

A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH SEPTEMBER 4, 2015

PENNSYLVANIA APPELLATE COURT DECISIONS

I. Civil Litigation

A. Arbitration Clauses - Enforceability

- [Washburn v. Northern Health Facilities, Inc., 2015 PA Super 168 \(Pa.Super., August 7, 2015\)](#)

- **Holding:** An arbitration/alternative dispute resolution agreement is not enforceable unless the party seeking to enforce the agreement demonstrates an agency relationship. An agency relationship may not be inferred from mere relationship or family ties unattended by conditions, acts or conduct clearly implying an agency.

- [Provenzano v. Ohio Valley General Hospital, 2015 PA Super 179 \(Pa.Super., Aug. 26, 2015\)](#)

- **Holding:** An arbitration provision is enforceable even if it is broadly drafted, *i.e.*, it contains language that encompasses all disputes that relate to the contractual obligations, and generally includes all claims arising from the contract, regardless whether they sound in tort or in contract. In the absence of any express provision excluding a particular grievance from arbitration, only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail.

B. Peer Review - Privilege

- [Venosh v. Henzes, 2015 PA Super 169 \(Pa.Super., August 7, 2015\)](#)

- **Holding:** An insurer's quality of care review is not protected from discovery in a medical malpractice action by the Pennsylvania Peer Review Protection Act, 63 P.S. § 425.1, *et seq.*

C. Pharmaceuticals/Products Liability

- [Czimmer v. Henzes, 2015 PA Super 169 \(Pa.Super., August 7, 2015\)](#)

- **Holding:** Federal law does not preempt a state law failure to warn claim because the manufacturer is responsible for the accuracy and adequacy of its label.

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!

D. *Medical Malpractice - Civil Liability*

- [*K.H. v. Kumar*, 2015 PA Super 177 \(Pa.Super., August 25, 2015\)](#)
 - **Holding:** The lack of an express statutory civil remedy under the Child Protective Services Law (CPSL), 23 Pa.C.S. § 6301, *et seq.*, does not preclude a common law remedy in tort for harms sustained because of child abuse when a physician has failed to report to the government authorities designated by the CPSL reasonable suspicions that a child is a victim of abuse.

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II. *Workers' Compensation*

A. *Uninsured Employer Guaranty Fund*

- [*Lozado v. Workers' Compensation Appeal Board \(Dependable Concrete Work and UEGF\)*, No. 21 C.D. 2014 \(Pa.Cmwlth., August 5, 2015\)](#)
 - **Holding 1:** A claim petition against the Uninsured Employer Guaranty Fund (UEGF) is not barred by Section 305(d) of the Workers' Compensation Act, 77 P.S. § 501(d), when, after learning that an employer is uninsured, a claimant preserves a civil remedy by filing a "savings action" against an uninsured employer.
 - **Holding 2:** A claimant's failure to give timely notice to the UEGF that his or her employer is uninsured does not act as a complete bar to a claim against the UEGF. Rather, the failure to provide notice under Section 1603(d) of the Workers' Compensation Act, 77 P.S. § 2703(d), delays the provision of compensation to the date notice is given.

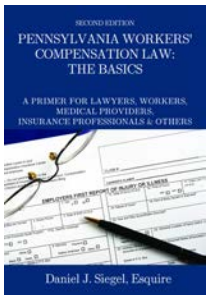
III. *Allocatur Granted*

A. *The Pennsylvania Supreme Court has granted allowance of appeal on the following matter for the issue stated:*

- [*IA Construction Corp. and Liberty Mutual Insurance Co. Workers' Compensation Appeal Board \(Rhodes\)*, No. 112 WAP 2015 \(Pa., August 26, 2015\)](#)
 - **Issue:** Whether the Commonwealth Court overstepped its appellate function in making credibility judgments which is the sole function of the Workers' Compensation Judge?

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