

THE PENNSYLVANIA APPELLATE CASE REVIEW

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REPORTING STATE COURT DECISIONS THROUGH JUNE 16, 2023

PENNSYLVANIA APPEALS COURT OPINIONS

I. Civil Litigation

A. Arbitration Agreements

- [Carvell v. Edward D. Jones & Co., L.P., 2023 PA Super. 76 \(Pa.Super. May 5, 2023\)](#)

➤ **Holding:** An estate may be bound by an arbitration agreement entered into by the decedent based upon the express language of the agreement.

B. Civil Contempt - Landlord-Tenant Disputes

- [Hanbicki v. Leader, 2023 PA Super. 79 \(Pa.Super. May 9, 2023\)](#)

➤ **Holding:** A party may be held in civil contempt when he intentionally violates a definite, clear, and specific court order. The court must provide the party with an opportunity to purge himself of his contempt.

C. Collateral Estoppel

- [Sheils v. Bartles, No. 375 C.D. 2022 \(Pa.Cmwlt. May 5, 2023\)](#)

➤ **Holding:** Collateral estoppel precludes a party from re-litigating a jury's verdict finding in a previous matter with identical factual issues.

D. Emotional Distress - Interference with a Dead Body

- [Rouse v. Rosenberg, 2023 PA Super. 83 \(Pa.Super. May 15, 2023\)](#)

➤ **Holding:** To state a claim for emotional distress resulting from interference with a dead body, under Section 868 of the *Restatement of Torts 1st*, the plaintiff must allege that the defendant had possession, control, or authority, or at the very least, knew of the dead body's existence or location.

E. Forum Non Conveniens - Technological Considerations

- [Ehmer v. Maxim Crane Works, LP, 2023 PA Super. 96 \(Pa. Super. June 7, 2023\)](#)

➤ **Holding:** A Motion to Transfer Venue for Forum Non Conveniens under Pa.R.Civ.P. 1006(d)(1) may be granted only if the moving party places "detailed information on the record" to support the transfer. To allege witness hardship, the movant must first (1) identify the encumbered witness and (2) generally state the witness's testimony, to establish that the witness's testimony is relevant and necessary. This case addresses the impact of technology on motions to transfer, noting that "modern technology" has made the need for site visits obsolete.

F. *Motor Vehicle Insurance - Waiver of Stacking*

- [*Franks v. State Farm Mutual Automobile Ins. Co.*, No. 42 MAP 2022 \(Pa. April 19, 2023\)](#)
 - **Holding:** Removal of a vehicle from a multiple motor vehicle insurance policy, in which “stacked coverage” was already waived, does not require a renewed express waiver of stacked coverage pursuant to Section 1738(c) of the Motor Vehicle Financial Responsibility Law, 77 Pa.C.S. 1738(c).

G. *Negligence - Contractor Liability*

- [*Brown v. City of Oil City*, No. 6 WAP 2022 \(Pa. May 16, 2023\)](#)
 - **Holding:** A contractor who has created a dangerous land condition may be liable under Section 385 of the *Restatement of Torts 2d* for a third party’s injury caused by the condition, even though the contractor no longer possessed the land and the condition is obvious or apparent. Justice Mundy filed a [dissenting opinion](#).

H. *Privileged Work Product - Expert Reports*

- [*Cardinal Midstream II, LLC v. Energy Transfer LP*, 2023 PA Super. 84 \(Pa.Super. May 16, 2023\)](#)
 - **Holding:** Expert reports required by governmental agencies are not privileged work product under Pa.R.Civ.P. 4003.5(a)(3) even if they were prepared at the direction of counsel.

I. *Redlined Contracts*

- [*King v. Driscoll*, 2023 PA Super. 95 \(Pa.Super. June 5, 2023\)](#)
 - **Holding:** An attorney may bind his client by exchanging a “redlined” draft of a settlement agreement only if the attorney has express authority to settle.

J. *Whistleblower Claims*

- [*Javitz v. Luzerne County*, No. 85 MAP 2021 \(Pa. May 5, 2023\)](#)
 - **Holding:** To state a wrongful discharge claim under Section 3(a) of the Whistleblower Law, 43 P.S. § 1423(a), an employee is not required to present direct proof of either an explicit threat of retaliation or explicit instruction not to file a report of wrongdoing. Instead, the employee must present “some evidence” by “concrete facts or surrounding circumstances,” beyond their personal perception, “that the report of wrongdoing... led to [their] dismissal.”

II. *Workers’ Compensation*

A. *Collateral Source Doctrine*

- [*Chavers v. 1605 Valley Center Pky, LP*, 2023 PA Super. 73 \(Pa.Super. April 28, 2023\)](#)
 - **Holding:** A plaintiff in a third party action may introduce into evidence the amount of an assigned subrogation lien, which represents the amount of medical bills paid by his workers’ compensation carrier. In this case, Plaintiff settled her workers’ compensation claim by Compromise and Release (C&R). Employer assigned its rights to Claimant. At trial in her third party claim, the trial court refused to allow Plaintiff to admit the lien into evidence. Superior Court held that the evidence was admissible and would not create a windfall.

B. *Employer's Failure to Investigate Injury*

□ [*Franczyk v. The Home Depot, Inc.*, No. 11 WAP 2022 \(Pa. April 19, 2023\)](#)

- **Holding:** The exclusive remedy provision of the Workers' Compensation Act (77 P.S. § 481) precludes an employee from bringing a claim against an employer whose conduct impedes or prevents the injured worker from bringing a third party claim against the party responsible for the worker's injuries. Chief Justice Todd filed a [concurring opinion](#).

C. *Specific Loss Benefits After Death*

□ [*Steets v. Celebration Fireworks, Inc. \(WCAB\)*, No. 512 C.D. 2022 \(Pa.Cmwlt. May 8, 2023\)](#)

- **Holding:** "Specific loss" benefits, under Section 306(c) of the Workers' Compensation Act (77 P.S. § 513), are payable following an injured worker's death only when his death is from a cause other than the work injury.

D. *Subrogation of Heart and Lung Act Benefits*

□ [*Alpini v. WCAB \(Tinicum Township\)*, No. 2 MAP 2022 \(Pa. May 16, 2023\)](#)

- **Holding :** Section 1720 of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1720 bars subrogation of workers' compensation claims "arising out of the maintenance or use of a motor vehicle." This prohibition also precludes subrogation of Dram Shop Act claims from payments made under the Heart and Lung Act. Justice Dougherty filed a [concurring opinion](#) in which Justice Donohue joined. Justice Wecht filed a [dissenting opinion](#) in which Chief Justice Todd joined.

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