

The Pennsylvania Appellate Case Review

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REPORTING DECISIONS THROUGH SEPTEMBER 20, 2019

PENNSYLVANIA APPEALS COURT OPINIONS

I. Civil Litigation

A. *Exculpatory Clauses - Gross Negligence & Recklessness*

□ [*Feleccia v. Lackawanna College*, No. 75 MAP 2017 \(Pa., August 20, 2019\)](#)

➤ *Attorney Dan Siegel was appellate counsel for Plaintiffs.*

➤ **Holding:** A university “had a duty to provide duly licensed athletic trainers for the purpose of rendering treatment to its student athletes participating in athletic events.” In addition, a Waiver of Liability is unenforceable as to claims of gross negligence and recklessness.

➤ The Court agreed that the university had assumed a duty toward its football players, noting that the facts support a determination that “affirmative conduct” by the college created a “special relationship” with and increased the risk of harm to its student athletes. Thus, the college had a duty to “exercise reasonable care to protect them against an unreasonable risk of harm arising” from that affirmative conduct.

➤ The Court also that the record supported a finding that the college undertook a duty to provide licensed athletic trainers for student athletes participating in athletic events, including a football practice. Chief Justice Saylor filed a [concurring and dissenting opinion](#). Justice Wecht also filed a [concurring and dissenting opinion](#).

B. *Arbitration - Transfer of Arbitration Clauses*

□ [*Porter v. Toll Brothers, Inc.*, 2019 PA Super 257 \(Pa.Super., August 21, 2019\)](#)

➤ **Holding:** A subsequent purchaser is not bound by a mandatory arbitration clause because the purchaser never signed any form and had not agreed to be bound by it.

C. *Forfeiture of Proceeds from an Action*

□ [*Johnson v. Neshaminy Shore Picnic Park*, 2019 PA Super 252 \(Pa.Super., August 20, 2019\)](#)

➤ **Holding:** Under the Wrongful Death Act, 20 Pa.C.S.A. § 2016(b)(1), a parent forfeits any interest in a child's estate by either failing to support the child or by deserting the child, *i.e.*, when the parent fails to perform the duty to support, the reason for the failure is irrelevant.

D. *Motor Vehicle Insurance - Unlisted Resident Driver Exclusion*

□ [*Safe Auto Insurance Co. v. Oriental-Guillermo*, No. 26 MAP 2018 \(Pa., August 20, 2019\)](#)

➤ **Holding:** An unlisted resident driver exclusion in a personal automobile insurance policy, which does not provide coverage for a household resident who is not listed as an additional driver on the policy, is enforceable. Justice Wecht filed a [concurring opinion](#).

E. *Pennsylvania Uniform Statute of Limitations on Foreign Claims Act*

□ [*Engleman v. Ethicon, Inc.*, 2019 PA Super 287 \(Pa.Super., September 20, 2019\)](#)

- **Holding:** Under the Pennsylvania Uniform Statute of Limitations on Foreign Claims Act (USLFA), 42 Pa.C.S.A. § 5521, jurisdiction is based on the location of the event that caused the underlying harm, *i.e.*, the tort. Thus, in this case, because the event occurred in Pennsylvania, where the implant was inserted, not New Jersey, which was the site of the pain, the USLFA does not apply because the cause of action accrued in Pennsylvania. Thus, the discovery rule determines when the statute began to run.

F. *Third Party Actions - Admissibility of Workers' Compensation Benefits*

□ [*Nazarak v. Waite*, 2019 PA Super 235 \(Pa.Super., August 2, 2019\)](#)

- **Holding:** An injured worker may plead, prove and recover the amount of workers' compensation benefits paid for by the workers' compensation carrier. The settlement of the workers' compensation case and the Compromise & Release Agreement are not admissible pursuant to 42 Pa.C.S.A. § 6141(a), (c).

II. Workers' Compensation

A. *Fee Review - Jurisdiction*

□ [*Workers First Pharmacy Services, LLC v. Bureau of Workers' Compensation Fee Review Hearing Office \(Cincinnati Insurance Co.\)*, No. 1619 C.D. 2018 \(Pa.Cmwlt., August 7, 2019\)](#)

- *Attorney Dan Siegel was appellate counsel for Petitioner/Workers First.*
- **Holding:** An insurer/employer may not deprive a medical provider of payment by asserting that a Compromise & Release Agreement bars an award in a fee review when (1) the carrier denies liability in the C&R, (2) the parties agree in the C&R that claimant will be responsible for payment of all medical bills, and (3) the C&R limits a provider's liability to the fee review process.

B. *Subrogation - Heart & Lung Benefits*

□ [*Kenney v. WCAB \(Lower Pottsgrove Twp.\)*, No. 328 C.D. 2018 \(Pa.Cmwlt., May 22, 2019\)](#)

- **Holding:** An employer/carrier is not entitled to subrogate for Heart & Lung Act payments made to a Claimant pursuant to Sections 1720 and 1722 of the Motor Vehicle Financial Responsibility Law.

III. Rules Changes

A. *Pennsylvania Rules of Professional Conduct*

□ [*Pa.R.P.C. 1.6 \(Confidentiality of Information\)*](#)

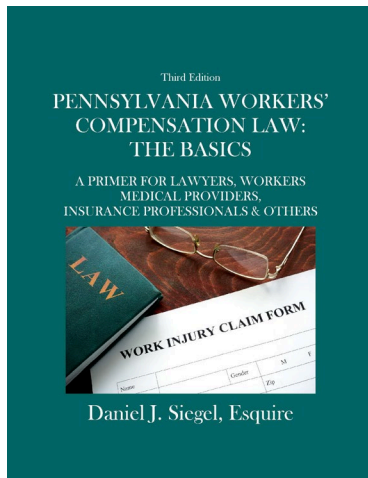
- Effective September 14, 2019, Rule 1.6 has been amended to include section (c)(8). Under this provision, a lawyer may reveal confidential information to the extent that the lawyer believes reasonably necessary "to comply with other law or court order" unless review is sought.

REVISED THIRD EDITION:

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

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By Daniel J. Siegel, Esquire



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