

# A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH JULY 31, 2015

## PENNSYLVANIA APPELLATE COURT DECISIONS

### I. Causes of Action

#### A. *Negligent Misrepresentation*

- [\*Gongloff Contracting, L.L.C., v. L. Robert Kimball & Assocs., 2015 PA Super 149 \(Pa.Super., July 8, 2015\)\*](#)

- **Holding:** Recovery in an action for negligent misrepresentation under Section 552 of *Restatement of Torts (Second)* is permissible in cases where one in the business of supplying information, such as an architect, negligently supplies such information when he knows that third parties will likely use or rely on the information. In addition, a Complaint for negligent misrepresentation must also plead with some specificity that the information provided included false information.

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

### II. Insurance Law

#### A. *Consent to Settle*

- [\*The Babcock & Wilcox Co. v. American Nuclear Insurers, No. 2 WAP 2014 \(Pa., July 21, 2015\)\*](#)

- **Holding:** An insured does not forfeit the right to insurance coverage when it settles a lawsuit without an insurer's consent, when the insurer has defended the lawsuit subject to a reservation of rights. Justice Eakin filed a [Concurring and Dissenting Opinion](#), in which Chief Justice Saylor Joined.

### III. Workers' Compensation

#### A. Impairment Rating Evaluations

- [Logue v. Workers' Compensation Appeal Board \(Commonwealth of Pennsylvania\), No. 1882 C.D. 2013 \(Pa.Cmwlt., July 14, 2015\)](#)
  - **Holding:** An employer is not required to seek an agreement with a claimant as to the identity of an impairment rating evaluation (IRE) physician under Section 306(a.2) of the Workers' Compensation Act, 77 P.S. § 511.2(1), before seeking the designation of a physician from the Bureau of Workers' Compensation.

#### B. Interest Calculations

- [Tobler v. Workers' Compensation Appeal Board \(Verizon Pennsylvania, Inc.\), No. 2211 C.D. 2014 \(Pa.Cmwlt., July 9, 2015\)](#)
  - **Holding:** Interest on an award of past due indemnity benefits is calculated on a simple interest basis, not on a compound interest basis under Section 406.1(a) of the Workers' Compensation Act, 77 P.S. § 717.1(a), which provides that "Interest shall accrue on all due and unpaid compensation at the rate of ten percentum per annum."

#### C. Course & Scope – Furthering Employer's Interests

- [Pipeline Systems, Inc. v. Workers' Compensation Appeal Board \(Pounds\), No. 1577 C.D. 2014 \(Pa.Cmwlt., July 7, 2015\)](#)
  - **Holding:** An employee is within the course and scope of employment who are injured when responding to emergency situations. This case provides an analysis of Section 601(a)(10)(i)-(ii) of the Workers' Compensation Act, 77 P.S. § 1031(a)(10)(i)-(ii), which was enacted in 2003 to provide workers' compensation benefits to an employee who, while in the course and scope of employment, goes to the aid of a person and suffers injury or death as a direct result of (i) preventing the commission of a crime, lawfully apprehending a person reasonably suspected of having committed a crime or aiding the victim of a crime; or, (ii) rendering emergency care, first aid or rescue at the scene of an emergency.

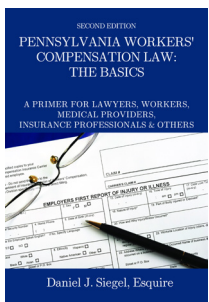
#### D. Statutory Offsets

- [Gelvin v. Workers' Compensation Appeal Board \(Pennsylvania State Police\), No. 1503 C.D. 2014 \(Pa.Cmwlt., July 13, 2015\)](#)
  - **Holding:** An employer that regularly notifies a claimant of the obligation to report the receipt of pension and other benefits under Section 204(a) of the Workers' Compensation Act, 77 P.S. § 71(a), may recoup any overpayment retroactively.

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