

A Summary of Recent 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

REPORTING DECISIONS THROUGH SEPTEMBER 30, 2013

PENNSYLVANIA APPELLATE COURT DECISIONS

I. CIVIL LITIGATION

A. Venue - Confession of Judgment

- [Midwest Financial Acceptance Corp. v. Lopez, 2013 PA Super 239 \(August 23, 2013\)](#)

- **Holding:** Traditional venue rules do not automatically apply to the initial filing of a judgment of confession because (1) the rules governing confessions of judgment do not expressly incorporate the general venue rules by blanket reference, and (2) actions for confession of judgment differ significantly both procedurally and substantively from the civil actions that are subject to the general venue rules.

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. Discovery - Medical Malpractice - Other Patients

- [Lykes v. Yates, 2013 PA Super 358 \(September 25, 2013\)](#)

- **Holding:** A trial court does not abuse its discretion by precluding a plaintiff from obtaining the medical records of other patients because (1) the records were not necessary to establish that the physician was negligent, and (2) the plaintiff was permitted to establish its negligence theory through expert testimony.

C. New Trial

- [Banohashim v. R.S. Enterprises, LLC, 2013 PA Super 257 \(Sept. 24, 2013\)](#)

- **Holding:** A new trial should be ordered when a trial court fails to instruct a jury as to whether or when a plaintiff's contributory negligence could bar a recovery. In this case, the trial court did not provide the jury with any instruction on Pennsylvania's comparative negligence law.

II. Workers' Compensation

A. Course of Employment

- [**Trigon Holdings, Inc. v. Workers' Compensation Appeal Board \(Griffith\), No. 207 C.D. 2013 \(Pa. Cmwlth. August 7, 2013\)**](#)
 - **Holding:** An employee is not considered injured during the course of his or her employment under the Workers' Compensation Act, and thus will not receive benefits, when he or she abandons work responsibilities and suffers an injury while deliberately engaging in a personal activity that is foreign to those work responsibilities and does not serve the employer's interests.

B. Expiration of 500-Week Period

- [**Cozzone v. Workers' Compensation Appeal Board \(PA Municipal/East Goshen Township\), No. 51 MAP 2012 \(Pa. August 19, 2013\)**](#)
 - **Holding:** Under Section 413(a) of the Workers' Compensation Act, 77 P.S. § 772, workers' compensation claimants retain the right to petition for a modification of benefits for a minimum of three years from the date of the last payment of benefits. When benefits have been suspended because of a return to work, or an attempted return, without a loss in earnings, Section 413(a) extends the right to petition to the entire 500-week period during which compensation for partial disability is properly payable. In the event that payments are resumed after a suspension, workers' compensation claimants continue to retain the right to petition for any modification that they hold at the time of any workers' compensation payment received subsequent to suspension, for a minimum of three years from the date of that payment. In the event that a period of suspension comes to an end upon the resumption (or commencement as the case may be) of workers' compensation payments, claimants retain the right to petition for modification as set forth in Section 413(a).

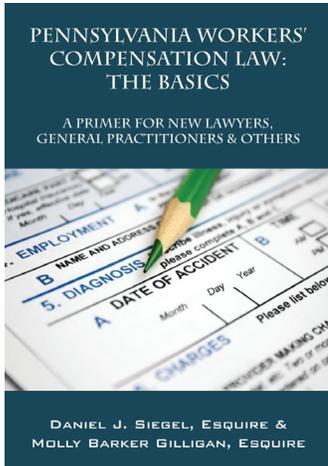
C. Fatal Claim Petition

- [**The Manitowoc Co., Inc. v. Workers' Compensation Appeal Board \(Cowan\), No. 472 C.D. 2013 \(Pa. Cmwlth. August 20, 2013\)**](#)
 - **Holding:** Under the Workers' Compensation Act, a WCJ properly granted a fatal claim petition even though the precise cause of death was uncertain, because the medical evidence, as accepted by the WCJ, established that the cause of death was work-related and not the result of a pre-existing condition.

D. Subrogation

- [**Kennedy v. Workers' Compensation Appeal Board \(Henry Modell & Co., Inc.\), No. 1649 C.D. 2012 \(Pa. Cmwlth. August 1, 2013\)**](#)
 - **Holding:** Under Section 319 of the Workers' Compensation Act, 77 P.S. § 671, an employer is entitled to subrogation against a claimant's third party recovery from the insurance carrier for the third party tortfeasor responsible for the claimant's original compensable work injury.

- [**Liberty Mutual Insurance Co. v. Domtar Paper Co., , 2013 PA Super 262 \(September 27, 2013\)**](#)
 - **Holding:** Pennsylvania does not recognize an independent cause of action by a workers' compensation insurer when the injured party has not sued or made a claim in his own right and is not a party to the suit.



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

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