

# The Pennsylvania Appellate Case Review

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REPORTING DECISIONS THROUGH DECEMBER 31, 2017

## PENNSYLVANIA APPELLATE COURT DECISIONS

### I. Procedural Law

#### A. *Arbitration - Enforcement of Award & Res Judicata*

- [\*Weinar v. Lex\*, 2017 PA Super 398 \(Pa. Super., Dec. 15, 2017\)](#)

- **Holding 1:** The one-year statute of limitations for confirming an Arbitration Award under the Federal Arbitration Act, 9 U.S.C. § 9, does not preempt the Pennsylvania statute, 42 Pa.C.S. § 7342(b), which does not specify the time within which a party must file a petition to confirm an award.
- **Holding 2:** Res judicata does not bar a Complaint alleging claims for events that occurred after an arbitration.

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. *Termination for Inactivity*

- [\*Golab v. Knuth\*, 2017 PA Super 389 \(Pa. Super., Dec. 12, 2017\)](#)

- **Holding:** A one-time publication in a local legal journal notifying the public which inactive cases were scheduled for termination is sufficient notice pursuant to Pa.R.J.A. 1901 (governing termination of inactive cases). In addition, a trial court is not required to conduct an evidentiary hearing concerning the cause of delay after approximately seven years of docket inactivity.

#### C. *Conformity of Pleadings*

- [\*Bouchon v. Citizen Care, Inc.\*, 2017 PA Super 379 \(Pa. Super., Dec. 6, 2017\)](#)

- **Holding:** Because claims of negligence, corporate negligence, and vicarious liability are separate causes of action, a Complaint must apprise each defendant of the capacity in which it is being sued and the specific conduct attributable to it.

## II. Substantive Law

### A. Civil Liability for Violation of Rules of Professional Conduct

□ [\*SCF Consulting, LLC v. Barrack Rodos\*, 7 EAP 2017 \(Pa., Dec. 19, 2017\)](#)

- **Holding:** A fee-splitting agreement between a lawyer and a non-lawyer in violation of Pa.R.P.C. 5.4 is not *per se* unenforceable as a violation of public policy.
- **Analysis:** Chief Justice Saylor authored the “Opinion Announcing the Judgment of the Court,” in which Justice Dougherty joined. It concluded that “only that the contract cause of action is not *per se* barred by the purported infraction on [the law firm’s] part.” The Court left it to the trial court to make “its own judgment as to the relevance of any wrongful conduct on [the law firm’s] part, without present guidance from” the Supreme Court.

In his concurring opinion, Justice Dougherty agreed that fee-splitting agreements between attorneys and non-attorneys should not be automatically unenforceable because “a *per se* rule might have the effect of emboldening unscrupulous attorneys—who are often in a superior negotiating posture as compared with their non-attorney contracting counterparts—to enter into illusory fee-splitting agreements with full knowledge the agreement may never be enforced.” Justice Baer, in his concurring and dissenting opinion, agreed that fee-sharing agreements between a lawyer and a nonlawyer are not *per se* unenforceable, but believed that such agreements do not violate public policy. Finally, in his dissenting opinion, Justice Wecht noted that the Rules of Professional Conduct should protect the clients whom lawyers represent, and suggested adopting “a bright-line rule barring such fee-splitting agreements as unenforceable at law, but [allowing] non-lawyers to seek judicial relief in equity.”

### B. *Pennsylvania Minimum Wage Act*

□ [\*Chevalier v. General Nutrition Centers, Inc.\*, 2017 PA Super 407 \(Pa. Super., Dec. 22, 2017\)](#)

- **Holding:** To calculate an employee's "regular rate" of pay under the Pennsylvania Minimum Wage Act, 43 P.S. §§ 333.101-333.115, an employer may divide the employee's salary in a given week by the number of hours actually worked. In addition, because an employee's straight salary does not fulfill the "1" of the "1-1/2" requirement for overtime compensation, an employer must pay at least 1-1/2 times the regular rate for all hours in excess of 40 hours in a workweek in addition to the employee's regular salary.

### C. *Heart & Lung Act - Subrogation*

□ [\*City of Philadelphia v. Zampogna\*, No. 94 C.D. 2017 \(Pa. Cmwlth., Dec. 27, 2017\)](#)

- **Holding:** Section 1702 of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. § 1720, prohibits an employer from subrogating its payment of Heart & Lung Act benefits from a third-party tort recovery. Courts had previously applied this provision to claims under the Workers' Compensation Act.

### III. Workers' Compensation

#### A. Modification Based Upon Labor Market Survey/Earning Power Assessment

- ☐ [Valenta v. WCAB \(Abington Manor Nursing Home and Rehab and Liberty Insurance Co.\), No. 1302 C.D. 2016 \(Pa. Cmwlth., Dec. 7, 2017\)](#)

➤ **Holding:** When an employer seeks to modify an injured worker's benefits based upon a labor market survey/earning power assessment, a claimant may present evidence concerning his or her experience pursuing the jobs identified by the employer's expert witness.

### IV. Allocatur Petitions

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

- ☐ [County of Butler v. Centurylink Communications, LLC, 271 WAL 2017 \(Pa., Dec. 26, 2017\)](#)

➤ When the General Assembly plainly and unambiguously grants the right to enforce a statute to a particular Commonwealth agency, may a different plaintiff circumvent this legislative directive by attempting to enforce the statute through common-law damages claims?

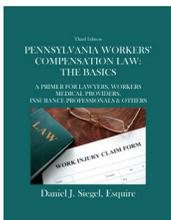
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