

# The Pennsylvania Appellate Case Review

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REPORTING DECISIONS THROUGH September 30, 2017

## PENNSYLVANIA APPELLATE COURT DECISIONS

### I. Procedural Law

#### A. *Trial - Removal Judgment of Non Pros*

- [\*Banks v. Cooper\*, 2017 PA Super 304 \(Sept. 26, 2017\)](#)

➤ **Holding:** Before entering a judgment of non pros based upon counsels' failure to appear for a scheduled trial, the trial court must hold a hearing to consider the factors outlined in Pa.R.C.P. 3051, including timeliness, reasonable explanation, and the merit of the cause of action. The Court affirmed that a plaintiff should not be denied her day in court simply because her attorney of record committed an error which counsel moved to correct immediately upon discovering it.

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. *Bad Faith Claim - Elements of Cause of Action*

- [\*Rancosky v. Washington National Insurance Co.\*, 28 WAP 2016 \(Pa., Sept. 28, 2017\)](#)

➤ **Holding:** In order to recover in a bad faith action under 42 Pa.C.S. § 8371, Pennsylvania's bad faith statute, a plaintiff must present clear and convincing evidence that (1) the insurer did not have a reasonable basis for denying benefits under the policy and (2) the insurer knew of or recklessly disregarded its lack of a reasonable basis (adopting the test set forth in *Terletsky v. Prudential*, 649A.2d 680 (Pa.Super. 1994)). Proof of an insurance company's motive of self-interest or ill-will is not a prerequisite for prevailing in a bad faith claim under Section 8371. Chief Justice Saylor filed a [concurring opinion](#). Justice Wecht also filed a [concurring opinion](#).

#### B. *Corporate Negligence - Vicarious Liability*

- [\*Breslin v. Mountain View Nursing Home, Inc.\*, 2017 PA Super 308 \(Sept. 28, 2017\)](#)

➤ **Holding:** A Complaint alleging claims of corporate negligence/vicarious liability is not required to identify by name the nurses, doctors, or other staff allegedly responsible for the negligent care, when there is enough evidence for persons to be ascertained through discovery.

### C. Motor Vehicle Insurance - Resident Non-Relative Exclusion

□ [Safe Auto Insurance Co. v. Oriental-Guillermo, 2017 PA Super 297 \(Sept. 18, 2017\)](#)

- **Holding:** An “Unlisted Resident Driver Exclusion” in a motor vehicle insurance policy, which excludes from coverage individuals who reside with policyholder but are not related and are not listed on policy, is enforceable under the Motor Vehicle Financial Responsibility Law (MVFRL).

### D. Evidence - Intoxication

□ [Coughlin v. Massaquoi, 32 EAP 2016 \(Pa., Sept. 28, 2017\)](#)

- **Holding:** The admissibility of a party’s blood alcohol content (BAC) is within the discretion of the trial court based upon the rules governing the admissibility of evidence. Thus, in this case, the trial court did not err by admitting evidence of the decedent’s BAC despite the fact that (1) the decedent’s whereabouts before the accident were unknown, (2) there were no witnesses who observed his condition or behavior before the accident, and (3) there was no evidence that the decedent appeared intoxicated or that intoxication was a factor in causing the accident. Justice Donohue filed a [concurring opinion](#) in which Justice Baer joined. Justice Mundy filed a [dissenting opinion](#) in which she asserted that the majority has created an over-broad standard for which evidence of an injured party’s intoxication in a personal injury case becomes relevant and admissible.
- *Commentary: This case highlights why bad facts make bad law. The pedestrian/decedent had a BAC of .313 as well as trace amounts of illegal substances in his blood. This case has essentially overturned, or neutralized, longstanding case law that evidence of intoxication is inadmissible absent evidence of unfitness.*

## III. Workers’ Compensation

### A. Collateral Estoppel

□ [McNeil v. Workers’ Compensation Appeal Board \(Dept. of Corrections, SCI-Graterford\), 2022 C.D. 2016 \(Pa. Cmwlth., Sept. 1, 2017\)](#)

- **Holding:** The doctrine of collateral estoppel bars a party from re-litigating an issue ruled upon in a prior proceeding.

### B. The Going and Coming Rule

□ [Rana v. Workers’ Compensation Appeal Board \(Asha Corp.\), 1401 C.D. 2016 \(Pa. Cmwlth., Sept. 29, 2017\)](#)

- **Holding:** Section 301(c) of the Workers’ Compensation Act, 77 P.S. § 411(1)e permits compensation to claimants who are injured when “actually engaged in the furtherance of the business or affairs of the employer.” An Employee is considered to be on a “special assignment” for employer when traveling to a location for employer, especially when it is a location that he had never visited in the past.

### C. *Supersedeas Fund Reimbursement*

- [\*Volpe Tile and Marble, Inc., v. Workers' Compensation Appeal Board \(Redelheim\)\*, 118 C.D. 2017 \(Pa. Cmwlth., Sept. 29, 2017\)](#)
  - **Holding:** An employer seeking reimbursement from the Supersedeas Fund under Section 443(a) of the Workers' Compensation Act, 77 P.S. § 999(a), cannot circumvent a final determination concluding that compensation is payable to Claimant without ensuring that it has complied with the specific criteria under the Act.

### D. *Utilization Review*

- [\*Haslam v. Workers' Compensation Appeal Board \(London Grove Communication\)\*, 1655 C.D. 2016 \(Pa. Cmwlth., Sept. 1, 2017\)](#)
  - **Holding:** An employer should file a Petition for Review, and not proceed with a Utilization Review, to address the scope of an acknowledged injury and challenge causation.

## IV. *Allocatur Petitions*

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

- [\*Cruz v. Police Officers Madonna Peachey, and McCue\*, 172 EAL 2017 \(Pa., Sept. 19, 2017\)](#)
  - Did [the] Commonwealth Court err in holding that a jury's finding of intentional tort liability was sufficient to vitiate Officer Peachey's immunity under the Political Subdivisions Tort Claims Act even though the jury found that he did not commit willful misconduct?
- [\*Dittman v. UPMC\*, 149 WAL 2017 \(Pa. Sept. 12, 2017\)](#)
  - Does an employer have a legal duty to use reasonable care to safeguard sensitive personal information of its employees when the employer chooses to store such information on an internet accessible computer system?
  - Does the economic loss doctrine permit recovery for purely pecuniary damages which result from the breach of an independent legal duty arising under common law, as opposed to the breach of a contractual duty?
- [\*Dolan v. Hurd Millwork Company, Inc.\*, 168 MAL 2017 \(Pa. Sept. 12, 2017\)](#)
  - What is the proper role of an appellate court in reviewing a non-jury decision where it deems the Pa.R.A.P. 1925(a) opinion inadequate but the trial judge is no longer available to provide a supplemental opinion?
  - If the appellate court is required to reach the merits of the trial court's decision, what are the appropriate scope and standard of review?

- [\*Stapas v. Giant Eagle, Inc.\*, 123 WAL 2017 \(Pa., Sept. 26, 2017\)](#)
  - Does the Superior Court’s decision to reverse the trial court’s finding of waiver, despite Giant Eagle’s failure to object to flawed jury instructions, flawed verdict slip and/or the problematic verdict, all of which contributed to the error complained of on appeal, conflict with the Court’s holding in *Straub v. Cherne Indus.*, 583 Pa. 608, 880 A.2d 561 (2005), a case not considered by the Superior Court?
  - Does the Superior Court’s decision to excuse Giant Eagle’s failures to object to flawed jury instructions, flawed verdict slip and/or problematic verdict, merely because the appeal is styled as a “challenge to the weight of the evidence,” conflict with the timely objection requirement of *Dillipaine v. Lehigh Valley Trust Co.*, 457 Pa. 255, 322 A.2d 114 (1974)?
- [\*Whitmoyer v. Workers’ Compensation Appeal Board \(Mountain Country Meats\)\*, 924 MAL 2016 \(Pa. Sept. 15, 2017\)](#)
  - Did the Commonwealth Court err in concluding that the term “instalments of compensation” in Section 319 of the Workers’ Compensation Act, 77 P.S. § 671, encompasses both medical and disability compensation?
  - Did the Commonwealth Court err in finding that the defendant-employer did not waive its right under Section 319 of the Workers’ Compensation Act, 77 P.S. § 671?

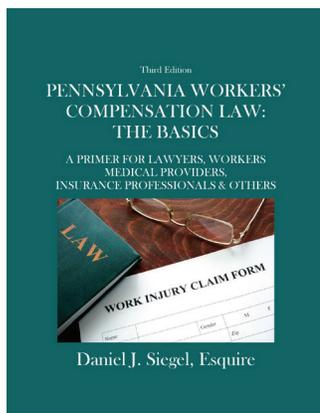
## V. Federal Court Opinion

### A. *Workers’ Compensation Compromise & Release Agreements - Impact on Other Matters*

- [\*Zuber v. Boscov’s\*, No. 16-3217 \(3rd Cir., Sept. 11, 2017\)](#)
  - **Holding:** An employee who settles a claim under the Pennsylvania Workers’ Compensation Act by executing a Compromise & Release Agreement, does not release any other claims, such as claims under the FMLA or common law. To release any other claims, the employee must also sign a general release.

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