

# A Summary of Recent Pennsylvania Appellate Court Decisions By Daniel J. Siegel, Esquire

LAW OFFICES OF DANIEL J. SIEGEL, LLC

66 West Eagle Road • Suite 1 • Havertown, PA 19083-1425  
(610) 446-3457 • Fax (484) 636-3993  
E-mail [dsiegel@danieljsiegel.com](mailto:dsiegel@danieljsiegel.com)

REPORTING DECISIONS THROUGH SEPTEMBER 30, 2015

## PENNSYLVANIA APPELLATE COURT DECISIONS

### I. Substantive Law

#### A. Agency

- [Wisler v. Manor Care of Lancaster PA, LLC, 2015 PA Super 189 \(September 8, 2015\)](#)

➤ **Holding:** An agency relationship may be created by (1) express authority, (2) implied authority, (3) apparent authority and/or (4) authority by estoppel. Thus, a party seeking to enforce an arbitration agreement signed by an agent on behalf of the principal must ascertain the scope of the agent's authority when the agreement is signed or produce affirmative evidence of the authority, either express or implied.

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. Fiduciary Duty/Confidential Relationship

- [Yenchi v. Ameriprise Financial, Inc., 2015 PA Super 195 \(September 15, 2015\)](#)

➤ **Holding:** Although the purchase of insurance is considered an arm's length transaction, in which the insurer does not have a fiduciary duty, a confidential relationship may nevertheless exist if the parties do not deal on equal terms and there is instead an overmastering influence on one side, or a weakness, dependence or trust, justifiably reposed, on the other side. Thus, a party's position as a financial advisor may be sufficient by itself to establish a confidential relationship.

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### C. *Medical Malpractice*

□ [\*Green v. Pennsylvania Hospital\*, No. 36 EAP 2014 \(Pa., September 3, 2015\)](#)

- **Holding:** A hospital may be liable under the theory of ostensible agency under Section 516 of the MCARE Act, 40 P.S. § 1303.516(a)(1), for the negligence of an independent contractor physician if the plaintiff can establish, and a jury finds, that a reasonably prudent person in the patient's position would be justified in the belief that the care in question was being rendered by the hospital or its agents.

### D. *Products Liability*

□ [\*Barton v. Lowe's Home Centers, Inc.\*, No. 2015 PA Super 203 \(September 24, 2015\)](#)

- **Holding:** A Complaint sets forth a cause of action for strict liability under Section 402A of the *Restatement (Second) of Torts* if it avers that: (1) the product was defective, (2) the defect existed when the product left the defendant's hands, and (3) the defect caused the harm. A plaintiff is not required to rule out all other possible causes of harm in the Complaint; the plaintiff need only allege a cause (or causes) of harm for which the defendant is liable under the law. Defendants may challenge the sufficiency and weight of the evidence at trial or by filing a motion for summary judgment .

## II. Workers' Compensation

### A. *IRE Procedure is Unconstitutional*

□ [\*Protz v. Workers' Compensation Appeal Board \(Derry Area School District\)\*, No. 1024 C.D. 2014 \(Pa.Cmwlt. \*en banc\*, September 18, 2015\)](#)

- **Holding:** The use of the 5<sup>th</sup> and 6<sup>th</sup> Editions of the *AMA Guides to the Evaluation of Permanent Impairments* to determine an injured worker's level of impairment under the Workers' Compensation Act is an unconstitutional delegation of legislative authority. Consequently, Impairment Rating Evaluations performed under Section 306(a.2) of the Workers' Compensation Act, 77 P.S. 511.2, must utilize the 4<sup>th</sup> Edition of the *AMA Guides*, *i.e.*, the latest edition approved by the General Assembly.

*Our office has been raising this issue in the Commonwealth Court and other venues on behalf of our clients and on behalf of our law firm clients for many years.*

### B. *Employment Contract Choice of Law*

□ [\*Watt v. Workers' Compensation Appeal Board \(Boyd Brothers Transportation\)\*, No. 53 C.D. 2015 \(Pa.Cmwlt., September 15, 2015\)](#)

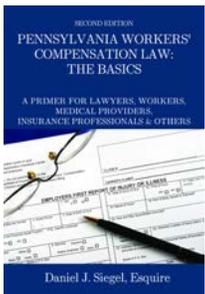
- **Holding:** A worker's employment is not principally localized in Pennsylvania under Section 305.2(d)(5) of the Workers' Compensation Act, 77 P.S. § 411.2(a)(1), when, although domiciled in Pennsylvania, (1) he signed an agreement that his employment was subject to the workers' compensation law of Alabama, (2) the work injury occurred in New Jersey, and (3) he did not spend a substantial part of his working time in Pennsylvania.

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