

# A Summary of Recent U.S. Supreme & Pennsylvania 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](mailto:dsiegel@danieljsiegel.com)

REPORTING DECISIONS THROUGH JULY 31, 2013

## PENNSYLVANIA APPELLATE COURT DECISIONS

### I. CIVIL LITIGATION

#### A. *Abuse of Discretion - Denial of a New Trial*

- [\*Irey v. Comm., Dept. of Transportation, 2194 C.D. 2011 \(Pa. Cmwlth., June 28, 2013\)\*](#)

- **Holding:** A trial court abuses its discretion by denying a motion for judgment n.o.v. when the weight of the evidence demonstrates that the plaintiff would not have suffered the harm absent the defendant's negligence and that the defendant's negligence was a factual cause of a plaintiff's harm.

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. *Forum Non Conveniens Under 42 Pa.C.S.A. § 5322(e)*

- [\*Pisieczko v. The Children's Hospital of Philadelphia, 2013 PA Super 209 \(July 29, 2013\)\*](#)

- **Holding:** A trial court does not abuse its discretion by granting a motion to dismiss for forum non conveniens under 42 Pa.C.S.A. § 5322(e) when (1) an alternate forum exists for the plaintiff to litigate the case, and (2) there are sufficient "weighty reasons" to justify overcoming plaintiff's choice of forum.

#### C. *Political Subdivision Torts Claims Act - Liability to Bystanders During a Vehicle Pursuit*

- [\*Cornelius v. Roberts, 1393 C.D. 2011 \(Pa. Cmwlth., June 5, 2013\)\*](#)

- **Holding:** Under the Political Subdivision Torts Claims Act, 42 Pa.C.S.A. § 8542(b)(1), a local agency and its police employees are not immune from negligence claims stemming from injuries suffered by an innocent bystander during a police pursuit.

- [\*Sellers v. Township of Abington, 531 C.D. 2011 \(Pa. Cmwlth. en banc, June 5, 2013\)\*](#)

- **Holding:** Under the Political Subdivision Torts Claims Act, 42 Pa.C.S.A. § 8542(b)(1), a local agency and its police employees are immune from negligence claims stemming from injuries suffered by a passenger in a vehicle that is being pursued.

**D. *Pharmaceutical Failure to Warn Claims***

□ [\*Hassett v. Dafoe\*, 2013 PA Super 213 \(July 29, 2013\)](#)

- **Holding:** Failure to warn claims premised solely on the content of generic drug labels that conform to the brand-name label, and pre-date the Food and Drug Administration Amendments Act of 2007 (FDAAA), are preempted. Post-Act claims are not preempted “unless there is a thoughtful and careful examination of the federal law and state law applicable to ascertain whether state law compels what is impossible under federal law. Judge Platt issued a [concurring and dissenting opinion](#).

**E. *Punitive Damages***

□ [\*Empire Trucking Co., Inc. v. Reading Anthracite Coal Co.\*, 2013 PA Super 148 \(June 21, 2013\)](#)

- **Holding:** The severity of a defendant’s reprehensible conduct and the harm it causes may be considered when determining whether the punitive damages awarded by the jury are disproportionate. Consequently, a trial court does not abuse its discretion by affirming an award of punitive damages that were not grossly disproportionate to the compensatory damages and were not so high as to shock the conscience of the court.

**F. *Summary Judgment***

□ [\*Dearmitt v. New York Life Insurance Co.\*, 2013 PA Super 161 \(June 28, 2013\)](#)

- **Holding:** When reviewing a motion for summary judgment, a trial court errs by interpreting the record in a manner unfavorable to the non-moving party, and by making both fact-based and credibility assessments. Judge Strassburger issued a [concurring and dissenting opinion](#).

**II. *Unemployment Compensation***

**A. *Backdating of Application for Unemployment Benefits***

□ [\*Falcone v. Unemployment Compensation Board of Review\*, 2092 C.D. 2012 \(Pa. Cmwlt., July 9, 2013\)](#)

- **Holding:** Under Section 401(c) of the Unemployment Compensation Law (Law), 43 P.S. § 801(c), an application for unemployment compensation benefits may be backdated two weeks if he or she is able to merely demonstrate that an immediate family member is sick or has died. In order to backdate applications and claims for more than two weeks, as explained in 34 Pa. Code § 65.43a(h), the claimant must establish that the reason for his or her delay actually prevented the claimant from filing.

**III. *Workers’ Compensation***

**A. *Course & Scope of Employment - Commuting/Premises***

□ [\*Mansfield Brothers Painting and Selective Insurance Co. of America v. Workers’ Compensation Appeal Board \(German\)\*, 1858 C.D. 2012 \(Pa. Cmwlt., July 26, 2013\)](#)

- **Holding:** A claimant leaving a work site is not injured on the employer’s “premises” when (1) the injury did not occur at the work site, (2) the employee was not furthering the business of the employer at the time, and (3) the employer has no interest in or control over the claimant’s chosen route to travel home. In this case, the critical fact

was that claimant worked for a painting contractor and was injured while walking to a train station on the premises of the entity that had hired the contractor, and was not on the employer's premises. Consequently, this matter did not fall under the "no fixed place of work" exception for traveling employees.

#### B. *Employer's Duty*

- [\*Southeastern Pennsylvania Transportation Authority v. Workers' Compensation Appeal Board \(Cunningham\)\*, 2045 C.D. 2011 \(Pa. Cmwlth., July 12, 2013\)](#)
  - **Holding:** Under section 413 of the Workers' Compensation Act, 77 P.S. § 772, when non-work-related injuries render a claimant incapable of all possible work activity, an employer is not required to establish the availability of a job in order to obtain a suspension of benefits.

#### C. *Fatal Claim Petitions*

- [\*Whitesell v. Workers' Compensation Appeal Board \(Staples, Inc.\)\*, 205 C.D. 2013 \(Pa. Cmwlth., July 10, 2013\)](#)
  - **Holding:** Under section 301(c)(1) of the Workers' Compensation Act, a Fatal Claim Petition is barred when the Decedent dies more than 300 weeks after the date of her injury. The term "injury" is limited to the original compensable injury, and does not include any additional injuries that may have occurred as a result of the original injury.

### IV. *Disciplinary Board/Attorney Ethics Matters*

#### A. *Disbarment*

- [\*Office of Disciplinary Counsel v. Jamison\*, 18 D.B. 2013 \(Pa., June 12, 2013\)](#)
  - **Holding:** An attorney was disbarred on consent for failing to represent a client with reasonable promptness, misappropriating settlement proceeds, failing to promptly deliver funds, making false statements, and failing to keep separate accounts for his property and the client's property.
- [\*Office of Disciplinary Counsel v. Mandale\*, 37 D.B. 2012 \(Pa., June 19, 2013\)](#)
  - **Holding:** Disbarment is an appropriate discipline when an attorney demonstrates a pattern of client neglect, deceptive conduct, and misappropriation of client funds. Additionally, a single mitigating factor does not outweigh substantial aggravating factors when determining the appropriate sanctions.

#### B. *Suspension*

- [\*Office of Disciplinary Counsel v. Berg\*, 208 D.B. 2010 \(Pa., June 19, 2013\)](#)
  - **Holding:** When an attorney neglects a client's case while on probation for previous client neglect, he may be subject to a harsher sanction because the prior discipline did not have the desired effect of changing the way in which he conducts his practice. In this case, the Supreme Court imposed a two year suspension because the attorney had been on probation for prior client neglect and because the attorney failed to cooperate in the disciplinary system and instead attempted to obstruct the process.

## V. United States Supreme Court Opinions

### A. *Employment Law - Title VII - Unlawful Harassment*

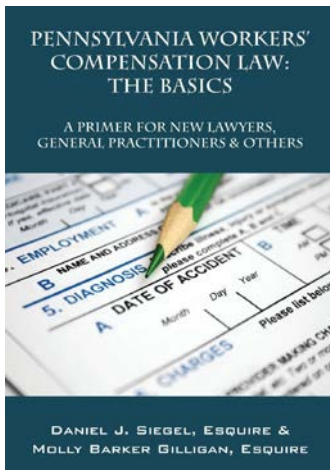
□ [\*Vance v. Ball State University, No. 11-556 \(U.S., June 24, 2013\)\*](#)

- **Holding:** Under Title VII, an employee is a “supervisor” for purposes of vicarious liability in an unlawful harassment claim only if the person is empowered by the employer to take tangible employment actions, such as hiring or firing, against the victim. Justice Alito delivered the opinion of the Court, in which Chief Justice Roberts, Justice Scalia, Justice Kennedy, and Justice Thomas joined. Justice Thomas filed a concurring opinion. Justice Ginsburg filed a dissenting opinion, in which Justice Breyer, Justice Sotomayor, and Justice Kagan joined.

### B. *Pharmaceutical Design-Defect Claims*

□ [\*Mutual Pharmaceutical Co., Inc. v. Bartlett, No. 12-142 \(U.S., June 24, 2013\)\*](#)

- **Holding:** Under the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. § 355(a) a design-defect claim brought under state law that is based on the adequacy of a drug’s warning labels is preempted by federal law, which prohibits any changes to a drug’s label following the FDA’s approval of the drug. Justice Alito delivered the opinion of the Court, in which Chief Justice Roberts, Justice Scalia, Justice Kennedy, and Justice Thomas joined. Justice Breyer filed a dissenting opinion, with Justice Kagan joining. Justice Sotomayor also filed a dissenting opinion, with Justice Ginsburg joining.



# 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 version 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](mailto:wcbook@danieljsiegel.com)
- Visit [www.outskirtspress.com](http://www.outskirtspress.com)

Also available from [Amazon.com](http://Amazon.com) in traditional and [Kindle](#) editions