

# 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](mailto:dsiegel@danieljsiegel.com)

REPORTING DECISIONS THROUGH FEBRUARY 28, 2014

## PENNSYLVANIA APPELLATE COURT DECISIONS

### I. ETHICS

#### A. *Conflicts of Interest*

- [\*Dougherty v. Philadelphia Newspapers, LLC\*, 2014 PA Super 24 \(Pa.Super., February 11, 2014\)](#)

➤ **Holding:** Appellate review is appropriate of an Order denying a Motion to Disqualify Counsel when a party avers facts establishing a colorable claim that the potential disclosure of attorney work product and the breach of the attorney-client privilege could result in irreparable harm. When the record demonstrates that counsel's prior representation of the party is substantially related to the current matter, and that a member or members of counsel's law firm acquired confidential information from the party, disqualification of counsel is appropriate. Judge Donohue authored a [concurring opinion](#).

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!

### II. MEDICAL MALPRACTICE

#### A. *Jury Instructions - Error in Judgment*

- [\*Passarello v. Grumbine, Nos. 15 & 16 WAP 2012 \(Pa., February 7, 2014\)\*](#)

➤ **Holding:** An "error in judgment" jury instruction should never be given to the jury in a medical malpractice action. "If a defendant desires an instruction that conveys the principle that an unfortunate result does not by itself establish negligence, he or she may request from the trial court an instruction, in the appropriate case, that an unfortunate result does not by itself establish negligence. There is no need to resort to the use of ambiguous and problematic phrases such as 'error in judgment' or 'mistake in judgment.'" Justice Castille filed a [dissenting opinion](#). Justice Saylor filed a [concurring and dissenting opinion](#). Justice Eakin filed a [dissenting opinion](#).

#### B. *Jury Instructions - Error in Judgment*

- [\*Matharu v. Muir, 2014 PA Super 29 \(Pa.Super., February 21, 2014\)\*](#)

➤ **Holding:** When a claim alleging negligence arising within the confines of the physician-patient relationship, and the averments of the Complaint do not assert any failure to intervene with a third party, Section 324A of the *Restatement of Torts (2d)*, which requires an averment that the physician has undertaken "to render services to another which he should recognize as necessary for the protection of a third person," does not apply.

### III. SOVEREIGN IMMUNITY

#### A. *SEPTA Vehicles*

- [\*Muldrow v. Southeastern Pennsylvania Transportation Authority\*, No. 1181 C.D. 2013 \(Pa.Cmwlth., February 26, 2014\)](#)
  - **Holding 1:** SEPTA is entitled to the protections afforded a Commonwealth party under the Sovereign Immunity Act, 42 Pa.C.S.A. §§ 8521-8528.
  - **Holding 2:** A stopped SEPTA vehicle is not "in operation" for purposes of the motor vehicle exception to sovereign immunity; in addition, the personal property property exception to sovereign immunity does not apply to the stopped vehicle.

### IV. TRIAL

#### A. *Delay Damages*

- [\*Roth v. Ross\*, 2014 PA Super 20 \(Pa.Super., February 7, 2014\)](#)
  - **Holding:** Pa.R.Civ.P. 238 delay damages should be awarded on future medical expenses.

### V. WORKERS' COMPENSATION

#### A. *Fee Review Petitions*

- [\*Selective Insurance Co. of America v. Bureau of Workers' Compensation Fee Review Hearing Office \(The Physical Therapy Institute\)\*, No. 613 C.D. 2013 \(Pa.Cmwlth., February 4, 2014\)](#)
  - **Holding:** The Bureau of Workers' Compensation Fee Review Hearing Offices lacks jurisdiction over an insurer's challenge whether a billing agency is a medical provider. Further, because the Hearing Office lacks jurisdiction of this challenge, it also lacks jurisdiction to act upon the alleged provider's fee review applications, and the issues should be resolved by a Workers' Compensation Judge.

#### B. *Claim Petitions - Burden of Proof of Ongoing Disability*

- [\*Pennsylvania Uninsured Employers Guaranty Fund v. Workers' Compensation Appeal Board \(Bonner and Fitzgerald\)\*, No. 300 C.D. 2013 \(Pa.Cmwlth., February 12, 2014\)](#)
  - **Holding:** In a Claim Petition, the burden is on the claimant to establish a right to compensation and to prove all necessary elements to support an award, including the duration and extent of disability. A WCJ is free to rely on a claimant's testimony in determining the length/extent of disability, provided there is competent medical evidence to support an award of ongoing disability.

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](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