THE PENNSYLVANIA APPELLATE CASE REVIEW

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REPORTING STATE COURT DECISIONS THROUGH FEBRUARY 28, 2025

PENNSYLVANIA APPEALS COURT OPINIONS

Featured Cases of the Month

Summary Judgment Clarified

Two cases decided by the Superior Court in January have clarified (1) when trial courts may rule on a Motion for Summary Judgment, and (2) whether they are reviewable by appellate courts. Both issues had been subjects of conflicting opinions for years. Now, the issues are clarified, providing future litigants with greater certainty about the situation.

The Court also ruled that a franchisor may be liable for the acts of a franchisee if there is sufficient robust and extensive evidence to deem the franchisee its servant or agent for purposes of vicarious liability. In doing so, the Court affirmed a $2,337,279.41 verdict for Plaintiff.

Dan Siegel was appellate counsel in both cases, and briefed and argued them before the Superior Court.

In ***Coryell v. Morris*, 2025 PA Super 28 (Pa.Super., January 31, 2025)**, the Superior Court *en banc* ruled that (1) an appellate court may not rule upon a trial court's pre-trial denial of a Motion for Summary Judgment when the case has gone to verdict and the jury has had the opportunity to evaluate the evidence rather than the hypothetical evidence presented at trial, and (2) the franchisor, Domino's Pizza, had such control over the franchisee, which exceeded mere protection of its brand and trademark, and was sufficiently robust and extensive to deem the franchisee its servant or agent for purposes of vicarious liability for the negligence of the franchisee's employee. ***Neil Murray and Thomas Sheridan of Sheridan and Murray were trial counsel.***

In ***Jordan v. Lynde*, 2024 PA Super 315 (Pa.Super., December 31, 2024),** the Superior Court ruled each litigant must be given 30 days to file an answer to each separate Motion for Summary Judgment under Pa.R.Civ.P. 1035.3. In this case, one of the defendants filed a Motion for Summary Judgment. Approximately 20 days later, another Defendant "joined" in the Motion, claiming that he was filing the Motion for the same legal reasons. He did not file a new or different Motion. Plaintiff asserted, however, that there were different causes of action against each Defendant, requiring separate answers, but was not given 30 days to reply as required under the Rule. The Court granted the Motions as to both Defendants and the Plaintiff appealed.

On appeal, the Superior Court reversed the grant of summary judgment as to the "joining" Defendant. The Court ruled that each party must be 30 given days to respond to each separate Motion for Summary Judgment. This clarified prior conflicting decisions.

Pennsylvania Appellate Court Opinions

Civil Litigation

A. *Asbestos Exposure Damages*

- ☐ Constantine v. Lenox Instrument Co. Inc., 2024 PA Super 216 (Pa.Super., September 17, 2024)
  - ➢ **Holding:** In a claim of negligence for asbestos exposure, there must be sufficient evidence for the fact-finder to conclude that occupational exposure to asbestos was a substantial factor of the injuries; a claimant need not prove the level or duration of exposure but that the exposure was frequent, regular, and in close proximity to asbestos dust.

B. *Civil Immunity*

- ☐ O'Brien v. Beatty, 2024 PA Super 307 (Pa.Super., December 20, 2024)
  - ➢ **Holding:** Disciplinary counsel, who prosecutes a lawyer through the disciplinary process, is immune from a civil action when the lawyer's allegations are based on disciplinary counsel's conduct during the disciplinary proceedings.

C. *Commercial Property Insurance Coverage - COVID*

- ☐ Ungarean v. CNA, No. 12 WAP 2023 (Pa., September 26, 2024)
  - ➢ **Holding:** Commercial property insurance coverage does not extend to financial losses suffered as a result of the COVID-19 pandemic and Pennsylvania's non-essential business shutdown. There must be direct physical damage or loss of the covered property to recoup any damages.

D. *Comparative Negligence - Motor Vehicle Accident*

- ☐ Dailey v. Smith, 2024 PA Super. 235 (Pa.Super., October 10, 2024)
  - ➢ **Holding:** When there is sufficient evidence for a jury to find both that the plaintiff was negligent and that the negligence caused the injuries in which damages are sought, the issue of the plaintiff's negligence must be submitted to the jury, no matter how strong or persuasive the opposing evidence is, and failure to do so is reversible error.

E. *Corporate Existence - Litigation*

- ☐ Chongqing Kangning Bioengineering Co. v. Conrex Pharmaceutical Corp., 2024 PA Super 255 (Pa.Super., November 1, 2024)
  - ➢ **Holding:** Under Pa.C.S.A. §1978(a), every business corporation that is dissolved shall continue to exist for the purpose of prosecuting and defending actions or proceedings by or against it; therefore, a dissolved corporation retains its rights and standing as plaintiff and does not lack subject-matter jurisdiction.

F. *Default Judgment*

- ☐ Zappacosta v. McAvoy, 2024 PA Super 225 (Pa.Super., September 27, 2024)
  - ➢ **Holding:** Under Pa.R.C.P. 218, a trial court does not have authority to enter a default judgment against a defendant for failure to appear at trial without requiring the plaintiff to prove their case.

G. *Delay Damages*

- ☐ Arreguin v. Kinsing, 2024 PA Super 258 (Pa.Super., November 5, 2024)
  - ➢ **Holding:** Under Pa.R.Civ.P. 238(c), to obtain delay damages, a prevailing plaintiff must file a Motion for Delay Damages containing the notice as stated in the rule. Failure to comply constitutes a facial and fatal defect in the motion and therefore does not merit relief.

H. *Discovery - Expert Materials*

- ☐ McKeehan v. The Milton S. Hershey Medical Center, 2024 PA Super 290 (Pa.Super., December 6, 2004)
  - ➢ **Holding:** Pa.R.Civ.P. 4003.5 does not allow the production of materials reviewed by an expert beyond that specifically permitted under the Rules.

- ☐ Kunkel v. Abington Memorial Hospital, 2024 PA Super 298 (Pa.Super., December 13, 2024)
  - ➢ **Holding:** Opinions that physicians reach when treating their patients are not considered expert testimony in Pennsylvania because they are not produced in anticipation of litigation.

I. *Expert Witness Testimony*

- ☐ Verba v. Erie Insurance Exchange, 2024 PA Super 251 (Pa.Super., October 31, 2024)
  - ➢ **Holding:** An independent medical examination ("IME") scheduled in conjunction with a pending action under Pa.R.Civ.P. 4010 is not governed by Section 1796(a) of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1796(a).

J. *Gross Negligence*

- ☐ Toth v. Chambersburg Hospital, 2024 PA Super 236 (Pa.Super., October 15, 2024)
  - ➢ **Holding:** Under the Mental Health Procedures Act (MHPA), 50 P.S. § 7101, et seq., it is not a gross deviation from the standard of care for a certified nursing assistant who received training on fall precautions and management of patients with aggressive behaviors to supervise a patient who was prone to agitation and a fall risk.

K. *Motor Vehicle Insurance - Stacking*

- ☐ Erie Insurance Exchange v. Baluch, 2025 PA Super 3 (Pa.Super., January 3, 2025)
  - ➢ **Holding:** When an insured has their own motor vehicle insurance policy that provides stacked UIM coverage, they are entitled to stack UIM coverage from other household policies unless they expressly choose to waive stacked coverage.
- ☐ Goodville Mutual Casualty Co. v. McNear, 2025 PA Super 48 (Pa.Super., February 26 2025)
  - ➢ **Holding:** Under the Motor Vehicle Financial Responsibility Law, once an insured selected UIM benefits when applying for original coverage, an insurer is entitled to presume that the selection remained effective until affirmatively changed by the named insured.

L. *Reasonable Accommodations*

- ☐ Genell v. Fleetwood Bank, 2024 PA Super 237 (Pa.Super., October 15, 2024)
  - ➢ **Holding:** Under the Pennsylvania Human Relations Act and the Americans With Disabilities Act, when an employee with a disability cannot comply with a valid safety requirement for a job, there must be a reasonable accommodation that would allow the employee to perform their job in compliance with the legitimate safety requirement to remain qualified for the position.

M. *Recusal*

- ☐ Irish Holdings LLC v. EQT Production Co., 2024 PA Super 10 (Pa.Super., January 16, 2025)
  - ➢ **Holding:** The appearance of impropriety arises when a judge presides over a case that calls upon the judge to make rulings on issues that could impact his own rights and interests vis-a-vis one of the parties to the case.

N. *Sovereign Immunity*

- ☐ Schmidt v. Com., Dept. of Transportation, No. 33 C.D. 2024 (Pa. Cmwlth., October 11, 2024)
  - **Holding:** A tree branch that originated from beyond PennDOT's right-of-way is insufficient to trigger the real estate exception to the Commonwealth's sovereign immunity, 42 Pa.C.S. § 8522(b)(4). The dangerous condition must derive, originate from, or have as its source the Commonwealth realty.

O. *Statutory Employer Immunity*

- ☐ Feldman v. Vito Braccia Construction, LLC, 2024 PA Super 208 (Pa.Super., September 12, 2025)
  - **Holding:** Under section 302 of the Workers' Compensation Act, 77 P.S. §§ 461, 462, a subcontractor may be treated as the actual employer and entitled to immunity if a validly formed contract or mutual understanding exists with the owner of the property or one in the position of an owner.

P. *Wage Payment & Collection Law - Liquidated Damages*

- ☐ Aita v. NCB Management Services, Inc., 2024 PA Super 223 (Pa.Super., September 26, 2024)
  - **Holding:** Under the Wage Payment and Collection Law, 43 P.S. §§ 260.1-260.45, an employer's acknowledgement of a duty to pay liquidated damages to an employee removes the statute of limitations with respect to the principal but not to the corresponding interest, unless specifically stated.

Q. *Waiver of Liability*

- ☐ Werner v. 1281 King Associates, LLC, 2024 PA Super 270 (Pa.Super., November 13, 2024)
  - **Holding:** A release in a termination agreement is enforceable if it is clear and unambiguous.

II. Workers' Compensation

A. *Disability Status Modification*

- ☐ City of Philadelphia v. Turner, (WCAB), No. 1190 C.D. 2023 (Pa.Cmwlth, October 17, 2024)
  - **Holding:** Under Section 306(a.3) of the Workers' Compensation Act, 77 P.S. § 511.3, an employer seeking to reduce a worker's compensation benefit status from total temporary disability (TTD) to partial temporary disability (PTD) must prove claimant's whole-person impairment rating was less than 35%.

B. *Exclusivity - Time-Barred Claims*

- ☐ Herold v. University of Pittsburgh, No. 22 WAP 2023 (Pa., January 22, 2025)
  - ➢ **Holding:** A common law action for relief for a disability or death resulting from an occupational disease covered by the Occupational Disease Act, which occurs beyond the four-year limitations period, does not fall within the ODA's exclusivity provision.

C. *Specific Loss Benefits - Calculation of Benefit Rate*

- ☐ Jackiw v. Soft Pretzel Franchise (WCAB), No 3 EAP 2024 (Pa., January 22, 2025)
  - ➢ **Holding:** Section 306(c), 77 P.S. § 513 should be used to determine the benefit rate for the specific loss of a body part.

D. *Vocational Expert Witness Credentials*

- ☐ Brooks v. Trustees of the University of Pennsylvania (WCAB), No. 936 C.D. 2023 (Pa.Cmwlth., October 21, 2024)
  - ➢ **Holding:** Under Section 306(b)(2) of the Workers' Compensation Act and 34 Pa. Code § 123.204, a vocational expert may not be disqualified for inaccurately including credentials on written correspondence provided the expert remains in compliance with the Code of Professional Ethics for Rehabilitation.
- ☐ Borough of Hollidaysburg v. Detwiler (WCAB), No. 739 C.D. 2023 (Pa.Cmwlth., Nov. 19, 2024)
  - ➢ **Holding:** A firefighter who does not file a claim within 300 weeks of the last date of exposure to a Group 1 carcinogen loses the benefit of the presumptions in Section 301(f) of the Act. If a firefighter does not file his claim until more than 600 weeks after the date of last exposure, he is foreclosed from bringing the claim in its entirety.

III. Allocatur Petitions

A. The Pa. Supreme Court has *granted* appeal in the following matters:

- ☐ Erie Insurance Property and Casualty Co. v. David Heater, (Worker's Compensation Appeal Board), No. 301 MAL 2024 (Pa., December 17, 2024)
  - ➢ Under Section 311 of the WCA, 77 P.S. § 631, an employee "shall give notice thereof [of an injury] to the employer within twenty-one days after the injury." Does an employee satisfy this requirement by giving notice solely to the employer?
- ☐ 700 Pharmacy v. State Workers Insurance Fund, (Bureau of Workers' Compensation Fee Review Hearing Office), No. 274 MAL 2024 (Pa., December 11, 2024)
  - ➢ Section 306(f.1(3)(iii) of the Workers' Compensation Act makes it "unlawful for a provider to refer a person for laboratory, physical therapy, rehabilitation, chiropractic, radiation oncology, psychometric, home infusion therapy or diagnostic imaging, goods or services pursuant to this section if the provider has a financial interest with the person or in the entity that receives the referral." Because this provision neither includes nor refers to "prescription drugs" or "professional pharmaceutical services," is a pharmacy entitled to payment for prescription drugs and pharmaceutical services provided to a Claimant whose physician has a financial interest in the pharmacy?

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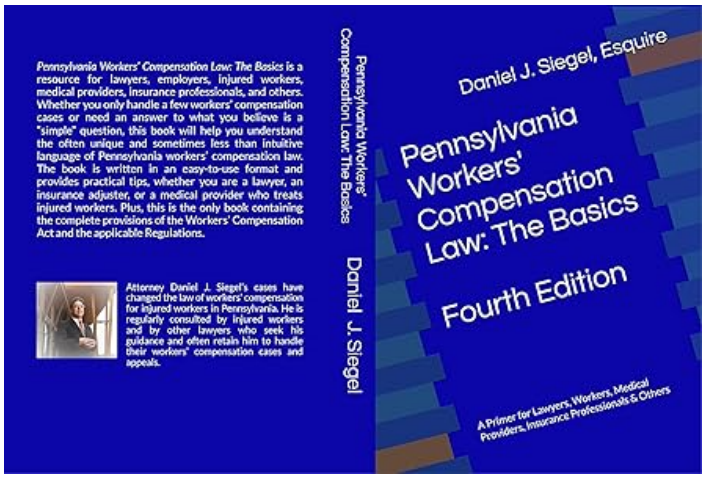
By Daniel J. Siegel, Esquire



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