

A Summary of Recent Pennsylvania Appellate Court Decisions By Daniel J. Siegel, Esquire

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REPORTING DECISIONS THROUGH MAY 31, 2017

FEATURED DECISION OF THE MONTH

[Erie Insurance Exchange v. Bristol](#), 124 MAP 2016 (Pa., May 24, 2017)

Attorney Dan Siegel argued this case before the Pennsylvania Supreme Court on May 10, 2017. As a result of the oral argument, the Supreme Court issued the following unprecedented Order on May 24, 2017 revising the question under consideration/reinstating the question as presented in the original Petition for Allowance of Appeal:

By affirming its Opinion in *Hopkins v. Erie Insurance Co.*, 65 A.3d 452 (Pa. Super 2013), and ruling that:

- (1) a claimant seeking uninsured or underinsured motorist benefits must file a Complaint or a Petition to Compel Arbitration if the claim does not resolve within four years of the date of the underlying accident, and
- (2) a claimant must file a Complaint or Petition to Compel Arbitration, contrary to the plain language of the Arbitration Act of 1927, 42 Pa.C.S. 7304(a), which requires a claimant to file a Complaint or Petition only when “an opposing party refuse[s] to arbitrate”;

did the Superior Court create a new rule that is contrary to prior decisions of this court and inconsistent with the plain language of the Arbitration Act?

[CLICK HERE TO VIEW THE ORAL ARGUMENT](#)

PENNSYLVANIA APPELLATE COURT DECISIONS

I. Procedural Law

A. *Law of the Case*

- [*Windows v. Erie Insurance Exchange*, 2017 PA Super 131 \(Pa. Super., May 1, 2017\)](#)

- **Holding:** Although the law of the case doctrine precludes a judge from revisiting a question decided by another judge of the same court, a judge may not interpret an Order that does not contain the rationale for the decision.

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. *Summary Judgment*

- [*Krolczyk v. Goddard Systems, Inc.*, 2017 PA Super 159 \(Pa. Super., May 23, 2017\)](#)

- **Holding:** Consistent with the *Nanty-Glo* rule, a court may not grant a Motion for Summary Judgment if it is based solely upon testimonial proof offered by the moving party.

II. Substantive Law

A. *Judicial Privilege - Medical Practices Act*

- [*Greenberg v. McGraw*, 2017 PA Super 136 \(Pa. Super., May 5, 2017\)](#)

- **Holding:** Quasi-judicial immunity applies to complaints, even if defamatory in nature, filed with the Board of Medicine under the Medical Practice Act, 63 P.S. § 422.4 because the procedures constitute a quasi-judicial proceeding.

B. *Medical Malpractice - Evidence of Risks and Complications*

- [*Mitchell v. Shikora*, 2017 PA Super 134 \(Pa. Super., May 5, 2017\)](#)

- **Holding:** Evidence of the potential risks and complications of surgery are inadmissible in a medical malpractice action based on a surgeon’s alleged breach of the standard of care for failing to inform a patient of the risks of the surgery.

C. *Premises Liability - Duty of Care*

- [*Stuski v. Philadelphia Authority for Industrial Development*, No. 1979 C.D. 2016 \(Pa. Cmwlth., May 25, 2017\)](#)

- **Holding:** When the evidence establishes that one party has assumed responsibility for maintaining a property, and the plaintiff fails to proffer direct or circumstantial evidence to the contrary, a trial court may dismiss as parties other entities that do not have any responsibility for the maintenance of the premises.

D. *Representation of Corporations*

- [*David R. Nicholson, Builder, LLC v. Jablonski*, 2017 PA Super. 153 \(Pa. Super., May 19, 2017\)](#)

- **Holding:** Corporations, including single member LLCs, cannot proceed in Pennsylvania courts of common pleas unless they are represented by a licensed attorney.

E. *Wrongful Death Actions - Standing to File*

- [*Brittain v. Hope Enterprises Foundation, Inc.*, 2017 PA Super 148 \(Pa. Super., May 17, 2017\)](#)
 - **Holding:** A biological mother whose parental rights have been terminated may not maintain a wrongful death action on behalf of the estate of the child.

III. Workers' Compensation

A. *Occupational Diseases Claims - Burden of Proof*

- [*Kimberly Clark Corp. v. WCAB \(Bromley\)*, No. 656 C.D. 2016 \(Pa. Cmwlth., May 4, 2017\)](#)
 - **Holding:** To meet the burden for establishing that a worker's death was the result of exposure to chemicals in the workplace under Section 301(c)(1) of the Worker's Compensation Act, 77 P.S. § 411(1), a claimant must produce evidence that: (1) the employee's death occurred within 300 weeks of the last date of injurious exposure, and (2) the exposure was a substantial contributing cause of the death.

IV. Allocatur Petition

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

- [*Valentino v. Philadelphia Triathlon, LLC.*, 533 EAL 2016 \(Pa., May 2, 2017\)](#)
 - Whether the Superior Court erred when it determined that a waiver of liability form, executed solely by the decedent, and stating the signer assumes all risks of participation in a triathlon, also binds his heirs, thereby precluding them from bringing a wrongful death action?

V. Federal Court Opinions

A. *Motor Vehicle Insurance - Medical Examinations*

- [*Sayles v. Allstate Insurance Co.*, No. 3:16-CV-01534 \(M.D. Pa., May 10, 2017\)](#)
 - **Holding:** Section 1796(a) of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A., does not permit a motor vehicle insurance carrier to require an insured to submit to a medical examination unless the carrier demonstrates "good cause" for requesting the examination.

VI. Ethics Opinion

A. *Securing communication of Protected Client Information*

- [*ABA Standing Committee on Ethics and Professional Responsibility, Formal Op. 477R*](#)
 - **Holding:** Lawyers are generally permitted to transmit client information over the internet without violating the Model Rules of Professional Conduct so long as they undertake reasonable efforts to prevent inadvertent or unauthorized access. However, a lawyer may be required to take special security precautions to protect against the inadvertent or unauthorized disclosure of client information when required by an agreement with the client or by law, or when the nature of the information being transmitted requires a higher degree of security.