

The Pennsylvania Appellate Case Review

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REPORTING DECISIONS THROUGH MAY 31, 2018

PENNSYLVANIA APPELLATE COURT DECISIONS

I. Procedural Law

A. *Jury Selection*

- [*Trigg v. Children's Hospital of Pittsburgh of UPMC*, 2018 PA Super 129 \(Pa. Super. May 14, 2018\)](#)

➤ **Holding:** A party is entitled to a new trial when the trial judge does not personally observe the voir dire of the jury and it is later determined that a party was forced to use at least one peremptory challenge to excuse a prospective juror who should have been excused for cause.

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. *Statute of Limitations - Legal Malpractice Claims*

- [*Communications Network v. Mullineaux*, 2018 PA Super 126 \(Pa. Super. May 11, 2018\)](#)

➤ **Holding:** Equitable estoppel does not toll the statute of limitations in a claim for legal malpractice when the party asserting the cause of action fails to use all reasonable diligence to be properly informed of the facts and circumstances upon which a potential right of recovery is based and to institute suit within the prescribed statutory period.

C. *Summary Judgment*

- [*Straw v. Fair*, 2018 PA Super 125 \(Pa. Super. May 11, 2018\)](#)

➤ **Holding:** Summary judgment is inappropriate when a genuine issue of material fact exists regarding whether a defendant owed a duty of care to a plaintiff under Sections 323 ("Negligent Performance of Undertaking to Render Services") and 324A ("Liability to Third Person for Negligent Performance of Undertaking") of the *Restatement of Torts (Second)*. This case includes a lengthy discussion of the *Restatement* and the issues of duty and undertaking to render services.

II. Substantive Law

A. *Attorney-Client Privilege*

□ [*Knopick v. Boyle*, 2018 PA Super 140 \(Pa. Super. May 30, 2018\)](#)

- **Holding:** A party is entitled to discover electronic documents not protected by attorney-client privilege, which does not encompass notes made in anticipation of meeting with an attorney.

B. *Borrowed Employee*

□ [*Gardner. v. MIA Products Co.*, 2018 PA Super 139 \(Pa. Super. May 30, 2018\)](#)

- **Holding:** A “borrowed employee” is furnished by one person to another such that he becomes the employee of the person to whom he is loaned and passes under the latter's right of control not only to the work but also to the manner of performing it.

C. *Evidence Authentication and Admission, Lay Testimony*

□ [*Commonwealth v. Manivannan*, 2018 PA Super 112 \(Pa. Super. May 4, 2018\)](#)

- **Holding:** An unsigned letter from an internet service provider is not an exception to hearsay as a business record, and is inadmissible hearsay unless properly authenticated under Pa.R.E. 902(11).

D. *Exculpatory Clause*

□ [*Vinson v. Fitness & Sports Clubs, LLC*, 2018 PA Super 113 \(Pa. Super. May 4, 2018\)](#)

- **Holding:** An exculpatory clause in a contract between private parties is enforceable and does not contravene public policy when it does not involve any public entity or concern and is not a contract of adhesion.

III. Workers' Compensation

A. *Coming & Going Rule*

□ [*Kush v. WCAB \(Power Contracting Co.\)*, No. 1688 C.D. 2017 \(Pa.Cmwlt. May 17, 2018\)](#)

- **Holding:** Merely because a job has a discrete and limited duration does not make the employee who holds it a traveling employee for purposes of entitlement to workers' compensation benefits.

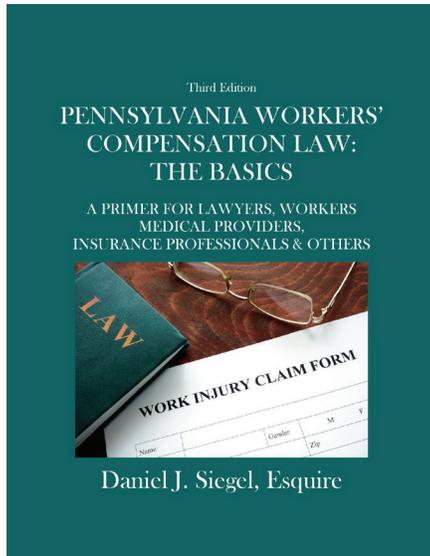
B. *Subrogation (Heart & Lung Act)*

□ [*Pennsylvania State Police v. WCAB \(Bushta\)*, No. 14 WAP 2017 \(Pa. May 29, 2018\)](#)

- **Holding:** Pursuant to the Heart and Lung Act, 53 P.S. § 637(a)(1), (12), a self-insured municipality is not entitled to subrogation under the Workers' Compensation Act when it has concurrent obligations under the Workers' Compensation and Heart and Lung Acts.

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