

# A Summary of Recent Pennsylvania Appellate Court Decisions & Rules Changes

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REPORTING DECISIONS THROUGH DECEMBER 31, 2014

## PENNSYLVANIA APPELLATE COURT DECISIONS

### I. Civil Procedure

#### A. *Certificate of Merit*

□ [\*Bruno v. Erie Insurance Co., No. 25 WAP 2013 \(Pa., Dec. 15, 2014\)\*](#)

- **Holding:** In a negligence claim brought against an insurer by its insureds, the insureds are not required to obtain a certificate of merit under Pa. R.C.P. 1042.1 and 1042.3 in order to proceed with a negligence suit against a professional engineer because they were not patients or clients of the engineering company that employed the engineer. Justice Eakin filed a [concurring opinion](#), in which Chief Justice Castille joined.

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. *Evidence - Expert Testimony*

□ [\*Harris v. Phila. Facilities Mgmt. Corp., No. 39 C.D. 2014 \(Pa. Cmwlth., Dec. 2, 2014\)\*](#)

- **Holding:** Expert testimony is admissible when the expert identifies the facts of record upon which he relied during his testimony.

□ [\*Nelson v. Airco Welders Supply, 2014 PA Super 286 \(Pa. Super. en banc, Dec. 23, 2014\)\*](#)

- **Holding:** When, in an asbestos claim, an expert is unable to establish the impact of incremental exposure posed by the products to which the plaintiff was exposed, it is impossible for plaintiff to establish that the products were a substantial factor in causing plaintiff's disease.

#### C. *Evidence - Gist of the Action*

□ [\*Bruno v. Erie Insurance Co., No. 25 WAP 2013 \(Pa., Dec. 15, 2014\)\*](#)

- **Holding:** A negligence claim brought against an insurer by its insureds based upon alleged statements by insurer's adjuster and an engineer retained by the carrier is not barred by the gist of the action doctrine because the claim was based on an alleged breach of a social duty imposed by the law of torts, and not a breach of duty created by the underlying contract of insurance. Justice Eakin filed a [concurring opinion](#), in which Chief Justice Castille joined.

D. *Evidence - Motions in Limine*

- [\*Parr v. Ford Motor Co.\*, 2014 PA Super 281 \(Pa. Super. \*en banc\*, Dec. 22, 2014\)](#)
  - **Holding:** A trial court's decision to grant or deny a motion in limine is subject to an evidentiary abuse of discretion standard of review. To constitute reversible error, an evidentiary ruling most not only be erroneous, but also harmful or prejudicial to the complaining party.

E. *Notice of Appeal - Timeliness/Propriety of Appeal*

- [\*Burkey v. CCX, Inc.\*, 2014 PA Super 269 \(Pa. Super., Dec. 3, 2014\)](#)
  - **Holding:** Interlocutory orders dismissing various parties piecemeal from a lawsuit may not be appealed until the case is concluded as to the final remaining party, and the case is therefore resolved as to all parties and all claims. Thus, the discontinuance of a case against the sole remaining defendant renders prior judgments final and appealable.
- [\*Malanchuk v. Tsimura\*, 2014 PA Super 277 \(Pa. Super. \*en banc\*, Dec. 17, 2014\)](#)
  - **Holding:** An appellate court does not have jurisdiction over an interlocutory appeal, taken without permission of the trial court, in a consolidated case in which a single plaintiff brings identical allegations against separate defendants.
- [\*Modern Equipment Sales & Rental Co. v. Main Street America Assurance Co.\*, 2014 PA Super 275 \(Pa. Super., Dec. 15, 2014\)](#)
  - **Holding:** An order in a declaratory judgment action that affirmatively or negatively declares the rights of the parties is final and appealable, even if other claims in the case remain pending. However, an order is not final when some, but not all, of the alternative claims for declaratory were resolved.

II. Substantive Law

A. *Asbestos Claims*

- [\*Markovsky v. Crown Cork & Seal Co.\*, 2014 PA Super 282 \(Pa. Super., Dec. 22, 2014\)](#)
  - **Holding:** The statute, 15 Pa.C.S.A. § 1929.1, which limits "successor asbestos-related liabilities" does not violate the Pennsylvania or U.S. Constitutions.

B. *Bad Faith Claims*

- [\*Allstate Property and Casualty Ins. Co. v. Wolfe\*, No. 39 MAP 2014 \(Pa., Dec. 15, 2014\)](#)
  - **Holding:** An insured may assign the right to recover damages from his insurance company in a claim deriving from the insurer's bad faith toward the insured.

C. *Motor Vehicle Insurance*

- [\*Peters v. National Interstate Ins. Co.\*, 2014 PA Super 276 \(Pa. Super., Dec. 16, 2014\)](#)
  - **Holding:** The Pennsylvania Motor Vehicle Financial Responsibility Law applies only to policies delivered or issued for delivery in Pennsylvania, with respect to any motor vehicle registered or principally garaged in Pennsylvania. Thus, the MVFRL does not apply to a claim for underinsured motorist coverage for a vehicle registered and principally garaged in Ohio.

D. *Sovereign Immunity - Fleeing Vehicle*

- [\*Sellers v. Township of Abington\*, No. 97 MAP 2013 \(Pa., Dec. 29, 2014\)](#)
  - **Holding:** A local agency does not owe a common law or statutory duty of care (under Section 8542(b)(1) of the Political Subdivision Tort Claims Act) to a passenger of a fleeing vehicle, whose existence or relationship to the fleeing driver is unknown to the pursuing officer. Justice Saylor filed a [concurring opinion](#); in addition, Justice Todd filed a [concurring opinion](#).

E. *Unfair Trade Practices Law*

- [\*Grimes v. Enterprise Leasing Co. of Phila., LLC\*, No. 4 MAP 2014 \(Pa., Dec. 15, 2014\)](#)
  - **Holding:** The retention of counsel does not constitute an “ascertainable loss” that would give rise to a cause of action under the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-9.2(a) because the legislature provided an independent basis for the recovery of attorney’s fees.

III. Workers’ Compensation

A. *Psychological Injuries - Abnormal Working Conditions*

- [\*Frog, Switch & Manufacturing Co. v. Workers’ Compensation Appeal Board \(Johnson\)\*, No. 149 C.D. 2014 \(Pa. Cmwlth. \*en banc\*, Dec. 4, 2014\)](#)
  - **Holding:** In order to be entitled to compensation for a psychological (mental) injury under the Workers’ Compensation Act, an employee must establish that the injury was more than a subjective response to normal working conditions. The employee must specifically delineate the injury’s occurrence and cause, which is a higher standard for causation than that of a physical injury.
- [\*PA Liquor Control Board v. Workers’ Compensation Appeal Board \(Kochanowicz\)\*, No. 760 C.D. 2010 \(Pa. Cmwlth. \*en banc\*, Dec. 30, 2014\)](#)
  - **Holding:** Robbery at gunpoint while working in a liquor store is an abnormal working condition, even if the employee has been provided training about workplace violence. Consequently, a robbery-related psychological condition is compensable under the Workers’ Compensation Act.

B. *Statutory Employer*

- [\*Zwick v. Workers’ Compensation Appeal Board \(Popchocoj\)\*, Nos. 428 & 429 C.D. 2014 \(Pa. Cmwlth., Dec. 11, 2014\)](#)
  - **Holding:** In order to be liable as a statutory employer under the Workers’ Compensation Act, an employer must meet the criteria in *either* Section 302(a) or Section 302(b) of the Act. Unlike Section 302 (a), Section 302(b) requires a claimant to demonstrate that the alleged statutory employer occupied or exercised control over the premises where the injury occurred.

#### IV. Rules - Amendments

##### A. *Rules of Appellate Procedure*

###### □ [Rule 1115 & 1116 \(Effective March 1, 2015\)](#)

###### ➤ Length of Petitions for Allowance of Appeal

- Petitions shall exceed 9,000 words.
- Answers shall not exceed 9, 000 words.
- The Rule further notes that parties may rely on the word count of the word processing system used to prepare the filing.

###### □ [Rule 2135 \(Effective March 1, 2015\)](#)

###### ➤ Length of Briefs

- Principal briefs shall not exceed 14,000 words.
- Reply briefs shall not exceed 7, 000 words.
- The Rule further notes that “A party shall file a certificate of compliance with the word count limit if the principal brief is longer than 30 pages or the reply brief is longer than 15 pages when prepared on a word processor or typewriter.” (Parties must rely on the word count of the word processing system used to prepare the brief.)

##### B. *Rules of Professional Conduct*

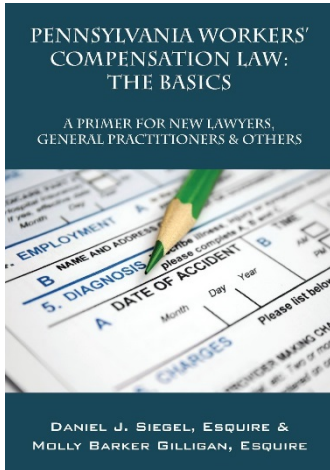
###### □ [Various Rules \(Effective March 1, 2015\)](#)

###### ➤ Rule 1.15 (Safekeeping Property)

- Lawyers must maintain the writing containing the basis or rate of the fee in all matters.
- When an account is used to hold funds of more than one client, such as a trust/escrow/IOLTA account, lawyers must maintain an individual ledger for each trust client, showing the source, amount and nature of all funds received from or on behalf of the client, the description and amounts of charges or withdrawals, the names of all persons or entities to whom such funds were disbursed, and the dates of all deposits, transfers, withdrawals, and disbursements. Lawyers must also maintain a regular trial balance of the individual client trust ledgers.
- Only a lawyer admitted to practice law in Pennsylvania, or a person under the direct supervision of the lawyer, shall be an authorized signatory or authorize transfers from a Trust account or any other account in which fiduciary funds are held.

###### ➤ Rule 5.8 (Investment Products)

- A lawyer shall not broker, offer to sell, sell, or place any investment product unless separately licensed to do so.
- The Rule also limits how and when a lawyer may recommend or offer an investment product to a client or any person with whom the lawyer has a fiduciary relationship.



# The Pennsylvania Workers' Compensation Book

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

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