

A Summary of Recent Pennsylvania Appellate Court & United States Supreme Court Decisions

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REPORTING DECISIONS THROUGH FEBRUARY 6, 2009

PENNSYLVANIA STATE COURT DECISIONS

FEATURED CASE:

Commonwealth Court Holds that Workers' Compensation Pension Offsets Must be Calculated Based Upon the Net Benefits Received

The Law Offices of Daniel J. Siegel, LLC Represents & Was Counsel for Claimant for This Appeal

In [Philadelphia Gas Works v. Workers' Compensation Appeal Board \(Amodei\), No. 350 C.D. 2008 \(Pa.Cmwlt., February 4, 2009\)](#), the Commonwealth Court has ruled that, when an employer seeks an offset from workers' compensation benefits for pension benefits paid to a claimant, the offset must be calculated based upon the net amount of the benefits received by the employee. This unanimous decision by an en banc panel of the Commonwealth Court effectively overrules *Steinmetz v. Workers' Compensation Appeal Board (Cooper Power Systems)*, 858 A.2d 182 (Pa.Cmwlt. 2004), as noted in one of the two concurring opinions. This decision applies to all pension offsets asserted against injured workers' benefits.

I. Civility

A. *Respect for the Court and Counsel*

- [Johnson v. White, No. 2266 C.D. 2007 \(Pa.Cmwlt., January 8, 2009\)](#)

- Holding: Although the underlying decision is of little import, the case is notable for the portion of the Opinion, "Counsel's Code of Civility Violations," in which the Court admonishes plaintiff's counsel for violating the Pennsylvania Code of Civility, 204 Pa.Code §§ 99.1-99.3.

The decision outlines counsel's multiple violations of the Code, noting that "Counsel has done a disservice to his client, to opposing counsel, to opposing counsel's clients, and to the general public, as significant resources were wasted in preparation for an argument that would not take place."

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!

II. Causes of Action

A. *Attorney's Fees*

☐ [Bayne v. Smith, 2009 PA Super 11 \(January 26, 2009\)](#)

- Holding: A provision in a residential lease that permits an award of attorney's fees is enforceable if it is neutral in its application and is intended as an indemnification for reasonable attorney's fees incurred.

B. *Breach of Contract*

☐ [LJL Transportation, Inc. v. Pilot Air Freight Corp., No. 73 MAP 2007 \(Pa., January 22, 2009\)](#)

- Holding: Pennsylvania law permits the immediate termination of a contract when there is a material breach of the contract so serious that it goes directly to the heart and essence of the contract, rendering the breach incurable -- even if the contract includes an express provision granting the breaching party the right to cure before the contract is terminated.

III. Civil Procedure & Trial

A. *Appellate Court Jurisdiction*

☐ [Estate of Considine v. Wachovia Bank, 2009 PA Super 21 \(February 4, 2009\)](#)

- Holding: An order granting summary judgment in favor of fewer than all defendants is not a final order; similarly, a judgment by default entered against fewer than all defendants is not a final order. Accordingly, these orders are interlocutory and not appealable as of right.

B. *MCare Act - Admissibility of Expert Testimony*

☐ [Gbur v. Golio, No. 23 MAP 2008 \(Pa., January 28, 2009\)](#)

- Holding: Concluding that the parties had not properly preserved the issue on appeal, a divided Supreme Court declined to address the MCare Act's same-subspecialty requirement pertaining to the admissibility of expert testimony to establish the standard of care in a medical malpractice action. In a [concurring opinion](#), Justice Greenspan argued that the issue was properly preserved and the trial court properly admitted the disputed testimony.

C. *Public Records - Autopsy*

☐ [Penn Jersey Advance, Inc. v. Grim, No. 62 MAP 2007 \(Pa., January 22, 2009\)](#)

- Holding: A coroner's autopsy report is an "official" record or paper within the meaning of Section 1251 of the Coroner's Act, 16 P.S. §§ 1214 and 1231-1260. Justice Eakin filed a [concurring and dissenting opinion](#).

IV. Workers' Compensation

A. *Reinstatement - Modified Duty - Allocatur Granted*

☐ [Bufford v. Workers' Compensation Appeal Board \(North American Telecom\), No. 3030 MAL 2008 \(Pa., January 9, 2009\)](#)

- The Pennsylvania Supreme Court has granted allocatur to decide the following issues:
 - Under 77 P.S. § 772, what burden of proof must a claimant who leaves a modified duty position to accept other employment, which involuntarily ends due to no fault of the claimant, meet in order to obtain reinstatement of his or her worker's compensation benefits, if the claimant remains disabled by his original work related injury?

- The parties are also to address in their briefs the question of how 77 P.S. § 772 allocates the burden of proof as between the claimant and the employer in reinstatement proceedings. See *Stevens v. W.C.A.B. (Consolidation Coal Company)*, 760 A.2d 369 (Pa. 2000).

B. *Supersedeas Fund Reimbursement*

□ **[Department of Labor & Industry v. Workers' Compensation Appeal Board, No. 2211 C.D. 2007 \(Pa.Cmwth., February 2, 2009\)](#)**

- Holding: When seeking Supersedeas Fund reimbursement, it does not matter that the date of service of the medical expenses in question preceded the request for supersedeas. Rather, what matters is that the treatment in question was later determined to be ineligible for payment and that the bill for treatment was submitted to and paid for by the insurer after supersedeas was requested and denied.

C. *Appeals - Proof of Mailing*

□ **[Bates v. Cheltenham Township, No. A07-2000 \(WCAB, December 26, 2008\)](#)**

- Holding: a Proof of Mailing is not the exclusive method of establishing that a filing was mailed in a timely manner. Rather, when an appeal would logically have to have been placed in the mail within the filing deadline based upon the time-stamped date on which it was received, the appeal is timely. In this case, the Notice of Appeal was received one day after the filing deadline, but was metered rather than postmarked. The Board concluded that the appeal had to have been mailed before the filing deadline and was, therefore, timely, noting that a Proof of Mailing is not the exclusive method for establishing when a filing was made.

V. Pennsylvania Rules of Civil Procedure

A. *New Rule 1036.1 - "Reinstatement of Claim Dismissed Upon Affidavit of Noninvolvement"*

- Effective March 1, 2009, Rule 1036.1 permits a party to file a motion to reinstate a party that had been dismissed from an action pursuant to an Affidavit of Noninvolvement under Rule 1036.

UNITED STATES SUPREME COURT OPINION

A. *Employment Retaliation*

□ **[Crawford v. Metropolitan Government of Nashville, No. 06-1595 \(January 26, 2009\)](#)**

- Holding: Persons who participate in an internal investigation of alleged discriminatory behavior are protected from retaliation even if they did not bring the original internal complaint. The provision of the Civil Rights Act that prohibits retaliating against those who "oppose" discriminatory acts includes everyone who participates in an investigation of allegations of discrimination, even if the investigations precede the official filing of a charge with an administrative agency, and even if those investigations involve allegations by employees other than the one interviewed. *Special thanks to Attorney Harold Goldner for supplying this analysis.*

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