

A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH APRIL 30, 2013

PENNSYLVANIA APPELLATE COURT DECISIONS

I. ETHICS AND PROFESSIONAL RESPONSIBILITY

A. *Right-to-Know Law*

- [Levy v. Senate of Pennsylvania, No. 44 MAP 2012 \(Pa., April 24, 2013\)](#)

- **Holding:** Under the Right-to-Know Law, 65 P.S. §§ 67.101-67.3104, client identities are not protected by the attorney-client privilege; however, the attorney-client privilege may apply in cases in which divulging the client's identity would disclose either the legal advice given or the confidential communications provided. In addition, general descriptions of legal services included in attorney invoices are not covered by the umbrella of the attorney-client privilege, but specific descriptions that would reveal attorney-client communications are protected. Justice Eakin issued a [concurring 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!

II. CIVIL LITIGATION

A. *Underinsured Motorist Claims - Statutes of Limitation*

- [Hopkins v. Erie Insurance Co., 2013 PA Super 90 \(Pa. Super., April 19, 2013\)](#)

- **Holding:** Under 42 Pa.C.S.A. § 5525(a)(8), the four year statute of limitations on underinsured motorist claims begins to run when the insured settles with, or secures a judgment against, the underinsured owner or operator. Furthermore, a claim cannot equitably toll the statute of limitations when 21 months elapsed between the notification of expiration of the statutes of limitation and the filing of a petition to compel arbitration.

B. *Underinsured Motorist Coverage - Coverage Limits*

- [Weilacher v. State Farm Mutual Automobile Insurance Co., 2013 PA Super 97 \(Pa. Super., April 25, 2012\)](#)

- **Holding:** Under the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A., when an insured purchases underinsured motorist coverage with limits equal to the bodily injury liability coverage, and does not request a reduction of the UM/UIM coverage after the coverage was added, the UM/UIM coverage limits must be equal to the bodily injury liability limits. The carrier may only provide lower UM/UIM coverage if the policyholder signed a written request under Section 1734 of the MVFRL.

C. *Waiver of Right to Sue for Damages*

□ [*Bowman v. Sunoco, Inc., No. 27 EAP 2011 \(Pa., April 25, 2013\)*](#)

- **Holding:** An agreement in which an employee waives her right to sue her employer's clients for damages for injuries sustained under the Workers' Compensation Act does not violate the public policy provisions of the Act. Justice Saylor filed a [concurring opinion](#); Justice Baer filed a [dissenting opinion](#). In this case, the employee, a security guard, was required to sign a waiver by which she gave up her right to sue her employer's clients in exchange for her employment.
- **Comment:** While the Court reasons that the plaintiff "bargained away her rights," there is no evidence that she had any alternative other than to sign the waiver if she wanted to be employed. This decision should be compared with decisions by which restrictive covenants are deemed void for lack of consideration.

III. WORKERS' COMPENSATION

A. *Medical Bill Payment - Downcoding Procedures*

□ [*Walsh v. Bureau of Workers' Compensation Fee Review Hearing Office \(Traveler's Insurance Co.\), 329 C.D. 2012 \(Pa. Cmwlth., April 22, 2013\)*](#)

- **Holding:** Before downcoding a provider's claim for payment for medical services under the Workers' Compensation Act, an insurer must comply with the procedures set forth in 34 Pa. Code § 127.207. If an insurer fails to comply with this procedure, the Bureau must resolve the matter in favor of the provider.

□ [*Witkin v. Bureau of Workers' Compensation Fee Review Hearing Office \(State Workers' Insurance Fund\), No. 1313 C.D. 2012 \(Pa. Cmwlth., April 17, 2013\)*](#)

- **Holding:** A provider's fee review application may not be barred by collateral estoppel when the hearing officer did not conduct a hearing or address whether the insurer complied with Section 127.207 of the Regulations. Thus, under section 306(f.1)(1)(i) of the Workers' Compensation Act, a court or administrative agency may not rely upon a prior determination of a CPT code and must hold a hearing to determine whether the insurer strictly complied with the Regulations and whether the proper CPT code was used.

