

A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH FEBRUARY 29, 2012

PENNSYLVANIA APPELLATE COURT DECISIONS

I. CIVIL LITIGATION

A. *Asbestos Claims - Separate Disease Rule*

- [*Daley v. A.W. Chesterton, Inc., No. 27 EAP 2010 \(February 21, 2012\)*](#)

➤ **Holding:** The separate or "two-disease" rule allows an individual to bring separate lawsuits for more than one malignant disease allegedly resulting from the same asbestos exposure, provided the subsequent action is based on a separate and distinct disease not known to claimant at the time of the first action, and is filed within the applicable statute of limitations. Justice Eakin filed a [concurring opinion](#) in which Justice Baer joined. Justice Orié Melvin filed a [dissenting opinion](#).

B. *Contract Claims - Interest*

- [*Truserv Corp. v. Morgan's Tool & Supply Co., No. 10 WAP 2010 \(Pa., February 21, 2012\)*](#)

➤ **Holding:** A trial court may not refuse to award interest to a prevailing party when the right to interest has been expressly reserved under the terms of contract. Justice Saylor filed a [concurring and dissenting opinion](#) in which Chief Justice Castille joined.

C. *ERISA - Preemption of State Contract Law*

- [*Barnett v. SKF USA, INC., No. 60 MAP 2010 \(Pa., February 21, 2012\)*](#)

➤ **Holding:** A state law breach of contract claim is preempted by Section 514(a) of ERISA when a retirement plan is the source of the alleged rights and the claim is not a mere measurement of compensatory damages. Justice Eakin filed a [dissenting opinion](#) in which Justice McCaffery joined.

D. *MCARE - Abatement Law*

- [*Pennsylvania Medical Society v. Department of Public Welfare, Nos. 22 & 23 MAP 2010 \(Pa., February 29, 2012\)*](#)

➤ **Holding:** The Commonwealth does not have an obligation under the Health Care Provider Retention Law (the "Abatement Law") to transfer monies to the Medical Care Availability and Reduction of Error ("MCARE") Fund in an amount necessary to fund, dollar for dollar, all abatements of annual assessments granted to health care providers. Rather, the Abatement Law gives the Secretary of the Budget the discretion, but not the obligation, to transfer monies into the MCARE fund in an amount up to the total amount of the abatements granted. Justice Todd filed a [concurring opinion](#).

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!

E. *Medical Malpractice - Res Ipsa Loquitur*

- [Vazquez v. CHS Professional Practice, P.C., T/A Coordinated Health, 2012 PA Super 38 \(February 21, 2012\)](#)

- **Holding:** When an injury could occur in the absence of negligence, but was beyond the comprehension of the average layperson, and the plaintiff had not eliminated other possible causes, the doctrine of *res ipsa loquitur* does not apply, and expert testimony is required.

F. *MVFRL - Claims for Economic Damages*

- [Corbin v. Khosla, No. 48 EAP 2010 \(Pa., February 21, 2012\)](#)

- **Holding:** An uninsured driver who is injured in a motor vehicle accident with an insured driver may sue the driver in tort for economic damages under Section 1714 of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1714. Justice Saylor filed a [concurring opinion](#) in which Chief Justice Castille and Justice Orié Melvin joined.

II. WORKERS' COMPENSATION

A. *Joint Liability of Employers - Trucking Industry*

- [American Road Lines v. Workers' Compensation Appeal Board \(Royal\), Nos. 2419 & 2428 C.D. 2010 \(Pa.Cmwlth., February 23, 2012\)](#)

- **Holding:** When assessing a claim for benefits implicating joint employer liability in the trucking industry under the Workers' Compensation Act, there must be sufficient evidence to support an employment relationship between the employee and each employer. To determine if an employment relationship is present, the Workers' Compensation Judge must consider factors such as whether the employee's work directly furthers the interest of the employer, as well as the indicia of control each entity had over the employee.

B. *Medical Benefits - Downcoding*

- [Liberty Mutual Insurance Co. v. Bureau of Workers' Compensation Fee Review Hearing Office \(Kepko, D.O., Lindenbaum, D.O. c/o East Coast TMR\), No. 1182 C.D. 2011 \(Pa.Cmwlth., February 23, 2012\)](#)

- **Holding:** When an insurer fails to strictly comply with the correct downcoding procedures, an award of actual charges to the providers is proper and does not constitute a penalty under the Workers' Compensation Act.

III. ALLOCATUR GRANTED

A. *The Pennsylvania Supreme Court has granted allocatur on the following matters for the issues stated:*

- [Wayne M. Chiurazzi Law, Inc. v. MRO Corp., No. 464 WAL 2011 \(February 22, 2012\)](#)

- Does the Medical Records Act, 42 Pa.C.S. § 6152(a)(1) and (a)(2)(i), require medical records reproducers to disclose their estimated, actual and reasonable expenses of reproducing the charts or records, and to limit their copying charges to these amounts or the statutory ceiling rates, whichever is less?
- If so, where a medical records reproducer failed to disclose and charge its estimated, actual and reasonable expenses and instead charges the MRA's ceiling rates, do the "voluntary payment" and "prior approval" defenses bar the records requestor from bringing a subsequent breach of contract claim to recoup the unlawful over-payment?