

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 STATE COURT DECISIONS THROUGH SEPTEMBER 1, 2023

PENNSYLVANIA APPEALS COURT OPINIONS

I. Civil Litigation

A. Arbitration Agreements

- ☐ [Von Sick v. ANC Builders Inc., 2023 PA Super. 116 \(Pa.Super., June 28, 2023\)](#)

- **Holding:** An arbitration provision in a written contract is valid unless the challenger proves that (1) there was a lack of meaningful choice in their acceptance of the provision, and (2) the provision unreasonably favors the party asserting it.

B. Arbitration Agreements - Delegation Clauses

- ☐ [Doe v. The Cheesecake Factory, 2023 PA Super. 153 \(Pa.Super., Aug. 9, 2023\)](#)

- **Holding:** If an arbitration agreement gives the arbitrator exclusive authority to determine a claim's arbitrability, the trial court lacks authority to examine the merits of the arbitrator's decision.

C. Arbitration Agreements - Due Process

- ☐ [PennEnergy Resources, LLC v. Winfield Resources, LLC, 2023 PA Super. 130 \(Pa.Super., July 25, 2023\)](#)

- **Holding:** A general partner may not arbitrate or be awarded damages on behalf of a limited partnership unless the partnership is formally named as a party in the arbitration proceedings, *i.e.*, an arbitrator lacks jurisdiction to award damages "on behalf of" a party that has not brought an action.

D. Arbitration Agreements - Hyperlinked

- ☐ [Chilutti v. Uber Technologies, Inc., 2023 PA Super. 126 \(Pa.Super., July 19, 2023\)](#)

- **Holding:** An arbitration agreement is not valid if it is contained in a set of inconspicuous hyperlinked "terms and conditions" on a website or smartphone application, which the user never clicked on, viewed, or read.

E. Discovery - Foster Care Case Records

- [**Leslie v. Public Health Management Corp., 2023 PA Super. 142 \(Pa.Super., July 28, 2023\)**](#)

➤ **Holding:** In a personal injury action, the court may order disclosure of a foster child's case record under 55 Pa Code Section 3130.44(e) only if the Order maintains the confidentiality of the documents. A court (1) may not order disclosure of that child's juvenile court records of delinquency and dependency proceedings, except for the limited disclosure allowed under Section 6307(b) of the Juvenile Act, and (2) may not order disclosure of certain documents in the case record that are protected by other privileges, such as the Pennsylvania Mental Health Procedures Act.

F. Motor Vehicle Insurance - Waiver of Stacking

- [**Golik v. Erie Insurance Exchange, 2023 PA Super. 150 \(Pa.Super., Aug. 7, 2023\)**](#)

➤ **Holding:** Under Section 1738(c) of the Motor Vehicle Financial Responsibility Law, 77 Pa.C.S., a waiver of stacked coverage is binding on all insureds if the waiver is signed by the first named insured.

G. Punitive Damages

- [**The Bert Company v. Turk, No. 13 WAP 2022 \(Pa., July 19, 2023\)**](#)

➤ **Holding:** The constitutionally permissible ratio of punitive-to-compensatory damages is calculated on a per-defendant basis, not a per-judgment basis. Punitive damages must be reasonable and proportionate to the amount of harm to plaintiff and the general damages recovered. A ratio of punitive-to-compensatory damages exceeding 9:1 is not presumptively unconstitutional. Justices Dougherty, Wecht, Mundy, and Brobson filed concurring opinions.

H. Social Host Liability

- [**Klar v. Dairy Farmers of America, Inc., No. 29 WAP 2022 \(Pa., August 22, 2023\)**](#)

➤ **Holding:** An organization that hosted an event at which alcohol was served, but was not a liquor licensee, may not be held liable for injuries caused by a guest who became intoxicated at the event.

I. Sovereign Immunity

- [**Marshall v. SEPTA, No. 40 CD 2022 \(Pa.Cmwlt., Aug. 4, 2023\)**](#)

➤ **Holding:** New Jersey Transit, as an arm of the state of New Jersey, is entitled to sovereign immunity in Pennsylvania state court. The Court relied on the ruling of *Hyatt III (Franchise Tax Board of California v. Hyatt, 139 S.Ct. 1485 (2019))*.

J. Waiver of Attorney-Client Privilege/Work Product Protection

- [Carlino East Brandywine, LP v. Brandywine Village Associates, 2023 PA Super. 141 \(Pa.Super., July 28, 2023\)](#)

➤ **Holding:** When a party asserts a defense of good faith based on reliance of the advice of counsel, the party waives the attorney-client privilege with respect to communications with counsel placed in issue by the defense.

II. Workers' Compensation

A. Constructive Notice

- [The Hershey Co. v. Woodhouse \(WCAB\), No. 904 C.D. 2022 \(Pa.Cmwlt., August 3, 2023\)](#)

➤ **Holding:** When a Claimant: (1) knew that he suffered a work-related injury in November 2017; (2) knew that he was to immediately report suspected work-related injuries to his supervisor; and (3) sent an email to Employer within the required 120 days without stating, or in any manner indicating, that his injury was work related, he fails to provide timely notice under Section 312 of the Act, 77 P.S. § 632. Section 312 mandates that “notice . . . shall inform the employer that a certain employe received an injury, described in ordinary language, in the course of his employment on or about a specified time, at or near a place specified.”

B. Yellow Freight Motion -Well-Pled Allegation of Injury

- [Hollis v. C&R Laundry Services LLC \(WCAB\), No. 1233 C.D. 2021 \(Pa.Cmwlt., July 31, 2023\)](#)

➤ **Holding:** If an injured employee does not include well-pled allegations of (1) his injuries, (2) the work-related cause, and (3) ongoing disability, he is not entitled to a rebuttable presumption of ongoing disability, even in a *Yellow Freight* motion where the employer's answer is untimely.

III. Allocatur Petition

A. The Pa. Supreme Court has granted appeal in the following matter based upon the issue stated:

- [Macmiles, LLC v. Erie Insur. Exchange, No. 307 WAL 2022 \(Pa., July 13, 2023\)](#)

➤ Did the Superior Court err as a matter of law in finding that Petitioner is not entitled to coverage under its policy of insurance with Respondent for losses associated with the COVID-19 pandemic when the insurance policy is ambiguous and Pennsylvania law mandates that an ambiguity should be construed in favor of the insured?

IV. Pennsylvania Rules Amendments

A. *Pennsylvania Rules of Civil Procedure*

☐ [Rule 230.2 \(Effective Aug. 8, 2023\)](#)

- Rule 230.2 Termination of Inactive Cases
 - ◆ Rule 230.2 was amended to provide an administrative method for terminating inactive cases. The amendment makes mandatory a status conference for all cases and establishes a timeline for timely disposition.

B. *Pennsylvania Rules of Disciplinary Enforcement, Effective Sept. 1, 2023*

☐ [Amending Pa. Rules of Disciplinary Enforcement 102, 201, 204, 205, 208, 212, 216, 217, 218, 219, 221, 301, 321, 401, 402, 403, 501, 502, 503, 512, 514, 521, 531, and 532](#)

- The Pennsylvania Supreme Court has amended numerous disciplinary Rules. Rule 219(c) relating to changes in attorney registration will become effective May 1, 2024 for the start of the 2024-2025 registration period.

C. *Pennsylvania Rules of Professional Conduct*

☐ [Rule 1.17 \(Effective Sept. 1, 2023\)](#)

- Rule 1.17 Sale of Law Practice
 - ◆ Rule 1.17(f) now reads: "In the case of sale by reason of disability, if a proceeding under Rule 301 of the Pennsylvania Rules of Disciplinary Enforcement has not been commenced against the seller, the seller shall file the notice and request for transfer to voluntary inactive status, as of the date of the sale, pursuant to Enforcement Rule 219(i)(1)."

V. United States Supreme Court Opinion

A. *Due Process - Personal Jurisdiction*

☐ [Mallory v. Norfolk Southern Railway Co., No. 21-1168 \(U.S. June 27, 2023\)](#)

- **Holding:** The Pennsylvania state law requiring an out-of-state corporation to consent to personal jurisdiction to do business in the state does not violate the Due Process Clause of the Fourteenth Amendment. This ruling upheld the Court's ruling in *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917).