



A Summary of Recent Appellate Decisions & Rules Changes

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Appellate Decisions - New Format A "Hit"

Thanks to all who have provided feedback to the last "Summary of Appellate Decisions." Your feedback (completely positive!) about the revised format has been heartening.

This issue summarizes appellate decisions released up to November 23, 2005, with each opinion hyperlinked so that, if you receive the electronic version of this newsletter, you can just click on a case and read the entire slip opinion. In the near future, this newsletter – and a slew of links to legal websites – will be available for free on the Internet.

Of note is the Pennsylvania Supreme Court's Order (see page 5) creating a website that will contain the local rules from every county. This is a welcome innovation, which will make practice easier throughout the state. Take a look at the Court's the site; it is a work in progress that should eventually be of assistance to most Pennsylvania attorneys.

Integrated Technology Services, LLC

My consulting firm, Integrated Technology Services, LLC (ITS), has been busier than I would have ever dreamed. We perform needs analyses for law firms, and also provide assistance with web design and marketing, including newsletters. A needs analysis is an in-depth analysis of how the attorneys in a firm operate (technologically); after the analysis is completed, you receive a report highlighting your firm's strengths and weaknesses, along with suggestions how to improve your efficiency with technology. In addition, ITS has formed strategic partnerships with various companies – including Case Soft, Adobe and ACD Systems. Before you purchase software or training with other companies, give ITS a call at (610) 446-3467 or send an e-mail to dan@itsllconline.com.

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REPORTING DECISIONS THROUGH NOVEMBER 23, 2005

PENNSYLVANIA STATE COURT DECISIONS

1. CIVIL LITIGATION & PROCEDURE

1.1. ATTORNEY-CLIENT PRIVILEGE

► Superior Court of Pennsylvania

- ◆ [*In re: Investigating Grand Jury*](#)
2005 PA Super 369 (November 1, 2005)
(*Petition for Rehearing Filed*)

Holding: The attorney-client privilege applies to communications between an attorney and client occurring as a result of the attorney's ongoing professional relationship with the client, even after formal representation ends, unless it is made clear that there is no confidentiality in the communication.

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 – MEDICAL MALPRACTICE

► Superior Court of Pennsylvania

- ◆ [*Brodowski v. Ryave*](#)
2005 PA Super 354 (October 21, 2005)

Holding: To establish a *prima facie* case of corporate negligence, a plaintiff must show that: (1) the hospital or other corporate entity acted in deviation from the standard of care; (2) the hospital or other corporate entity had actual or constructive notice of the defects or procedures that created the harm; and, (3) the conduct was a substantial factor in bringing about the harm. Expert testimony may be necessary to establish prongs 1 and 3 of the test.

1.3. CAUSES OF ACTION – CONFIDENTIALITY OF MEDICAL INFORMATION

► Superior Court of Pennsylvania

- ◆ [*Grimminger v. Maitra*](#)
2005 PA Super 374 (November 4, 2005)

Holding: A physician does not violate the physician-patient privilege (*See* 42 Pa.C.S.A. § 5929) by offering information and opinions to the patient's employer when the patient provides implied consent to discuss his medical problems with the employer. The privilege is lost when a party institutes a civil matter for personal injuries; in addition, a patient's consent serves as an affirmative defense to an action for breach of physician-patient confidentiality.

1.4. RECREATIONAL USE OF LAND AND WATER ACT

► Supreme Court of Pennsylvania

- ◆ [*Stanton v. Lackawanna Energy, Ltd.*](#)
No. 50 MAP 2004 (November 23, 2005)

Holding: An “owner” of land under the Recreational Use of Land and Water Act, 68 P.S. §§ 477-1-477-8 (“Recreation Act”) is defined as the “possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.” Thus, an occupant is one who has possessory rights in or control over certain property or premises. In this case, PP&L managed the land by virtue of an easement agreement, is the possessor of the land, and is entitled to all rights under the Recreation Act.

1.5. CAUSES OF ACTION – WRONGFUL DISCHARGE

► Superior Court of Pennsylvania

- ◆ [*Weaver v. Harpster*](#)
2005 PA Super 359 (October 21, 2005)

Holding: Pennsylvania recognizes a common law cause of action for wrongful discharge of an at-will employee based on allegations of sexual harassment when the defendant/employer does meet the standards of the Pennsylvania Human Relations Act, 43 P.S. § 953(b), which defines an “employer” as, *inter alia*, any person employing four or more persons within the Commonwealth.

1.6. DELAY DAMAGES

► Superior Court of Pennsylvania

- ◆ [*LaRue v. McGuire*](#)
2005 PA Super 348 (October 14, 2005)

Holding: When parties stipulate to a limit of \$15,000 in damages under Pa. R.Civ.P. 1311.1, Rule 238 delay damages must be calculated pursuant to the \$15,000 cap to which the plaintiff had agreed.

1.7. EVIDENCE – MEDICAL MALPRACTICE ACTIONS

► Superior Court of Pennsylvania

- ◆ [*Papach v. Mercy Suburban Hospital*](#)
2005 PA Super 345 (October 12, 2005) (*Petition for Reargument Filed*)

Holding: An EMS *report* is inadmissible hearsay under Pa. R.E. 803(6) in a medical malpractice action and could not be admitted as proof of the matter asserted.

1.8. PROFESSIONAL LIABILITY ACTIONS

► Superior Court of Pennsylvania

- ◆ [*Smith v. Paoli Memorial Hospital*](#)
2005 PA Super 352 (October 18, 2005)

Holding: A trial court does not abuse its discretion by permitting expert witness testimony under the MCare Act, 40 P.S. §§ 1303.101-1303.910, when the expert's specialties and/or subspecialties overlap with the specialty/subspecialty of the defendant, and the expert's testimony relates to the standard of care applicable when a patient presents to any appropriately trained medical care provider.

2. AUTOMOBILE INSURANCE

2.1. COVERAGE

► Superior Court of Pennsylvania

- ◆ [*Allstate Insurance Co. v. DeMichele*](#),
2005 PA Super 382 (November 14, 2005)

Holding: A properly signed and dated rejection of uninsured motorist coverage form under Section 1731 of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701, *et seq.*, is enforceable even without proof the insured signed an "Important Notice" form under Section 1791 of the MVFRL.

3. WORKERS' COMPENSATION

3.1. COMING AND GOING RULE

► Supreme Court of Pennsylvania

- ◆ [*Wachs v. Workers' Compensation Appeal Board \(American Office Systems\)*](#)
No 77 MAP 2004 (October 21, 2005)

Holding: The "going and coming rule," which generally precludes the award of workers' compensation benefits to workers traveling to or from their places of employment, does not apply if: (1) the worker's employment contract includes transportation to and from work; (2) the employee has no fixed place of work; (3) the employee is on a special mission for the employer; or, (4) special circumstances exist and the worker was furthering the business of the employer. Justice Saylor filed a [dissenting opinion](#), joined by Justices Castille and Newman, concluding that the 1993 amendment to Section 301(c)(1) of the Workers' Compensation Act abrogated the common-law employment contract exception to the going-and-coming rule.

3.2. EVIDENCE

► Commonwealth Court of Pennsylvania

- ◆ [*Teter v. Workers' Compensation Appeal Board \(Pinnacle Health Systems\)*](#)
No 1387 C.D. 2005 (November 17, 2005)

Holding: A Workers' Compensation Judge does not abuse his discretion by accepting the testimony of the employer's medical witness on remand even though the WCJ had rejected that same testimony in his initial opinion.

3.3. JOB AVAILABILITY/NOTICE OF ABILITY TO RETURN TO WORK

► Commonwealth Court of Pennsylvania

- ◆ [Secco, Inc. v. Workers' Compensation Appeal Board \(Work\)](#)
No 1048 C.D. 2005 (November 17, 2005)

Holding: In order to obtain a modification or suspension of benefits based upon the receipt of medical evidence, an employer must issue a Notice of Ability to Return to Work under 77 P.S. § 512(3). The Notice of Ability to Return to Work is defective, however, when it is mailed to a claimant one day before the date on which the claimant received a notice of the employer's job offer, a job offer that expired on the same date.

3.4. OFFSETS – PENSION BENEFITS

► Commonwealth Court of Pennsylvania

- ◆ [Department of Public Welfare/Polk Center v. Workers' Compensation Appeal Board \(King\)](#)
No. 163 C.D. 2005 (July 25, 2005)

Holding: In order for an employer to receive a credit for pension benefits pursuant to Section 204(a) of the Workers' Compensation Act, 77 P.S. § 71(a), the burden is on the employer to establish entitlement to and the amount of the offset.

PENNSYLVANIA RULES CHANGES & OTHER MATTERS

1. PENNSYLVANIA RULES OF CIVIL PROCEDURE

► LOCAL RULES

On November 2, 2005, the Pennsylvania Supreme Court issued an Order amending [Pa.R.C.P. 239.8](#) to require that local Rules of Civil Procedure are not effective and enforceable unless the Rules are published on the newly established Pennsylvania Judiciary Web Application Portal located at <http://ujportal.pacourts.us>.

[COMING SOON – PALEGALLINKS.COM](#)

Watch for the announcement of the unveiling of www.palegallinks.com, a conveniently organized website with links to hundreds of the websites Pennsylvania attorneys need most. Designed to put information just a click away, www.palegallinks.com will connect you with everything from courts to government agencies to bar associations to – virtually any website you are looking for. All for free, and all just a mouse click away.