

The Pennsylvania Appellate Case Review

By Daniel J. Siegel, Esquire

LAW OFFICES OF DANIEL J. SIEGEL, LLC

66 West Eagle Road • Suite 1 • Havertown, PA 19083-1425

(610) 446-3457 • Fax (484) 636-3993

E-mail dsiegel@danielsiegel.com

REPORTING DECISIONS THROUGH AUGUST 31, 2017

PENNSYLVANIA APPELLATE COURT DECISIONS

I. Substantive Law

A. *Premises Liability- - Business Invitee*

- [*Kote v. The Bank of New York Mellon*, 2017 PA Super 277 \(Pa. Super. Aug. 25, 2017\)](#)

➤ **Holding:** An individual who is injured in a criminal act at a property to which he was lured by a person unassociated with the property owner is not a business invitee, and the property owner owes no duty to the person.

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. Trials/Procedure

A. *Compulsory Nonsuit*

- [*Baird v. Smiley*, 2017 PA Super 267 \(Pa. Super., Aug. 18, 2017\)](#)

➤ **Holding:** A trial court may enter a compulsory nonsuit if, at the close of plaintiff’s case against all defendants on liability, the court finds that plaintiff failed to establish a right to relief. It is improper to enter a nonsuit in favor of one defendant before the other defendants have an opportunity to present their cases. When one (of multiple) defendant does not intend to present evidence, however, the court may enter the nonsuit.

B. *Verdict - Objections and Waivers*

- [*Chin v. New Flyer of America, Inc.*, 1896 C.D. 2016 \(Pa. Cmwlt., Aug. 24, 2017\)](#)

➤ **Holding:** Pa.R.C.P. Rule 227.1(b)(1) requires a party to contemporaneously object at the time a verdict is rendered, and before the jury is discharged, if it believes the verdict is inconsistent; otherwise, the issue is waived.

III. Workers' Compensation

A. *Construction Workplace Misclassification Act*

- [*D&R Construction v. WCAB \(Suarez\)*, 1558 C.D. 2016 \(Pa. Cmwlt. Aug. 1, 2017\)](#)

➤ **Holding:** Because the Construction Workplace Misclassification Act, 43 P.S. §§933.1-933.17, alters the elements of proof required to establish independent contractor status in the construction industry, it affects a worker’s substantive rights and cannot be applied retroactively. The Court also held that the CWMA may not be used as guidance for the application of traditional factors under the common law to determine whether an employment relationship existed.

B. IREs - Application of Protz

□ [Thompson v. WCAB \(Exelon Corp.\), 1227 C.D. 2016 \(Pa. Cmwlth., Aug. 16, 2017\)](#)

- **Holding:** The Supreme Court's decision in *Protz v. WCAB (Derry Area School District)*, 161 A.3d 827 (Pa. 2017) must apply retroactively to IREs. However, the decision leaves many questions unanswered.

C. Loss of Earnings - Voluntary Withdrawal From the Workforce

□ [Torijano v. WCAB \(In A Flash Plumbing\), 1686 C.D. 2016 \(Pa. Cmwlth., Aug. 30, 2017\)](#)

- **Holding:** When there is substantial evidence indicating that a loss of earnings was a result of Claimant's own actions (i.e., voluntary quit), and not the work-related injury, an Employer is under no duty to present medical evidence in a suspension petition.

D. Specific Loss Benefits - Permanency

□ [Morocho v. WCAB \(Home Equity Renovations, Inc.\), 1393 C.D. 2016 \(Pa. Cmwlth., Aug. 3, 2017\)](#)

- **Holding:** When providing a medical opinion regarding the permanency of a claimant's injury, the medical expert must provide factual medical evidence to support the opinion. Mere legal conclusions stating that claimant has "effectively lost function...at this time for all intents and purposes" is not sufficient.

IV. Allocatur Petitions

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

□ [Davis v. NVR, Inc., 89 WAL 2017 \(Aug. 8, 2017\)](#)

- Whether a contractor who creates a dangerous condition on land is relieved of his duty of reasonable care to subsequent users of the land by the fact that the dangerous condition was discoverable by either the owner of the land or by the user of the land?

□ [Dept. of Labor and Industry v. WCAB \(Lin and Eastern Taste\), 124 EAL 2017 \(Aug. 23, 2017\)](#)

- Whether the Commonwealth Court's decision interpreting the language of the Construction Workplace Misclassification Act (CWMA) to mean that the CWMA only applies to circumstances where the putative employer's industry or business is construction was in error?

□ [Gallagher v. Geico Indemnity Co., 87 WAL 2017 \(Aug. 8, 2017\)](#)

- Whether the "household vehicle exclusion" violates section 1738 of the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL) where GEICO issued all household policies and unilaterally decided to issue two separate policies, when the insured desired stacking, elected stacking, paid additional premiums for stacking and never knowingly waived stacking of underinsured motorist benefits?
- Whether the "household vehicle exclusion" impermissibly narrows or conflicts with the statutory mandates of the Pa MVFRL and the evidence of record is that GEICO was fully aware of the risks of insuring a motorcycle in the same household as other family vehicles but unilaterally decided to write a separate motorcycle policy?

□ [Nicolaou v. Martin, 58 MAL 2017 \(Aug. 18, 2017\)](#)

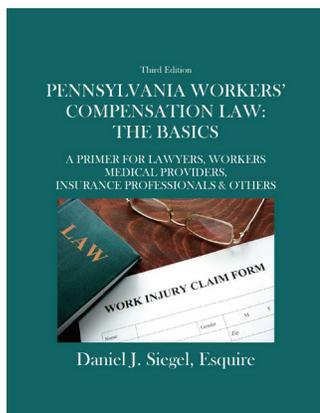
- Did the Trial Court err in granting Respondents' Motion for Summary Judgment and holding that Petitioners' medical malpractice action was time barred under 42 Pa.C.S. § 5524(2) and did not meet the Discovery Rule Exception when Plaintiff, did not, and was financially unable to, confirm Respondents' negligent misdiagnosis until final medical testing confirmed she had Lyme Disease on February 13, 2010?
- Did the Trial Court abuse its discretion in granting Respondents' Motion for Summary Judgment when there was a genuine issue of material fact which should have been presented to a jury, as to whether Petitioners' medical malpractice action is tolled from the running of the Statute of Limitations under 42 Pa.C.S. § 5524(2) by the Discovery Rule?

□ [The Hartford Insurance Group on Behalf of Chunli Chen v. Kamara, 205 EAL 2017 \(Aug. 9, 2017\)](#)

- Can a Workers' compensation lienholder bring a third party action on behalf of the injured worker to recoup amounts paid to the injured worker from the alleged tortfeasor contrary to the standard set in *Liberty Mutual Insurance Company v. Domtar Paper Co.*, 631 Pa. 463, 113 A.3d 1230 (Pa. 2015)?
- Did the Superior Court fail to see that the failure to attach the verification of Chunli Chen to Plaintiff's Complaint and decision to attach the verification of the insurance adjuster with knowledge of the lien, supports the argument of [Petitioners] that this lawsuit was brought without the cooperation of Chunli Chen and solely on behalf of the insurance company in an attempt to subrogate its lien in direct contradiction of the standard set in *Liberty Mutual Insurance Company v. Domtar Paper Co.*, 631 Pa. 463, 113 A.3d 1230 (Pa. 2015)?
- Is the caption, and effect of the caption, "The Hartford Insurance Group on Behalf of Chunli Chen" synonymous with "Liberty Mutual Insurance Company, as a subrogee of George Lawrence" as it appears in *Liberty Mutual Insurance Company v. Domtar Paper Co.*, 631 Pa. 463, 113 A.3d 1230 (Pa. 2015)?

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