



A Summary of Recent Appellate Decisions & Rules Changes

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A Holiday "Thank You"

It is hard to believe that less than two months have passed since the opening of my law office and my consulting firm. Life as a solo practitioner certainly has its highs (being one's own boss, for example) and lows (I miss the "banter" with my colleagues). But overall, as my family affirms, I have never been happier. And cash flow is getting better, too.

More importantly, I have had the opportunity to reflect on my good fortune at having friends, family and colleagues who have been so supportive, whether through their encouragement, their referrals or their confidence in my legal and technical skills. As in previous years, as a small token of my thanks for your kindness and support, and for our professional relationship, I have made donations to two charities:

Philadelphia Bar Foundation

Philabundance

The Bar Foundation funds legal services for persons who cannot otherwise afford counsel. Philabundance provides food for those less fortunate than we are.

Let us hope that 2006 is a year of peace, happiness and prosperity.

Dan Siegel

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REPORTING DECISIONS THROUGH DECEMBER 16, 2005

PENNSYLVANIA STATE COURT DECISIONS

1. CIVIL LITIGATION & PROCEDURE

1.1. CONTEMPT

► Superior Court of Pennsylvania

- ◆ [McNelis v. Lear](#)
2005 PA Super 416 (December 14, 2005)

Holding: In order for a court to find a party in contempt, (1) the contemnor must have had notice of the specific order or decree that was disobeyed, (2) the act constituting the contemnor's violation was volitional, and (3) the contemnor acted with wrongful intent.

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. MOTOR VEHICLE INSURANCE – CONFLICT OF LAWS (PENNSYLVANIA & NEW JERSEY)

► Superior Court of Pennsylvania

- ◆ [Wilson v. Transport Insurance Co.](#)
2005 PA Super 401 (December 6, 2005)

Holding: An individual insured under a motor vehicle insurance policy issued in Pennsylvania, who is injured in an accident in New Jersey, is entitled to first party medical benefits under the New Jersey "deemer" statute, which constitutes an implied endorsement to a Pennsylvania policy. Accordingly, New Jersey's two-year statute of limitations applies to claims under the deemer statute.

1.3. SPORTING EVENTS– SPECTATOR INJURIES

► Superior Court of Pennsylvania

- ◆ [Loughran v. The Phillies](#)
2005 PA Super 396 (November 23, 2005)

Holding: Under the "no duty" rule, the operator of a place of amusement is not an insurer of its patrons and bars claims for injuries suffered as the result of common, frequent and expected risks during the activity in question. Only when a plaintiff introduces adequate evidence that the facility deviated in some relevant respect from established custom will it be proper for an "inherent risk" case to go to the jury.

2. UNEMPLOYMENT COMPENSATION

2.1. SUBSTANCE ABUSE AS A BASIS FOR DENIAL OF BENEFITS

▶ Commonwealth Court of Pennsylvania

- ◆ [*Brannigan v. Unemployment Compensation Board of Review*](#)
No. 651 C.D. 2005 (December 8, 2005)

Holding: Section 402(e.1) of the Act requires an employer to demonstrate that it had adopted a substance abuse policy that was violated by the employee in order for the employee to be rendered ineligible for benefits. Further, an employee can commit willful misconduct by arriving at work smelling of alcohol even if that employee does not drink at work and is able to perform all required duties.

3. WORKERS' COMPENSATION

3.1. MODIFICATION OF BENEFITS – JOB OFFERS

▶ Commonwealth Court of Pennsylvania

- ◆ [*Housing Authority of the City of Pittsburgh v. Workers' Compensation Appeal Board \(Redmond\)*](#), No. 572 C.D. 2005 (December 9, 2005)

Holding: An employer fails to meet its burden of proving that work was “available” to a claimant when the claimant did not meet the job requirement that he live within a specific city or municipality, provided claimant’s decision not to live in the particular city is not made in bad faith.

3.2. UTILIZATION REVIEW – UNREASONABLENESS CONTEST

▶ Commonwealth Court of Pennsylvania

- ◆ [*United States Steel Corp. v. Workers' Compensation Appeal Board \(Luzcki\)*](#)
No. 235 C.D. 2004 (December 2, 2005)

Holding: When an employer files a Petition for Review of Utilization Review Determination without medical evidence (or another reasonable basis for filing the claim), the contest is unreasonable under Section 440(a) of the Act. Section 440(a) does not apply, however, to an initial UR determination under Section 306(f.1)(6)(i). Justices Leavitt and Jubelirer dissented from this *en banc* decision.

PENNSYLVANIA RULES CHANGES & OTHER MATTERS

1. PENNSYLVANIA RULES OF CIVIL PROCEDURE

▶ CERTIFICATES OF MERIT – [PA. R.CIV.P. 1042.3\(B\)\(2\) AND 1042.8](#)

On December 5, 2005, the Pennsylvania Supreme Court issued an Order amending Pa. R.Civ.P. 1042.3(b)(2) and 1042.8, relating to Certificates of Merit. In particular, the Amendments require that, when a claim is filed under both Pa. R.Civ.P. 1042.3(a)(1) and Pa. R.Civ.P. 1042.3(a)(2), the plaintiff must either file a separate Certificate of Merit for each claim or a single Certificate of Merit stating that the claims are raised under both subdivisions (a)(1) and (a)(2).