

# 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@danielsiegel.com](mailto:dsiegel@danielsiegel.com)

REPORTING DECISIONS THROUGH JANUARY 6, 2016

## PENNSYLVANIA APPELLATE COURT DECISIONS

### I. Civil Procedure

#### A. *Forum Non Conveniens*

- [\*Fessler v. Watchtower Bible and Tract Society of New York, Inc.\*, 2015 PA Super 274 \(Dec. 30, 2015\)](#)

➤ **Holding:** A trial court abuses its discretion by granting a motion to transfer venue under Pa.R.Civ.P. 1006(d)(1) based upon *forum non conveniens* unless the defendant demonstrates that the plaintiff's chosen forum would be oppressive to the defendant. A motion for transfer of venue must be in good faith and on a timely basis: (1) offer evidence that plaintiff's chosen forum is "oppressive or vexatious;" (2) demonstrate more than "mere inconvenience;" (3) show the proposed forum will enhance convenience to witnesses ; and, (4) will not cause an unreasonable delay.

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!

### II. Substantive Law

#### A. *Attorney's Fees - Quantum Meruit*

- [\*Angino & Rovner v. Jeffrey R. Lessin & Assocs.\*, 2016 PA Super 2, \(Jan. 5, 2016\)](#)

➤ **Holding:** When a client terminates an attorney, engages the services of other counsel, and subsequently settles the case, the discharged lawyer may recover fees only on a theory of *quantum meruit*, based upon the reasonable value of the work performed, prior to discharge - regardless of a termination provision in a contingency fee agreement. This 2 to 1 decision ([click here to read the dissent](#)) is very broad, and may impact numerous other decisions addressing this issue. [\*My PBI book, Changing Law Firms: Ethical Guidance for PA Law Firms & Attorneys, contains a discussion of the law regarding contingent fees and attorneys who change law firms.\*](#)

### B. *Motor Vehicle Insurance - Peer Review*

□ [\*Doctor's Choice Physical Medicine & Rehabilitation Ctr., P.C. v. Travelers Personal Ins. Co.\*, 146 MAP 2014 \(Pa., Dec. 21, 2015\)](#)

- **Holding:** Under Section 1797 of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. § 1797, a medical provider is only entitled to an award of attorney's fees when the insurer has not challenged the reasonableness or necessity of treatment before a Peer Review Organization. Because Section 1795(b)(4) prohibits fee-shifting, however, "there can be no recovery of attorneys' fees from an adverse party in litigation, absent express statutory authority, clear agreement by the parties, or some other established exception." See *Herd Chiropractic Clinic v. State Farm Mutual Automobile Ins. Co.*, 64 A.3d 438 (Pa. 2013).

### C. *Wrongful Death - Releases*

□ [\*Valentino v. Philadelphia Triathlon, LLC\*, 2015 PA Super 273 \(Dec. 30, 2015\)](#)

- **Holding:** A waiver signed by a decedent does not bind his beneficiaries/non-signatories or preclude them from exercising their right to an independent cause of action under the Wrongful Death Act, 42 Pa.C.S.A. § 8301, despite the execution of a release by the decedent, because wrongful death claims are not derivative of decedents' rights under Pennsylvania law.

## III. *Workers' Compensation*

### A. *Occupational Diseases Claim - Causal Presumption*

□ [\*Swigart v. Workers' Compensation Appeal Board \(City of Williamsport\)\*, No. 493 C.D. 2015 \(Pa.Cmwlt., Dec. 23, 2015\)](#)

- **Holding:** The "occupational causal presumption" given to firefighters under Section 301(e) of the Workers' Compensation Act, 77 P.S. § 413 is not conclusive. Thus, while experts must consider the causal links between occupational hazards and diseases such as lung disease, the Act does not preclude an expert from attributing the disease to non-occupational factors, such as pre-existing bronchitis and smoking.

### B. *Subrogation - Uninsured Motorist Benefits*

□ [\*Davis v. Workers' Compensation Appeal Board \(PA Social Services Union\)\*, No. 216 C.D. 2015 \(Pa.Cmwlt., Dec. 30, 2015\)](#)

- **Holding:** An employer is entitled to subrogation under Section 319 of the Workers' Compensation Act, 77 P.S. § 671, against an employee's recovery of uninsured motorist benefits through the policy of a co-employee, *i.e.*, when the insurance is purchased by someone other than the claimant.

C. *Subrogation: Medical Malpractice*

☐ [\*Protz v. Workers' Compensation Appeal Board \(Protz\)\*](#), No. 402 C.D. 2015  
[\(Pa.Cmwlt., Jan. 6, 2016\)](#)

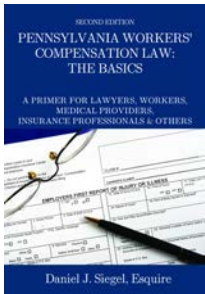
- Under the Medicare Care Availability and Reduction of Error Act (MCARE), 40 P.S. § 1303.508(c), an employer is precluded from subrogating against medical malpractice proceeds for medical expenses or earnings losses incurred before trial. An employer is entitled to subrogation against *future/post-trial* medical expenses and wage losses.

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