

# The Pennsylvania Appellate Case Review

By Daniel J. Siegel, Esquire

LAW OFFICES OF DANIEL J. SIEGEL, LLC

66 West Eagle Road • Suite 1 • Havertown, PA 19083-1425

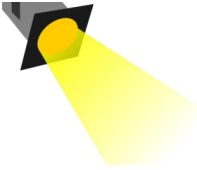
(610) 446-3457 • Fax (484) 636-3993

E-mail [DSiegel@DanielJSiegel.com](mailto:DSiegel@DanielJSiegel.com)

---

REPORTING DECISIONS THROUGH MARCH 31, 2019

## PENNSYLVANIA APPEALS COURT OPINIONS



**Spotlight Case – [Armour Pharmacy v. Bureau of WC Fee Review Hearing Office \(Wegman's Food Markets, Inc.\), 1725 C.D. 2017 \(Pa. Cmwlth., March 29, 2019\)](#)**

***Finally – relief for medical providers who want to get paid!***

This case, in which Attorney Daniel J. Siegel was counsel, eliminates the practice in which insurers and employers could simply allege a few “magic words” to halt the fee review process used to determine how much providers are paid for caring for injured workers. Rather, a unanimous *en banc* Commonwealth Court ruled that “where the employer challenges a fee determination of the Medical Fee Review Section for the stated reason that the medical service was not rendered by a ‘provider’ within the meaning of the Act, the threshold question must be decided by the Hearing Officer.”

Insurers and employers must now introduce evidence of why they are disputing a medical bill, eliminating the often-bogus defenses that have prevented Hearing Officers from deciding how much providers are owed. ***This case applies to every doctor, hospital, chiropractor, medical equipment company, pharmacy and any other entity providing medical care or services to workers injured and receiving benefits under the Pennsylvania Workers’ Compensation Act.*** The Opinion by President Judge Leavitt affirms the principles set forth in [Armour Pharmacy v. Bureau of Workers’ Compensation Fee Review Hearing Office \(National Fire Insurance Company of Hartford\)](#), (Pa. Cmwlth. 2018), that due process applies to providers in fee review matters. Attorney Dan Siegel was also counsel in this matter.

One Hearing Officer has stated that half of the cases assigned to the Hearing Officer involve the “provider” defense, which had previously required the Hearing Officer to dismiss the action. Once the fee review was dismissed, providers generally had no alternative method of asserting their right to be paid for treatment of injured workers subject to the Pennsylvania Workers’ Compensation Act. Now, providers have a method of asserting and protecting their rights.

## **You've Trusted Dan Siegel for Over 25 Years for Case Summaries Why Not Call Him When Your Office Has Technology Questions?**



Numerous lawyers trust Dan Siegel's Integrated Technology Services, LLC to provide sales, advice, support and training for a wide range of software products – you should too!

We can help with Microsoft Office, Adobe Acrobat, Legal Files, Time Matters, LexisNexis CaseMap, and more! In many cases we wrote the book on the products. [Click here to visit our redesigned website at techlawyergy.com](http://techlawyergy.com), and learn what we can do for you and your firm – providing practical advice from lawyers and paralegals who understand what you do – not consultants who have never practiced law or who don't speak your language.

Give us a call at **610-446-3467** or email us at [dan@techlawyergy.com](mailto:dan@techlawyergy.com).

### I. Civil Litigation

#### A. *Statute of Limitations - Tolling When Federal Action is Pending*

□ [\*Buchan v. The Milton Hershey School\*, 2019 PA Super 92 \(March 27, 2019\)](#)

- **Holding:** 42 Pa.C.S. § 5103 provides that the statute of limitations on a state law cause of action will toll when a litigant timely commences an action in federal district court and the matter is dismissed by the federal court for lack of jurisdiction. Consequently, a voluntary dismissal does not toll the statute of limitations period for state law claims.

#### B. *Spoliation - Adverse Inference Instruction*

□ [\*Marshall v. Brown's IA, LLC\*, 2019 PA Super 94 \(March 27, 2019\)](#)

- **Holding:** A party that unilaterally decides not to preserve arguably relevant evidence is subject to sanctions for spoliation. Thus, because the defendant unilaterally decided not to preserve arguably relevant evidence, the trial court should have given the jury an adverse inference instruction.

#### C. *Personal Jurisdiction*

□ [\*Calabro v. Socolofsky\*, 2019 PA Super 75 \(March 11, 2019\)](#)

- **Holding:** To determine whether personal jurisdiction exists in an intentional torts case, the plaintiff must show: (1) the defendant committed an intentional tort, (2) the forum state is the focal point of the harm suffered by plaintiff, and (3) the tortious conduct is expressly aimed at the forum state.

□ [\*Seeley v. Caesars Entertainment Corp.\*, 2019 PA Super 87 \(March 22, 2019\)](#)

- **Holding:** To establish personal (general) jurisdiction over a non-resident defendant, pursuant to 42 Pa.C.S. § 5301((a)(2)(i-iii), a plaintiff must establish that the defendant (1) is incorporated under or qualified as a foreign corporation under the laws of this Commonwealth; (2) consents, to the extent authorized by the consent; or (3) carries on a continuous and systematic part of its general business within this Commonwealth. Ownership of another entity is insufficient on its own to establish the "systemic and continuous" carrying on of business within Pennsylvania needed to confer personal jurisdiction.

## II. Workers' Compensation

### A. Domestic Service Exception

□ [\*Van Leer v. WCAB \(Hudson\)\*, No. 1127 C.D. 2018 \(Pa. Cmwlth., February 27, 2019\)](#)

- **Holding:** A claimant who does not provide medical care, and whose only duties consist of service to members of the household, is not entitled to benefits pursuant to the Domestic Service exception to the Workers' Compensation Act, 77 P.S. § 676.

### B. Supersedeas Fund Reimbursement

□ [\*Erie Insurance Co. v. WCAB \(Commonwealth, Dept. of Labor and Industry\)\*, No. 20 C.D. 2018 \(Pa. Cmwlth., February 21, 2019\)](#)

- **Holding:** An employer that unilaterally withholds payment of medical expenses in violation of the Act is not entitled to Supersedeas Fund reimbursement for the withheld benefits. Even if the employer subsequently prevails on a termination petition, it does not excuse earlier violations of the Act.

### C. Volunteer Firefighter - Cancer - Burden of Proof

□ [\*Bristol Borough v. WCAB \(Burnett\)\*, No. 464 C.D. 2018 \(Pa. Cmwlth., March 22, 2019\)](#)

- **Holding:** For a volunteer firefighter to receive benefits for cancer under Section 108(r) of the Workers' Compensation Act, 77 P.S. § 27.1(r), a claimant need not identify and document the carcinogens encountered at every incident. Rather, direct exposure may be established by evidence of occupational exposure to Group 1 carcinogens known to cause various types of cancers.

### III. Pennsylvania Rules of Appellate Procedure

#### A. *Amendments to the Rules*

##### □ [Pa. R.A.P. 126 \("Citations of Authorities"\)](#)

➤ The revisions to the Rule, effective May 1, 2019, permit a party to cite unpublished/non-precedential opinions as follows:

(a) When citing authority, a party should direct the court's attention to the specific part of the authority on which the party relies. A party citing authority that is not readily available shall attach the authority as an appendix to its filing. If a party cites a decision as authorized in paragraph (b), (c), or (d), the party shall indicate the value or basis for such citation in a parenthetical following the citation.

(b) *Non-Precedential Decisions.*

(1) As used in this rule, “non-precedential decision” refers to an unpublished non-precedential memorandum decision of the Superior Court filed after May 1, 2019 or an unreported memorandum opinion of the Commonwealth Court filed after January 15, 2008.

(2) Non-precedential decisions as defined in (b)(1) may be cited for their persuasive value.

(c) *Single-Judge Opinions of the Commonwealth Court.*

(1) A reported single-judge opinion in an election law matter filed after October 1, 2013, may be cited as binding precedent only in an election law matter.

(2) All other single-judge opinions, even if reported, shall be cited only for persuasive value and not as binding precedent.

(d) *Law of the Case and Related Doctrines.*-Any disposition may always be cited if relevant to the doctrine of law of the case, *res judicata*, or collateral estoppel, or if relevant to a criminal action or proceeding because it recites issues raised and reasons for a decision affecting the same defendant in a prior action or proceeding.

### IV. Allocatur Petitions

*The Pennsylvania Supreme Court has granted appeals in the following matter based upon the issues stated:*

#### • [Walsh v. BASF Corp., No. 359 WAL 2018 \(Pa., March 5, 2019\)](#)

○ Did the Superior Court majority commit reversible error in concluding that, when evaluating scientific evidence under the *Frye* standard, trial courts are not permitted to

act as "gatekeepers" to ensure the relevance and reliability of scientific studies offered by experts to support their opinions by scrutinizing whether those studies actually support their opinions?

- Did the Superior Court majority commit reversible error in concluding that trial courts may not review experts' opinions extrapolating from a broad class of products and injuries to a specific product and injury, thereby eliminating plaintiff's burden to show product-specific causation of plaintiff's specific injury?
- Did the Superior Court majority commit reversible error in concluding that the trial court erred without explaining how it abused its discretion because of manifest unreasonableness, partiality, prejudice, bias, ill-will or such lack of support from the evidence of the record so as to be clearly erroneous?

• [Dean v. Bowling Green-Brandywine, No. 657 MAL 2018 \(Pa., March 4, 2019\)](#)

- Whether the Superior Court, in reviewing a non-suit, properly applied the provisions in the Mental Health Procedures Act ("MHPA") and the evidence in the light most favorable to the plaintiffs in granting limited immunity to a drug addiction treatment facility and its physicians where the individual who dies under the care of the facility was not mentally ill and did not seek voluntary inpatient treatment for a mental illness?
- Whether the Superior Court properly applied fundamental notices of due process and the provisions of the Mental Health Procedures Act ("MHPA") to an individual who did not give consent to voluntary treatment under the MHPA?

• [Berg v. Nationwide Mutual Insurance Co., No. 569 MAL 2018 \(Pa., March 29, 2019\)](#)

- a. Does an appellate court abuse its discretion by reweighing and disregarding clear and convincing evidence introduced in the trial court upon which the trial court relied to enter a finding of insurance bad faith?
- b. Did the Superior Court abuse its discretion by reweighing and disregarding clear and competent evidence upon which the trial court relied to support its finding of insurance bad faith [pursuant to the standard set forth in *Rancosky v. Washington Nat'l Ins Co.*, 170 A.3d 364 (Pa. 2017)]?
- c. Does an insurer that elects under an insurance contract to repair collision damage to a motor vehicle, rather than pay the insured the fair value of the loss directly, have a duty to return the motor vehicle to its insured in a safe and serviceable condition pursuant to national insurance standards, and pursuant to its duty of good faith and fair dealing?

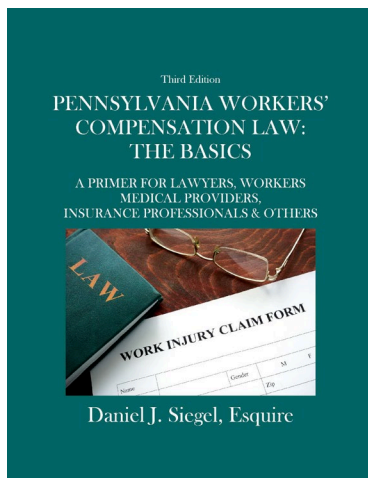
\*\*\*\*\*

**REVISED THIRD EDITION:**

*The Only Desk Reference with the Entire Workers' Compensation Act and the Most Current Regulations*

# The Pennsylvania Workers' Compensation Book

By Daniel J. Siegel, Esquire



The only resource of its kind, *Pennsylvania Workers' Compensation Law: The Basics: A Primer for Lawyers, Workers, Medical Providers, Insurance Professionals & Others*, is an up-to-date and easy-to-understand guide to Pennsylvania workers' compensation law, practice and procedure. Designed as a desk reference for attorneys, paralegals, injured workers, employers, claims adjusters, self-insured employers and vocational rehabilitation workers, the book includes:

- The latest versions of the Pa. Workers' Compensation Act and Regulations
- A complete analysis of the medical provider provisions of the Act
- Information for attorneys who don't regularly handle workers' comp claims
- Helpful tips to better understand Pennsylvania's workers' compensation system

**Buy your copy today! Only \$49.95**

- [Order Direct from the Author by completing this Order Form](#)
- Call 1-610-446-3457
- Email [wcbook@danieljsiegel.com](mailto:wcbook@danieljsiegel.com)

Also available from [Amazon.com](#) and [Barnes & Noble](#) in traditional editions, and in a [Kindle](#) edition.