

# A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH AUGUST 31, 2016

## PENNSYLVANIA APPELLATE COURT DECISIONS

### I. Appellate Procedure

#### A. *Waiver of Issues*

- [Dixon v. Northwestern Mutual, 2016 PA Super 186 \(Pa.Super., Aug. 25, 2016\)](#)

➤ **Holding:** The Complaint is sufficient to preserve for appellate review an issue challenging an Order sustaining Preliminary Objections. The failure to include an issue in an appellant's Docketing Statement does not result in the waiver of that issue.

#### B. *Timeliness of Appeal*

- [Cubano v. Sheehan, 2016 PA Super 193 \(Pa.Super., Aug. 19, 2016\)](#)

➤ **Holding:** The filing of a Motion for Reconsideration does not stay the 30 day period for filing an appeal. Moreover, relying on Federal Express to deliver a package overnight does not satisfy the requirement of Pa.R.A.P. 902 to file a Notice of Appeal within the time allowed by Pa.R.A.P. 403.

### II. Causes of Action

#### A. *Negligent Hiring*

- [Barnes v. Alcoa, Inc., 2016 PA Super 178 \(Pa. Super., Aug. 12, 2016\)](#)

➤ **Holding:** The fact that a parent company's name is listed on an employee's paycheck is not evidence that the employee is employed by the parent company instead of the subsidiary. Thus, a trial court does not abuse its discretion by granting a compulsory nonsuit when plaintiff fails to present evidence from which a jury could find that a person was employed by the parent company.

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. *Intentional Infliction of Emotional Distress*

□ [Gray v. Huntzinger, 2016 PA Super 194 \(Pa. Super., Aug. 30, 2016\)](#)

- **Holding:** Recovery in a claim for intentional infliction of emotional distress is limited to those cases in which plaintiff presents competent medical evidence that confirms the plaintiff suffered emotional distress.

C. *Fraud and UTCPL*

□ [Adams v. Hellings Builders, Inc., 2016 PA Super 192 \(Pa. Super., Aug. 29, 2016\)](#)

- **Holding:** Third party purchasers may assert claims of fraud and claims arising under the Unfair Trade Practices and Consumer Protection Law (UTCPL), 73 P.S. 201-1 *et seq.*, against contractors who make misrepresentations, despite the absence of privity, when reliance is foreseeable and damage proximately results.

III. Evidence

A. *MCARE Act - Experts*

□ [Frey v. Potorski, 2016 PA Super 190 \(Pa. Super., Aug. 26, 2016\)](#)

- **Holding:** The determination of whether a witness is qualified to give expert witness testimony is vested in the discretion of the trial court, and the standard for qualification of an expert witness is a liberal one. Under the MCARE Act, 40 P.S. § 1303.512(a)-(c), (e), because medical specialties may overlap, an expert can qualify to testify upon demonstrating a familiarity with the specific standard of care at issue.

B. *Negligence -Burden of Proof*

□ [Krishack v. Milton Hershey School, 2016 PA Super 180 \(Pa. Super., Aug. 15, 2016\)](#)

- **Holding:** In a negligence action, Plaintiff must prove proximate causation by more than impermissible speculation and conjecture.

IV. Workers' Compensation

A. *Concurrent Jurisdiction - Longshore Act*

□ [Savoy v. WCAB \(Global Associates\), 2613 C.D. 2015 \(Pa. Cmwlt., Aug. 25, 2016\)](#)

- **Holding:** Employees injured while performing traditional maritime functions such as ship repair on a vessel that is "on the water" are not covered by the Worker's Compensation Act. Rather, the federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950, provides the exclusive remedy.

B. *Occupational Diseases for Firefighters (Section 108(r) of the Act)*

□ [City of Philadelphia Fire Department v. WCAB \(Sladek\), 570 C.D. 2015 \(Pa. Cmwlt., Aug. 12, 2016\)](#)

- **Holding:** In order to establish the right to benefits under Section 108(r) of the Workers' Compensation Act, 77 P.S. § 27.1(r), a Claimant must prove that his particular cancer is a type of cancer *caused* by the Group1 carcinogens to which he was exposed in the workplace.

## V. Allocatur Granted

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

### [Coughlin v. Massaquoi, 166 EAL 2016 \(Pa., Aug. 24, 2016\)](#)

- In a civil trial brought on behalf of a pedestrian who was killed by a motorist, is it reversible error where the defendant motorist admits evidence of the pedestrian's uncorroborated post-mortem blood alcohol content (BAC) by way of a toxicology expert who merely explains the uncorroborated BAC in terms of how an equivalent BAC would render an "average" person unfit to cross the street?

### [Lomas v. Kravitz, 52 MAL 2016 \(Pa., Aug. 24, 2016\)](#)

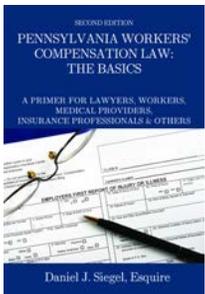
- Whether, as a matter of law, the Montgomery County Court of Common Pleas should have been recused from presiding over the non-jury trial due to an appearance of impropriety arising from the ongoing participation and financial interest in the litigation by a sitting member of that Court?
- Whether, as a matter of law, an appearance of impropriety was created when a sitting member of the Montgomery County Court Bench personally participated in the litigation?

### [Rancosky v. Washington National Insurance Co., 124 WAL 2016 \(Pa., Aug. 30, 2016\)](#)

- Whether this Court should ratify the requirements of *Terletsky v. Prudential Property & Casualty Insurance Co.*, 649 A.2d 680 (Pa. Super. 1994), *appeal denied*, 659 A.2d 560 (Pa. 1995), for establishing insurer bad faith under 42 Pa.C.S. § 8371, and assuming the answer to be in the affirmative, whether the Superior Court erred in holding that *Terletsky* factor of a "motive of self-interest or ill-will" is merely a discretionary consideration rather than a mandatory prerequisite to proving bad faith?

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