

A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH FEBRUARY 28, 2013

PENNSYLVANIA APPELLATE COURT DECISIONS

I. CIVIL LITIGATION

A. *MVFRL - Award of Attorneys' Fees*

- [*Herd Chiropractic Clinic, P.C. v. State Farm Mutual Automobile Insurance Co.*, No. 35 MAP 2012 \(Pa. February 20, 2013\)](#)

➤ **Holding:** A provider that is successful in a claim under Section 1797 of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1797, is not entitled to an award of attorneys' fees because the express terms of Section 1797 do not create an express statutory authorization for an award of fees from an adverse party. Justice Baer filed a [dissenting opinion](#), in which Justice McCaffery joined.

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!

B. *Challenging Venue*

- [*Cid v. Erie Insurance Group*, 2013 PA Super 22 \(February 15, 2013\)](#)

➤ **Holding:** Because a Petition to Compel Appointment of an Arbitrator is a Petition under Pa.R.C.P. 206.1, and not a pleading as defined under Pa.R.C.P. 1017, objections should be raised in an Answer to the Petition, and not by Preliminary Objections, which do not apply to Petitions.

C. *MCARE - Experts*

- [*Renna v. Schadt*, 2013 PA Super 34 \(February 25, 2013\)](#)

➤ **Holding:** Under the Medical Care Availability and Reduction of Error Act (MCARE), 40 P.S. § 1303.512, an expert must possess an unrestricted physician's license, have the appropriate education and training, knowledge and experience, and be actively engaged in clinical practice. Moreover, to render an expert opinion concerning the standard of care of a physician, the expert must either meet the requirements of Section 1303.512(c) or fall with the exceptions outlined in Section 1303.512(d) or (e). In light of these provision, a trial court did not abuse its discretion by permitting a pathologist and an oncologist to render expert testimony regarding the standard of care applicable to a surgeon.

D. *Statute of Limitations - Legal Malpractice - Tolling*

□ [O'Kelly v. Dawson, 2013 PA Super 25 \(February 19, 2013\)](#)

- **Holding:** In a claim of legal malpractice, the "occurrence rule" determines when the statute of limitations begins to run. Under this rule, the statutory period commences upon the happening of the alleged breach of duty. Equitable tolling is permitted under the discovery rule only when, despite the exercise of due diligence, the injured party is unable to know of the injury or its cause.

E. *Venue - Transfer*

□ [Pennsylvania Manufacturers' Association Insurance Co. v. The Pennsylvania State University, 2013 PA Super 29 \(February 21, 2013\)](#)

- **Holding:** A trial court does not abuse its discretion by failing to base its decision on a Motion to Transfer solely on the convenience of the parties, but also considers the criteria listed in Pa.R.C.P. 213.1 and other factors in rendering its decision.

II. ALLOCATUR GRANTED

The Pennsylvania Supreme Court has granted allocatur in the following matter for the issues stated:

□ [AAA Mid-Atlantic Insurance Co. v. Ryan, No. 861 MAL 2011 \(February 27, 2013\)](#)

- Does underinsured motorist coverage under a policy of insurance allow for an offset of all damages paid, which fully satisfied a judgment, or only for those sums paid under the automobile policy of the other driver, without regard to the full compensation of the award/judgment?

