

A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH NOVEMBER 30, 2014

PENNSYLVANIA APPELLATE COURT DECISIONS

I. Substantive Law

A. *Damages - Sovereign Immunity*

- [*Zauflik v. Pennsbury School District*, No. 1 MAP 2014 \(Pa., November 19, 2014\)](#)

- **Holding:** The \$500,000 damages cap applies to claims against local government agencies under the Political Subdivision Tort Claims Act, 42 Pa.C.S. §§ 8501-8564.

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. *Medical Malpractice - Causation*

- [*Pomroy v. Hospital of the University of Pennsylvania*, 2014 PA Super 257 \(Pa. Super., November 9, 2014\)](#)

- **Holding:** In a negligence action, a plaintiff’s burden of causation has two components: (1) cause-in-fact, and (2) legal or proximate cause. Expert testimony is required to establish causation. To establish cause-in-fact causation, a plaintiff must prove, through expert testimony, that “but for” the defendant’s negligence, the harm suffered by the plaintiff would not have occurred. A jury’s verdict must therefore be based upon more than mere speculation of medical causation. This case is highly fact-specific, and should be analyzed primarily for the factual issues in the case.

C. *Medical Records Act - Pharmacy Record Fees*

- [*Landay v. Rite Aid*, No. 20 WAP 2013 \(Pa., November 24, 2014\)](#)

- **Holding:** The Medical Records Act, 42 Pa.C.S.A. §§ 6151-6160 does not apply to pharmacies, which are not health care providers under the Act. Thus, pharmacies are not subject to the fee limitations of the Act.

D. *Products Liability - Second Restatement of Torts Applies*

- [*Tincher v. Omega Flex, Inc.*, No. 17 MAP 2013 \(Pa., November 19, 2014\)](#)

- **Holding:** Pennsylvania will continue to apply Section 402A of the *Restatement (Second) of Torts* in products liability matters. In particular, the Court concluded that in

a products liability claim, a plaintiff must prove that the product is in a “defective condition” by showing either that (1) the danger is unknowable and unacceptable to the average or ordinary consumer, or that (2) a reasonable person would conclude that the probability and seriousness of harm caused by the product outweigh the burden or costs of taking precautions. The burden of production and persuasion is by a preponderance of the evidence.

E. *Wrongful Discharge*

- [*Owens v. Lehigh Valley Hospital*, No. 472 C.D. 2014 \(Pa. Cmwlth., November 7, 2014\)](#)
 - **Holding:** A cause of action exists under Pennsylvania law for wrongful discharge of an employee who files a claim for benefits under the Workers’ Compensation Act but has not filed a Claim Petition with the Bureau of Workers’ Compensation.

II. Longshore & Harbor Workers’ Compensation

A. *Attachment of Disability Benefits*

- [*Uveges v. Uveges*, 2014 PA Super 251 \(Pa. Super., November 5, 2014\)](#)
 - **Holding:** A spouse (Spouse A) may attach the other spouse’s (Spouse B) Longshore and Harbor Workers’ Compensation Act disability benefits to pay Spouse B’s alimony obligations.

III. Workers’ Compensation

A. *Course & Scope of Employment*

- [*1912 Hoover House Restaurant v. Workers’ Compensation Appeal Board*, No. 309 C.D. 2014 \(Pa. Cmwlth., November 10, 2014\)](#)
 - **Holding:** An employee injured during a brief, but not pronounced, departure from work activities is within the course and scope of his employment and entitled to benefits under the Workers’ Compensation Act. In this case, the injured worker was on a cigarette break expressly permitted by his employer in an area designated by the employer as a break area when he was attacked while petting a dog.

B. *Impairment Rating Evaluations*

- [*Commonwealth of Pennsylvania v. Workers’ Compensation Appeal Board \(Slessler\)*, No. 99 C.D. 2014 \(Pa. Cmwlth., October 30, 2014\)](#)
 - **Holding:** Because the evidence in a modification petition involving impairment rating evaluations under Section 306(a.2)(1) of the Act, 77 P.S. § 511.2, is generated through a process requiring evaluation by a medical professional, a claimant seeking to respond to such evidence must offer evidence of similar quality and character, *i.e.*, competent opinion evidence from a medical professional. Thus, when a claimant seeks to rebut competent IRE evidence, he or she must present evidence of similar character, *i.e.*, evidence of rating evaluations performed only by those persons deemed qualified to engage in rating evaluations, *i.e.*, osteopathic or medical doctors.

C. *Specific Loss Benefits*

- [*Fields v. Workers' Compensation Appeal Board \(City of Philadelphia\)*, No. 42 C.D. 2014 \(Pa. Cmwlth., November 14, 2014\)](#)
 - **Holding:** Benefits for multiple specific losses under Section 306(c)(23) of the Act, 77 P.S. § 513(c)(23), must be paid consecutively. This case addresses the limited circumstances in which a worker suffers the loss of both hands or both arms or both feet or both legs or both eyes, and the provision of the Act that had given the Appeal Board the ability to determine how such benefits may be paid.

D. *Subrogation - Heart and Lung Act*

- [*Stermel v. Workers' Compensation Appeal Board \(City of Philadelphia\)*, No. 2121 C.D. 2013 \(Pa. Cmwlth., November 13, 2014\)](#)
 - **Holding:** An employer has no right to subrogation under the Heart and Lung Act for benefits paid to victims of motor vehicle accidents under the Motor Vehicle Financial Responsibility Law. Because the employer is prohibited from subrogating against the recovery, a plaintiff is prohibited from including Heart and Lung Act benefits as an element of damages pursuant to 75 Pa.C.S. § 1720.

E. *Uninsured Employer Guaranty Fund - Unreasonable Contest*

- [*Trautman v. Workers' Compensation Appeal Board \(Blystone Tree Service and Pennsylvania Uninsured Employer Guaranty Fund\)*, No. 389 C.D. 2014 \(Pa. Cmwlth., November 14, 2014\)](#)
 - **Holding:** Attorney's fees for unreasonable contest may not be assessed against the Uninsured Employer Guaranty Fund pursuant to Section 1605(b) of the Act, 77 P.S. § 2705(b).

IV. Allocatur Granted

A. *The Pennsylvania Supreme Court has granted an allowance of appeal in the following matters for the issues stated:*

- [*Rost v. Ford Motor Co.*, No. 309 EAL 2014 \(Pa., November 6, 2014\)](#)
 - Whether, contrary to Howard, Betz, and Gregg, a plaintiff in an asbestos action may satisfy the burden of establishing substantial-factor causation by an expert's "cumulative-exposure" theory that the expert concedes is simply an "any-exposure" theory by a different name?
 - Whether the Philadelphia Court of Common Pleas' mandatory practice of consolidating unrelated asbestos cases – even where the defendants suffer severe prejudice as a result – is consistent with the Pennsylvania Rules of Civil Procedure and Due Process; whether consolidation in this case was proper; and whether the Superior Court has the authority to review a trial court's case-consolidation decisions in asbestos cases?

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