



A Summary of Recent Appellate Decisions & Rules Changes

July 2006 Edition

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Pa. House Approves Revisions to the Workers' Compensation Act

On June 26, 2006, the Pennsylvania House of Representatives approved legislation containing improvements to the Pennsylvania Workers' Compensation Act. The bill, which still must be approved the Pennsylvania Senate, is a pleasant change from most "reform" bills – where "reform" is generally synonymous with "restricting or limiting rights."

The Bill, H.B. 2738, includes the following provisions:

- ✓ Creation of an Uninsured Employers Guaranty Fund to provide benefits to workers whose employers fail to maintain workers' compensation coverage
- ✓ Increasing the salaries of Workers' Compensation Judges to the same pay schedule applicable to administrative law judges for Public Utility Commission and the Liquor Control Board. If approved by the Senate and signed by the Governor, this provision will finally create pay parity for WCJs, an issue with which I have been involved for nearly a decade.
- ✓ Changes in the structure of the Workers' Compensation Appeal Board
- ✓ Changes designed to expedite decisions on Compromise and Release petitions
- ✓ Numerous other modifications to the Act

[Click here](#) to read the version of the Bill approved by the House. This Newsletter will continue to provide updates on the Bill's progress.

A Summary of Recent Pennsylvania Appellate Court Decisions & Rule Changes

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REPORTING DECISIONS THROUGH JUNE 30, 2006

PENNSYLVANIA STATE COURT DECISIONS

1. CIVIL LITIGATION & PROCEDURE

1.1. ARBITRATION/JURISDICTIONAL LIMITS

► Superior Court of Pennsylvania

- ◆ [Robert Half International, Inc. v. Marlton Technologies, Inc.](#)
2006 PA Super 145 (June 20, 2006)

Holding: Because the monetary limits for compulsory arbitration are jurisdictional, when a defendant files a counterclaim seeking an amount in excess of the jurisdictional limits for compulsory arbitration, the arbitration program is immediately divested of jurisdiction in the matter. This is an *en banc* decision of the Superior Court.

All decisions are “hyperlinked” to the slip opinion. All you have to do is “click” (or “ctrl + click”) on the title of the case, and if connected to the Internet, your browser will open up the decision for you to read in its entirety. Try it and see!

1.2. CAUSES OF ACTION – ASBESTOS-RELATED DISEASES

► Superior Court of Pennsylvania

- ◆ [Estate of Abrams v. Pneumo Abex Corp.](#)
2006 PA Super 136 (June 9, 2006)

Holding: Affirming its prior *en banc* decision adopting the “two disease rule” in *Marinari v. Asbestos Crop., Ltd.*, 612 A.2d 1021 (Pa.Super 1992), the Court holds that the diagnosis of lung cancer, even if it occurs years after a diagnosis of nonmalignant asbestos disease, triggers the running of the two year statute of limitations in asbestos cases. The two disease rule applies even if one or more of the defendants named in the second action was not named as defendant in the first action.

1.3. CAUSES OF ACTION – CLAIMS AGAINST MUNICIPALITIES

► Commonwealth Court of Pennsylvania

- ◆ [Warner v. Lawrence.](#)
No. 1929 C.D. 2005 (June 2, 2006)

Holding: A charter school formed under the Charter School Law, 24 P.S. §§ 17-1701-A – 17-1751-A is entitled to the same immunity as political subdivisions and local agencies receive under the Political Subdivision Tort Claims Act, 42 Pa.C.S. §§8541-8542.

► Commonwealth Court of Pennsylvania

- ◆ [Murphy v. City of Duquesne.](#)
No. 2284 C.D. 2005 (May 5, 2006)

Holding: There is no cause of action against a municipality and its individual police officers for failing to investigate and prosecute criminal activity with the degree of zeal satisfactory to the plaintiff.

1.4. CAUSES OF ACTION – SLIP & FALL CLAIMS/HILLS & RIDGES

► Superior Court of Pennsylvania

- ◆ [Harvey v. Rouse Chamberlin, Ltd.](#)
2006 PA Super 130 (June 2, 2006)

Holding: When the condition of land is influenced by human intervention, *e.g.*, the plowing of snow, a defendant is not insulated from liability pursuant to the “hills and ridges” doctrine.

1.5. DELAY DAMAGES

► Supreme Court of Pennsylvania

- ◆ [Touloumes v. E.S.C. Inc.](#)
No. 33 MAP 2004 (June 19, 2006)

Holding: Pa.R.Civ.P. 238 does not authorize an award of delay damages in breach of contract actions involving damage to property.

1.6. DISQUALIFICATION OF COUNSEL/APPEALABILITY OF ORDERS

► Supreme Court of Pennsylvania

- ◆ [Vaccone v. Syken](#)
No. 30 EAP 2005 (June 19, 2006)

Holding: An Order disqualifying trial counsel in a civil case is an interlocutory order, which is not subject to immediate appeal.

1.7. MEDICAL MALPRACTICE

► Superior Court of Pennsylvania

- ◆ [Vogelsberger v. Magee-Womens Hospital of UPMC Health System](#)
2006 PA Super 146 (June 21, 2006)

Holdings: (1) Pa.R.Civ.P. 1042.72 does not prohibit a plaintiff from taking an immediate appeal from an order granting a new trial on non-economic damages following

plaintiff's rejection of remittitur. Pursuant to Pa.R.A.P. 311(6), once an order for a new trial is entered under these circumstances, the plaintiff may take an immediate appeal from the order granting a new trial.

(2) Pursuant to the MCARE Act, 40 P.S. § 1303.515, and Pa.R.Civ.P. 1042.72, a trial court may grant remittitur when the damage award is excessive because it deviates substantially from what could be reasonable compensation. The standard for remittitur in medical malpractice actions differs, however, from the traditional remittitur standard, which requires a verdict to be so excessive as to offend the conscience and judgment of the Court before a Court may grant remittitur.

◆ [*Forrester v. Hanson*](#)
2006 PA Super 137 (June 9, 2006)

Holding: Pa.R.Civ.P. 1006(a.1), which requires that medical malpractice actions be filed only in a county in which the cause of action arose, does not apply to cases in which a medical malpractice claim was not filed in the original Complaint, but arises solely from a Joinder Complaint. Consequently, an order transferring the case to county where the malpractice allegedly occurred, as pleaded in the Joinder Complaint, should be reversed.

1.8. MOTOR VEHICLE CLAIMS

► Superior Court of Pennsylvania

◆ [*Bennett v. Mucci*](#)
2006 PA Super 133 (June 6, 2006)

Holding: The limited tort threshold applies when the insured is injured in an accident while in the vehicle for which he or she procured limited tort coverage even if, at the time of the accident, the insured was operating the vehicle for commercial purposes and not as a private passenger motor vehicle.

1.9. PROCEDURAL ISSUES

1.9.1. SANCTIONS/NON PROS

◆ [*Sahutsky v. Mychak, Geckle & Welker, P.C.*](#)
2006 PA Super 110 (May 12, 2006)

Holding: The entry of a judgment of non pros is an appropriate sanction when counsel fails to respond to discovery requests, letters from opposing counsel relating to discovery, a motion to compel discovery, a Rule Returnable issued by the trial and an Order of the trial court compelling answers to discovery.

1.10. SPOILIATION OF EVIDENCE

► Superior Court of Pennsylvania

◆ [*Creazzo v. Medtronic, Inc.*](#)
2006 PA Super 152 (June 27, 2006)

Holding: Dismissal of the Complaint is appropriate in a products liability action in which plaintiff bears the responsibility for preservation of the product.

2. WORKERS' COMPENSATION

2.1. Course of Employment/Home Office

▶ Commonwealth Court of Pennsylvania

- ◆ [*Verizon Pennsylvania, Inc. v. Workers' Compensation Appeal Board \(Alston\)*](#)
No. 1804 C.D. 2005 (May 31, 2006)

Holding: A claimant is entitled to compensation for an injury that occurs when the claimant is working for her employer at her home, where she regularly worked two days per week while away from the employer's official place of business. In this circumstance, claimant is furthering the business of the employer.

2.2. Limitations on Claims

▶ Supreme Court of Pennsylvania

- ◆ [*Romaine v. Workers' Compensation Appeal Board \(Bryn Mawr Chateau Nursing Home\)*](#)
No. 62 EAP 2004 (June 22, 2006)

Holding: When calculating the three (3) year statute of limitations under 413(a) of the Act, 77 P.S. §§ 771-772, which applies to reinstatement and other petitions (*See, e.g., Penn Beverage*, below), the only date of import is the date on which the last payment check is received. That date constitutes the last payment of compensation – provided the check is honored and payment relates back to the date of its receipt.

▶ Commonwealth Court of Pennsylvania

- ◆ [*Penn Beverage Distributing Co. v. Workers' Compensation Appeal Board \(Rebich\)*](#)
No. 1698 C.D. 2004 (June 27, 2006)

Holding: The three (3) year statute of limitations under 413(a) of the Act, 77 P.S. §§ 771-772, applies to claims seeking to add a permanent scar to a Notice of Compensation Payment or an otherwise previously accepted work injury. Consequently, a claim petition seeking disfigurement benefits must be filed with three years after the date of the most recent payment of compensation. This decision also applies to petitions seeking to add a new injury arising as a direct result of an injury for which an employer has assumed liability.

2.3. Mental/Mental Injury Claims

▶ Commonwealth Court of Pennsylvania

- ◆ [*Kennelty v. Workers' Compensation Appeal Board \(Schwan's Home Service, Inc.\)*](#)
No. 2357 C.D. 2005 (May 31, 2006)

Holding: A claimant who suffers psychological injuries as the result of being robbed at gunpoint on multiple occasions while in the course of delivering food and collecting payments from customers is entitled to compensation for those injuries, which constitute "legally sufficient abnormal working conditions." In the Opinion, President Judge Colins states that "this Court is unprepared to accept that our society has deteriorated to the point where a holdup at gunpoint does not constitute an 'abnormal working condition' for a food delivery person."

REVISED PA. RULE OF CIVIL PROCEDURE 1311.1

Effective July 1, 2006, the Pennsylvania Supreme Court has increased to \$25,000.00 (from \$15,000.00) the maximum amount of damages recoverable in the trial of an appeal from the Award of Arbitrators – in the event the plaintiff files the requisite Stipulation to Limitation of Monetary Recovery at least thirty (30) days from the date the appeal is first listed for trial. [Click here to read the Rule.](#)

AN INTERESTING ETHICS OPINION

In Formal Opinion 06-439, “Lawyer’s Obligation of Truthfulness When Representing a Client in Negotiation: Application to Caucused Mediation,” the American Bar Association Standing Committee on Ethics and Professional Responsibility has concluded that, under Model Rule 4.1, “in the context of a negotiation, including a caucused mediation, a lawyer representing a party may not make a false statement of material fact to a third person. However, statements regarding a party’s negotiating goals or its willingness to compromise, as well as statements that can fairly be characterized as negotiation ‘puffing,’ are ordinarily not considered ‘false statements of material fact’ within the meaning of the Model Rules. [Click here to read the Opinion.](#)

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The screenshot shows a web browser window with the address bar displaying "http://www.palegallinks.com/". The page title is "Pennsylvania Legal Research Links". The main content area features a welcome message: "Welcome to Pennsylvania Legal Research Links, the website where you begin your research about anything and everything related to Pennsylvania. A service of Havertown, Pennsylvania Attorney Daniel J. Siegel, the Law Offices of Daniel J. Siegel, LLC and Integrated Technology Services, LLC, this website was designed for attorneys and legal researchers. Pennsylvania Legal Research Links also contains features that are helpful to anyone trying to find more information about Pennsylvania." Below this, there are several links for finding state courts, agencies, and federal agencies. A sidebar on the right lists "Popular Links" such as "Pennsylvania Appellate Court Slip Opinions", "Check Your Pennsylvania CLE Record", and "Pennsylvania Rules of Civil Procedure".