

**A Summary of Recent
Pennsylvania Appellate Court Decisions
& Other Items of Interest
By Daniel J. Siegel, Esquire**

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REPORTING DECISIONS THROUGH JUNE 30, 2016

PENNSYLVANIA APPELLATE COURT DECISIONS

I. Civil Procedure

A. Dragonetti Actions - Damages

- [Miller v. St. Luke's Univ. Health Network, 2016 PA Super 134 \(June 24, 2016\)](#)

- **Holding:** Damages are not presumed under the Dragonetti Act, 42 Pa.C.S.A. § 8351, *et seq.* A plaintiff is required to prove that he or she suffered actual damages.

B. Liability - Dual Capacity Doctrine

- [Neidert v. Charlie, 2016 PA Super 138 \(June 29, 2016\)](#)

- **Holding:** Although the Workers' Compensation Act bars lawsuits against an employer, Pennsylvania courts recognize a "dual capacity" exception. Under this doctrine, an employer normally shielded from tort liability may become liable in tort if the employer occupies, in addition to its capacity as employer, a second capacity that confers obligations independent of those imposed on the party as an employer.

C. Non Pros - Relief From (Timeliness)

- [Horwath v. Digrazio, 2016 PA Super 133 \(June 24, 2016\)](#)

- **Holding:** There is no *per se* rule that requires a Petition to Open or Strike a Judgment of Non Pros to be filed within ten days in order to be considered "timely." Rather, pursuant to Pa.R.C.P. 273.3(b), a Petition filed within ten days is presumed to be timely. Petitions filed after that date are subject to the traditional requirements for filing petitions to open.

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. Workers' Compensation

A. Attorney's Fees - Medical Bills

☐ [Righter v. WCAB \(Righters Parking\), No. 1356 C.D. 2015 \(Pa. Cmwlth. June 14, 2016\)](#)

- **Holding:** While 20% contingency fees are *per se* reasonable in a workers' compensation claim for indemnity benefits, a Workers' Compensation Judge must conduct a separate analysis of medical bill payments, including a determination whether claimant and counsel intended in the fee agreement for counsel to receive a percentage of the medical benefits.

B. Nunc Pro Tunc Review

☐ [Dep't of Labor & Indus. v. WCAB \(Gerretz\), No. 445 C.D. 2015 \(Pa. Cmwlth. June 14, 2016\)](#)

- **Holding:** An order striking a joinder petition is a final appealable order. However, because the WCJ in this case explicitly identified the order as interlocutory, the Court concluded that the carrier was entitled to seek *nunc pro tunc* review.

III. Amendments to Pennsylvania Rules of Civil Procedure

Orders Establishing Local Rules Website (Pa. June 28, 2016)

- In a series of Orders, the Pennsylvania Supreme Court has required each judicial district - no later than August 1, 2016 - to publish all proposed Local Rules in the *Pennsylvania Bulletin* and to make all local rules available to the public. Each judicial district must provide the address of a free and publicly accessible website of the court or county in which the court has jurisdiction where all local rules are to be published. The Court noted that the purpose of these rules is to assure that it would not be difficult for attorneys to practice law in several counties.

IV. Allocatur Orders

The Pennsylvania Supreme Court has granted an appeal in the following matters for the issues stated:

☐ [Dubose, R. v. Quinlan, 29 EAL 2016 \(Pa. June 7, 2016\)](#)

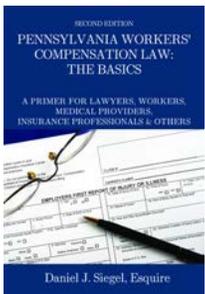
- Do special and important reasons exist which mandate this Court's intervention, since the Superior Court improperly lengthened, potentially significantly, the statute of limitations applicable to survival actions in medical professional liability claims contrary to 41 Pa.C.S. § § 5542 (2) and 5502(A), all legal authority emanating from this Court, and the intent of the legislature when enacting the MCARE Act's statute of repose?

☐ [Angino & Rovner v. Lessin & Assocs., P.C., 68 MAL 2016 \(Pa. June 13, 2016\)](#)

- Did the trial court err in granting summary judgment in favor of Mr. Zarreii and denying summary judgment to Angino & Rovner, P.C. where the facts are undisputed that Mr. Zarreii, an adult, knowingly and voluntarily entered into a contingent fee agreement with Angino & Rovner, P.C. that required the payment of a 20% fee if Mr. Zarreii discharged the Angino & Rovner Law Firm and secured other counsel, particularly under circumstances where the Angino & Rovner Law Firm had prepared the underinsured motorist case completely to the point of selecting arbitrators and awaiting an arbitration hearing?
- Are attorneys prohibited *per se* from including a reasonable fee recovery provision in contingent fee agreements that governs the termination of the attorney-client relations prior to the occurrence of the contingency?
- Are discharged attorneys entitled only to the equitable remedy of *quantum meruit* for services rendered to former clients?
- Is the *quantum meruit* equitable remedy for services rendered to former clients exclusive where a termination provision is included in a contingent fee agreement, and that provision is not challenged and established to be either excessive or unconscionable?

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