

A Summary of Recent Pennsylvania Appellate Court Decisions

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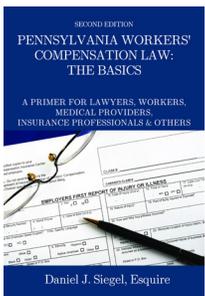
REPORTING DECISIONS THROUGH APRIL 30, 2015

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PENNSYLVANIA APPELLATE COURT DECISIONS

I. Substantive Law

A. *Arbitration*

□ [*Taylor v. Extendicare Health Facilities, Inc.*, 2015 PA Super 64 \(April 2, 2015\)](#)

- Holding: An arbitration agreement signed by a decedent or a decedent's authorized representative is not binding upon non-signatory wrongful death beneficiaries, who cannot be compelled to litigate their claims in arbitration. In addition, neither the Federal Arbitration Act nor Pa.R.C.P. 213 precludes wrongful death and survival actions from proceeding together in arbitration when all of the parties, including wrongful death beneficiaries, agree to arbitrate.

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. *Employment Law*

□ [*Stewart v. Fedex Express*, 2015 PA Super 86 \(April 17, 2015\)](#)

- Holding: A terminated worker has no cause of action for wrongful termination unless the termination violates public policy. An employer does not have to have a reason, or even have a bad reason, for terminating an employee; the only relevant question is whether plaintiff has pled that he or she was terminated for a reason that violates public policy " so obviously for or against public health, safety, morals, or welfare that there is a virtual unanimity of opinion in regard to it."

C. *Exculpatory Releases*

□ [*McDonald v. Whitewater Challenges, Inc.*, 2015 PA Super 104 \(April 29, 2015\)](#)

- Holding: When a non-Pennsylvania resident signs an exculpatory release with a Pennsylvania corporation engaged in the business of whitewater rafting in Pennsylvania, and is injured while whitewater rafting, Pennsylvania law applies.

D. *Motor Vehicle Insurance - Policy Interpretation*

□ [*An v. Victoria Fire & Casualty Co.*, 2015 PA Super 84 \(April 17, 2015\)](#)

- Holding: A "named driver only" exclusion on an automobile insurance policy does not violate Section 1718(c) of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1718(c), and is not contrary to public policy.

□ [*Rourke v. Pennsylvania National Mutual Casualty Insurance Co.*, 2015 PA Super 100 \(April 28, 2015\)](#)

- Holding: If an insurance policy contains an ambiguous term, the policy must be construed in favor of the insured. Thus, when an insurer failed to define "ward" in a policy, the carrier may not add an age or other restriction onto the definition after the policy was issued.

E. *Torts - Duty - Assumption of Risk - Bar from Liability*

□ [*Juszczyszyn v. Taiwo*, 2015 PA Super 71 \(April 10, 2015\)](#)

- Holding: A police officer responding to a call in the performance of his duties is a licensee, and a property owner is only required to warn the police officer of dangerous hidden conditions. Thus, pursuant to *Holpp v. Fez, Inc.*, 656 A.2d 147 (Pa. Super. 1995), an officer who responds to a call at a bar and is aware of the potential for violence among patrons who have been consuming alcoholic beverages and who is conscious of the attendant risks, cannot establish a breach of a duty in a negligence claim. In addition, a police officer may not assert a Dram Shop claim against a bar for injuries suffered while acting in his official capacity in response to a situation that created the need for the officer's presence.

F. *Vicarious Liability*

□ [*Estate of Denmark v. Williams*, 2015 PA Super 101 \(April 28, 2015\)](#)

- Holding: In a claim against an entity, in this case a hospital, for vicarious liability, the employees whose conduct underlies the claim may be unnamed or referred to as a group.

II. Unemployment Compensation

A. *Incarceration*

□ [*Chamberlain v. Unemployment Compensation Board of Review*, No. 76 MAP 2014 \(Pa., April 27, 2015\)](#)

- Holding: A claimant sentenced to house arrest is not "incarcerated" under Section 402.6 of the Unemployment Compensation law, 43 P.S. § 402.6. Justice Stevens filed a dissenting opinion.

III. Workers' Compensation

A. *Counsel Fees Disputes*

- [*Bierman v. Workers' Compensation Appeal Board \(Philadelphia National Bank\)*, No. 1336 C.D. 2014 \(Pa. Cmwlth., April 1, 2015\)](#)
 - Holding: A Workers' Compensation Judge has the authority to resolve fee disputes between two successive attorneys pursuant to Section 422 of the Workers' Compensation Act, 77 P.S. § 998, when the fee agreement or petition was filed before the claimant discharged the attorney. The WCJ must balance the attorney's legitimate expectations of a reasonable legal fee with the claimant's right to be represented by counsel of his or her choice. Therefore, the WCJ did not abuse his discretion by awarding a counsel fee to the new attorney and not awarding a fee to the discharged attorney.

B. *Death Benefits for a Deceased Spouse*

- [*Elk Mountain Ski Resort, Inc. v. Workers' Compensation Appeal Board \(Tietz, deceased, and Tietz-Morrison\)*, No. 1017 C.D. 2014 \(Pa. Cmwlth., April 7, 2015\)](#)
 - Holding: To establish a common law marriage under Section 307 of the Workers' Compensation Act, 77 P.S. § 561, the surviving spouse of the decedent must prove the elements of the marriage by clear and convincing evidence. Of note, the marriage here was consummated in 2004, before the legislative abolition of common law marriage in 2005.

C. *Social Security Offsets*

- [*Pocono Mountain School Dist. v. Workers' Compensation Appeal Board \(Easterling\)*, No. 663 C.D. 2014 \(Pa. Cmwlth., April 10, 2015\)](#)
 - Holding: An employer is not entitled to an offset for Social Security retirement benefits if the claimant was entitled to the Social Security retirement benefits before the date of the work injury.

D. *Specific Loss Benefits*

- [*Pocono Mountain School Dist. v. Workers' Compensation Appeal Board \(Easterling\)*, No. 663 C.D. 2014 \(Pa. Cmwlth., April 10, 2015\)](#)
 - Holding: In order to receive both total disability and specific loss benefits, a claimant need only to have suffered separate and distinct disabilities, pursuant to Section 306(d) of the Workers' Compensation Act, 77 P.S. § 513, provided the payment of specific loss benefits is withheld until all disability benefits are terminated.

E. *Subrogation*

- [*Liberty Mutual Insurance Co. v. Domtar Paper Co.*, No. 19 WAP 2014 \(Pa., April 27, 2015\)](#)
 - **Holding:** Section 319 of the Workers' Compensation Act, 77 P.S. 671, does not permit employers/insurers to commence an action directly against third party tortfeasors. The right of action against a third-party tortfeasor under Section 319 of the Act remains with the injured employee, and the employer/insurer's right of subrogation under Section 319 must be achieved through a single action brought in the name of the injured employee or joined by the injured employee. Chief Justice Saylor filed a dissenting opinion, asserting that because "the caption as stated effectively makes the injured employee the use plaintiff," he dissents. In a separate dissenting opinion, Justice Todd "agree[d] with the majority, to the extent it preserves the right of an employer or its insurance company, as subrogee of an injured employee, to bring suit in the name of the injured employee in the capacity of a 'use-plaintiff.'"
- [*Reed v. Workers' Compensation Appeal Board \(Allied Signal, Inc.\)*, No. 879 C.D. 2014 \(Pa.Cmwlt., April 21, 2015\)](#)
 - **Holding:** The employer's right to subrogation against an injured worker's third party tort action is automatic. When, as here, the employee refuses to disclose the amount of the settlement, the employer is entitled to a suspension of benefits. The burden is on the claimant to establish the amount of the recovery, and a claimant may not shift that burden onto the employer.

F. *Temporary Compensation Benefits*

- [*Aldridge v. Workers' Compensation Appeal Board*, No. 494 C.D. 2014 \(Pa.Cmwlt., January 26, 2015 - published on April 16, 2015\)](#)
 - **Holding:** When an employer issues a Medical Only Notice of Temporary Compensation Payable, which converts to a Medical Only Notice of Compensation, and later issues a Wage Loss and Medical Notice of Temporary Compensation Payable for additional/different injuries, which it later withdraws/denies, the employer is not estopped from denying liability for the later injuries or for wage loss benefits from the original TNCP.

IV. Allocatur Granted

A. *The Pennsylvania Supreme Court has granted allowance of appeal in the following matter for the issue stated:*

□ [Meyer, Darragh, Buckler, Bebeneck & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C., No. 420 WAL 2014 \(Pa., April 13, 2015\)](#)

1. Whether the Superior Court erred in vacating the Judgment of the Court of Common Pleas with respect to Meyer Darragh's breach of contract cause of action and in awarding damages to Meyer Darragh against Malone Middleman, P.C. under a breach of contract theory of liability when no contract existed between Meyer Darragh and Malone Middleman, P.C.?
2. Whether the Superior Court erred in extending the reach and holding of *Ruby v. Abington Mem. Hosp.*, 50 A.3d 128, 2012 Pa. Super. 114 (2012), app. den. 68 A.3d 909 (Pa. 2013) from creating duties with respect to partner-attorneys leaving a law firm to creating duties to unrelated third-party after the departure of an employee, non-partner attorney?