

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 OCTOBER 31, 2013

PENNSYLVANIA APPELLATE COURT DECISIONS

I. CIVIL LITIGATION

A. *Limited Tort – Serious Injury – Jury Question*

- [*Cadena v. Latch*, 2013 PA Super 266 \(Pa. Super., October 4, 2013\)](#)

➤ **Holding:** A trial court errs by granting summary judgment and concluding that a plaintiff did not suffer a “serious injury” under Section 1705 of the Motor Vehicle Code, 75 Pa.C.S. § 1705, when the evidence of record includes “no less than eight ailments,” and plaintiff “described at length how her daily life has changed because of the pain she has and continues to endure.” Thus, because reasonable minds could differ as to whether a serious injury had been sustained, the trial court erred by taking the matter from the jury.

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. *Underinsured Motorist Claims – Failure to Identify Carrier as Party to Lawsuit When Tortfeasor & Carrier Are Parties*

- [*Stepanovich v. McGraw*, 2013 PA Super 275 \(Pa. Super., October 15, 2013\)](#)

➤ **Holding:** In an action against both the tortfeasor and the underinsured motorist, a trial court does not err by refusing to permit the plaintiff to identify the insurance carrier as a party to the jury when, as here, the record does not support a conclusion that the outcome of the trial would have been different had the jury been informed that the insurance company was a party. President Judge Ford Elliott filed a [concurring and dissenting opinion](#).

C. *Uninsured Motorist Claims – Reporting of Unidentified Vehicle*

- [*Vanderhoff v. Harleysville Insurance Co.*, No. 98 MAP 2012 \(Pa., October 30, 2013\)](#)

➤ **Holding:** Pursuant to Section 1702 of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. § 1702, an insured’s failure to report a phantom vehicle for more than eight months after the accident, which violates the

statute's 30 day reporting requirement, constitutes actual prejudice that relieves the insurance company of its obligation to pay insurance benefits to the insured. The Court further held that these cases must be addressed on a case-by-case basis in which the court balances the extent and success of the insurer's investigation with the insured's reasons for the delay. While an insurer may not deny coverage absent prejudice caused by an insured's delay in notice, showing such prejudice does not require proof of what the insurer would have found had timely notice been provided. [Justice Baer filed a concurring opinion.](#)

D. *Motor Vehicle Insurance – Payment of Both Liability & Underinsured Benefits*

- [Estate of O'Connell v. Progressive Insurance Co., 2013 PA Super 271 \(Pa. Super., October 8, 2013\)](#)
 - **Holding:** When an insurance policy precludes payment of both underinsured and liability benefits, a claimant who receives liability coverage cannot receive UIM benefits as well. In this case, the driver was driving a vehicle owned by a father and mother, and the father and son were killed in a single car accident in which the driver (who was negligent) was also killed. Under these facts, the estates of the father and son could only receive liability benefits, and not UIM benefits as well.

II. WORKERS' COMPENSATION

A. *Description of Injury – Amendment to Conform to IRE Findings*

- [Harrison v. Workers' Compensation Appeal Board \(Auto Truck Transport Corp.\), No. 769 C.D. 2013 \(Pa. Cmwlth., October 2, 2013\)](#)
 - **Holding:** Section 413(a) of the Workers' Compensation Act, 77 P.S. § 772, permits, but does not require, a Workers' Compensation Judge to amend a Notice of Compensation Payable. Even if a Workers' Compensation Judge accepts an impairment rating that includes non-work-related injuries, the WCJ's acceptance of the impairment rating does not implicitly amend the Notice of Compensation Payable to include the non-work related injuries.

B. *Hearing Loss Claims – Burden of Proof*

- [McCool v. Workers' Compensation Appeal Board \(Sunoco, Inc.\), No. 783 C.D. 2013 \(Pa. Cmwlth., October 18, 2013\)](#)
 - **Holding:** Pursuant to Section 306(c)(8) of the Workers' Compensation Act, 77 P.S. § 772, when it is undisputed that a Claimant suffers a permanent bilateral hearing loss greater than 10 percent, the Claimant must also show that his hearing loss was work-related.

C. *Mental Disability Caused by Abnormal Working Conditions*

- [*Payes v. Workers' Compensation Appeal Board \(Commonwealth PA State Police\), No. 50 MAP 2011 \(Pa., October 30, 2013\)*](#)
 - **Holding:** In a rare decision granting “mental-mental” benefits, the Pennsylvania Supreme Court ruled that an on-duty police officer is entitled to benefits under the Workers’ Compensation Act when he strikes and kills a mentally-disabled individual who runs in front of his car while he is driving and thereafter the officer suffers from PTSD. The Court affirmed the WCJ’s conclusion that the claimant experienced an extraordinarily unusual, abnormal and distressing work event that resulted in the officer’s disabling mental condition. This case turned on the fact that the event that caused the disability did not have any connection to the officer’s employment, other than the fact that the accident occurred while the officer was on duty. Chief Justice Castille filed a [concurring and dissenting opinion](#). Justice Eakin filed a [dissenting opinion](#).

D. *Notice of Injury*

- [*A & J Builders, Inc. v. Workers' Compensation Appeal Board \(Verdi\), No. 479 C.D. 2013 \(Pa. Cmwth., October 16, 2013\)*](#)
 - **Holding:** An injured worker must provide notice of his injury when he learns about the causal connection between the injury and his work duties pursuant to Section 311 of the Workers’ Compensation Act, 77 P.S. § 772. The Court noted that the Pennsylvania Supreme Court has interpreted Section 311 to include a discovery rule, which allows an employee to give notice within 120 days of becoming aware of the correlation between the employment and the injury.

E. *Medical Care*

- [*Moran v. Workers' Compensation Appeal Board \(McCarthy Flowers\), No. 830 C.D. 2013 \(Pa. Cmwth., October 16, 2013\)*](#)
 - **Holding:** When a licensed practical nurse, who is a health care provider under Section 109 of the Workers’ Compensation Act, 77 P.S. § 772, provides massage therapy prescribed by a physician, and the employer fails to establish that massage therapy did not come under the duties of a licensed practical nurse, the nurse’s services are considered within the scope of the nurse’s practice.

F. *Voluntary Withdrawal From Workforce*

- [*Turner v. Workers' Compensation Appeal Board \(City of Pittsburgh\), No. 347 C.D. 2013 \(Pa. Cmwth., October 16, 2013\)*](#)
 - **Holding:** Under the Workers’ Compensation Act, a claimant’s application for and acceptance of a disability pension does not raise a presumption that a claimant has retired/withdrawn from the workforce.

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 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
- Visit www.outskirtspress.com

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