THE PENNSYLVANIA APPELLATE CASE REVIEW

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REPORTING STATE COURT DECISIONS THROUGH JUNE 28, 2024

PENNSYLVANIA APPEALS COURT OPINIONS

I. Civil Litigation

A. *Apportionment of Liability - Asbestos Actions*

- ☐ ***Fisher v. American International Industries*, 2024 PA Super 69 (Pa.Super., April 10, 2024)**
  - **Holding**: Pursuant to the Fair Share Act, 42 Pa. C.S.A. § 7102, liability is apportioned on a per capita basis in strict liability asbestos matters because it may be impossible to determine which actor caused the harm.

B. *Arbitration Agreements - Use of Extrinsic Evidence*

- ☐ ***Schwartz v. Kelly Services, Inc.*, 2024 PA Super 62 (Pa.Super., March 28, 2024)**
  - **Holding:** Extrinsic evidence should be considered if a contract term to compel arbitration is ambiguous.

C. *Damages - Promissory Estoppel*

- ☐ ***Erie Insurance Exchange v. United Services Automobile Association*, 2023 PA Super 271 (Pa.Super., December 21, 2023)**
  - **Holding**: Damages may be granted based upon promissory estoppel when reliance on a promise causes a detriment to the promisee, and injustice can only be avoided by enforcing the promise.

D. *Defamation and False Light Claims*

- ☐ ***Vivian v. Blank Rome, LLP*, 2024 PA Super 118 (Pa.Super., June 7, 2024)**
  - **Holding**: The Uniform Single Publication Act, 42 Pa.C.S.A. § 8343, sets forth the elements of a defamation claim in Pennsylvania. A statement that expresses subjective opinions will not be defamatory. Similarly, a statement that contains true statements of fact without suggesting the presence of hidden false claims will not support a false light invasion of privacy claim.

E. *Insurance Bad Faith*

- ☐ ***Watchword Worldwide v. Erie Insurance Exchange*, 2024 PA Super 2 (Pa.Super., January 9, 2024)**
  - **Holding**: Under the bad faith statute, 42 Pa.C.S.A. § 8371, a plaintiff must prove by clear and convincing evidence that the insurer did not have a reasonable basis for denying a claim for benefits under the policy and it knew or recklessly disregarded its lack of reasonable basis in denying the claim.

F. *Insurance Policy Exclusions*

- ☐ ***Kramer v. Nationwide Property and Casualty Insurance Co.*, No. 103 MAP 2022 (Pa., April 25, 2024)**
  - **Holding**: Emotional distress damages are not covered under a policy of insurance providing liability coverage only for bodily injury when the policy explicitly excludes emotional distress damages from the definition of bodily injury. Justice Dougherty filed a **concurring opinion,** and Justice Mundy filed a **concurring opinion**.

G. *Judicial Estoppel*

- ☐ ***N.T. v. The Children's Hospital of Philadelphia*, 2024 PA Super 14 (Pa.Super., January 25, 2024)**
  - **Holding**: A claim in a separate action for the same injuries, which resulted in a settlement, can constitute the successful maintenance of a prior litigation position that supports judicial estoppel.

H. *Jury Verdict Validity*

- ☐ ***Shook v. Lehigh Valley Restaurant Group, Inc.* No. 1861 EDA 2023 (Pa.Super., June 21, 2023)**
  - **Holding:** A jury verdict is not valid if it is not announced in court in the presence of the parties and their counsel.

I. *Mental Health Procedures Act - Gross Negligence*

- ☐ ***Azaravich v. Wilkes-Barre Hospital*, 2024 PA Super 116 (Pa., Super., June 5, 2024)**
  - **Holding**: Under the Mental Health Procedures Act, 50 Pa. Stat. § 7302, gross negligence may occur if a provider fails to communicate a patient's risk of suicide to a consulting physician, and the patient is then discharged. This deviation from the standard of care may present genuine issues of material fact, precluding a grant of summary judgment to the medical provider.

J. *Service of Process*

- ☐ ***Ferraro v. Patterson-Erie Corp.*, No. 1 WAP 2023 (Pa., April 25, 2024)**
  - **Holding**: One effort to effectuate service of process prior to the date on which the statute of limitations would have expired, and no further effort until after the expiration date, does not meet the good faith standard of diligent attempts at timely service of process on the defendant. Justice Wecht filed a **dissenting opinion** in which Justice Mundy joined.

K. *Sovereign Immunity - Real Property Exception*

- ☐ ***Turner v. Lower Merion School District*, No. 657 C.D. 2023 (Pa.Cmwlth., May 10, 2024)**
  - **Holding**: A school district may be entitled to governmental immunity under Section 8541 of the Judicial Code, 42 Pa. C. S. § 8541, if a chattel that is not attached to the ground and could not be a fixture of the real property is the cause of a negligence claim. This claim arose as a result of temporary bases, not affixed to the ground, in a kickball game.

L. *Statute of Limitations - Medical Marijuana Act*

- ☐ ***Washabaugh v. Gaudenzia, Inc.*, 2024 Pa Super 100 (Pa.Super., May 17, 2024)**
  - ➢ **Holding**: A claim brought under the Medical Marijuana Act, 35 P.S. § 10231.101, will ordinarily be subject to a six-year statute of limitations unless the claim revolves around tortious conduct, which is governed by the two-year statute of limitations set forth in 42 Pa. C. S. A. § 5524.

M. *Statute of Repose*

- ☐ ***Tibbitt v. Eagle Home Inspections, LLC*, 2023 PA Super 219 (Pa.Super., October 30, 2023)**
  - ➢ **Holding**: The statute of repose in the Home Inspection Law, 65 Pa.C.S.A. § 7512, requires an action to recover damages arising from a home inspection report to be commenced within one year after the date the report is delivered.

N. *Strict Products Liability*

- ☐ ***Sullivan v. Werner Co.*, No. 18 EAP 2022 (Pa., December 22, 2023)**
  - ➢ **Holding**: Evidence of a product's compliance with industry and governmental safety standards remains inadmissible following the Court's decision in *Tincher v. Omega Flex, Inc.,* 104 A.3d 368 (Pa. 2014). Justice Donohue filed a **concurring opinion**, and Chief Justice Todd filed a **dissenting opinion,** which Justice Brobson joined.

O. *Sudden Emergency Doctrine*

- ☐ ***Olar v. Bennett*, 2023 PA Super 282 (Pa.Super., December 29, 2023)**
  - ➢ **Holding**: A motorist ordinarily has a legal duty to keep a proper lookout ahead unless confronted with a perilous situation requiring a quick response under the sudden emergency doctrine.

P. *Tenants in Common - Joinder*

- ☐ ***Simone v. Alam*, 2023 PA Super 175 (Pa.Super., September 21, 2023)**
  - ➢ **Holding**: Liability for negligence resulting from ownership of real property held by tenants in common requires that the co-tenant, as an indispensable party, be joined in the action.

Q. *UTPCPL - Availability of Treble Damages*

- ☐ ***Dwyer v. Ameriprise Financial, Inc.*, No. 2 WAP 2023 (Pa., April 25, 2024)**
  - ➢ **Holding**: Under the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTPCPL), 73 P.S. §§ 201.1-201.10, treble damages up to three times the amount of actual damages sustained are available to compensate plaintiffs for enforcing the UTPCPL. These damages should not be conflated with other types of damages. Justice Brobson filed a **concurring and dissenting opinion**.

II. Evidence & Civil Procedure

A. *Admissibility of Evidence - Alcohol*

- ☐ ***Moffitt v. Miller*, 2023 PA Super 168 (Pa.Super., September 18, 2023)**
  - ➢ **Holding:** A trial court may admit evidence of blood alcohol content if there is also corroborating evidence, such as expert testimony.

B. *Appellate Court Procedure - Quashing*

- ☐ ***G.K. v. Labella*, 2024 PA Super 124 (Pa.Super., June 10, 2024)**
  - ➢ **Holding**: An appellate court does not have jurisdiction over an Order that does not dispose of all of a party's claims or is not a final, appealable Order in accordance with Pa.R.A.P. 341.

C. *Bankruptcy Stay*

- ☐ ***Tyson v. City of Philadelphia*, No. 519 C.D. 2022 (Pa.Cmwlth., January 16, 2024)**
  - ➢ **Holding**: Under Section 362(a) of the Federal Bankruptcy Code, 11 U.S.C. § 362, when a debtor files for bankruptcy, the bankruptcy acts as an automatic stay of most legal proceedings. The Bankruptcy Court stay, therefore, precludes the entry of orders by a trial court.

D. *Evidence - Adverse Inference*

- ☐ ***Thorson v. EDDW LLC*, 2024 PA Super 6 (Pa.Super., January 16, 2024)**
  - ➢ **Holding**: If the evidence that would properly be part of a case is within the control of the party whose interest it would be to produce it, and without satisfactory explanation, he fails to do so, an adverse inference may be drawn against that party. Failure to object to an adverse inference instruction prior to the trial court's deliberations constitutes a waiver of the issue.

E. *Expert Witness Testimony*

- ☐ ***Garced v. United Cerebral Palsy of Philadelphia and Vicinity*, 2023 PA Super 257 (Pa.Super., December 7, 2023)**
  - ➢ **Holding**: Under Pa.R.E. 702, testimony by expert witnesses should employ a generally accepted methodology to establish a causal connection between an initial incident and a corresponding injury.

III. Medical Malpractice

A. *Medical Malpractice - Acts of Partnerships*

- ☐ ***Nigon v. Jewell*, 2024 PA Super 68 (Pa.Super., April 9, 2024)**
  - ➢ **Holding**: General partnership law may be applied to physicians under 15. Pa. C.S.A. § 8435 (a); therefore, the partners are jointly and severally liable for the acts of any partner, and the jury should determine how liability is apportioned among various defendants.

B. *Medical Malpractice - Discovery of Treating Physician*

- ☐ ***Mertis v. Oh*, No. 31 MAP 2023 (Pa. June 18, 2024)**
  - ➢ Holding: Pa.R.Civ.P. 4003.6 precludes a law firm representing a defendant treating physician from obtaining information outside the discovery process from a nonparty treating physician by subsequently entering into an attorney-client relationship with the nonparty treating physician. Justice Donohue filed a **concurring opinion**.

IV. Motor Vehicle Insurance

A. *Motor Vehicle Insurance - Regular Use Exclusion*

- ☐ ***Rush v. Erie Insurance Exchange*, No. 77 MAP 2022 (Pa., January 29, 2024)**
  - **Holding**: A regular use, non-owned car exclusion is a permissible limitation of UIM coverage under the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. §§ 1701-1799.7. Justice Wecht filed a **concurring opinion**.
- ☐ ***Major v. Cruz*, 2024 PA Super 26 (Pa.Super., February 13, 2024)**
  - **Holding**: A household exclusion in a motor vehicle insurance policy that bars coverage for injuries sustained if a named insured operates a vehicle owned by a relative will be enforceable if it does not deprive the insured of any coverage they paid for.

B. *Notice of Applicable Insurance Coverages*

- ☐ **Erie Insurance Exchange v. Eachus, 2023 PA Super 264 (Pa.Super., December 12, 2023)**
  - Holding: Under section 1731 of the Motor Vehicle Financial Responsibility Law 75 Pa.C.S.A. § 1731, an insured is provided with an "important notice" that presumes they have been advised of an offer of both UM and UIM motorist coverage equal to the bodily injury liability amount, and the insured's signature demonstrates actual knowledge.

V. Workers' Compensation

A. *Abnormal Working Conditions*

- ☐ ***Premium Transportation Staffing v. Welker (Workers' Compensation Appeal Board)*, No. 1445 C.D. 2021 (Pa.Cmwlth., November 30, 2023)**
  - **Holding**: Mitigating factors, such as knowledge of the risk and training, are relevant to the question of whether an employment event constitutes an abnormal working condition.

B. *Claim Barred by Collateral Estoppel*

- ☐ ***Clark v. Keystone Lawn Spray (Workers' Compensation Appeal Board)*, No. 1468 C.D. 2022 (Pa.Cmwlth., September 6, 2023)**
  - **Holding**: A claimant's petition will be barred by collateral estoppel if the subject matter in a prior decision and the current case is the same, and the subject matter was essential and material to the prior decision.

C. *Co-Employee Immunity*

- ☐ ***Brown v. Gaydos*, 2023 PA Super 258 (Pa.Super., December 7, 2023)**
  - **Holding**: Under 77 P.S. § 72, the Workers' Compensation Act provides immunity to a co-employee whose negligent actions cause another's injuries if the act or omission occurs while both employees are in the course of their performance of duties for the same employer.

D. *Corrective Amendments*

- ☐ ***Reading Anthracite Co. v. Oxenrider*, No. 120 C.D. 2023 (Pa.Cmwlth., June 11, 2024)**
  - ➢ **Holding**: When determining whether to permit a corrective amendment where there is no dispute that the original injuries suffered by a claimant are work-related and where the question is the identity of the claimant's employer, a Workers' Compensation Judge is permitted to consider circumstances such as the timeliness and manner in which the employer or insurer handled the claim.

E. *Credibility of Expert Testimony*

- ☐ ***Lawry v. County of Butler (Workers' Compensation Appeal Board)*, No. 593 C.D. 2022 (Pa.Cmwlth., March 6, 2024)**
  - ➢ **Holding**: Credibility of expert testimony may be overturned if it is arbitrary and capricious or fundamentally dependent on a misapprehension of material facts.

F. *Injury in the Course of Employment*

- ☐ ***Lewis v. Lehigh Asphalt Paving & Construction Co. (Workers' Compensation Appeal Board)*, No. 1445 C.D. 2021 (Pa.Cmwlth., October 19, 2023)**
  - ➢ **Holding**: To prevail in a claim for injuries under the Workers' Compensation Act, an employer's premises must play a role in the causative chain of the claimant's injury.

G. *Issue Waiver: Workers' Compensation Appeal Board*

- ☐ ***Dennis v. Inglis House (Workers' Compensation Appeal Board)*, No. 1223 C.D. 2022 (Pa.Cmwlth., October 12, 2023)**
  - ➢ **Holding**: Under 34 Pa. Code 111.11(a)(2), an issue is waived unless it is preserved at every stage of the proceeding, and an issue will be waived if it is asserted for the first time to the Board after the Workers' Compensation Judge's Decision.

H. *Lead Exposure Claims*

- ☐ ***Mercer v. Active Radiator MPN Inc. (Workers' Compensation Appeal Board)*, No. 1326 C.D. 2023 (Pa.Cmwlth., June 3, 2024)**
  - ➢ **Holding**: A claimant without typical lead toxicity symptoms, such as overactive reflexes, and whose lead exposure is under the limit designated by OSHA is not eligible for workers' compensation benefits.

I. *Pharmaceutical Reimbursement Rate*

- ☐ ***Federated Insurance Co. v. Summit Pharmacy (Bureau of Workers' Compensation Fee Review Hearing Office)*, No. 115 C.D. 2023 (Pa.Cmwlth., January 2, 2024)**
  - ➢ **Holding:** The Workers' Compensation Bureau's adoption and use of "Red Book" values as the average wholesale price to be used in resolving disputes over pharmaceuticals is inconsistent with Section 306(f.1)(3)(vi)(A) of the Workers' Compensation Act, 77 P.S. § 531(3)(vi)(A), which limits the reimbursement of pharmaceuticals to "one hundred ten per centum of the average wholesale price of the product."

J. *Res Judicata*

- ☐ ***Boulin v. Brandywine Senior Care, Inc. (Workers' Compensation Appeal Board)*, No. 1273 C.D. 2022 (Pa.Cmwlth., January 2, 2024)**
  - ➢ **Holding**: A review petition in a workers' compensation case will be barred by res judicata if the claimant had the opportunity to establish additional conditions during the initial litigation. Res judicata will not necessarily bar a post-termination reinstatement petition since termination and reinstatement pertain to different issues.

K. *Self-Employed Claimants/Notice*

- ☐ ***Erie Insurance Property v. Heater (Workers' Compensation Appeal Board)*, No. 148 C.D. 2023 (Pa.Cmwlth., May 29, 2024)**
  - ➢ **Holding:** Under Section 311 of the Workers' Compensation Act, 77 P.S. § 631, when a claimant is both the injured employee and the sole employee of the employer, the claimant must notify the insurer of a work-related injury within the specified time frame.

L. *Self-Referral Provision - Pharmacies*

- ☐ ***700 Pharmacy v. Bureau of Workers' Compensation Fee Review Hearing Office*, No. 560 C.D. 2020 (Pa.Cmwlth., May 16, 2024)**
  - ➢ **Holding**: Under Section 306(f.1)(5) of the Workers' Compensation Act, 77 P.S. § 531(5), the self-referral provision applies to physician referrals to pharmacies because, although neither drugs nor pharmaceutical services are referred to in the Act, the phrase "goods or services" is sufficiently broad to cover drugs and pharmaceutical services.

M. *Subrogation*

- ☐ ***Tiano v. City of Philadelphia (Workers' Compensation Appeal Board)*, No. 438 C.D. 2022 (Pa.Cmwlth., August 17, 2023)**
  - ➢ **Holding**: An Employer is entitled to recover, by subrogation against her award from a third party tortfeasor, benefits paid pursuant to the Heart and Lung Act (HLA), 53 P.S. §§ 637-38, when the matter is not a motor vehicle accident.

N. *Traveling Employee*

- ☐ ***Martinez v. Lewis Tree Service (Workers' Compensation Appeal Board)* No. 298 C.D. 2023 (Pa.Cmwlth., February 8, 2024)**
  - ➢ **Holding**: An injury sustained during an employee's commute to or from work can be compensable for a traveling employee. A change of work location during the day or from day to day does not transform a claimant into a traveling employee. Instead, a traveling employee is one whose travel in his own vehicle is essential to the furtherance of the employer's business.

O. *Untimely Appeal*

- ☐ ***Wheatley v. Pyramid Hotel Group (Workers' Compensation Appeal Board)*, No. 1017 C.D. 2022 (Pa.Cmwlth., January 11, 2024)**
  - ➢ **Holding**: Nunc pro tunc relief is only available in extraordinary circumstances, such as cases involving fraud, a breakdown in the administrative process, or when there is a non-negligent failure to file a timely appeal, which was corrected within a very short time.

P. *Workers' Compensation: Reasonable Attorney's fees*

- ☐ ***Torres v. Amazon.com Services LLC (Workers' Compensation Appeal Board)*, No. 1398 C.D. 2022 (Pa.Cmwlth., April 9, 2024)**
  - **Holding:** An employer is not automatically absolved from exposure to attorney's fees under Section 440 of the Workers' Compensation Act, 77 P.S. § 996(a), whenever its contest is deemed reasonable.

VI. Venue Claims

A. *Forum Non Conveniens*

- ☐ ***Smith v. CMS West, Inc.*, 2022 PA Super 218 (Pa.Super., April 3, 2022)**
  - **Holding:** A case may be transferred based on forum non conveniens if the plaintiff's choice of forum is oppressive or vexatious to the defense's critical witnesses.
- ☐ ***James v. Walmart Distribution Center*, 2024 PA Super 17 (Pa.Super., February 2, 2024)**
  - **Holding:** To meet the burden of proof necessary for a Motion to Transfer for Forum Non Conveniens under Pa.R.Civ.P. 1006(d), a defendant must show that the plaintiff's choice of venue is oppressive or vexatious. A trial court's failure to hold a defendant to the proper burden constitutes an abuse of discretion.

B. *Venue of Corporations*

- ☐ ***Hangey v. Husqvarna Professional Products, Inc.*, No. 14 EAP 2022 (Pa., November 22, 2023)**
  - **Holding**: Under Pa.R.Civ.P. 2179, when evaluating whether a company regularly conducts business in a forum county, courts should consider the quantity of a corporation's business as a whole and whether the acts are continuous and sufficient to the extent they could be called general or habitual.

C. *Wholesaler Corporations*

- ☐ ***Watson v. Baby Trend Inc.*, 2024 PA Super 5 (Pa.Super., January 12, 2024)**
  - **Holding**: Under Pa.R.Civ.P. 2179, venue in cases against corporate entities is determined by employing a quality-quantity analysis. A wholesaler business fails to meet the quality prong if its direct-to-consumer sales are merely incidental to its corporate object and fails to meet the quantity prong if it does not maintain any contacts with the jurisdiction or generates only a small percentage of its sales from the jurisdiction.

VII. Allocatur Petitions

A. *The Pa. Supreme Court has granted appeal in the following matters based upon the issue(s) stated:*

- ***Elite Care, RX, LLC v. Premier Comp Solutions, LLC.*, No. 156 WAL 2023 (Pa., October 24, 2023)**
  - Can a purported medical provider seeking payment for prescription medication in accordance with the provision of the Pennsylvania Workers' Compensation Act (hereinafter "WCA"), specifically 77 P.S. § 501(a)(1), and corresponding Medical Cost Containment Regulations (hereinafter "MCCR"), 34 Pa. Code §§ 127.1 - 127.755, circumvent the exclusivity provisions of the WCA by initiating litigation outside the forums established by and under the WCA and MCCR for adjudicating such issues? Alternatively phrased, is the liability of the Employer and its Insurer or carrier exclusive in place of any and all other liability, given the WCA provides for an exclusive remedy barring any tort action flowing from a work-related injury?
- ***Steets v. Celebration Fireworks, Inc.*, No. 302 MAL 2023 (Pa. January 16, 2024)**
  - Because specific loss benefits are not payable until either disability ceases or the worker dies, did the Commonwealth Court err by limiting receipt of specific loss benefits posthumously to only claimants who die because of a cause unrelated to the work injury?
- ***Galette v. NJ Transit*, No. 204 EAL 2023 (Pa., February 14, 2024)**
  - Whether guidance by this Court is necessary when the Supreme Court issued an opinion that New Jersey Transit is not an arm of the state of New Jersey, conflicting with its own prior decision in *Flamer v. New Jersey Transit Bus Operations,* 607 A.2d 260 (Pa.Super. 1992) and thereby creating inconsistent precedent?
  - Whether guidance by this court is necessary when the Superior Court disregarded the persuasive authority of *Karns v. Shanahan,* 879 F.3d 504 (3d Cir. 2018) and instead misinterpreted and misapplied *Goldman v. SEPTA,* 75 A. 3d 1154 (Pa. 2012) to issue an opinion that New Jersey Transit is not an arm of the state of New Jersey and therefore not entitled to Eleventh Amendment Sovereign Immunity?
  - Whether guidance by this Court is necessary because the issue of whether New Jersey Transit is an arm of the state of New Jersey entitled to Eleventh Amendment Sovereign Immunity under the United States Constitution in accordance with *Franchise Tax Board of California v. Hyatt*, 139 S. Ct 1485 (U.S. 2019) is an issue of first impression in this Court?
- ***Jackiw v. Soft Pretzel Franchise*, No. 286 EAL 2023 (Pa. February 14, 2024)**
  - Did the Commonwealth Court err in applying Section 306(a) of the Workers' Compensation Act, 77 P.S. § 511, rather than section 306(c), 77 P.S. § 513, to determine the benefit rate for the specific loss of a body part, based upon its decision in Walton v. Cooper Hosiery Co., 409 A.2d 518 (Pa. Cmwlth. 1980)?

- ***Halpern v. Ricoh U.S.A., Inc.*, No. 263 EAL 2023 (Pa., February 27. 2024)**
  - Whether, in this case of first impression, this Court should overrule the 2001 Superior Court holding in *Romeo v. Pittsburgh Associates* that a deceptive omission under Pennsylvania's Unfair Trade Practices and Consumer Protection Law is actionable only if a vendor had an affirmative duty to disclose a defect in a good or service.
- ***Rouse v. Rosenburg*, No. 145 WAL 2023 (Pa., March 5, 2024)**
  - Should this Court adopt the portion of the Restatement (Second) of Torts, Section 868-Interference with Dead Bodies, that allows recovery for emotional distress of a family member of the decedent entitled to the disposition of the body caused by the tortfeasor's intentional or wanton action that prevented the body's proper interment or cremation?
- ***Freilich v. Southeastern Pennsylvania Transportation Authority*, No. 245 EAL 2023 (Pa., March 11, 2024)**
  - Does 42 Pa.C.S § 8528(b) violate [Petitioner's] right to a remedy in Article I, Section 11 of the Pennsylvania Constitution under the facts of this case, where [Petitioner's] recovery will be consumed by costs, fees, and insurance reimbursement claims?
  - Does 42 Pa.C.S § 8528(b) violate [Petitioner's] right to a jury trial in Article I, Section 6 of the Pennsylvania Constitution under the facts of this case, where [Petitioner's] recovery will be consumed by costs, fees, and insurance reimbursement claims?
  - In addition, the parties were directed to address the following question:
    - If the Court concludes that the limitation of damages set forth in 42 Pa.C.S.§ 8528 is unconstitutional, is Section 8528 severable from the limited waiver of sovereign immunity set forth in 42 Pa.C.S. § 8522(a)?
- ***Tiano v. City of Philadelphia*, No. 287 EAL 2023 (Pa., March 20, 2024)**
  - Whether the Commonwealth Court's decision conflicts with this Court's decisions, such as *City of Erie v. WCAB (Annunziata)*, 838 A.2d 598, 602- 03 (Pa. 2003), *Oliver v. City of Pittsburgh*, 11 A.3d 960 (Pa. 2011), *Stermel v. Workers' Compensation Appeal Board (City of Philadelphia)*, 103 A.3d 876 (Pa. Cmwlth. 2014), and *Pennsylvania State Police v. Workers' Comp. Appeal Bd. (Bushta)*, 184 A.3d 958, 969 (Pa. 2018), because a self-insured, government entity, is prohibited from subrogating Heart and Lung Benefits Act Benefits from a third-party settlement received by [Petitioner], an employee, who was injured in the line of duty as a Philadelphia Police officer in a non-motor vehicle case[.]
  - In addition, the parties were "directed to address the statutory basis for subrogation under 77 P.S. § 671, as well as the application of *Topelski v. Universal S. Side Autos, Inc.*, 180 A.2d 414 (Pa. 1962), to non-motor vehicle accident cases in light of the recent line of aforementioned cases involving motor vehicle accidents."
- ***City of Philadelphia v. J.S., Sr.*, No. 7 EAL 2024 (Pa. April 8, 2024)**
  - Whether the Commonwealth Court incorrectly concluded that the Sexual Abuse Exception to the Local Political Subdivision Tort Claims Act (42 Pa.C.S. § 8542(b)(9)) is only applicable to plaintiffs who were minors at the time they were victimized?

- ***Schmidt v. Schmidt, Kirfides, and Rassias, PC*, No. 658 MAL 2023 (Pa., April 30, 2024)**
  - Do the terms "medical services" and "medicine and supplies" as used in the Section 306(f.1), 77 P.S. § 531, of the Workers' Compensation Act, include cannabinoid oil (CBD oil), specifically, as well as dietary supplements, generally, and products that may be purchased without a prescription from a healthcare provider?
  - Do the cost containment regulations of the Workers' Compensation Act apply to CBD oil?
  - Does Section 306 (f.1) of the Workers' Compensation Act, 77 P.S. § 531, require employers/insurers to reimburse claimants, directly, for out-of-pocket expenses for "medical services" and "medicine and supplies," and if so, are claimants obligated to submit supporting documentation, such as medical records or prescriptions, or specified forms, such as HCFA forms, before they may receive such reimbursement?
- ***Yoder v. McCarthy Construction, Inc.*, No. 127 EAL 2023 (Pa., May 16, 2024)**
  - Whether this Court should overrule its decision in *Fonner v. Shandon, Inc.*, 724 A.2d 903 (Pa. 1999), and hold that the General Assembly's 1974 amendments to the Workers' Compensation Act, making it mandatory for all employers to obtain workers' compensation coverage, necessitates denying "statutory coverage" status to general contractors unless they in fact have been called on to pay workers' compensation benefits to the injured employee of a subcontractor?
  - Whether this Court should overrule its decision in *LeFlar v. Gulf Creek Indus. Park #2*, 515 A.2d 875, 879 (Pa. 1986), holding that the statutory employer defense is unwaivable in the nature of subject-matter jurisdiction, in a case such as this where the supposed statutory employer was not called on to pay any workers' compensation benefits?
  - Whether the Superior Court failed to properly apply the factors that must be strictly established under *McDonald v. Levinson Steel Co.*, 153 A. 424 (Pa. 1930), for a general contractor to qualify as a statutory employer in the light most favorable to the plaintiff as verdict-winner, necessitating at the very least a retrial at which the jury would resolve the disputed factual issues concerning whether McCarthy qualifies as Yoder's statutory employer under the McDonald test?
- ***Simone v. Alam*, No. 502 MAL 2023 (Pa., May 21, 2024)**
  - Whether a tenant in common of real property who does not exercise possession or control thereover is an indispensable party in a premises liability action?

VIII. Pennsylvania Rules Amendment

A. *Pennsylvania Rules of Professional Conduct*

- **Pa.R.P.C. 8.4 (Effective June 2, 2024)**
  - Pa.R.P.C. 8.4 was amended to state that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation except that a lawyer may advise, direct, or supervise others, including clients, law enforcement officers, and investigators, who participate in lawful investigative activities."