

# A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH JANUARY 31, 2014

## PENNSYLVANIA APPELLATE COURT DECISIONS

### I. MOTOR VEHICLE INSURANCE

#### A. *Underinsured Motorist Coverage -- Damages Offset*

- [AAA Mid-Atlantic Insurance Co. v. Ryan, No. 15 MAP 2013 \(Pa., January 21, 2014\)](#)

➤ **Holding:** A motor vehicle insurance policy may provide that underinsurance benefits are offset by the damages the insured collects from all tortfeasors.

### II. PRODUCTS LIABILITY & MALPRACTICE

#### A. *Expert Testimony*

- [Klein v. Aronchick, 2014 PA Super 3 \(Pa. Super., January 7, 2014\)](#)

➤ **Holding:** Direct causation and increased risk of harm are alternative theories of recovery which, depending on the facts and the expert testimony, may both apply in a particular case. Thus, a plaintiff is entitled to an increased risk of harm jury instruction where his or her expert concludes that a defendant's negligence either caused the specific harm, or at least increased the risk of such harm occurring.

- [Parr v. Ford Motor Co., 2014 PA Super 8 \(Pa. Super., January 15, 2014\)](#)

➤ **Holding:** Evidence intended to establish causation as a result of a design defect is not admissible when the standard was enacted and effective after the date on which the product was manufactured. Thus, a standard enacted in 2009, not applicable until 2016, cannot form the basis for liability when the product was manufactured in 2001.

#### B. *Pharmaceuticals -Duty of Care*

- [Lance v. Wyeth, Nos. 17 & 18 EAP 2011 \(Pa., January 21, 2014\)](#)

➤ **Holding:** Under Pennsylvania law, a pharmaceutical company violates its duty of care if it introduces, or continues to distribute, a drug, with actual or constructive knowledge that the drug is too harmful to be used by anyone. In other words, the Court found that FDA approval, in and of itself, does not establish as a matter of law that a drug is safe. The Court also declined to expand Pennsylvania law and immunize companies from the responsibility to respond in damages for a lack of due care that results in injury or death. This case has extensive discussions about Pennsylvania products liability and pharmaceutical liability law that warrant further review by counsel involved in these types of cases. [Click here to read the Majority Opinion.](#) [Click here to read the Dissent.](#)

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!

### III. WORKERS' COMPENSATION

#### A. *Burden to Establish Jurisdiction*

- [\*O'Rourke v. Workers' Compensation Appeal Board \(Gartland\)\*, No. 1794 C.D. 2012 \(Pa. Cmwlth., January 8, 2014\)](#)

- **Holding:** In order to establish the right to benefits under the “bunkhouse rule,” a claimant need only establish that his or her presence on the premises is required by the nature of his or her employment, regardless of whether his or her presence was actually required at the particular place where the injury occurred.

#### B. *Compromise & Release Agreements*

- [\*H.A. Harper Sons, Inc. v. Workers' Compensation Appeal Board \(Sweigart and BWC Legal Division\)\*, No. 861 C.D. 2013 \(Pa. Cmwlth., January 3, 2014\)](#)

- **Holding:** A Compromise & Release Agreement only precludes continued litigation of the “exact issues” resolved in the Agreement.

#### C. *Dismissal of Petitions*

- [\*Wagner v. Workers' Compensation Appeal Board \(Ty Construction Co., Inc. and Erie Insurance\)\*, No. 1202 C.D. 2013 \(Pa. Cmwlth., January 3, 2014\)](#)

- **Holding:** Dismissal is not an appropriate sanction for a claimant's failure to meet deadlines to produce evidence when the employer cannot establish prejudice.

#### D. *IRE Determinations*

- [\*Wingrove v. Workers' Compensation Appeal Board \(Allegheny Energy\)\*, No. 1151 C.D. 2013 \(Pa. Cmwlth., January 3, 2014\)](#)

- **Holding:** A claimant must appeal the change in total benefit status following an Impairment Rating Evaluation within 60 days of receipt of notice or the “IRE is beyond challenge.” However, a claimant may obtain a new impairment evaluation and seek to change his or her disability status back to total if the evaluation shows an impairment rating of 50 percent or greater.

#### E. *Notice of Ability to Return to Work*

- [\*School District of Philadelphia v. Workers' Compensation Appeal Board \(Hilton\)\*, No. 598 C.D. 2013 \(Pa. Cmwlth., January 7, 2014\)](#)

- **Holding:** An employer is not required to provide a claimant with a Notice of Ability to Return to Work during the time period after it issued a Notice of Compensation Denial, but before the claimant filed a Claim Petition.

#### F. *Utilization Review Petitions*

- [\*Womack v. Workers' Compensation Appeal Board \(The School District of Philadelphia\)\*, No. 1137 C.D. 2013 \(Pa. Cmwlth., January 14, 2014\)](#)

- **Holding:** A Utilization Review Determination is not void merely because it was issued outside the time specified under the Workers' Compensation Act, particularly because the UR reviewer is not a party to the proceeding and is not under the control or supervision of a party.

#### IV. ALLOCATUR GRANTED

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

□ [\*Zauflik v. Pennsbury School District\*, No. 554 MAL 2013 \(January 16, 2014\)](#)

- Does the [Tort Claims] Act's liability cap violate equal protection principles in this case where (a) the cap reduced the jury's verdict by over 96% because [petitioner] was injured by a local agency [that] operated the school bus; (b) [petitioner] would be entitled to recover the jury's full verdict had a private entity instead operated the school bus, as in commonplace among school districts; and (c) as this Court held forty years ago, political subdivision immunity is "an anachronism, without rational basis" because local agencies may purchase liability insurance and tort liability promotes accountability and accident-prevention? *See Ayala v. Philadelphia Board of Public Educ.*, 305 A.2d 877, 881-83 (Pa. 1973).
- Does the [Tort Claims] Act's liability cap violate equal protection principles in this case where (a) Pennsbury purchased \$11 million in insurance, funded by taxpayers, including [petitioner's] parents; (b) [petitioner] could recover her judgment at least to the extent of the available insurance; and (c) the Commonwealth Court's majority opinion acknowledged that the available insurance presented "intriguing, and perhaps appealing" issues regarding the Act's constitutionality?
- Does the [Tort Claims Act's] liability cap violate [petitioner's] right to jury trial guaranteed by Article I, Section 6 of the Pennsylvania constitution where Pennsbury did not challenge the verdict's excessiveness yet the liability cap eviscerated the verdict by reducing [petitioner's] recovery by over 96%?
- Does the [Tort Claims Act's] liability cap impermissibly infringe on the judicial power set forth in Article V, Section 1 of the Pennsylvania constitution by forcing a more than 96% remittitur of the jury's verdict in this case, and thereby usurping the judiciary's exclusive and inherent power to determine remittitur requests?
- Does the [Tort Claims Act's] liability cap violate the open courts provision of Article I, Section 11 of the Pennsylvania constitution by forcing a more than 96% remittitur of the jury's verdict and therefore denying [petitioner] full redress of her injuries?
- Does the [Tort Claims Act's] liability cap violate the guarantee against liability limitations set forth in Article III, Section 18 of the Pennsylvania constitution, where this is not a workers' compensation matter?

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