

THE PENNSYLVANIA APPELLATE CASE REVIEW

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REPORTING STATE COURT DECISIONS THROUGH JANUARY 13, 2023

PENNSYLVANIA APPEALS COURT OPINIONS

I. Civil Litigation

A. Arbitration Agreements

- [Waters v. Express Container Services of Pittsburgh, LLC, 2022 PA Super 182 \(Oct. 18, 2022\)](#)
 - **Holding:** When a contract contains a clause requiring arbitration of any claims arising out of or relating to the contract, any claim that arises out of the parties' contractual relationship must be arbitrated, even if it is a tort or other non-contract cause of action and is not based on any breach of the contract's terms.

B. Asbestos Claims - Knowledge of Danger

- [Shellenberger v. Kreider Farms, 2023 PA Super 1 \(January 4, 2023\)](#)
 - **Holding:** A landowner has a heightened duty to exercise reasonable care to protect individuals from the hazards of asbestos on a worksite. Thus, when a party produces sufficient evidence from which a jury could conclude that the defendant *should have known* of the dangers of asbestos, the question should be presented to the jury.

C. Civil Rights Actions

- [McGuire v. City of Pittsburgh, No. 26 WAP 2021 \(Pa. November 23, 2022\)](#)
 - **Holding:** A federal jury's finding that a police officer acted "under color of state law" for purposes of claims under 42 U.S.C. § 1983 does not necessarily constitute a "judicial determination" that he also acted with the "scope of his office or duties" for purposes of claim under the Political Subdivision Tort Claims Act, 42 Pa.C.S. §§ 8541-8564. Justice Donohue filed a [concurring opinion](#) in which Justice Mundy joined.

D. Corporations - Representation

- [Barrett v. M&B Medical Billing, Inc., 2022 PA Super 200 \(Pa.Super. November 22, 2022\)](#)
 - **Holding:** Although an individual may represent himself or herself *pro se*, an individual may not represent a corporation unless the person is an attorney.

E. Default Judgments - Service

- [Grady v. Nelson, 2022 PA Super 186 \(Pa.Super. October 21, 2022\)](#)
 - **Holding:** A default judgment will be stricken when (1) the Complaint and the judgment notices are served on a non-existent address, and (2) the Notice of Intent to Enter a Default Judgment does not substantially comply with Pa.R.Civ.P. 237.5 and 237.1.

F. *Forum Non Conveniens*

□ [*Ritchey v. Rutter's Inc.*, 2022 PA Super 184 \(October 20, 2022\)](#)

- **Holding:** Mere inconvenience does not justify the grant of a Motion to Transfer for Forum Non Conveniens under Pa.R.Civ.P. 1006(d)(1). Rather, the moving party must show the current venue is oppressive and vexatious to the moving party. The Court noted that "there is a vast difference between a finding of inconvenience and one of oppression."

G. *MCARE - Cause of Death*

□ [*Reibenstein v. Barax*, No. 32 MAP 2021 \(Pa. December 12, 2022\)](#)

- **Holding:** The phrase "cause of death," as used in Section 513(d) of the MCARE Act, 40 P.S. § 1303.513(d), refers specifically to the medical cause of death. Only an affirmative misrepresentation or fraudulent concealment of the medical cause of death will toll the two-year statute of limitations that MCARE prescribes for medical malpractice claims sounding in survival or wrongful death. Justice Mundy filed a [Concurring and Dissenting Opinion](#), in which Justice Dougherty joined. Justice Dougherty filed a [Concurring and Dissenting Opinion](#).

H. *Motor Vehicle Insurance - Inter-Policy Stacking*

□ [*Erie Insurance Exchange v. Backmeier*, 2022 PA Super 221 \(December 28, 2022\)](#)

- **Holding:** A policyholder may knowingly waive inter-policy stacking by executing a waiver under Section 1738(d) of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A., when the insurance policy covers more than one vehicle.

I. *Personal Jurisdiction*

□ [*Merino v. Repak B. V.*, 2022 PA Super 206 \(December 6, 2022\)](#)

- **Holding:** The defendant must object to jurisdiction in the first instance, after which the burden shifts to the plaintiff to establish that personal jurisdiction exists. A court may exercise specific personal jurisdiction over a defendant if (1) the plaintiff's cause of action arises out of or relates to the out-of-state defendant's forum-related activities, (2) the defendant purposely directs its activities, particularly as they relate to the plaintiff's cause of action, toward forum, and (3) the exercise of personal jurisdiction satisfy the requirement that it be reasonable and fair.

II. *Workers' Compensation*

A. *Credit for Overpayment*

□ [*Columbia County Commissioners v. Rospendowski \(WCAB\)*, No. 723 C.D. 2021 \(Pa.Cmwlt. December 1, 2022\)](#)

- **Issue:** The Workers' Compensation Act does not permit an employer to take a credit for an overpayment from one date of injury against benefits paid for a second and separate date of injury.

B. Fee Reviews - Defenses

- [UPMC Benefit Management Services, Inc. v. United Pharmacy Services \(BWC Fee Review Hearing Office\), No. 558 C.D. 2021 \(Pa.Cmwlt. December 15, 2022\)](#)

and

- [State Workers' Insurance Fund v. Harburg Medical Sales Co., Inc. \(BWC Fee Review Hearing Office\), No. 712 C.D. 2021 \(Pa.Cmwlt. December 15, 2022\)](#)

- **Holding:** Although liability for a claimant's prescribed treatment may only be disputed through a utilization review, when an employer or insurer also seeks to render a provider's fee review application premature, a dispute regarding the causal connection between the prescribed treatment and the underlying work injury must be reframed as a challenge to the reasonableness and necessity of the treatment through the utilization review process.

The Law Offices of Daniel J. Siegel, LLC was counsel for the respondent pharmacy in the UPMC Benefit Management case.

C. Fees for Legal Services

- [Lawhorne v. Lutron Electronics Co., Inc. \(WCAB\), No. 1132 C.D. 2021 \(Pa.Cmwlt. October 18, 2022\)](#)

- **Holding:** Under Section 440(a) of the Workers' Compensation Act, 77 P.S. §996(a), a claimant must be awarded reasonable litigation costs when claimant prevails in part or whole, even if the costs incurred did not directly contribute to the success of the matter at issue.

D. Independent Contractor - Truck Drivers

- [IDI Logistics, Inc. v. Clayton \(WCAB\), No 514 C.D. 2021 \(Pa.Cmwlt. October 18, 2022\)](#)

- **Holding:** Employment status is a question of law fully reviewable on appeal and neither workers' compensation adjudicators nor the courts should be solicitous to find contractor status if a reasonable view of the facts and evidence allows at least slightly stronger inferences in favor of employment status.

III. Allocatur Petitions

A. The Pa. Supreme Court has granted appeal in based upon the issues stated:

- [Dwyer v. Ameriprise Financial, Inc., No. 209 WAL 2022 \(Pa. January 9, 2023\)](#)

1. UTPCPL treble damages are remedial. Where intentional misconduct is found, the statutory goal of eradicating unfair business practices is supported by courts trebling damages. Here, intentional misconduct was found, yet the trial court refused to treble damages based upon improper consideration of the award of common law punitive damages and statutory attorneys' fees. Did the Superior Court err by affirming the use of these improper considerations to replace the award of statutory remedial treble damages?
2. Whether the law has been misapplied involves a purely legal question. It is reviewed de novo and the scope of review is plenary. Whether an award of common law punitive damages and statutory attorneys' fees can replace an award of remedial treble damages under the UTPCPL is a question of law. Did the Superior Court err by applying an abuse of discretion standard to the question of law instead of a de novo standard?