

**[J-23-2014]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

DAVID BRUNO AND ANGELA BRUNO, HUSBAND AND WIFE AND ANTHONY GOTTI BRUNO AND MCKAYLA MARIE BLAKE, BY THEIR PARENTS AND LEGAL GUARDIANS, DAVID BRUNO AND ANGELA BRUNO,  Appellants	: No. 25 WAP 2013 : : : Appeal from the Order of the Superior : Court entered July 10, 2012 at No. 1154 : WDA 2011, affirming in part and vacating : in part the Order of the Court of Common : Pleas of McKean County entered June 27, : 2011 at No. 1369 C.D. 2009, and : remanding. : : : ARGUED: April 8, 2014 : : : : : : : : : : : :
v.	
ERIE INSURANCE COMPANY, RUDICK FORENSIC ENGINEERING, INC., THERESA PITCHER AND MARC PITCHER,  Appellees	

**CONCURRING OPINION**

**MR. JUSTICE EAKIN** **DECIDED: DECEMBER 15, 2014**

I agree in full with the majority’s analysis concerning a certificate of merit. I also agree the “gist of the action” doctrine does not bar the present action because statements concerning toxicity are outside the scope of the insurance policy, but I write separately to caution against what I deem troublesome language. To the extent the majority is perceived to “paint with a broad brush,” suggesting any negligence claim based on a contracting party’s manner of performance does not arise from the underlying contract, see Majority Slip Op., at 35, I must disagree. In some cases, such as here, that may be the case. However, synthesizing case law to stand for such a broad pronouncement does not comport with the “gist of the action” doctrine — an

inherently circumstantial analysis. See eToll, Inc. v. Elias/Savion Advertising, Inc., 811 A.2d 10, 17 (Pa. Super. 2002) (“[W]hether [a] claim [is] actually barred by the doctrine appears to vary based on the individual circumstances and allegations[.]”).

Mr. Chief Justice Castille joins this concurring opinion.