

# A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH JANUARY 31, 2015

## PENNSYLVANIA APPELLATE COURT DECISIONS

### I. Civil Procedure

#### A. *Motions for Reconsideration*

- [\*Manufacturers and Traders Trust Co. v. Greenville Gastroenterology, SC\*](#), 2015 PA Super 15 (Pa. Super., January 22, 2015)

- **Holding:** Although a court lacks authority to grant reconsideration of a final order more than 30 days after its entry, it has the limited ability to modify or rescind a final order more than 30 days after its entry for extrinsic fraud, lack of jurisdiction over the subject matter, a fatal defect apparent on the face of the record, or some other evidence of “extraordinary cause” justifying intervention. However, a party’s mistaken reliance on a trial court’s statement is not “extraordinary cause,” even if the statement is legally erroneous.

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. Substantive Law

#### A. *Arbitration*

- [\*Bair v. Manor Care of Elizabethtown, PA, LLC\*](#), 2015 PA Super 9 (Pa. Super., January 15, 2015)

- **Holding:** In deciding whether there was an arbitration agreement compelling arbitration, “[t]he issue is not whether the arbitration agreement was signed by the party sought to be bound, but whether there was a meeting of the minds, that is, whether the parties agreed in a clear and unmistakable manner to arbitrate their disputes.”

- [\*State Farm Mutual Automobile Insurance Co. v. Dill\*, 2015 PA Super 6 \(Pa. Super. en banc, January 13, 2015\)](#)

- **Holding:** In an arbitration proceeding, a party must object to the partiality of an arbitrator or the inadmissibility of evidence at the first available opportunity. An arbitrator's failure to remove himself from the panel for his brief representation of one party in a related litigation and subsequent withdrawal does not constitute the type of "fraud, misconduct, corruption or other irregularity" that results in "the rendition of an unjust, inequitable or unconscionable award."

#### B. *Class Actions*

- [\*Kern v. Lehigh Valley Hospital, Inc.\*, 2015 PA Super 19 \(Pa. Super., January 28, 2015\)](#)

- **Holding:** A party must establish justifiable reliance in all private claims under the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* Thus, in order to obtain class certification, a party must demonstrate that he and all prospective class members justifiably relied upon the alleged violations of the UTPCPL, and suffered an ascertainable loss as a result of those alleged violations.

#### C. *Evidence - Sidewalk Defects*

- [\*Reinoso v. Heritage Warminster\*, 2015 PA Super 8 \(Pa. Super., January 14, 2015\)](#)

- **Holding:** Whether a sidewalk defect is trivial is not simply a matter of the size or measurement of the defect when there are genuine issues of material fact. A plaintiff may establish genuine issues of material fact based on the surrounding circumstances when plaintiff is an invitee to which a heightened duty of care is owed. In this case, plaintiff presented (1) evidence of a height differential between sidewalk panels, (2) expert testimony that the differential exceeded safety standards, and (3) testimony from the owner of the maintenance company that he considered the defect a tripping hazard and reported it to the land owner.

#### D. *Statutes of Limitation - Limited Tort - Motor Vehicle Financial Responsibility Law*

- [\*Varner-Mort v. Kapfhammer\*, 2015 PA Super 14 \(Pa. Super., January 21, 2015\)](#)

- **Holding:** Pursuant to Section 1705(a)(1)(A) of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S., the statute of limitations in a limited-tort case does not begin to run until the plaintiff knows that he or she suffered from a "serious injury." The issue whether plaintiff suffered a "serious injury" ordinarily must be resolved by the factfinder, unless "the facts are so clear that reasonable minds could not differ" as to when the plaintiff should have been reasonably aware of the injury and its cause. Only under those circumstances may the court determine the issue as a matter of law at the summary judgment stage.

E. *Trial - Evidence - Collateral Source Rule*

- [\*Deeds v. University of Pennsylvania Medical Center\*, 2015 PA Super 21 \(Pa. Super., January 30, 2015\)](#)
  - **Holding:** A trial court violates the collateral source rule, thus justifying a new trial, when it permits a party to inform the jury ~ without issuing a curative instruction ~ that the plaintiff's substantial medical needs were all being attended to at little or no cost because of state and federal education and medical benefits programs.

III. Workers' Compensation

A. *Counsel Fees*

- [\*Mayo v. Workers' Compensation Appeal Board \(Goodman Distribution, Inc.\)\*, No. 683 C.D. 2014 \(Pa. Cmwlth., January 8, 2015\)](#)
  - **Holding:** An attorney discharged before a settlement is reached is not entitled to an additional proportionate share of the contingent fee from the settlement proceeds based on the relative contributions of the attorneys.

B. *Fee Petitions - Jurisdiction*

- [\*Physical Therapy Institute, Inc. v. Bureau of Workers' Compensation Fee Review Hearing Office\*, No. 71 C.D. 2014 \(Pa. Cmwlth., January 16, 2015\)](#)
  - **Holding:** Although the Bureau of Workers' Compensation Fee Review Hearing Office lacks jurisdiction to determine whether an entity is a "provider" of medical services or simply a billing agency, a claimant may file a review or penalty petition to establish the carrier's liability to the provider.

C. *Impairment Rating Evaluations*

- [\*Neff v. Workers' Compensation Appeal Board \(Pennsylvania Game Commission\)\*, No. 130 C.D. 2014 \(Pa. Cmwlth., January 8, 2015\)](#)
  - **Holding:** An Impairment Rating Evaluation under Section 306(a.2)(1) of the Workers' Compensation Act, 77 P.S. § 511.2(1), is valid when the WCJ bases the credibility determinations upon the doctor's demonstrated familiarity with the claimant's medical history, the doctor's clear and logical expression of opinion, the consistency of the doctor's explanations, the corroboration of the doctor's opinions, the lack of any significant qualification or retraction of the doctor's opinions, and the absence of specific medical opinions disputing the doctor's opinions of maximum medical improvement and the percentage of impairment.

D. *Multiple Specific Loss Benefits - Election of Benefits Payment*

□ [\*Arnold v. Workers' Compensation Appeal Board \(Lacour Painting, Inc.\)\*, No. 565 C.D. 2014 \(Pa. Cmwlth., January 28, 2015\)](#)

- **Holding:** Pursuant to Section 306(c)(23) of the Workers' Compensation Act, a claimant who suffers a bilateral loss of arms, feet, legs, or eyes may file a petition with the Workers' Compensation Appeal Board to elect to receive specific loss benefits instead of the default presumption of total disability benefits. However, the determination whether to alter the presumption of total disability benefits is left to the Board, which is to be guided solely by whether the default presumption of total disability or an election of the specific loss benefits provides the "optimum benefit available to a claimant," and that the benefits claimant elects fall within the statutory scheme.

IV. Allocatur Granted

A. *The Pennsylvania Supreme Court has granted an allowance of appeal in the following matters for the issues stated:*

□ [\*Egan v. USI Mid-Atlantic, Inc.\*, Nos. 338 & 339 EAL 2014 \(Pa., January 21, 2015\)](#)

- When this Court held in *Everhart v. PMA Insurance Co.*, 938 A.2d 301 (Pa. 2007), that a waiver is not required for a commercial insured to reject stacked uninsured and underinsured motorist (UM/UIM) coverage, did the Superior Court, as a matter of first impression, commit legal error by *requiring* a waiver for a commercial insured to reject non-stacked UM/ UIM insurance when interpreting a nearly identical provision of the same statute (the Motor Vehicle Financial Responsibility Law)?
- Did Judge Panella correctly find in his dissent that the trial court's unquestionably erroneous jury instruction, that a signed waiver form is required for a commercial insured to reject *stacked* UM/UIM coverage, impermissibly disregarded *Everhart* and unfairly allowed the jury to base liability on conduct regarding a waiver form that was not required for rejection of stacked coverage?
- Did the Superior Court dilute the burden of proof for punitive damages contrary to hornbook law, by holding that a plaintiff need not demonstrate more than an intentional tort to submit the question of punitive damages to the jury?

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