

A Summary of Recent Pennsylvania Court Decisions

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REPORTING DECISIONS THROUGH MARCH 31, 2017

PENNSYLVANIA APPELLATE COURT DECISIONS

I. Discovery

A. *Answers to Request for Admission*

- [*Discover Bank v. Repine*, 2017 PA Super 68 \(Pa. Super., March 15, 2017\)](#)

➤ **Holding:** A general denial to a request for admission under Pa.R.C.P. 4014 is sufficient if it is made in good faith. Conversely, a bad faith denial is insufficient and will be deemed an admission.

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. *Arbitration Clauses*

- [*Fellerman v. PECO Energy Co.*, 2017 PA Super 86 \(Pa. Super., March 30, 2017\)](#)

➤ **Holding:** An agreement to arbitrate is enforceable if the provisions of the contract are legible and capable of being understood. As a general principle, minimum conspicuity standards are not required to establish the formation of a contract.

B. *Attorney-Client Privilege*

- [*Bousamra v. Excela Health*, 2017 PA Super 66 \(Pa. Super., March 13, 2017\)](#)

➤ **Holding:** A party waives the attorney-client privilege under 42 Pa.C.S. § 5928 and waives the work product privilege by disclosing information to a third party.

C. *Evidence - Prior Convictions*

- [*Vetter v. Miller*, 2017 PA Super 64 \(Pa. Super., March 10, 2017\)](#)

➤ **Holding:** Although criminal charges may be admissible in a subsequent civil case, evidence of a violation of Title 75 (the Motor Vehicle Code) and evidence of arrest without conviction are not admissible in a subsequent civil matter. A conviction/guilty plea for driving under the influence is admissible as an admission against interest.

D. *Recoverable Damages Under Pa.R.C.P. 1311.1*

- [*Grimm v. Universal Medical Services, Inc.*, 2017 PA Super 53 \(Pa. Super., March 1, 2017\)](#)

➤ **Holding:** In a claim under the Wage Payment and Collection Law, in which the plaintiff limits the recoverable damages under Pa.R.C.P. 1311.1, the plaintiff may recover attorney’s fees even if they cause the total verdict to exceed \$25,00.00.

E. *Sovereign Immunity - Dangerous Conditions of Streets & Trolley Rails*

- [*Lacava v. Southeastern Pennsylvania Transportation Authority*, No. 96 C.D. 2016 \(Pa. Cmwlth., March 29, 2017\)](#)

- **Holding:** In a claim under Section 8542(a) of the Political Subdivision Tort Claims Act, 42 Pa.C.S.A., which arise from a defect within 18 inches of trolley tracks, a plaintiff must (1) establish that the government entity breached a duty sufficient to establish a common law negligence claim, and (2) present sufficient evidence to establish a dangerous condition of the trolley rail sufficient to fall within the real estate exception to sovereign immunity.

F. *Statute of Limitations - Declaratory Judgment Actions*

- [*Green v. Pennsylvania Property and Casualty Insurance Guaranty Assoc.*, 2017 PA Super 73 \(Pa. Super. March 21, 2017\)](#)

- **Holding:** The four-year statute of limitations for declaratory judgment actions begins to run when the cause of action accrues, *i.e.*, when an actual controversy exists. An actual controversy exists only when a case presents clearly antagonistic positions or claims indicating imminent and inevitable litigation.

G. *Unemployment Compensation - Representation by Suspended Attorney*

- [*Powell v. Unemployment Compensation Board of Review*, No. 38 MAP 2016 \(Pa., March 28, 2017\)](#)

- **Holding:** Although representation of an unemployment compensation claimant does not constitute the practice of law pursuant to *Harkness v. UCBR*, 920 A.2d 162 (Pa. 2007), an attorney suspended from the practice of law may not represent a claimant in unemployment compensation proceedings based upon Disciplinary Enforcement Rule 217, which prohibits formerly admitted or suspended attorneys from “appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, court, public agency, referee, magistrate, hearing officer or any other adjudicative person or body.” Justice Bear filed a [concurring and dissenting opinion](#). Justice Todd filed a [dissenting opinion](#).

III. Workers' Compensation

A. *Average Weekly Wage - Calculation*

- [*Lidey v. Workers' Compensation Appeal Board \(Tropical Amusements, Inc.\)*, No. 726 C.D. 2016 \(Pa. Cmwlth., March 17, 2017\)](#)

- **Holding:** Under Section 309 of the Workers' Compensation Act, 77 P.S. § 582, a claimant's average weekly wage must be calculated based upon how claimant earned his wages “at the time of the injury,” and not based upon another point during his employment.

B. *Personal Comfort Doctrine*

- [*Starr Aviation v. Workers' Compensation Appeal Board \(Colquitt\)*, No. 659 C.D. 2016 \(Pa. Cmwlth., March 7, 2017\)](#)

- **Holding:** A claimant injured while taking a momentary departure from work to attend to personal comfort remains in the course and scope of employment and is entitled to workers' compensation benefits for injuries occurring while attending to those personal needs.

C. *Remand*

- [*McDaniel v. Workers' Compensation Appeal Board \(Maramont Corp., No. 797 C.D. 2016 \(Pa. Cmwlth., Dec. 20, 2016\)\)*](#)

- **Holding:** The Appeal Board has discretionary authority under Section 419 of the Workers' Compensation Act, 77 P.S. § 852, to remand a case for a *de novo* proceeding when the Workers' Compensation Judge has failed to consider all the evidence. The remand does not constitute a "second bite at the apple".

D. *Seasonal Employment*

- [*Tioga Orchards, LLL v. Workers' Compensation Appeal Board \(Gaffney\), No. 722 C.D. 2016 \(Pa. Cmwlth., March 13, 2017\)*](#)

- **Holding:** An "exclusively seasonal occupation" is one that, from its very nature, cannot be continuous or carried on throughout the year, but during fixed periods of it.

E. *Statute of Repose - Pre-Act 46 Claims*

- [*City of Warren v. Workers' Compensation Appeal Board \(Haines\), No. 468 C.D. 2016 \(Pa. Cmwlth., March 9, 2017\)*](#)

- **Holding:** In a claim for disability or death benefits resulting from a firefighter's exposure to carcinogens based on exposure before the 2011 enactment of Act 46, the employee's disability or death must occur within 300 weeks of the employee's last date of employment for the occupational disease to be compensable under Section 301(c)(2), 77 P.S. § 411(2) of the Workers' Compensation Act.

F. *Volunteer Firefighters - Exposure to Carcinogen Claims*

- [*Steele v. Workers' Compensation Appeal Board \(Findlay Township\), No. 875 C.D. 2016 \(Pa. Cmwlth., March 8, 2017\)*](#)

- **Holding:** A volunteer firefighter seeking benefits for injuries based upon exposure to carcinogens must present evidence, pursuant to Section 301(f) of the Act, 77 P.S. 413, of direct exposure to carcinogens as documented by PennFIRS reports.

IV. Allocatur Petition

A. *The Pennsylvania Supreme Court has granted appeal in the following matter for the issues stated:*

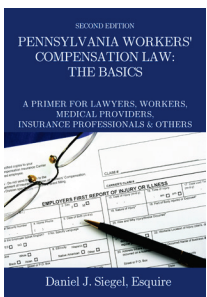
- [*City of Philadelphia Fire Dept. v. Workers' Compensation Appeal Board \(Sladek\), No. 405 EAL 2016 \(Pa., March 1, 2017\)*](#)

- (1) Whether the Commonwealth Court, in a case of first impression, committed an error of law by misinterpreting Section 108(r) to require a firefighter diagnosed with cancer caused by an IARC Group I carcinogen to establish exposure to a specific carcinogen that causes his/her cancer in order to gain the rebuttable presumption provided by the law?

- (2) Whether the Commonwealth Court committed an error of law by concluding that a legislatively-created presumption of compensability may be competently rebutted by a general causation opinion, based entirely upon epidemiology, without any opinion specific to the firefighter/claimant making the claim?

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