

A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH JUNE 30, 2015

PENNSYLVANIA APPELLATE COURT DECISIONS

I. Civil Procedure

A. Confidentiality/Attorney-Client Privilege

□ [Yocabet v. UPMC Presbyterian, 2015 PA Super 132 \(Pa.Super., June 5, 2015\)](#)

- **Holding 1:** The confidentiality provisions of the Peer Review Protection Act, 63 P.S. §§ 425.1-425.4 do not apply to a Department of Health or Center for Medicare Services investigation because the agencies are not professional health care providers and did not conduct peer review.
- **Holding 2:** The board of directors of a corporation, in addition to its officers, may act on its behalf for purposes of application of the attorney-client privilege. The attorney-client privilege operates in a two-way fashion to protect confidential client-to-attorney or attorney-to-client communications made for the purposes of obtaining or providing legal advice. [Read the Concurring & Dissenting 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!

B. Service of Process

□ [Trexler v. McDonald's Corp., 2015 PA Super 131 \(Pa.Super., June 3, 2015\)](#)

- **Holding:** Service of process is defective when the person served is not an employee of the defendant and is not authorized to accept service on behalf of the defendant. In this case, plaintiff served the employee of a McDonald's franchisee, which does not constitute service upon the franchiser.

C. Trial - Post-Trial Motions

□ [Hutto v. Phila. Parking Authority, No. 2176 C.D. 2014 \(Pa.Cmwlt., June 9, 2015\)](#)

- **Holding:** On appeal from an order denying post-trial motions, an appellate court may consider only whether the trial court's findings are supported by substantial evidence. The factfinder is responsible for weighing evidence, not the appellate court.

II. Substantive Law

A. *Negligence - Jerk & Jolt Doctrine*

- [*Bost-Pearson v. Southeastern Pennsylvania Transportation Authority*, No. 910 C.D. 2014 \(Pa.Cmwlt., June 5, 2015\)](#)

- **Holding:** Under the "jerk & jolt doctrine," which applies to public transit vehicles, testimony that the vehicle jerked suddenly or violently is not sufficient, in and of itself, to establish negligence. A plaintiff must show additional facts and circumstances from which it clearly appears that the movement of the vehicle was so unusual and extraordinary as to be beyond a passenger's reasonable anticipation. Nothing short of evidence that the allegedly unusual movement of the vehicle had an extraordinarily disturbing effect upon other passengers, or evidence of an accident, will suffice.

B. *Valet Service Liability*

- [*Moranko v. Downs Racing LP*, 2015 PA Super 137 \(Pa.Super. *en banc*, June 10, 2015\)](#)

- **Holding:** UA valet service owes no duty when returning an automobile to an allegedly intoxicated person. Attorneys handling dram shop cases should read this case because of its unique facts and the argument raised by the dissent. [Read the Dissent.](#)

III. Workers' Compensation

A. *Impairment Rating Evaluations*

- [*The Village at Palmerton Assisted Living v. Workers' Compensation Appeal Board \(Kilgallon\)*, No. 334 C.D. 2014 \(Pa.Cmwlt., June 12, 2015\)](#)

- **Holding:** Under Section 302(a.2)(1) of the Workers' Compensation Act, 77 P.S. § 511.2(1), the timeliness of a request for an Impairment Rating Evaluation is determined by the date on which the employer requests the evaluation, not the date the claimant attends the IRE. Moreover, timeliness is determined based solely upon the date upon which the employer files an LIBC-766 (Request for Designation of a Physician to Perform an IRE), not the date on which the Bureau designates the IRE physician.

- [*Duffey v. Workers' Compensation Appeal Board \(Trola-Dyne, Inc.\)*, No. 1840 C.D. 2014 \(Pa.Cmwlt., June 26, 2015\)](#)

- **Holding:** An Impairment Rating Evaluation that addresses injuries that were identified as compensable at the time the IRE was performed is not invalid if it is later determined that the claimant sustained additional work injuries.

B. *Multiple Dates of Injury - Reinstatement*

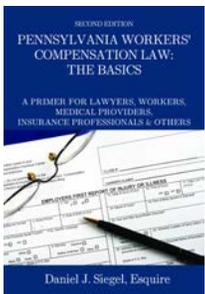
- [*Kane v. Workers' Compensation Appeal Board \(Glenshaw Glass\)*, No. 1172 C.D. 2013 \(Pa.Cmwlt., June 25, 2015\)](#)

- **Holding:** A claimant who suffers two totally disabling injuries, either of which would have entitled him to total disability benefits, cannot receive benefits for both at the same time. Rather, claimant must "choose one injury" and receive compensation for that

totally disabling injury in lieu of receiving compensation for the other totally disabling injury at that time. Should circumstances change, however, such that a loss in earning power from that injury for which the claimant is receiving benefits resolves or lessens, claimant may seek reinstatement under Section 413(a) of the Act, 77 P.S. § 772, within three years after the date of the most recent payment of compensation received in lieu of compensation for the other injury, to which he otherwise would have been entitled.

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