

THE PENNSYLVANIA APPELLATE CASE REVIEW

By Daniel J. Siegel, Esquire

LAW OFFICES OF DANIEL J. SIEGEL, LLC

66 West Eagle Road • Suite 1 • Havertown, PA 19083-1425

(610) 446-3457 • Fax (484) 636-3993

E-mail Dan@DanielJSiegel.com

REPORTING PENNSYLVANIA APPEALS COURT DECISIONS THROUGH JULY 7, 2022

PENNSYLVANIA APPEALS COURT OPINIONS

(PRECEDENTIAL DECISIONS)

I. Civil Litigation

A. Arbitration Agreements

- [*Kohlman v. Grane Healthcare Co.*, 2022 PA Super 118 \(Pa.Super. July 5, 2022\)](#)

- **Holding:** To invalidate or bar enforcement of a contract based on unconscionability, the party challenging the contract must show both an absence of meaningful choice, *i.e.*, procedural unconscionability, and contract terms that are unreasonably favorable to the other party, known as substantive unconscionability. Procedural and substantive unconscionability are assessed under a sliding-scale approach, with a lesser degree of substantive unconscionability required when the procedural unconscionability is very high.

- [*Fineman, Krekstein & Harris, P.C. v. Perr*, 2022 PA Super 117 \(Pa.Super. June 30, 2022\)](#)

- **Holding:** The substance of a complaint, not its styling, controls whether the complainant must proceed to arbitration or may file in common pleas court. When an agreement has no arbitration clause, and does not arise from a separate agreement containing a relevant arbitration provision, the matter may proceed in common pleas court.

B. Workers' Compensation - Exclusivity

- [*Riemenschneider v. D. Sabatelli, Inc.*, 2022 PA Super 105 \(Pa.Super. June 7, 2022\)](#)

- **Holding:** The exclusivity provision of the Workers' Compensation Act, 77 P.S. § 481(a), applies to children of injured workers, and bars claims by children not within the class of eligible beneficiaries under the Act.

II. Workers' Compensation

A. Impairment Rating Evaluations - Injuries Considered

- [*Sicilia v. API Roofers Advantage Program \(WCAB\)*, No. 747 C.D. 2021 \(Pa.Cmwth. June 7, 2022\)](#)

- **Holding:** When conducting an Impairment Rating Evaluation under Section 306(a.3) of the Workers' Compensation Act, 77 P.S. § 511.3, a physician-evaluator is explicitly invested with the obligation to determine the degree of impairment resulting from the compensable injury, thus permitting the evaluator to consider conditions not specifically included in the Notice of Compensation Payable.

B. *Impairment Rating Evaluations - Retroactive Application Under Act 111*

- [*DiPaolo v. UPMC Magee Women's Hosp. \(WCAB\), No. 878 C.D. 2021 \(Pa.Cmwlt. June 13, 2022\)*](#)
 - **Holding:** An Impairment Rating Evaluation conducted under Act 111, Section 306(a.3) of the Workers' Compensation Act, 77 P.S. § 511.3, does not violate a claimant's due process rights even though the IRE included periods of benefits received before the enactment of Act 111 in 2018, and even though the statute did not contain the required language necessary to permit retroactive application.

C. *Suspension - Termination for Cause*

- [*Montano v. Advance Stores Co., Inc. \(WCAB\), No. 732 C.D. 2021 \(Pa.Cmwlt. June 27, 2022\)*](#)
 - **Holding:** An employer's failure to follow its progressive discipline policy is not a basis, by itself, to overcome a termination for cause. In addition, a claimant may not collaterally attack a WCJ's determination of bad faith by using standards applicable to unemployment compensation benefits.

III. Allocatur Petitions

A. *The Pennsylvania Supreme Court has granted appeals in the following matters based upon the issues stated:*

- [*Sullivan v. Werner Co., No. 324 EAL 2021 \(Pa. June 8, 2022\)*](#)
 - Was it an error of law, under the product liability principles this Court established in *Tincher v. Omega Flex, Inc.*, 104 A.3d 328 (Pa. 2014), to prevent the jury from considering the product's compliance with pertinent industry and governmental safety standards, where this exclusion of evidence:
 - 1) was contrary to *Tincher's* expressed intent to provide juries with greater, rather than less, ability to decide if an unreasonably dangerous defect exists in a product;
 - 2) was contrary to *Tincher's* recognition that strict liability and negligence substantially overlap in product liability cases, particularly as to the "risk/utility" defect theory plaintiffs pursued in this case; and
 - 3) would once again leave Pennsylvania product liability law in a distinct minority position, concerning admissibility of compliance evidence.
- [*Rush v. Erie Insurance Exchange, No. 37 MAL 2022 \(Pa. June 27, 2022\)*](#)
 - Whether the decision of the three-judge panel of the Superior Court is in direct conflict with the Pennsylvania Supreme Court decisions in *Burstein v. Prudential Prop. & Cas. Ins. Co.*, 809 A.2d 204 (Pa. 2002) and *Williams v. GEICO Gov't Emps. Ins. Co.*, 32 A.3d 1195 (Pa. 2011) and whether the Superior Court erred as a matter of law by finding that the "regular use exclusion" contained in Pennsylvania auto insurance policies violates the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.[] [§] 1701, et. seq.[.]

- [*Klar v. Dairy Farmers of America, Inc.*, No. 25 WAL 2022 \(Pa. June 27, 2022\)](#)
 - Whether the Superior Court of Pennsylvania, by extending the holdings in controlling authority, erred in holding that a non-licensed host who invites guests to an event for purposes that are not purely social, and requires those who wish to attend to pay a fee in exchange for alcohol that will be provided on a self-serve-drink all you want basis, is not liable to an innocent third party who is injured as the result of a guest who left the event and was provided alcohol while visibly intoxicated during the event?

