

A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH OCTOBER 31, 2012

PENNSYLVANIA APPELLATE COURT DECISIONS

I. CIVIL LITIGATION

A. *Mandatory Arbitration Agreements*

- [*Setlock v. Pinebrook Personal Care and Retirement Center*, 2012 PA Super 232 \(October 23, 2012\)](#)

- **Holding:** A mandatory arbitration provision that does not contemplate or encompass tort claims cannot be extended to encompass all claims sounding in tort and, consequently, a demand for arbitration is improper.

B. *Damages Under the Wrongful Death Act*

- [*Hatwood v. Hospital of the University of Pennsylvania*, 2012 PA Super 217 \(October 5, 2012\)](#)

- **Holding:** Under the Pennsylvania Wrongful Death Act, 42 Pa.C.S.A. § 8301, the parents of a deceased infant may recover for the monetary value of their infant's companionship, society and comfort had he lived, despite the inherent uncertainty involved in determining the monetary value of future benefits.

C. *Forum Non Conveniens*

- [*Stoner v. Penn Kleen, Inc.*, 2012 PA Super 218 \(October 5, 2012\)](#)

- **Holding:** A trial court does not abuse its discretion when transferring a matter to another county based upon forum non conveniens, when (1) fact witness and employees of the defendant work and reside near or in the potential transfer venue, and (2) trial in a different venue would be a substantial burden.

D. *Medical Malpractice Expert Testimony*

- [*Catlin v. Hamburg*, 2012 PA Super 236 \(October 26, 2012\)](#)

- **Holding 1:** A board certified expert's failure to cite medical literature or treatises does not render the opinion inadmissible; rather, any doubts as to the doctor's testimony or qualifications go to the weight of the opinion.
- **Holding 2:** When a pregnancy is terminated early, it is an error for the court to equate the termination procedure with a birth and then limit damages to a six-week period following that procedure.

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!

E. Asbestos-Related Injuries

□ [*Glaab v. Honeywell International, Inc.*, 2012 Pa. Super. 231 \(October 22, 2012\)](#)

- **Holding:** A plaintiff presents a prima facie case of an asbestos-related compensable injury when he: (1) he worked in an environment for over 45 years in which he handled numerous products containing asbestos, (2) developed bilateral pleural plaques and pleural thickening, and his medical expert confirmed the asbestos exposure related to the lung abnormalities, and (3) suffers shortness of breath, and his medical expert opined that the medical abnormalities substantially contributed to the shortness of breath. Whether the plaintiff's pleural thickening is the proximate cause of his dyspnea and physical disabilities remains a material issue not appropriate for summary judgment.

F. Regular Use of a Motor Vehicle – Underinsured Motorist Claims

□ [*Rother v. Erie Insurance Exchange*, 2012 PA Super. 228 \(October 18, 2012\)](#)

- **Holding:** When a vehicle is not owned by the claimant or any resident relatives, but is used consistently by the claimant to travel back and forth to work, it is proper to consider that vehicle regularly used under a personal auto policy and allow the claimant to recover underinsured motorist benefits.

G. Release of Third Party Medical Information for Litigation

□ [*Buckman v. Verazin*, 2012 PA Super 216 \(October 5, 2012\)](#)

- **Holding:** In a medical malpractice action, a motion to compel the disclosure of the medical records of third parties who have not given their consent is improper because the information in the records is confidential and irrelevant to the negligence claim.

II. WORKERS' COMPENSATION

A. Petitions - Pleading

□ [*Krushauskas v. Workers' Compensation Appeal Board \(General Motors\)*, No. 446 C.D. 2011 \(Pa. Cmwlth., October 11, 2012\)](#)

- **Holding:** An employer is not required to file a petition specifically requesting the relief sought; rather, as noted by the dissent in this *en banc* Opinion, “the employer or anyone in any old proceeding can ask for anything they want without filing anything.” *This opinion dramatically changes the landscape in workers’ compensation proceedings by virtue of its holding that an employer is not required to file a petition before seeking relief in virtually any matter.*