

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

REPORTING DECISIONS THROUGH MARCH 31, 2016

PENNSYLVANIA APPELLATE COURT DECISIONS

I. Civil Procedure

A. *Medical Examinations*

□ [*Shearer v. Hafer*, 2016 PA Super 61 \(March 9, 2016\)](#)

- **Holding:** A litigant does not have an absolute right to the presence of counsel during an independent neuropsychological evaluation under Pa.R.Civ.P. 4010. Rather, a trial court may issue a protective order prohibiting the presence of counsel during the standardized test portion of the evaluation under Pa.R.Civ.P. 4012. In a matter of first impression, the Superior Court held that, absent any express intent of the legislature “to curb the court’s power under Rule 4012 to limit the protections provided under Rule 4010,” a court’s power to issue protective orders “expressly encompasses the ability to limit the number of individuals present during *all discovery*, including during psychological examinations.”

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. *MCARE Act - Expert Testimony*

□ [*Price v. Catanzariti*, 2016 PA Super 74 \(March 30, 2016\)](#)

- **Holding:** The heightened standard for admission of expert medical testimony under Section 512 of the MCARE Act, 40 P.S. § 1303.512, does not apply to a claim against a non-physician defendant, even in cases in which a Certificate of Merit is required under Pa.R.Civ.P. 1042.3.

□ [*Supreme Court Amends Pa.R.Civ.P. 1042.3 \(“Certificate of Merit”\)*](#)

- The Court has amended the Notes to Pa.R.Civ.P. 1042.3 (effective immediately) to “ensure that a claim of vicarious liability made against a defendant is supported by a certificate of merit” and to affirm that a Certificate of Merit is not required in claims against non-defendant licensed professionals.

C. Evidence - Intoxication

□ [Coughlin v. Massaquoi, 2016 PA Super 70 \(March 21, 2016\)](#)

- **Holding:** A jury may infer that a person was impaired, absent eyewitness testimony to support an inference the person had been drinking and was heavily intoxicated, based upon a BAC of .313, when there is expert witness testimony to corroborate the evidence.

II. Insurance Law

A. Motor Vehicle Insurance

□ [Toner v. The Travelers Home & Marine Ins. Co., 2016 PA Super 69 \(March 21, 2016\)](#)

- **Holding:** An insurance company is not required under Section 1738 of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. § 1738, to provide a new waiver of stacking of uninsured/underinsured benefits when vehicles are added to an insurance policy.

III. Workers' Compensation

A. Independent Contractor

□ [Edwards v. WCAB \(Epicure Home Care, Inc.\), 1106 C.D. 2015 \(Pa.Cmwlt. March 10, 2016\)](#)

- **Holding:** Although no single factor is dispositive when determining whether a claimant is an employee or an independent contractor, control over the work to be completed and the manner in which it is to be performed are primary factors in determining employee status. Although factors indicative of an employer-employee relationship existed here, the Commonwealth Court was persuaded by its holding in *Fletcher v. WCAB (Saia d/b/a Visiting Angels)*, 1664 C.D. 2009, 2010 WL 9513248 (Pa.Cmwlt. March 26, 2010), an unreported case that cannot be used as binding precedent pursuant to 210 Pa. Code. § 69.414.

B. Compromise & Release Agreements

□ [Schatzberg v. WCAB \(Bemis Company, Inc.\), 1914 C.D. 2015 \(Pa.Cmwlt. March 30, 2016\)](#)

- **Holding:** A Compromise & Release Agreement, which does not admit liability and specifically states that the employer is not required to pay any past or future medical expenses, is valid, and an unpaid medical provider has no recourse against the employer.

C. Notices of Temporary Compensation Payable

□ [Church v. WCAB \(Cook\), 1068 C.D. 2015 \(Pa.Cmwlt. March 18, 2016\)](#)

- **Holding:** An employer seeking to amend a Notice of Temporary Compensation Payable under 34 Pa. Code § 121.17 may file an Amended Notice, and is not required to issue a Notice Stopping Temporary Compensation before issuing the amended document.

D. Challenge Petitions - Timeliness

□ [Dixon v. WCAB \(Medrad Inc.\), 1700 C.D. 2014 \(Pa.Cmwlt. March 30, 2016\)](#)

- **Holding:** A Workers' Compensation Judge must hold a special supersedeas hearing within 21 days of an employee's filing a Challenge to a Notice of Modification under Section 413(c)(1) of the Act, 77 P.S. § 774.2(1). If the WCJ does not hold a hearing within 21 days, or fails to issue a written order approving suspension/modification of benefits within 14 days of the hearing, an insurer must reinstate claimant's benefits under 34 Pa. Code § 131.50a.

IV. Allocatur Orders

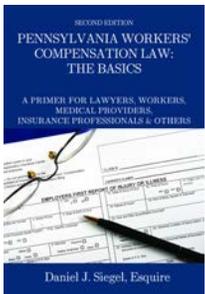
The Supreme Court has granted allowance of appeal in the following matters on the issues stated:

- [*Protz v. WCAB \(Derry Area School District\)*, 416 WAL 2015 & 412 WAL 2015 \(Pa. March 22, 2016\)](#)
 - Whether the Commonwealth Court - after properly determining that Section 306(a.2) of the Workers' Compensation Act was unconstitutional - erred in remanding the case to the Workers' Compensation Judge with instructions to apply the Fourth Edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* when neither Section 306(a.2) nor any other section of the Act ever references the Fourth Edition and its usage was not sanctioned by the Pennsylvania Legislature.
 - Does Section 306(a.2) of the Pennsylvania Workers' Compensation Act unconstitutionally delegate the State Legislature's lawmaking authority in violation of Article II, Section 1 of the Pennsylvania Constitution by incorporating the most recent edition of the AMA *Guides to the Evaluation of Permanent Impairment*?
- [*SEPTA v. City of Philadelphia*, 524 EAL 2015 \(Pa. March 15, 2016\)](#)
 - By delegating General Assembly's power to enact local anti-discrimination laws to Philadelphia general police intent to exempt SEPTA from complying with those laws, leaving thousands of Philadelphia passengers and employees without a remedy against various forms of discrimination?
 - Did the General Assembly, when it gave Philadelphia general police powers as expansive as [those] of the General Assembly and specific authority to enact local anti-discrimination laws, intend to exempt SEPTA from compliance with those laws, when the consequence of *compliance* would not materially disrupt SEPTA's core transportation function and the consequence of *non-compliance* would leave hundreds of thousands of Philadelphia passengers and employees without a remedy against many forms of discrimination?
- [*Shinal v. Toms*, 897 MAL 2015 \(Pa. March 23, 2016\)](#)
 - Is the plaintiff in a civil trial entitled to a for cause strike of prospective jurors with close familial, situational or financial relationships with the defendant's employer, whether direct or indirect, when the claimed negligence of the defendant occurred in the course and scope of the defendant's employment?
 - Can a panel of the Superior Court create new law and require counsel in a civil trial to motion the court to allow an additional peremptory challenge each time a for cause challenge of a potential juror is denied and/or object continuously after the initial motion to strike the potential juror for cause is denied in order to preserve the issue for appeal?
 - May a court in a medical malpractice trial alleging lack of informed consent by the surgeon ignore Pennsylvania common law and the Medical Care Availability and Reduction of Error Act, 40 P.S. §§ 1303.101, *et seq.*, and charge the jury that information received from the non-physician "qualified staff" at the hospital can be considered in deciding whether the surgeon obtained the informed consent of the patient for surgery.

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