

# A Summary of Recent Pennsylvania Court Decisions

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REPORTING DECISIONS THROUGH FEBRUARY 28, 2017

## PENNSYLVANIA APPELLATE COURT DECISIONS

### FEATURED CASE OF THE MONTH

#### Superior Court Refuses to Apply Exculpatory Waivers to College Football Players Injured During Practice Drills –Dan Siegel and Nicole Kratzer Serve as Appellate Co-Counsel

The Superior Court has refused to enforce an exculpatory release that would have insulated a college from liability for serious injuries suffered by two student athletes during a football drill. Attorneys Daniel J. Siegel and Nicole Kratzer of the Law Offices of Daniel J. Siegel, LLC served as appellate counsel with Attorney Andrew Motel, who filed the case and represents the plaintiffs before the trial court.

In *Feleccia v. Lackawanna College*, the plaintiffs asserted that Lackawanna College's failure to have qualified athletic trainers at the practice, and the use of a dangerous tackling drill, constituted gross negligence or recklessness. In support of their claims, plaintiffs retained multiple experts, including Richard C. Slocum, former Texas A&M University head football coach. The defendants asserted, however, that the students had signed a pre-injury release barring their claims that the college staff had made an improper return-to-play decision during a drill in which no licensed athletic trainer was present.

Judge Jacqueline Shogan authored the precedential decision, which was issued on February 24, 2017. Relying on *Tayar v. Camelback Ski Corp.*, the Court concluded that otherwise valid liability waivers are unenforceable in claims of gross negligence or reckless conduct. The Court also held that a special relationship exists between a college and its athletes, and that the College had a duty to be reasonably prepared to handle foreseeable medical emergencies that occur during participation in a contact sport.

The Court also expressed concern that the use of waivers such as this by colleges and universities would encourage the schools to ignore the health and safety of student athletes: "... we are concerned with a release being used to excuse a college from having qualified medical personnel readily available to its student athletes. Colleges are expected to put a priority on the health and safety of their students, especially student athletes engaged in dangerous sports. ... Enforcing a release and granting summary judgment in a situation where the availability of qualified medical personnel is called into question would jeopardize the health and safety of such student athletes by removing at least one incentive for colleges 'to adhere to minimal standards of care and safety.'"

## I. Procedural Law

### A. *Post-Trial Motions*

- [\*Board of Supervisors of Willistown Twp., v. Main Line Gardens, Inc.\*, No. 59 MAP 2016 \(Pa., Feb. 22, 2017\)](#)

- **Holding:** Under Pa.R.Civ.P. 227.1, when a trial court rules on the merits of post-trial motions in reliance upon the prior briefs and arguments of the parties addressing the issues presented in the post-trial motions, an appellate court may not dismiss the appeal because of the failure to file a brief in support of the post-trial motion.

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. *Motor Vehicle Insurance - UM & UIM Rejection Form*

- [\*Ford v. American States Insurance Co.\*, No. 13 WAP 2016 \(Pa., Feb. 22, 2017\)](#)

- **Holding:** An underinsured motorist rejection is valid even if it does not "specifically comply" with and is not a verbatim reproduction of the statutory language in Section 1731(c) of the MVFRL, 75 Pa.C.S. § 1731(c), provided the form differs from the statutorily-mandated form in an inconsequential manner. In this case, the form included one additional word in the rejection. Justice Donohue filed a [dissenting opinion](#), in which Justice Todd joined.

### B. *Duty of Care - Electrical Suppliers*

- [\*Greely v. West Penn Power Co.\*, 2017 PA Super 33 \(Pa. Super., Feb. 13, 2017\)](#)

- **Holding:** An electrical supplier owes a high duty of care to persons lawfully within proximity of its wires, including maintenance employees who work on or around utility poles.

### C. *Dead Man's Statute*

- [\*Davis v. Wright\*, 2017 PA Super 48 \(Pa. Super., Feb. 27, 2017\)](#)

- **Holding:** A party is not required to raise the Dead Man's Statute, 42 Pa.C.S.A. § 5930, as a defense in its first responsible pleading or as an affirmative defense in New Matter.

### D. *Judicial Privilege in Litigation*

- [\*Freundlich & Littman, LLC v. Feierstein\*, 2017 PA Super 40 \(Pa. Super., Feb. 23, 2017\)](#)

- **Holding:** The judicial privilege does not apply to litigation of claims arising under the Dragonetti Act, 42 Pa.C.S. § 8351, which permits a party to recover for the harm to his or her reputation by any defamatory matters alleged as the basis for the pleading.

### E. *Sovereign Immunity*

- [\*Gillingham v. County of Delaware\*, No. 2532 C.D. 2015 \(Pa. Cmwlth., Feb. 14, 2017\)](#)

- **Holding:** Because computer wires are not considered to be fixtures or "real property," they do not fall under the "real property exception" to governmental immunity under the Political Subdivision Torts Claim Act, 42 Pa.C.S. § 8541, *et seq.*

### III. Workers' Compensation

#### A. *Coming and Going Rule*

- [\*Lutheran Senior Services Management Co. v. WCAB \(Miller\)\*, No. 1074 C.D. 2016 \(Pa. Cmwlth., Feb. 15, 2017\)](#)

- **Holding:** An "on call" employee, who must return to the employer's place of business for emergency maintenance calls, and is compensated from the time a call is received until the employee arrives home, falls within an exception to the "coming and going rule" exception, and is entitled to workers' compensation benefits for injuries sustained while en route to the job.

#### B. *Heart and Lung Act - Collateral Estoppel*

- [\*Merrell v. WCAB \(Commonwealth\)\*, No. 493 C.D. 2016 \(Pa. Cmwlth., Feb. 6, 2017\)](#)

- **Holding:** Because an arbitration under the Heart and Lung Act is substantially different from a workers' compensation proceeding, a disability determination under the Heart and Lung Act does not have collateral estoppel effect upon a workers' compensation proceeding relating to the same injury.

#### C. *Subrogation*

- [\*Serrano v. WCAB \(Ametek, Inc.\)\*, No. 2684 C.D. 2015 \(Pa. Cmwlth., Feb. 13, 2017\)](#)

- **Holding:** When some, but not all, of an employee's injuries are caused by a third party's negligence, an employer is entitled to subrogation only for the work-related injuries, consistent with Section 319 of the Workers' Compensation Act, 77 P.S. § 671, which permits subrogation when the "compensable injury is caused in whole or in part" by a third party.

- [\*The Hartford Insurance Group on Behalf of Chunli Chen v. Kamara\*, 2017 PA Super 31 \(Pa. Super., Feb. 10, 2017\)](#)

- **Holding:** An employer may bring an action on behalf of an injured worker to establish the full amount to which the injured worker is entitled as a result of the tortfeasor's negligence. In so ruling, the Court differentiates this case from *Liberty Mutual Insurance Co. v. Domtar Paper Co.*, 113 A.3d 1230 (Pa. 2015), in which the Supreme Court ruled that a carrier was precluded from pursuing a subrogation action on behalf of an injured worker.

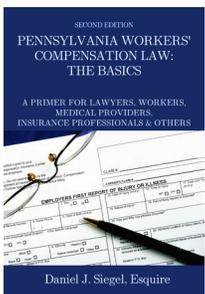
#### D. *Independent Contractors*

- [\*Dept. of Labor and Industry UEGF v. WCAB \(Lin and Eastern Taste\)\*, No. 627 C.D. 2016 \(Pa. Cmwlth., Feb. 17, 2017\)](#)

- **Holding:** An individual who is hired to remodel a restaurant and does not expect to work there after completion of the project, is an independent contractor and is not entitled to benefits under the Workers' Compensation Act.

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