

A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH MAY 31, 2013

PENNSYLVANIA APPELLATE COURT DECISIONS

I. CIVIL LITIGATION

A. *Arbitration Agreement - Enforceability*

□ [Walton v. Johnson, 2013 PA Super 108 \(Pa. Super., May 7, 2013\)](#)

- **Holding:** A party (Party A) seeking to enforce an agreement to arbitrate based upon a claim that the signer (Party B) was acting as the agent of the opposing party must demonstrate that the agency relationship was created by any of the following: (1) express authority, (2) implied authority, (3) apparent authority, and/or (4) authority by estoppel. When, as here, the person against whom the arbitration agreement was sought to be enforced (Party B) was comatose, and the individual who signed the agreement was not related to Party B, the arbitration agreement is not enforceable because Party B could not authorize the treatment or grant authority to anyone else.

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. *Electronic Evidence - Spoliation*

□ [PTSI, Inc. v. Haley, 2013 PA Super 130 \(Pa. Super., May 24, 2013\)](#)

- **Holding:** A trial court does not abuse its discretion by declining to impose sanctions for alleged spoliation of electronic stored information (ESI) when the record demonstrates that (1) the evidence most relevant to the matter was created before litigation was pending or foreseeable, (2) no protective order was in effect, (3) the moving party also deleted ESI after a protective order was issued, (4) the conduct was routine and not motivated by bad faith, and (5) all relevant ESI was produced.

C. *Judgment by Confession - Opening*

□ [Ferrick v. Bianchini, 2013 PA Super 116 \(Pa. Super., May 14, 2013\)](#)

- **Holding:** A trial court does not abuse its discretion by denying to strike or open a judgment by confession when the petition fails to allege evidence of a meritorious defense sufficient to require submission of the facts to a jury.

D. Judgment by Default - Opening or Striking

□ [**Wells Fargo Bank, N.A. v. Vanmeter, 2013 PA Super 115 \(Pa. Super., May 14, 2013\)**](#)

- **Holding:** In order to strike a default judgment under Pa.R.Civ.P. 237, a party must demonstrate a fatal defect apparent on the face of the record; in order to open a default judgment, the moving party must (1) promptly file the petition, (2) plead a meritorious defense to the claims raised in the Complaint, and (3) provide a reasonable excuse for not filing a responsive pleading.

E. Judgment of Non Pros - Opening

□ [**Bartolomeo v. Marshall, 2013 PA Super 103 \(Pa. Super., May 2, 2013\)**](#)

- **Holding:** Absent a meritorious defense, a trial court must deny a petition to open a judgment of non pros under Pa.R.Civ.P. 3051.

F. Pennsylvania Uniform Trade Secrets Act - Attorney's Fees

□ [**Krafft v. Downey, 2013 PA Super 119 \(Pa. Super., May 17, 2013\)**](#)

- **Holding:** Under the Pennsylvania Uniform Trade Secrets Act, 12 Pa.C.S.A. §§ 5301-5308, a defendant's motion for attorney fees may be granted when the plaintiff, acting with "subjective misconduct," files a Trade Secret Claim despite knowledge that the defendant did not in fact possess a trade secret.

G. Severance of Claims

□ [**Ball v. Bayard Pump & Tank Co., Inc., No. 18 MAP 2011 \(Pa., May 28, 2013\)**](#)

- **Holding:** A trial court has discretion pursuant to Pa.R.Civ.P. 213(b) to sever claims or issues in mass tort cases in an effort to avoid prejudice, or in the interest of convenience and judicial economy. The determination by the trial court may be reversed on appeal only if the trial court abused its discretion, and not merely because the appellate court may have reached a different conclusion from the trial court's. Justice Saylor filed a [**dissenting opinion.**](#)

II. CONTRACTS

A. Employment - Restrictive Covenants & Offers of Employment

□ [**Pulse Technologies, Inc. v. Notaro, No. 6 MAP 2012 \(Pa., May 29, 2013\)**](#)

- **Holding:** A restrictive covenant is binding and enforceable if it is contained within the employment agreement, was ancillary to the taking of employment, and supported by consideration. When a letter offering a position requires the applicant to sign an employment agreement as a condition of employment, the letter does not constitute an employment agreement. Justice Saylor filed a [**concurring opinion.**](#) Justice Todd also filed a [**concurring opinion.**](#)

III. INSURANCE

A. *Homeowner's Insurance - Intentional Injury Exclusion - Duty to Defend and Indemnify*

- [*State Farm Fire and Casualty Co. v Decoster, 2013 PA Super 121 \(Pa. Super., May 17, 2013\)*](#)
 - **Holding:** A carrier has a duty to defend an insured under a liability insurance policy, despite the existence of an intentional injury exclusion, unless the insured homeowner's conduct was intentionally wrong under applicable tort law.

B. *Motor Vehicle Insurance - Liability for Attorney Fees*

- [*Levine v. Travelers Property Casualty Insurance Co., 2013 PA Super 129 \(Pa. Super., May 24, 2013\)*](#)
 - **Holding:** When an insurer fails to submit bills for medical care to a peer review organization (PRO) pursuant to Section 1797(b) of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S., the carrier may be liable for attorneys' fees. Further, an independent medical examination (IME) is not and cannot serve as a substitute for a PRO determination.

C. *Unfair Insurance Practices Act*

- [*Lynn v. Nationwide Insurance Co., 2013 PA Super 101 \(Pa. Super., May 1, 2013\)*](#)
 - **Holding:** Under the Unfair Insurance Practices Act, 40 P.S. § 1171.5(a)(14), an insurer may not deny the claims of an innocent co-insured where the loss was caused by the intentional acts of another insured.



*Summarizing Pennsylvania
Appellate Case Law*