

# A Summary of Recent Appellate Court Decisions From Pennsylvania & Other Jurisdictions

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REPORTING DECISIONS THROUGH JULY 5, 2010

## PENNSYLVANIA APPELLATE COURT DECISIONS

### I. Allocatur Petitions Granted

The Pennsylvania Supreme Court has granted allocatur in the following matters on the issue stated:

A. [Daley v. A.W. Chesterton, Inc., No. 410 EAL 2009 \(May 11, 2010\)](#)

- Did the Superior Court err by permitting suits for more than one malignant disease resulting from the same asbestos exposure under the "two disease" rule?

B. [Gentex Corporation and Gallagher Bassett Services v. Workers' Compensation Appeal Board \(Morack\), No. 439 MAL 2009 \(June 1, 2010\)](#)

- What constitutes sufficient notice, including how specific the description of the injury must be, under Section 312 of the Workers' Compensation Act. In addressing this issue, the parties are also to address if, and when, the burden shifts to the employer to conduct a reasonable investigation into the circumstances surrounding the injury.

C. [Giant Eagle, Inc. v. Workers' Compensation Appeal Board \(Givner\), No. 44 WAL 2010 \(May 19, 2010\)](#)

- Whether "compensation" must include medical benefits as well as wage loss benefits under section 314 (a) of the Workers' Compensation Act.

### II. Civil Litigation and Other Matters

A. Automobile Insurance - Pro Rata Reimbursements of Deductibles

- [Jones v. Nationwide Property and Casualty Insurance Co., 2010 PA Super 90 \(May 24, 2010\)](#)
  - **Holding:** The Pennsylvania Insurance Department regulation, which requires that automobile insurance companies reimburse policyholders on a *pro rata* basis for deductibles recovered, is valid and does not violate the common law "made whole" doctrine.

B. Automobile Insurance - "Offensive" Collateral Estoppel

- [Catroppa v. Carlton, 2010 PA Super 85 \(May 14, 2010\)](#)
  - **Holding:** Where a UIM board of arbitrators decides the issue of damages, and the only parties are the plaintiff and the insurance company, the defendant in a third party action cannot be collaterally estopped from challenging damages because defendant was not a party to the arbitration and was not in privity with the insurance company.

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!

C. **Exculpatory Clauses - Skier's Responsibility Act**

□ [\*Chepkevich v. Hidden Valley Resort, L.P.\*, No. 22 WAP 2007 \(Pa., June 21, 2010\)](#)

- **Holding:** A negligence action against a ski resort is barred by (1) the release/exculpatory clause signed by the skier when purchasing her season pass, and (2) doctrine of assumption of the risk, as codified in the Skier's Responsibility Act, 42 Pa.C.S. § 7102(c), even if the exculpatory clause does not specifically mention negligence. Concurring opinions were also authored by [Justice Saylor](#) and by [Justice Baer](#).

D. **Interest Against a Commonwealth Agency**

□ [\*In Re: Septa MVFRL Interest Litigation\*, No. 111 C.D. 2009 \(Pa.Cmwlt., May 28, 2010\)](#)

- **Holding:** SEPTA is liable for interest on "overdue" bills under the Motor Vehicle Financial Responsibility Law (MVFRL), 75 Pa.C.S. §§ 1701-1799.7.

E. **Premises Liability - "Trivial" Defects**

□ [\*Mull v. Ickes Insurance Agency\*, 2010 PA Super 80 \(May 4, 2010\)](#)

- **Holding:** Although there is no definite or mathematical rule to determine when a defect on a property is trivial, a concrete slab with a one and one-half inch deep depression and a slight grade away from the road, was not so trivial a defect to justify granting summary judgment in favor of the defendant.

III. **Unemployment Compensation**

A. **Voluntary Resignation**

□ [\*Astolfi v. Unemployment Compensation Board of Review\*, No. 1866 C.D. 2009 \(Pa.Cmwlt., May 27, 2010\)](#)

- **Holding:** In order to claim unemployment benefits after resigning, an unemployment compensation claimant must establish a necessitous and compelling cause for leaving the job, such that a reasonable person under the same circumstances would resign. Personality conflicts, resentment or being privately reprimanded without the use of abusive language, however, do not rise to the level of a necessitous and compelling reason.

IV. **Workers' Compensation**

A. **Course of Employment**

□ [\*ICT Group v. Workers Compensation Appeal Board \(Churchray-Woytunick\)\*, No. 2315 C.D. 2009 \(Pa.Cmwlt., May 26, 2010\)](#)

- **Holding:** Injuries suffered during a lunch break in a fall on a parking lot at the office park where claimant worked are compensable, even if the lot is used by employees of other businesses and is not owned by the employer. In particular, any injury sustained by an employee up until he or she leaves the premises of the employer is compensable, provided that the time of injury was reasonably proximate to work hours.

B. **Defenses -- Lack of Employer/Employee Relationship**

□ [\*Moberg v. Workers' Compensation Appeal Board \(Twining Village\)\*, No. 1767 C.D. 2009 \(Pa.Cmwlt., March 17, 2010\)](#)

- **Holding:** An injury suffered during a pre-employment test, taken as a prerequisite to employment, is not compensable because there was no employer/employee relationship at the time of the injury.

**C. Duration of Benefits**

- [Milner v. Workers' Compensation Appeal Board \(Main Line Endoscopy Center\), No. 2331 C.D. 2009 \(Pa.CmwltH, May 18, 2010\)](#)
  - **Holding:** A WCJ may award benefits in a Claim Petition for a closed period even if a physician testifies that the condition was "irreversible" because the burden remains on the claimant to establish a compensable injury and ongoing disability.

**D. Labor Market Surveys**

- [Phoenixville Hospital v. Workers' Compensation Appeal Board \(Shoap\), No. 2188 C.D. 2009 \(Pa.CmwltH, 2010\)](#)
  - **Holding:** Pursuant to Section 306(b)(3)(ii) of the Act, a claimant has an obligation to begin pursuing employment opportunities upon being supplied with a Notice of Ability to Return to Work. The obligation to look for work commences before, not after, receiving any earning power assessments or labor market surveys by a vocational expert. Further, a job exists for purposes of Section 306(a) of the Act, even if a claimant applies for the job and does not receive an offer of employment, provided the employer presents credible expert testimony that the jobs were open and available at the time the employment opportunities were identified. Thus, an Employer is not precluded from obtaining a modification of benefits even when a Claimant pursues and is not offered any of the jobs contained in the labor market survey.

**E. Notice of Compensation Denial for Medical Only**

- [Forbes Road CTC v. Workers' Compensation Appeal Board \(Consla\), No. 919 C.D. 2009 \(Pa.CmwltH., May 27, 2010\)](#)
  - **Holding:** An employer may properly issue a Notice of Compensation Denial (NCD) as a means of accepting a claimed work injury for medical purposes only.

**F. Suspension of Medical Benefits Pending Utilization Review Appeal**

- [Scranton School District v. Workers' Compensation Appeal Board \(Carden\), No. 1567 C.D. 2009 \(Pa.CmwltH., March 12, 2010\)](#)
  - **Holding:** An employer may not suspend the payment of medical benefits during the pendency of a Petition for Review of Utilization Review Determination filed after the treatment has been found to be reasonable and necessary under Section 306(f.1)(6) of the Act.

**G. Waiver**

- [Riley v. Workers' Compensation Appeal Board \(DPW/Norristown State Hospital\), No. 1533 C.D. 2009 \(Pa.CmwltH., June 17, 2010\)](#)
  - **Holding:** Issues on appeal are deemed to be "waived" unless they are preserved at every stage of the proceedings. In addition, an appellant must bring to the attention of the appellate body its claims of error with some degree of specificity, or an appellate court will be precluded from addressing the claimed error.

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