Law Offices of Daniel J. Siegel, LLC & Integrated Technology Services, LLC

A Summary of Recent Pennsylvania Appellate Court Decisions & Other Rules Changes

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In This Issue

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Practice Tip: Exploding the Myth of the 90-Day Rule

The constant mantra that injured workers must treat with a "company doctor" for 90 days is a myth, and it's time to put it to rest. All too often, I hear that the "law" requires an injured worker to treat with a "company doctor" for 90 days when, in reality, this "rule" applies to virtually to no one. I hope this "Practice Tip" puts this myth to rest – for good.

Treatment with a "company doctor" is governed by Section 306(f.1)(1)(i), whose relevant provision says:

> Provided an employer establishes a list of at least six designated health care providers, no more than four of whom may be a coordinated care organization and no fewer than three of whom shall be physicians, the employe shall be required to visit one of the physicians or other health care providers so designated and shall continue to visit the same or another designated physician or health care provider for a period of ninety (90) days from the date of the first visit: Provided, however, That the employer shall not include on the list a physician or other health care provider who is employed, owned or controlled by the employer or the employer's insurer unless employment, ownership or control is disclosed on the list. . . . Should the employe not comply with the foregoing, the employer will be relieved from liability for the payment for the services rendered during such applicable period. ***It shall be the duty of the employer to provide a clearly written notification of the employe's rights and duties under this section to the employe. The employer shall further ensure that the employe has been informed and that he understands these rights and duties. This duty shall be evidenced only by the employe's written acknowledgment of having been informed and having understood his rights and duties. Any failure of the employer to provide and evidence such notification shall relieve the employe from any notification duty owed, notwithstanding any provision of this act to the contrary, and the employer shall remain liable for all rendered treatment.*** Subsequent treatment may be provided by any health care provider of the employe's own choice. (emphasis supplied)

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In the decade or so since the legislature enacted this provision, I have never met an injured worker whose employer complied with it. Consequently, and much to the dismay of employers and insurers, if the employer hasn't provided the employee with requisite written notification, and obtained the employee's signature, and provided the list complies with all of the other requirements of Section 306(f.1), an injured worker does not have to treat with a company doctor.

Dan Siegel to Speak to Montgomery County Bar Association on Friday, June 9th

On Friday, June 9, 2006, Dan Siegel will present "How to Do 90 Minutes of Work in 60 Minutes" at a combined luncheon meeting of the Montgomery Bar Association's Criminal Defense and Workers' Compensation Committees. To be held in the MBA CLE Room from Noon to 2:00 p.m., Dan's talk will focus on practical, easy-to-use ways that attorneys can use technology to be more effective litigators – doing so more effectively and in less time than through traditional methods. The presentation will include demonstrations of software as well as offer tips on how lawyers can take better advantage of the technology already in use in their offices.

For more information about the meeting, click here or contact the Montgomery Bar Association. The meeting is open to all Montgomery Bar Association Members, and pre-registration is requested.

Dan Siegel Authors Feature Article About Case Management Software

"Take a (case) load off with the right software," Dan Siegel's in-depth analysis of integrated case management software, was a feature article in the May 2006 issue of *TRIAL*, the monthly magazine of the Association of Trial Lawyers of America (ATLA). Just click here to read a copy of the article or contact Dan at (610) 446-3467 or dan@itsllconline.com to get a copy.

Remember to Visit palegallinks.com

Don't forget to bookmark and visit Pennsylvania Legal Research Links (www.palegallinks.com), an Integrated Technology Services, LLC website that provides helpful links for Pennsylvania legal research.

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PENNSYLVANIA STATE COURT DECISIONS

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!

1. AUTOMOBILE INSURANCE

1.1. Uninsured & Underinsured Motorist Benefits

► **Supreme Court of Pennsylvania**

♦ ***Craley v. State Farm Fire & Casualty Co.***
No. 162 MAP 2004 (April 21, 2006)

Holding: A named insured may waive inter-policy stacking of uninsured and/or underinsured motorist coverage under Section 1738 of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. Justice Cappy filed a **concurring opinion**; Justice Eakin also filed a **concurring opinion**.

1.2. Loaned Vehicle Coverage

► **Superior Court of Pennsylvania**

♦ ***Progressive Northern Insurance Co. v. Universal Underwriters Insurance Co.***
2006 PA Super 101 (May 3, 2006)

Holding: Section 1786 of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A., requires financial responsibility for all vehicles operated on the highways of Pennsylvania by the vehicles' owners and by all others who have the owners' permission to operate the vehicles. Thus, a person using a motor vehicle with the permission of the vehicle's owner, including a person operating a vehicle on loan from a car dealership, is an "insured" under the vehicle's policy. When two automobile insurance policies provide primary liability coverage, the insurers must share in the loss.

1.3. Bad Faith Claims

► **Superior Court of Pennsylvania**

♦ ***Condio v. Erie Insurance Exchange***
2006 PA Super 92 (April 25, 2006)

Holding: An insurer does not have a heightened duty of good faith to its insured in the context of a first party claim, as opposed to a third party claim, but does have a duty of good faith and fair dealing towards its insured. This duty also applies to an insurer's handling of uninsured and underinsured motorist claims, and does not allow an insurer to protect its own interests at the expense of its insured's interests, not does it require an insurer to sacrifice its own interests by blindly paying each and every claim submitted by an insured to avoid a bad faith lawsuit.

1.4. Termination of Coverage

► **Superior Court of Pennsylvania**

♦ ***Russock v. AAA Mid-Atlantic Insurance Co.***
2006 PA Super 72 (April 3, 2006)

Holding: When an insurer requires an insured to make premium payments by mail, acceptance of the premium is complete by posting the letter in normal mail channels, without further action. Further, a warning of cancellation accompanying an insurance renewal bill is preemptive and violates 31 Pa.Code § 61.10(h).

2. WORKERS' COMPENSATION

2.1. Vocational Expert Expenses

► **Commonwealth Court of Pennsylvania**

♦ ***Taylor v. Workers' Compensation Appeal Board (Bethlehem Area School District)***
No. 1651 C.D. 2005 (May 2, 2006)

Holding: The services of a vocational expert are not reimbursable medical expenses under Section 306(f.1)(1) of the Workers' Compensation Act, 77 P.S. § 531(1)(i)(ii), which requires that "medical services" be provided by a "health care provider."

2.2. Payment of Medical Expenses

► **Commonwealth Court of Pennsylvania**

♦ ***Keystone Coal Mining Corp. v. Workers' Compensation Appeal Board (Fink)***
No. 1487 C.D. 2005 (April 13, 2006)

Holding: An employer remains responsible for payment of medical expenses even after the employer's liability for payment of partial disability benefits has ceased and partial disability benefits have been exhausted. Liability for payment of medical expenses continues absent a finding that the employee's disability has ceased to exist.

2.3. Description of Injury

► **Commonwealth Court of Pennsylvania**

♦ ***City of Philadelphia v. Workers' Compensation Appeal Board (Fluek)***
No. 1250 C.D. 2005 (April 6, 2006)

Holding: Where no reasonable nexus or obvious relationship exists between the injury described in a Notice of Compensation Payable and a subsequently claimed physical disability, a claimant bears the burden of establishing the work-relatedness of the condition before an employer may bear the burden of disproving any continued disability related to that subsequently alleged condition.

3. ADMINISTRATE PROCEDURE

3.1. Timeliness of Appeals – Mailing

► **Commonwealth Court of Pennsylvania**

♦ ***Shea v. Unemployment Compensation Board of Review)***
No. 2042 C.D. 2005 (April 21, 2006)

Holding: Pursuant to 34 Pa.Code § 101.82(b)(1), the filing date of an appeal that is mailed is determined in the following order:

1. The date of the postmark on the envelope containing the appeal; or
2. A Certificate of Mailing; or
3. A Certified Mail receipt.

If there is no official U.S. Postal Service postmark, no Certificate of Mailing and no Certified Mail receipt, then the mailing date/appeal date will be determined by the date of the postage meter mark on the envelope containing the appeal.

4. CAUSES OF ACTION/DEFENSES

4.1. Sovereign Immunity

► **Commonwealth Court of Pennsylvania**

♦ ***Murphy v. City of Duquesne***
No. 2284 C.D. 2005 (May 5, 2006)

Holding: There is no cognizable cause of action for holding a municipality and its individual police officers liable in damages when they do not investigate and prosecute criminal activity with the degree of zeal satisfactory to the plaintiff. Rather, a crime is an offense against the sovereign, injuring not just the victim but also the public at large. It is for the criminal prosecutor, not a private citizen, to control the enforcement of the criminal statutes.

UNITED STATES SUPREME COURT DECISION OF INTEREST

1. MEDICAID SUBROGATION

► ***Arkansas Dept. of Health and Human Services v. Ahlborn***
No. 04-1506 (May 1, 2006)

Holding: Federal Medicaid law does not authorize a state to impose a lien on portions of a tort settlement intended to compensate the recipient for damages distinct from medical expenses such as pain and suffering, lost wages and loss of future earnings. Rather, a state cannot claim more than the portion of the recipient's settlement that represents medical expenses.

NEW FEDERAL RULE OF APPELLATE PROCEDURE 32.1

Many lawyers have complained for years about the practice by which Courts designate opinions as "Memorandum Opinions" or "non-precedential." While this practice continues in Pennsylvania, it will end in the Federal Courts on January 1, 2007, when Fed.R.A.P. 32.1 goes into effect. The Rule prohibits a court from restricting the citation of federal judicial opinions, orders, judgments or other written dispositions that have been designated "unpublished," "not for publication," "non-precedential," "not precedent," etc.

After January 1, 2007, if a party cites a federal judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment or disposition with the brief or other paper in which it is cited. ***Click here to read the Rule***.

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