

A Summary of Recent Pennsylvania, U.S. Supreme Court & Other Appellate Court Decisions

By Daniel J. Siegel, Esquire

LAW OFFICES OF DANIEL J. SIEGEL, LLC

66 West Eagle Road • Suite 1 • Havertown, PA 19083-1425
(610) 446-3457 • Fax (484) 636-3993 • E-mail dsiegel@danieljsiegel.com

REPORTING DECISIONS THROUGH APRIL 2, 2014

PENNSYLVANIA APPELLATE COURT DECISIONS

I. CIVIL LITIGATION

A. *Auto Insurance - Commercial UM & UIM Coverage*

- [*Egan v. USI Mid-Atlantic, Inc.*, 2014 PA Super 62 \(Pa.Super., April 2, 2014\)](#)

➤ **Holding:** Section 1731 of the Motor Vehicle Financial Responsibility Law (“MVFL”), 75 Pa.C.S.A. § 1731, requires motor vehicle insurers to offer uninsured and underinsured motorist coverage for commercial vehicle fleets.

Any UM or UIM rejection forms must also comply with Section 1731 of the MVFL.

B. *Jurors - Challenges*

- [*Cordes v. Philadelphia Newspapers, LLC*, 2014 PA Super 52 \(Pa.Super., March 12, 2014\)](#)

➤ **Holding:** Jurors may be struck for cause for various reasons, including:

- 1) Indirect relationships of a juror to a party with which the juror has had no direct contact, including connections through spouses with a potential (also indirect) employment-related interest in the outcome of the trial, may furnish a basis for per se exclusion.
- 2) Trial courts must err on the side of caution when confronted with such an indirect relationship;
- 3) No matter the *per se* nature of the applicable test, a trial court retains discretion to identify and assess the quality of the relationship, including the frequency or remoteness in time of the contacts, which may dictate contrary results.

C. *MCARE Act - Covered Events*

- [*Aria Health v. Medical Care Availability and Reduction of Error Fund*, No. 666 M.D. 2013 \(Pa.Cmwlt., March 31, 2014\)](#)

➤ **Holding:** A “medical professional liability claim” must relate to a medical provider’s failure to exercise the appropriate medical judgment or skill in order to be covered under the MCare Act, 40 P.S. § 1303.715.

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!

D. *Service of Process*

- [*Daniel v. City of Philadelphia*, No. 1043 C.D. 2013 \(Pa.Cmwlt., March 12, 2014\)](#)
 - **Holding:** A plaintiff's failure to serve a Complaint until seven months after the original statute of limitations expired does not constitute a good faith effort to serve the Complaint in a timely manner. Consequently, a defendant may raise defective service in New Matter; Preliminary Objections under Pa.R.C.P. 1028(a) are limited to objections to the improper form of service, not the lack of service.

E. *Sovereign Immunity*

- [*Hall v. Southwestern Pennsylvania Water Authority*, No. 139 C.D. 2013 \(Pa.Cmwlt., March 17, 2014\)](#)
 - **Holding:** Water flowing onto a state highway as the result of a non-governmental drainage system, does not derive from the road itself. Because such a claim does not fit within the real estate exception to sovereign immunity under the Tort Claims Act, 42 Pa.C.S. § 8522(b)(4), the trial court properly granted the Commonwealth's motion for summary judgment.

II. WORKERS' COMPENSATION

A. *Impairment Rating Evaluations - Physician Qualifications*

- [*Verizon Pennsylvania Inc. v. Workers' Compensation Appeal Board \(Ketterer\)*, No. 1188 C.D. 2013 \(Pa.Cmwlt. March 12, 2014\)](#)
 - **Holding:** A physician must have an active clinical practice, *i.e.*, the physician must provide preventive care and the evaluation, treatment and management of medical conditions, at least 20 hours per week, in order to be qualified to perform Impairment Rating Evaluation under Section 306(a.2)(1) of the Workers' Compensation Act, 77 P.S. § 551.2(1).
 - **Practice Tip:** Always ask the IRE physician (or any expert witness) about his or her qualifications. While most experts are qualified, you should always verify the information, just in case.

The Law Offices of Daniel J. Siegel, LLC served as co-counsel for appellant in this matter with the Law Offices of Kenneth N. Brodsky in this matter.

B. *Statutory Employer - Immunity from Liability*

- [*Patton v. Worthington Assocs., Inc.*, No. 32 MAP 2013 \(Pa. March 26, 2014\)](#)
 - **Holding:** In a third party claim against an injured worker's statutory employer/general contractor, the employer is immune from liability under Section 203 of the Workers'

Compensation Act, 77 P.S. § 52. In this case, the employee of a subcontractor sought damages from a general contractor that hired plaintiff's employer. The Court ruled that such claims are barred by the Workers' Compensation Act. Justice Baer filed a [concurring opinion](#) in which he asserted the concept of the statutory employer is "an irrational relic of a bygone era" that should be eliminated.

C. Subrogation

□ [Young v. Workers' Compensation Appeal Board \(Chubb Corp. and Federal Insurance Co.\), No. 1432 C.D. 2013 \(Pa.Cmwlt. March 10, 2014\)](#)

- **Holding:** In subrogation claims, a Court or Workers' Compensation Judge should apply the law of the state through which workers' compensation benefits were paid. Because claimant here was injured in Delaware and received benefits under Pennsylvania's Workers' Compensation Act, Pennsylvania subrogation law applies.
- **Practice Tip:** *In this case, counsel claimed that dividing the third party proceeds into one-third shares (paying 1/3 to counsel, 1/3 to claimant and 1/3 to resolve the subrogation lien) was a "customary" way of handling a WC lien.* This is simply not the case. In fact, the formula is far more complicated. In this case, however, this formula turned out to be more favorable to Ms. Young than the proper method, which would have resulted in Ms. Young receiving no money from the settlement (because the workers' compensation lien was so large). Thus, counsel's use of the "customary" method worked to help his client. That isn't always the case. When we address subrogation liens for our clients, and when other attorneys ask us to address liens impacting their clients, we consider the statutory method and also propose alternatives, including - at times - the "customary" method.

United States Supreme Court Decisions

I. CIVIL PROCEDURE

A. Jurisdiction - General versus Specific

□ [Daimler AG v. Bauman, No 11-965 \(January 14, 2014\)](#)

- **Holding:** There are two types of jurisdiction: specific jurisdiction and general jurisdiction. Specific jurisdiction encompasses cases in which the lawsuit arises out of or relates to the defendant's contacts with the forum. General jurisdiction applies when a foreign corporation's continuous corporate operations within a state are so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities. When, as here, the event underlying the litigation did not arise in the jurisdiction where the suit was filed, and the corporation is not incorporated in the jurisdiction and the jurisdiction is not its principal place of business, a Court may not exercise jurisdiction over the action.

Other State Court Decisions

I. FLORIDA SUPREME COURT

A. *Constitutionality of Statutory Caps on Non-Economic Damages*

□ [*Estate of McCall v. United States of America*, No SC11-1148 \(Fla., March 13, 2014\)](#)

- **Holding:** Florida's statutory cap on non-economic damages in medical malpractice actions, Fla. Stat. § 766.118, violates the Equal Protection Clause of the Florida Constitution.
- **Discussion:** In this landmark decision, the Florida Supreme Court concluded that the state's statutory caps on non-economic damages in medical malpractice cases violates the Equal Protection Clause of the Florida Constitution.

The Court held that the cap on wrongful death non-economic damages violated the Equal Protection Clause of the Florida Constitution under the rational basis test:

“The statutory cap on wrongful death noneconomic damages fails because it imposes unfair and illogical burdens on injured parties when an act of medical negligence gives rise to multiple claimants. In such circumstances, medical malpractice claimants do not receive the same rights to full compensation because of arbitrarily diminished compensation for legally cognizable claims. Further, the statutory cap on wrongful death noneconomic damages does not bear a rational relationship to the stated purpose that the cap is purported to address, the alleged medical malpractice insurance crisis in Florida.”

The court limited its holding to wrongful death claims rather than to personal injury claims in general. Presumably, counsel will cite this decision in other jurisdictions in which efforts continue to limit non-economic damages.

PENNSYLVANIA WORKERS'
COMPENSATION LAW:
THE BASICS

A PRIMER FOR NEW LAWYERS,
GENERAL PRACTITIONERS & OTHERS



DANIEL J. SIEGEL, ESQUIRE &
MOLLY BARKER GILLIGAN, ESQUIRE

The Pennsylvania Workers' Compensation Book

By Daniel J. Siegel, Esquire
& Molly Barker Gilligan, Esquire

The only resource of its kind, *Pennsylvania Workers' Compensation Law: The Basics: A Primer for New Lawyers, General Practitioners & Others*, is an up-to-date and easy-to-understand guide to Pennsylvania workers' compensation law, practice and procedure. Designed as a desk reference for attorneys, paralegals, injured workers, employers, claims adjusters, self-insured employers and vocational rehabilitation workers, the book includes:

- The latest versions of the Pennsylvania Workers' Compensation Act and Regulations
- A detailed explanation of the Pennsylvania statutes and regulations
- Helpful tips for anyone seeking to better understand Pennsylvania's workers' compensation system

Buy your copy today! Only \$49.95

- [Order Direct from the Authors by completing this Order Form](#)
- Call 1-610-446-3457
- Email wcbook@danieljsiegel.com
- Visit www.outskirtspress.com

*Also available from Amazon.com in traditional and **Kindle** editions*