A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH MARCH 31, 2015

PENNSYLVANIA APPELLATE COURT DECISIONS

I. Civil Procedure

A. *Evidence - Admissibility into Evidence of Requests for Admission*

- *Krepps v. Snyder*, 2015 PA Super 61 (Pa. Super., March 24, 2015)
  - **Holding:** A trial court may, in its discretion, decline to permit a party to read "admitted" Requests for Admissions into evidence at trial.

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. *Jury Charges*

- *Krepps v. Snyder*, 2015 PA Super 61 (Pa. Super., March 24, 2015)
  - **Holding:** A trial court is not required to read a particular form of a jury charge to the jury. Rather, it is sufficient if the trial court's charge clearly and accurately explains the relevant law and properly covers the requested point.

C. *Evidence - Experts - Financial Bias*

- *Flenke v. Huntington*, 2015 PA Super 50 (Pa. Super., March 17, 2015)
  - **Holding:** A party may discover evidence to support a reasonable inference that a witness might color or slant testimony in light of the substantial financial incentives involved. However, "a point exists 'beyond which inquiry is prejudicial and too intrusive, and serves only to divert the case into collateral matters.'"

II. Substantive Law

A. *Statute of Limitations - Asbestos Claims*

- *Wygant v. General Electric Co.*, 2015 PA Super 56 (Pa. Super., March 19, 2015)
  - **Holding:** In asbestos-related wrongful death claims, the statute of limitations begins to run at the time that an illness is diagnosed, pursuant to 42 Pa.C.S. § 5524(8).

B. *Motor Vehicle Claims - Limited Tort*

- *Brown v. Trinidad*, 2015 PA Super 46 (Pa. Super., March 9, 2015)
  - **Holding:** The determination whether a person has sustained serious injury and overcome the limited tort threshold under Section 1705(d) of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S., should be made by the jury in all but the clearest of cases.

C. *Pharmaceutical Claims - Preemption*

- *Gurley v. Janssen Pharmaceuticals, Inc.*, 2015 PA Super 49 (Pa. Super., March 16, 2015)
  - **Holding:** Absent "clear evidence" that the FDA would not approve a change to a drug's label, federal law does not preempt a plaintiff's failure-to-warn claim, *i.e.*, a drug manufacturer may comply with both federal and state law by unilaterally strengthening the safety information in its label before receiving the FDA's approval (*citing Wyeth v. Levine*, 555 U.S. 555 (2009)).

D. *Legal Malpractice - Settlements*

- *Silvagni v. Shorr*, 2015 PA Super 62 (Pa. Super., March 27, 2015)
  - **Holding:** In order for a plaintiff to establish a claim for legal malpractice following the settlement of the underlying action, the plaintiff must show that he or she was fraudulently induced to settle the original action.

E. *Medical Negligence - Admissibility of Evidence of Informed Consent*

- *Brady v. Urbas*, No. 74 MAP 2014 (Pa., March 25, 2015)
  - **Holding:** Evidence that a patient affirmatively consented to treatment after being informed of the risks of that treatment is generally irrelevant to a medical malpractice action. Rather, the fact that a patient may have agreed to a procedure in light of the known risks does not make it more or less probable that the physician was negligent.

F. *Unemployment*

- *Oyetayo v. Unemployment Compensation Board of Review*, No. 393 C.D. 2014 (Pa. Cmwlth., March 4, 2015)
  - **Holding:** A claimant's use of work time to engage in personal affairs without authorization is willful misconduct even when it is not prohibited by a specific work rule because it is contrary to reasonable standards of behavior that an employer can expect from its employees. In this case, claimant was terminated for sending personal emails on company time despite prior warnings.

III. Appellate Procedure

A. *Sanctions - Frivolous Appeals*

- *Smith v. Workers' Compensation Appeal Board (Consolidated Freightways, Inc.)*, No. 606 C.D. 2014 (Pa. Cmwlth., March 9, 2015)
  - **Holding:** Under Pa.R.A.P. 2744, an appellate court may impose sanctions – including both costs and counsel fees – for "obdurate and vexatious prosecution of a frivolous appeal." In this case, Claimant filed 17 different petitions over a period of 20 years, and repeatedly appealed adverse decisions.

IV. Workers' Compensation

A. *Service of Claim Petitions*

- *Washington v. Workers' Compensation Appeal Board (National Freight Industries, Inc.)*, No. 1070 C.D. 2014 (Pa. Cmwlth., March 4, 2015)
  - **Holding:** When a Claim Petition is mailed to an incorrect address, it is not untimely simply because it was filed more than 20 days after mailing, *i.e.*, Section 416 of the Workers' Compensation Act, 77 P.S. § 717, does not bar an employer from denying and fully contesting the allegations of the Claim Petition, absent proof the petition was received more than 20 days before the Answer was filed.

B. *Average Weekly Wage Calculation*

- *Anderson v. Workers' Compensation Appeal Board (F.O. Transport and Uninsured Employer Guaranty Fund)*, No. 181 C.D. 2014 (Pa. Cmwlth., March 10, 2015)
  - **Holding:** When the Workers' Compensation Act does not address a method of calculating a worker's average weekly wage for a particular situation, the average weekly wage should fairly assess a claimant's earnings when he or she was actually working and reasonably reflect the economic reality of a claimant's recent pre-injury earning experience, with some benefit of the doubt afforded to the claimant in the assessment.

C. *Waiver of Subrogation Rights*

- *Fortwangler v. Workers' Compensation Appeal Board (Quest Diagnostics and Travelers Property and Casualty Company)*, No. 1085 C.D. 2014 (Pa. Cmwlth., March 13, 2015)
  - **Holding:** In order for an employer to waive its rights to future subrogation under Section 319 of the Workers' Compensation Act, 77 P.S. § 671, it must expressly state its intention to relinquish those rights.

D. *Wage Losses – Occupational Exposure*

- *Little v. Workers' Compensation Appeal Board (Select Specialty Hospital)*, No. 1401 C.D. 2014 (Pa. Cmwlth., March 25, 2015)
  - **Holding:** A claimant is entitled to indemnity benefits when cumulative exposure to a workplace condition caused claimant to develop an injury that prevents the claimant from returning to the pre-injury job. In this case, claimant developed occupational asthma after being exposed to a chemical. Because claimant could not return to her pre-injury position because of the condition, claimant was only required to show that the aggravation arose in the course of employment, and that an aggravation would likely recur if claimant returned to the pre-injury job.

V. Rules - Amendments

A. *Pennsylvania Rules of Civil Procedure*

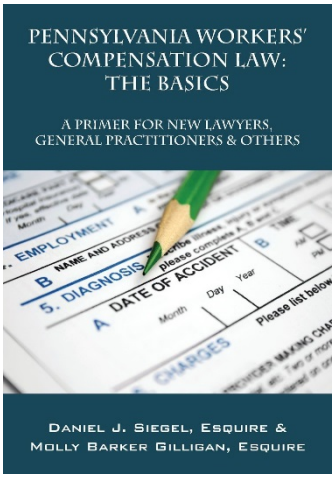
- *Rule 229* (Effective April 8, 2015)
  - **Grounds for Entering a Discontinuance as to Less than All Defendants**

    Under amended Rule 229, a discontinuance remains the exclusive method of voluntarily terminating an action, in whole or in part, by the plaintiff before commencement of trial. A discontinuance may not be entered as to less than all defendants except upon: (1) Written consent of all parties, or (2) Leave of court upon motion of any plaintiff or any defendant for whom plaintiff has stipulated in writing to the discontinuance.

VI. Federal Court Opinions

A. *Unemployment - Collateral Estoppel of Findings*

- *Mathis v. Christian Heating and Air Conditioning, Inc.*, No. 13-cv-3740 (E.D. Pa. March 12, 2015)
  - **Holding:** Pursuant to Section 829 of the Unemployment Compensation Law, 43 P.S., no finding of fact or law, judgment, conclusion or final order may be deemed to be conclusive or binding in any separate or subsequent action or proceeding in another forum.



The Pennsylvania Workers' Compensation Book

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

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