

The Pennsylvania Appellate Case Review

By Daniel J. Siegel, Esquire

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REPORTING DECISIONS THROUGH AUGUST 31, 2018

PENNSYLVANIA APPELLATE COURT DECISIONS

I. Substantive & Procedural Law

A. *Sovereign Immunity - Operation of a Motor Vehicle*

- [*Balentine v. Chester Water Authority, No. 119 MAP 2016 \(Pa., August 21, 2018\)*](#)

- **Holding:** In motor vehicle accident claims against Pennsylvania governments and governmental agencies, “operation of a vehicle” is the continuum of activity from when a vehicle begins its journey until it reaches its final destination. This case will impact every auto accident claim against the Commonwealth of Pennsylvania, every municipality, and every governmental agency, such as SEPTA.

In the case, the Supreme Court specifically cited and adopted the standard suggested by Attorney Daniel J. Siegel, who authored the Amicus/Friend of the Court Brief for the Pennsylvania Association for Justice: “The approach set forth in the Warrick dissent, as advocated for by Amicus Curiae Pennsylvania Association for Justice, does not contradict the ‘intent of the Tort Claims Act to insulate local government agencies from liability.’”

The Opinion reverses 30 years of inconsistent and illogical decisions and creates a uniform and logical standard for evaluating the responsibility of a governmental entity in motor vehicle accident cases.

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!

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B. Appellate Procedure -Waiver

- **[Hackett v. Indian King Residents Assoc., 2018 PA Super 240 \(Pa. Super., August 29, 2018\)](#)**
 - **Holding:** Issues raised on appeal are waived if a party (1) fails to advance or cite to supporting authority and/or the record, or (2) does not appropriately develop arguments, including those where the party has failed to cite any authority. Although this is a premises liability case, the analysis relating to invitees and licensees addresses longstanding principles.

C. Jury Charges - Waiver

- **[Jones v. Ott, No.12 WAP 2018 \(Pa., Aug. 21, 2018\)](#)**
 - **Holding:** To preserve a challenge to a proposed jury instruction pursuant to Pa.R.Civ.P. 227.1, a litigant must object to the charge at trial when the judge charges the jury. Although a party may preserve a challenge under Rule 227.1 by raising the issue in a post-trial motion, the challenge is waived

if the party fails to secure a ruling from the trial court upon the proposed charge. Chief Justice Saylor joined in portions of the Opinion, but also filed a [concurring opinion](#). Justice Dougherty filed a [dissenting opinion](#) in which Justice Donohue joined. Justice Mundy filed a [dissenting opinion](#) in which Justice Donohue joined.

D. *Summary Judgment - Expert Witness Testimony - Strict Liability*

□ [Dunlap v. Federal Signal Corporation, 2018 PA Super 231 \(Pa. Super., Aug 20, 2018\)](#)

- **Holding:** In a strict liability claim, expert testimony is necessary to establish that a proposed alternative design is safer, not merely that the proposed design met the industry standard. This case, filed as a mass tort on behalf of 247 firefighters, is relatively fact-specific; counsel with Section 402A claims should read this decision and the [dissent](#) carefully.

II. Workers' Compensation

B. *Due Process Clause - Compromise and Release Agreements Extinguishing Non-Party's Right to Payment*

□ [Armour Pharmacy v. Bureau of Workers' Compensation Fee Review Hearing Office, No. 1613 C.D. 2017 \(Pa. Cmwlth., Aug. 7, 2018\)](#)

- **Holding:** The parties to a Compromise & Release Agreement can bind each other, but they cannot release themselves from liability to a person who is not a party to the C&R agreement and who has been given neither notice nor opportunity to be heard on the C&R Agreement. The Court also ruled that “A C&R Agreement cannot be employed to avoid the procedures in the Act for challenging a provider’s invoice or a fee review determination that the invoice must be paid. To hold otherwise would eviscerate Section 301(f.1)(5) and (6) of the Act and violate the due process of law guaranteed to providers.”
- *Attorney Dan Siegel of the Law Offices of Daniel J. Siegel, LLC was lead appellate counsel, and argued the case for the medical provider; he was assisted by Attorney Nicole Kratzer.*

C. Impairment Rating Examinations - Retroactive Application of Protz

□ [Timcho v. Workers' Compensation Appeal Board, No. 158 C.D. 2017 \(Pa. Cmwlth., Aug. 17, 2018\)](#)

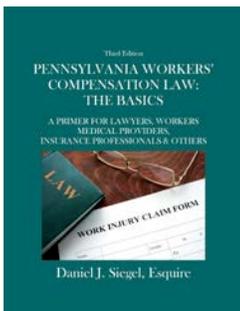
➤ **Holding:** A claimant does not waive a claim that an impairment rating-based modification of benefits is unconstitutional by failing to raise it when benefits were modified. A claimant may raise the defense provided the 500-week period of partial disability is not exhausted and the petition is filed within three years of the date of the most recent payment of compensation.

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