

A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH MAY 30, 2014

PENNSYLVANIA APPELLATE COURT DECISIONS

I. A CASE THAT MAY MAKE YOU SMILE

- A. This Newsletter doesn't generally address claims by prisoners that their Constitutional rights have been violated. However, in [Thomas v. Corbett, No. 458 M.D. 2013 \(Pa.Cmwlt., April 29, 2014\)](#), the Commonwealth Court rejected plaintiff's challenge to the Department of Corrections' conjugal visit policy. In particular, the Court rejected plaintiff's argument that "his religion requires him to marry and, in fact, to have multiple wives [and that] DOC's policy concerning visits from spouses precludes him from enjoying conjugal visits with his wives."

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. CIVIL LITIGATION & PROCEDURE

A. *Restrictive Covenants*

- [Socko v. Mid-Atlantic Systems of CPA, Inc., 2014 PA Super 103 \(May 13, 2014\)](#)
- **Holding:** A non-competition restrictive covenant in an employment agreement is unenforceable for lack of consideration when it is made after employment begins and without consideration, even if the covenant states that the parties "intend to be legally bound" by its terms. The Court noted that even though the agreement satisfied the Uniform Written Obligations Act, 33 P.S. § 6, because it included the language "intending to be legally bound", that language did not satisfy the need for valuable consideration.

B. *Jurisdiction & Civil Procedure*

- [Motley Crew, LLC v. Bonner Chevrolet Co., Inc., 2014 PA Super 101 \(May 13, 2014\)](#)
- **Holding:** An appellate court lacks jurisdiction over an appeal when the matter is discontinued based upon a Praecipe to Discontinue filed under Pa.R.Civ.P. No. 229. By discontinuing their action immediately before filing this appeal, appellants deprived the court of jurisdiction over the claim because there was no longer a case or controversy before any court.

- [*Morgan v. Petroleum Products Equipment Co.*, 2014 PA Super 104 \(May 13, 2014\)](#)
 - **Holding:** A trial judge may always revisit his or her own prior pre-trial rulings in a case without clashing with the law of the case doctrine. The law of the case doctrine embodies the concept that a court involved in the later phases of a litigated matter should not reopen questions decided by another judge of the same court or by a higher court in the earlier phases of the matter.

III. WILLS & ESTATES

A. *Two-Witness Rule*

- [*In Re Estate of Wilner*, 2014 PA Super 94 \(May 6, 2014\)](#)
 - **Holding:** A Court must strictly adhere to the “two-witness” rule, which requires two witnesses to establish proof of the contents of an unsigned lost Will before it may be admitted to probate, in order to prevent fraud. Of note, the Superior Court urged the Pennsylvania Supreme Court to create a narrow exception to this rule when, as here, the two-witness rule apparently fails to meet the intent of the testator and instead creates a result the testator “never dreamed of.”

IV. WORKERS’ COMPENSATION

A. *UEGF - Statute of Repose*

- [*Pennsylvania Uninsured Employers Guaranty Fund v. Workers’ Compensation Appeal Board \(Lyle and Walt & Al’s Auto & Towing Service\)*, No. 1421 C.D. 2013 \(Pa. Cmwlth., May 12, 2014\)](#)
 - **Holding:** Under Section 1603(b) of the Workers’ Compensation Act, 77 P.S. § 2703(b), an injured worker must notify the Pennsylvania Uninsured Employers Guaranty Fund (the UEGF/Fund) “within 45 days after the worker knew that the employer was uninsured” in order to receive benefits from the Fund. Of note, the Commonwealth Court liberally interpreted the date that the claimant learned that the employer did not have workers’ compensation insurance. On the other hand, the Court implicitly affirmed that a claimant who fails to provide notice within the statutory 45-day requirement is not entitled to benefits from the Fund.

B. *Jurisdiction*

- [*Sheard v. J.J. Deluca Company, Inc.*, 2014 PA Super 98 \(May 7, 2014\)](#)
 - **Holding** Because statutory immunity under the Workers’ Compensation Act, 77 P.S. § 481(a), is a question of law that goes to the heart of a court’s jurisdiction to hear and decide a matter, a court may consider the defense at any stage, as long as the proceedings continue, even throughout the appellate process.

□ [*Greenwalt v. Workers' Compensation Appeal Board \(Bristol Environmental, Inc.\)*, No. 1894 C.D. 2013 \(Pa.Cmwlt., May 12, 2014\)](#)

- **Holding:** Under Section 305.2 of the Workers' Compensation Act, 77 P.S. § 411.2, Pennsylvania did not have jurisdiction over a workers' compensation claim when the injured worker worked under a contract of hire made in Pennsylvania for employment principally located in another state. Jurisdiction is appropriate in Pennsylvania only when (1) the worker's employment is principally located in Pennsylvania, or, (2) the worker is working under a contract of hire made in Pennsylvania in employment not principally localized in any state, or (3) the injured worker is working under a contract of hire made in Pennsylvania in employment principally localized in another state whose workers' compensation law does not apply to the employer.

C. *Impairment Rating Evaluations*

□ [*Arvilla Oilfield Services, Inc. v. Workers' Compensation Appeal Board \(Carlson\)*, No. 1578 C.D. 2013 \(Pa.Cmwlt., May 20, 2014\)](#)

- **Holding:** Under Section 306(a.2) of the Workers' Compensation Act, 77 P.S. § 511.2, an employer seeking to change an injured worker's status based upon an Impairment Rating Evaluation must present evidence that the employee has reached maximum medical improvement (MMI). If an employee seeks to challenge the IRE based upon the fact that he or she has not reached MMI, the injured worker must present competent evidence on this issue. In this case, claimant's physician never opined whether claimant had reached MMI. Because the evidence did not support the WCJ's finding that claimant had not reached MMI, the Court reversed. Interestingly, the Court never noted that the WCJ could have simply rejected the employer's medical witness's testimony, but did not do so. In dissent, Judge Pellegrini argued that the WCJ made a credibility finding about the physician-witness and that credibility is within the WCJ's discretion.

D. *Course & Scope of Employment*

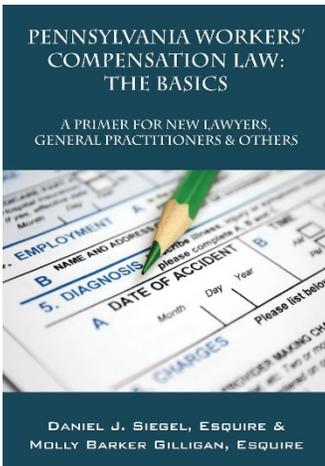
□ [*Wetzel v. Workers' Compensation Appeal Board \(Parkway Service Station\)*, No. 1693 C.D. 2013 \(Pa.Cmwlt., May 27, 2014\)](#)

- **Holding:** Under Section 301(c)(1) of the Workers' Compensation Act, 77 P.S. §411(1), an employee is entitled to benefits unless the employer proves that the injured employee abandoned his employment, was not engaged in an activity that furthered the employer's business, or violated a positive work rule. In this case, the injured worker, a management employee, was injured after pursuing and attempting to stop a thief while the employee was on the employer's premises outside of his scheduled shift in order to correct a cash register mistake and to stock the store's cooler.

V. ALLOCATUR GRANTED

The Pennsylvania Supreme Court has granted appeal in the following matter on the issue stated:

- [*Liberty Mutual Insurance Co. v. Domtar Paper Co., No. 607 WAL 2013 \(May 29, 2014\)*](#)
 - Does Section 319 of the Pennsylvania Workers' Compensation Act, 77 P. S. § 671, allow the employer/insurer to step into the shoes of the insured employee to subrogate against the tortfeasor?



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By Daniel J. Siegel, Esquire
& Molly Barker Gilligan, Esquire

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