

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

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REPORTING DECISIONS THROUGH JULY 31, 2017

PENNSYLVANIA APPELLATE COURT DECISIONS

I. Procedural Law

A. *Venue - Defamation Claims*

- [Reed v. Brown, 670 C.D. 2016 \(Pa. Cmwlth., July 13, 2017\)](#)
 - **Holding:** Pursuant to Pa. R.C.P. No. 2103(b), and consistent with a plaintiff's obligation under 42 P.S. § 8343, venue is proper in a defamation case even if the statement or cause of action did not originally occur in that location, provided the republication of the statement occurred in the location in question.

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. *Discovery - Attorney-Client Privilege*

- [Bousamra v. Excelsa Health, 2017 PA Super 235 \(Pa. Super July 19, 2017\)](#)
 - **Holding:** The attorney-client privilege does not apply to a company's email with its media consultants containing the advice of outside counsel.

B. *Defamation - Effect on the Viewer*

- [Rubin v. CBS Broadcasting Inc., 3397 EDA 2015 \(Pa. Super., July 17, 2017\)](#)
 - **Holding:** In a defamation case between a private actor plaintiff and a media defendant, the plaintiff has the burden of proving both that the report was materially false and that the defendant was acting negligently in its publication of the report. To prove falsity, the plaintiff must demonstrate that the publicized report had a materially different effect on the viewer than the actual facts would have.

C. *Medical Malpractice - Expert Witness Qualifications*

- [Seels v. Tenet Health System Hahnemann, 2017 PA Super 227 \(Pa. Super. July 18, 2017\)](#)
 - **Holding:** A physician is not qualified to testify as an expert witness in a medical malpractice action if the witness does not establish that he has any specialized skill, knowledge, or experience in the specific area of testimony such that he would aid a jury in the search for truth. Of note, this case does not address the MCARE Act.

D. *Medical Malpractice - Cause of Action*

□ [*Wentzel v. Cammarano*, 2017 PA Super 233 \(Pa. Super. July 19, 2017\)](#)

- **Holding:** The transmission of a doctor's impressions, diagnoses, and treatment plan in anticipation of transferring a patient to a different facility does not constitute the furnishing of "health care service" under the MCARE Act, 40 P.S. § 1303-101, *et seq.*

E. *Damages - Wage Loss Claims*

□ [*Crespo v. Hughes*, 2017 PA Super 230 \(Pa. Super. July 18, 2017\)](#)

- **Holding:** A plaintiff may assert a wage loss claim even if the plaintiff has not filed tax returns corroborating the wage loss, provided plaintiff presents sufficient data to determine damages with reasonable certainty. A defendant is permitted to cross-examine the plaintiff and any experts to create doubt in the jury's mind.

F. *Work Product Doctrine*

□ [*Estate of Paterno v. NCAA*, 2017 PA Super 247 \(Pa. Super. July 25, 2017\)](#)

- **Holding:** In accordance with Pa.R.C.P. 4003.3, "mental impressions of a party's attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories" are protected under the work product doctrine, irrespective of whether or not they were made in anticipation of litigation.

III. Workers' Compensation

A. *Subrogation Liens*

□ [*City of Philadelphia v. WCAB \(Knudson\)*, 675 C.D. 2016 \(Pa. Cmwlth., July 3, 2017\)](#)

- **Holding:** Consistent with the *Walker* Rule, which allows Workers' Compensation Judges to rely on hearsay evidence admitted without objection, hearsay evidence submitted by an insurance company is sufficient to establish the amount of a subrogation lien.

□ [*Kalmanowicz v. WCAB \(Eastern Industries, Inc.\)*, 1790 C.D. 2016 \(Pa. Cmwlth., July 7, 2017\)](#)

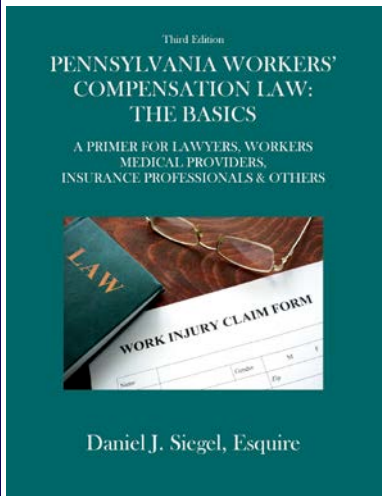
- **Holding:** Under section 319 of the Workers' Compensation Act, 77 P.S. § 671, an employer does not waive its right to subrogation by contesting a claimant's Claim Petition.

IV. Allocatur Petitions

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

□ [*Brewington v. City of Philadelphia*, 542 EAL 2016 \(Pa. July 11, 2017\)](#)

- Whether the Commonwealth Court's conclusion that the alleged negligence in this case concerned real property impermissibly broadens the real property exception and requires school districts to take unreasonable steps (and steps the court does not specify) to protect themselves from liability?
- Whether [Respondents'] claim of a defect in the real property is properly construed as a claim of negligent supervision when the actual negligence involved, if any, pertained to the supervision of students and was not related to real property?



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