

# A Summary of Recent Pennsylvania Appellate & U.S. Supreme Court Decisions

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REPORTING DECISIONS THROUGH JUNE 1, 2015

## PENNSYLVANIA APPELLATE COURT DECISIONS

### I. Substantive Law

#### A. Arbitration

- [Hammond v. Southeastern Pennsylvania Transportation Authority, No. 1166 C.D. 2014 \(Pa.Cmwlt., May 1, 2015\)](#)

➤ **Holding:** Once a court determines that a claim is subject to arbitration, any purported ambiguities in the terms of the Arbitration Agreement are for the Arbitrator to decide.

#### B. Jones Act

- [Criswell v. Atlantic Richfield Co., 2015 PA Super 119 \(Pa. Super., May 18, 2015\)](#)

➤ **Holding:** In a claim under the Jones Act, 46 U.S.C.A. § 30104, a plaintiff need only prove whether the employer's negligence played any part, however slight, in causing the injury, not whether the employer's negligence was a substantial factor in causing the injury.

#### C. Unfair Trade Practices & Consumer Protection Law

- [Boehm v. Riversource Life Insurance Co., 2015 PA Super 120 \(Pa.Super., May 19, 2015\)](#)

➤ **Holding:** In a claim under the Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§201-1, *et seq.*, the evidentiary burden only requires proof by a preponderance of the evidence.

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!

### II. Insurance Policies

#### A. Employer's Liability Exclusion

- [Mutual Benefit Insurance Co., No. 60 MAP 2014 \(Pa., May 26, 2015\)](#)

➤ **Holding:** When an employer's liability exclusion is ambiguous, it will pertain only to claims asserted by employees of the "insured" and not to others, such as property owners. This is a complicated and somewhat confusing opinion that warrants further review by those attorneys whose practice includes claims under similar policies. Justice Eakin filed a [concurring opinion](#).

### B. *Motor Vehicle Exclusion*

□ [\*Wolfe v. Ross\*, 2015 PA Super 110 \(Pa. Super., May 7, 2015\)](#)

- **Holding:** When a homeowners policy contains an exclusion for damages arising from the "ownership, maintenance, use [or] occupancy" of a motor vehicle, the policy does not provide coverage for injuries arising from the use of a vehicle, even if the service of alcohol to the driver was a factor in causing the accident.

## III. Workers' Compensation

### A. *Notice of Ability to Return to Work*

□ [\*School District of Philadelphia v. Workers' Compensation Appeal Board \(Hilton\)\*, No. 34 EAP 2014 \(Pa., May 26, 2015\)](#)

- **Holding:** An employer is not required to provide an injured employee with a Notice of Ability to Return to Work (NARW) when the employee has not yet filed a Claim Petition and has therefore never proven his or her entitlement to workers' compensation benefits. The Court further ruled that an employer must provide an NARW under Section 306(b)(3) of the Pennsylvania Workers' Compensation Act, 77 P.S. Section 512(3) when the employer seeks to modify a worker's existing workers' compensation benefits based upon medical evidence establishing that the injured employee is able to return to work in some capacity.

## IV. Allocatur Granted

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

□ [\*Nertavich v. PPL Electric Utilities\*, No. 538 EAL 2014 \(Pa., May 14, 2015\)](#)

- In the face of the trial court's cumulative review of, and conclusion that the record evidence of PPL's operative control of the contractor's work was sufficient to allow the issue of PPL's liability to be presented to the jury, does the majority of the Superior Court panel conflict with *Beil v. Telesis Construction, Inc.* and §414 of the Restatement (Second) of Torts?
- Did the majority of the Superior Court panel err in adding an element of proof for imposing liability on a property owner under §414 of the Restatement (Second) of Torts that was not contained in and is in conflict with *Beil v. Telesis Construction, Inc.*?

## U.S. SUPREME COURT DECISION

## I. U.S. Supreme Court

### A. *Employment Discrimination*

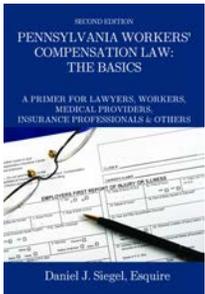
□ [\*Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores\*, No. 14-86 \(U.S., June 1, 2015\)](#)

- **Holding:** To prevail in a disparate-treatment claim, an applicant need show only that the need for an accommodation was a motivating factor in the employer's decision not to hire, not that the employer had knowledge of the applicant's need. Title VII's disparate-treatment provision requires an applicant to show that the employer (1) failed to hire (2) because of (3) the applicant's religion (including a religious practice). 42 U. S. C. §2000e-2(a)(1).

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