

# The Pennsylvania Appellate Case Review

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REPORTING DECISIONS THROUGH NOVEMBER 30, 2017

## PENNSYLVANIA APPELLATE COURT DECISIONS

### I. Procedural & Substantive Law

#### A. *Statute of Limitations -*

##### *Uninsured & Underinsured Motorist Claims*

- [Erie Insurance Exchange v. Bristol](#), 124 MAP 2016 (Pa. Nov. 22, 2017)

➤ **Holding:** The statute of limitations in an uninsured or underinsured motorist case does not begin to run until there is an alleged breach of the insurance contract, *i.e.*, the insurer either denies the claim or refuses to arbitrate. Justice Wecht filed a [dissenting opinion](#).

*The Law Offices of Daniel J. Siegel, LLC was appellate counsel in Erie v. Bristol.*

#### B. *Statute of Limitations - Survival Action - Medical Malpractice*

- [Dubose v. Quinlan](#), 21 EAP 2016 (Pa. Nov. 22, 2017)

➤ **Holding:** The statute of limitations in a survival action in a medical malpractice case accrues at the time of death, not at the time of the decedent's injury pursuant to Section 513(d) of the MCARE Act, 40 P.S. § 1303.513. Justice Baer filed a [concurring and dissenting opinion](#); Chief Justice Saylor filed a [dissenting opinion](#).

#### C. *Amendment of Pleadings*

- [Shiflett v. Lehigh Valley Health Network, Inc.](#), 2017 PA Super 354 (Pa. Super. Nov. 9, 2017)

➤ **Holding:** A Plaintiff is not permitted to amend a Complaint after the statute of limitations to include different tortfeasors, different timeframes, or different specific events, even if the events are part of the larger story encompassed in the original pleadings. In addition, vague, generalized negligence allegations do not relate back to the original Complaint, particularly when the defendants properly filed Preliminary Objections to those allegations.

#### D. *Trial - Closing Argument*

- [In Re: Risperdal Litigation](#), 2017 PA Super 356 (Pa. Super. Nov. 13, 2017)

➤ **Holding:** PowerPoint slides summarizing evidence are permissible in closing arguments, even when the slides are not previously admitted into evidence. In addition, opposing counsel does not have a right to review the materials used in an opponent's closing argument prior to the presentation of closing arguments.

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!

### E. *Premises Liability and OSHA*

- [\*Kovacevich v. Regional Produce Cooperative Corp.\*, 2017 PA Super 322 \(Pa. Super. Oct. 13, 2017\)](#)
  - **Holding:** A property owner is liable in tort only when it has a legally recognized duty to conform to a standard of care and breaches that duty. When considering actions by OSHA, courts must distinguish between pronouncements that set forth a standard of care and those that merely describe OSHA's enforcement policies. Consequently, OSHA's "controlling employer" policy is not a basis for imposing liability and is merely guidance to OSHA field offices about how to enforce the agency's requirements.

## II. Unemployment Compensation

### A. *Religious Beliefs*

- [\*Kelly v. Unemployment Comp. Board of Review\*, 286 C.D. 2017 \(Pa. Cmwlth., Oct. 17, 2017\)](#)
  - **Holding:** Under Section 402(b) of the Unemployment Compensation Law, 43 P.S. § 802(b), an employee is not entitled to unemployment benefits if she fails to notify her employer about religious objections to a job assignment and provides the employer with an opportunity to accommodate the employee's religious objections through a transfer or assignment of a new project.
- [\*Kaite v. Unemployment Comp. Board of Review\*, 851 C.D. 2016 \(Pa. Cmwlth. Nov. 29, 2017\)](#)
  - **Holding:** The Commonwealth cannot deny unemployment compensation benefits pursuant to Section 402(e) of the Unemployment Compensation Act, 43 P.S. § 802(e), based on "willful conduct" when the conduct is mandated by sincere religious beliefs. Further, the Board and the courts may only evaluate an employee's beliefs for their sincerity, and not the truth of the beliefs or the formality of the religious practice.

## III. Allocatur Petitions

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

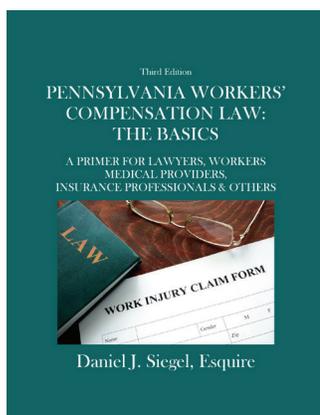
- [\*Feleccia v. Lackawanna College\*, 359 MAL 2017 \(Pa. Nov. 29, 2017\)](#)
  - Is a Pennsylvania college required to have qualified medical personnel present at intercollegiate athletic events to satisfy a duty of care to the college's student-athletes?
  - Is an exculpatory clause releasing "any and all liability" signed in connection with participation in intercollegiate football enforceable as to negligence?

*The Law Offices of Daniel J. Siegel, LLC is appellate counsel in the Feleccia case.*

- [\*Harmon v. Unemployment Comp. Board of Review\*, 307 EAL 2017 \(Pa. Nov. 28, 2017\)](#)
  - Did the Commonwealth Court inappropriately expand the concept of administrative deference by evaluating the Board's litigation posture for clear error, so that Commonwealth agency decisions will essentially become unreviewable?

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