A Summary of Recent Pennsylvania State & Federal Trial & Appellate Court Decisions

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REPORTING DECISIONS THROUGH JANUARY 31, 2013

PENNSYLVANIA APPELLATE 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 decision for you to read in its entirety. Try it!

I. CIVIL LITIGATION

A. *MCARE Act - Notice of Claim*

- *Community Hospital Alternative for Risk Transfer v. Ario*, No. 617 M.D. 2008 (Pa. Cmwlth. January 10, 2013)
  - **Holding 1:** A healthcare provider does not have notice that a claim asserted against him is eligible for coverage under section 715 of the Medical Care Availability and Reduction of Error Act (MCARE), 40 P.S. § 1303.715, if there is no information identifying (1) the starting and ending dates of the alleged malpractice, (2) the nature of the claims asserted, and (3) a description of the wrongful act is not articulated.
  - **Holding 2:** Because the Commonwealth Court has original jurisdiction over claims against MCARE based on MCARE's statutory liability, a claimant is not required to exhaust administrative remedies before filing its claim.

B. *Qualification of Insured under Automotive Insurance Policy*

- *McWeeney v. Estate of Strickler*, 2013 PA Super 17 (January 30, 2013)
  - **Holding**: Under Section 1705(b)(3) of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1705(b)(3), only a person named as an "insured" under a policy is a "named insured." A person named only as a "principal driver," who does not own a vehicle, and is unrelated to the owner of the car, is not subject to the policy owner's limited tort election, and may seek non-economic damages against a third-party tortfeasor.

C. *Sovereign Immunity*

- *Rodriguez v. Commonwealth of Pennsylvania, Department of Transportation* No. 339 C.D. 2012 (Pa. Cmwlth. January 9, 2013)
  - **Holding:** The Commonwealth is immune from liability pursuant to 42 Pa.C.S. § 8522(a) for damages resulting from an accident in which a car crosses through the grass median strip and causes an accident on the opposite side of the highway. In that situation, Penndot is immune from suit because the purpose of a highway is to travel on the roadway and the lack of a median barrier does not render the highway unsafe for that purpose. Thus, Penndot has no duty to install a median barrier or to maintain a median in a way that will prevent crossover accidents because the median is not meant for vehicular travel.

D. ***Summary Judgment -- Negligence Claims***

- ***Wright v. Eastman*, 2013 PA Super 11 (January 22, 2013)**
  - **Holding**: Summary judgment should not be granted when the facts, including circumstantial evidence, could lead a jury to conclude that the defendant was negligent. This is an unusual case involving an intoxicated pedestrian/plaintiff who presented expert reports addressing the driver's rate of travel, visibility, and the distance at which the driver would have to have seen the decedent in order to stop short of the decedent. Even if the experts had not reached precise conclusions on the topics, the case remained a jury question because there was enough information to lead a jury to conclude that the decedent was visible and that, therefore, there was a breach of duty by the driver that was a proximate cause of the decedent's death.

II. WORKERS' COMPENSATION

A. ***C&Rs – Impact Upon Efforts to Add an Additional Injury***

- ***DePue v. Workers' Compensation Appeal Board (N. Paone Construction, Inc.)*, No. 1113 C.D. 2012 (Pa. Cmwlth. January 30, 2013)**
  - **Holding:** When a claimant does not expressly reserve his right to add a new injury to the description of work injuries, he is precluded from adding the work injuries more than two years after the approval of the Compromise and Release Agreement despite the employer's voluntary payment of medical expenses, because an employer's voluntary payment is not an admission of its liability and cannot be construed as a promise to continue to make such payments.

B. ***Loss of Earnings***

- ***North Pittsburgh Drywall Co., Inc. v. Workers' Compensation Appeal Board (Owen)*, No. 1257 C.D. 2012 (Pa. Cmwlth. January 9, 2013)**
  - **Holding:** When a claimant is capable of performing and did perform a light-duty position without difficulty, his work-related injury did not prevent him from performing those duties, and he left the light-duty position because he no longer had transportation available to him, a Suspension Petition is proper because the Claimant's loss of earnings was a result of the Claimant's bad faith.

C. ***Refusal of Employment in Bad Faith***

- ***Napierski v. Workers' Compensation Appeal Board (Scobell Company, Inc. and Cincinnati Insurance Company)*, No. 330 C.D. 2012 (Pa. Cmwlth. January 10, 2013)**
  - **Holding:** The denial of a claimant's request for a reinstatement to total disability benefits is proper because the claimant did not prove that his physical condition had worsened so that he could not do the job provided to him and refused a light-duty job in bad faith that was funded by the employer that he was capable of performing.

D. ***Subrogation Rights***

- ***Glass v. Workers' Compensation Appeal Board (The City of Philadelphia)*, No. 1274 C.D. 2012 (Pa. Cmwlth. January 10, 2013)**
  - **Holding:** The granting of a Review Petition, which asserts the Employer's right to a subrogation against Claimant's third-party recovery, is proper when the Claimant's injuries were caused by miscommunication rather than the Employer's bad faith.

E. ***Suspension of Benefits of Unauthorized Aliens***

- ***Ortiz v. Workers' Compensation Appeal Board (Raul Rodriguez d/b/a Rodriguez General Contractors and Uninsured Employer's Guaranty Fund)*, No. 446 C.D. 2012 (Pa. Cmwlth. January 15, 2013)**
  - **Holding:** When a Claimant's status as an unauthorized alien and not his injury causes a loss of earning power, the suspension of disability benefits is proper.