand proceeding in which a trial judge merely reaches a different damages calculation based upon facts and contract terms already in the record, because the proceeding is not considered a trial.

**D. Personal Jurisdiction**

□ [\*\*\*Sulkava v. Glaston Finland OY, 2012 PA Super 206 \(September 28, 2012\)\*\*\*](#)

- **Holding:** Under Pennsylvania's Long Arm Statute, 42 Pa.C.S.A. § 5301(a)(2)(iii), when a company has (1) conducted business in Pennsylvania for at least ten years; (2) generated over \$16 million in income from its sales in Pennsylvania between the years 2000 and 2009; (3) paid considerable corporate income taxes to Pennsylvania; and (4) generated approximately 15% of its income, between the years 2000 and 2009, from the sale of its goods in Pennsylvania, the company has a continuous and systematic part of its general business within Pennsylvania and is thus subject to general personal jurisdiction.

**E. Underinsured Motorist Coverage**

□ [\*\*\*Smith v. Rohrbaugh, No. 2012 PA Super 208 \(September 28, 2012\)\*\*\*](#)

- **Holding:** Reversing *Pusl v. Means*, 982 A.2d 550 (Pa.Super. 2009), the Court holds that Section 1722 of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A., was not designed or intended to require the offset of underinsured motorist benefits from an award against a tortfeasor. Therefore, a claimant who received UIM benefits may also recover from a tortfeasor without offset.

**II. WORKERS' COMPENSATION**

**A. Notice of Ability to Return to Work**

□ [\*\*\*Smith v. Workers' Compensation Appeal Board \(Caring Companions, Inc. and Uninsured Employers Guaranty Fund\), No. 417 C.D. 2012 \(Pa. Cmwlt., September 17, 2012\)\*\*\*](#)

- **Holding:** The purpose of Section 306(b)(3) of the Workers' Compensation Act, 77 P.S., is for an employer to provide a claimant with a Notice of Ability to Return to Work when it receives evidence that the claimant is able to return to work in any capacity. An employer is not required to send an additional Notice when Claimant's own physician had informed Claimant that she was capable of returning to light-duty work.