

A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH NOVEMBER 30, 2015

PENNSYLVANIA APPELLATE COURT DECISIONS

I. Civil Procedure

A. *Subject Matter Jurisdiction*

- [Roman v. McGuire Memorial, 2015 PA Super 232 \(November 9, 2015\)](#)

➤ **Holding:** Because subject matter jurisdiction is non-waivable and can be raised by a court *sua sponte*, or by a party at any time, a defendant's failure to file a post-trial motion does not preclude it from raising the propriety of subject matter at any time during the ensuing proceedings.

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. *Timeliness of Constitutional Challenge*

- [Sernovitz v. Dershaw, 123 MAP 2014 \(Pa., November 18, 2015\)](#)

➤ **Holding:** Even though Act 47 of 1988 contains more than one subject, the substantially belated nature of the challenge, 22 years after enactment, renders the legislation immune from attack on that basis.

II. Substantive Law

A. *Arbitration Agreements*

- [MacPherson v. The Magee Memorial Hosp. for Convalescence, 2015 PA Super 248 \(Pa. Super. en banc, November 25, 2015\)](#)

➤ **Holding:** Courts should generally apply state-law principles, while giving due regard to the federal policy favoring arbitration, when determining whether there is a valid agreement to arbitrate. Thus, an arbitration agreement is valid when (1) a party to the agreement suffers from numerous physical ailments, but is alert as to person, place, and time, (2) the provisions of the agreement are neutral, (3) the agreement is voluntary, and (4) the forum-selection clause fails, but it is determined not to be an integral part of the agreement.

B. *Costs - Recovery After Trial*

- [*Ely v. Susquehanna Aquacultures, Inc., 2015 PA Super 247 \(November 25, 2015\)*](#)
 - **Holding:** Absent specific statutory authority to the contrary, party may only recover record costs (*e.g.*, filing fees), not actual costs (*e.g.*, transcript costs or witness fees).

C. *Covenants Not to Compete*

- [*Socko v. Mid-Atlantic Systems of CPA, Inc., \(Pa., November 18, 2015\)*](#)
 - **Holding:** Covenants not to compete entered into after the commencement of employment must be accompanied by new and valuable consideration, *e.g.*, a promotion or increase in salary. Chief Justice Saylor filed a [concurring opinion](#), and Justice Eakin filed a [dissenting opinion](#).

D. *Jury Discretion*

- [*Ely v. Susquehanna Aquacultures, Inc., 2015 PA Super 247 \(November 25, 2015\)*](#)
 - **Holding:** Juries may render a compromise verdict; even if a jury renders a verdict for a lesser amount, the plaintiff is still entitled to prejudgment interest.

III. *Workers' Compensation*

A. *Amendment of Description of Injury*

- [*Walter v. WCAB \(Evangelical Community Hospital\), No. 139 C.D. 2015 \(Pa. Cmwlth., November 23, 2015\)*](#)
 - **Holding:** A Workers' Compensation Judge may amend a Notice of Compensation Payable under Section 413(a) of the Workers' Compensation Act, 77 P.S. § 771, during litigation of any petition if evidence shows the NCP is materially incorrect.

B. *Notice - Repetitive Trauma*

- [*Gahring v. WCAB \(R and R Builders and Stoudt's Brewing Co.\), No. 534 C.D. 2015 \(Pa. Cmwlth., November 23, 2015\)*](#)
 - **Holding:** A claimant's notice to his employer that his illness or injury was related to his increased work hours constitutes sufficient notice of a repetitive trauma injury under the Workers' Compensation Act. Thus, a claimant's statement to his employer that his increased hours of work are causing him illness or injury is sufficient to put the employer on notice that the claimant may have a work-related injury.

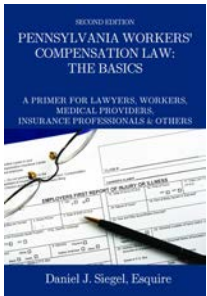
C. *Withdrawal from the Workforce*

- [*Chesik v. WCAB \(Department of Military and Veterans' Affairs\), No. 758 C.D. 2015 \(Pa. Cmwlth., November 9, 2015\)*](#)
 - **Holding:** A claimant's permanent relocation outside the Commonwealth is, by itself, insufficient evidence of the claimant's self-removal from the workforce to justify the suspension of benefits. Likewise, a claimant's receipt of her disability pension cannot be the sole basis for the suspension of benefits. Rather, there must

be additional evidence of the claimant's determination to permanently remove herself from the workforce in order to support the suspension of benefits.

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