



# A Summary of Recent Appellate Decisions & Rules Changes

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# A Summary of Recent State & Federal Appellate & Trial Court Decisions

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REPORTING DECISIONS THROUGH FEBRUARY 3, 2006

## PENNSYLVANIA STATE COURT DECISIONS

### 1. CAUSES OF ACTION

#### 1.1. Civil Remedies For Violations of State Constitutional Rights

##### ► Commonwealth Court of Pennsylvania

- ◆ [Jones v. City of Philadelphia](#)  
No. 795 C.D. 2004 (January 25, 2006)

**Holding:** A city or other local government is not liable for monetary damages under Article I, Section 8 of the

Pennsylvania Constitution for a claim of excessive force. Of note is the *en banc* Court's finding that the plaintiff failed to show that his rights against governmental use of excessive force were not sufficiently protected by the Fourth Amendment. Judge Smith-Ribner filed a dissenting opinion, in which she was joined by Judge Friedman.

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 Vehicles Claims – Uninsured Motorist Actions

##### ► Superior Court of Pennsylvania

- ◆ [Pantelis v. Erie Insurance Exchange](#)  
2006 PA Super 1 (January 4, 2006)

**Holding:** An automobile insurer's acknowledgement of "reasonable proof" that a party is entitled to first party benefits does not preclude the insurer from later disputing whether the insured is "legally entitled to recovery" of third party benefits in an uninsured motorist claim pursuant to 75 Pa.C.S.A. § 1731(b). The Court notes that the payment of medical bills under Section 1716 can be "triggered by something as simple as submission of a bill from a medical provider," whereas the "legal entitlement to recovery of uninsured motorist benefits ... is based on the wrongful conduct of a third party."

## 2. CIVIL PROCEDURE

### 2.1. Pre-Trial Procedure

#### ▶ Commonwealth Court of Pennsylvania

- ◆ [\*Wheeler v. Red Rose Transit Authority\*](#)  
No. 874 C.D. 2005 (January 27, 2006)

**Holding:** A petition to reinstate a case dismissed under Pa. R.Civ.P. 230.2, filed more than 30 days after the termination order, will be granted only if there is a “reasonable explanation or a legitimate excuse” for the failure to file (1) the statement of intention and (2) the petition to reinstate within 30 days of its termination.

### 2.2. Professional Negligence Actions

#### ▶ Superior Court of Pennsylvania

- ◆ [\*Varner v. Classic Communities Corp.\*](#)  
2006 PA Super 2 (January 6, 2006)

**Holding:** A Certificate of Merit is required for professional liability actions, including those against architects. Although a Complaint may attempt to characterize a claim as sounding in ordinary negligence or negligence *per se*, because the claim is against a licensed professional, the plaintiff must file a Certificate of Merit. When a plaintiff fails to file the requisite Certificate of Merit, a judgment of non pros is warranted under Pa. R.Civ.P. 1042.1-1042.8.

### 2.3. Trial Practice (Voir Dire)

#### ▶ Superior Court of Pennsylvania

- ◆ [\*Capoferri v. Children’s Hospital of Philadelphia\*](#)  
2006 PA Super 16 (January 31, 2006)

**Holding:** A trial court commits reversible error by denying counsel’s request to ask prospective jurors certain questions during *voir dire* about their knowledge of or perspective about the alleged medical malpractice crisis, and the alleged flight of physicians from Philadelphia, in particular. The Court notes that its Opinion does not endorse any of the questions proposed by the plaintiffs and, instead, states that the trial court should have asked prospective jurors appropriate preliminary questions designed to detect whether any of the prospective jurors had been exposed to tort reform and/or medical negligence propaganda.

## 3. UNEMPLOYMENT COMPENSATION

### 3.1. Willful Misconduct

#### ▶ Commonwealth Court of Pennsylvania

- ◆ [\*ATM Corp. of America v. Unemployment Compensation Board of Review\*](#)  
No. 1560 C.D. 2005 (January 23, 2006)

**Holding:** An accounting department employee, who processes checks in and out of an employer’s multimillion dollar account and who refuses to authorize a background check, is properly terminated for willful misconduct and is not entitled to unemployment compensation benefits.

#### 4. WORKERS' COMPENSATION (ALL COMMONWEALTH COURT CASES)

##### 4.1. Calculation of Self-Employment Income

- ◆ [\*Acme Markets, Inc. v. Workers' Compensation Appeal Board \(Brown\)\*](#)  
No. 1174 C.D. 2005 (January 3, 2006)

**Holding:** In determining a claimant's earning power, a Workers' Compensation Judge may consider a claimant's net income from self-employment, and is not required to rely solely upon the claimant's gross income. The ultimate determination must be based upon all evidence, including claimant's testimony and other sources.

##### 4.2. Medical Expenses – Replacement of Orthopedic Appliances and Similar Items

- ◆ [\*Zuback v. Workers' Compensation Appeal Board \(Paradise Valley Enterprise Lumber Co.\)\*](#)  
No. 1173 C.D. 2005 (January 9, 2006)

**Holding:** Although the Workers' Compensation Act requires an employer to provide home modifications at the employer's expense, such modifications are limited to a one-time expenditure. The replacement of an orthopedic device, including a stair glide, is not an additional modification, however, and an employer is obligated to pay for such costs, which are the result of "wear and tear."

##### 4.3. Retirement/Voluntary Withdrawal from the Workforce

- ◆ [\*Hepler v. Workers' Compensation Appeal Board \(Penn Champ/Bissel, Inc.\)\*](#)  
No. 1727 C.D. 2005 (January 11, 2006)

**Holding:** Disability benefits should be suspended when a claimant leaves the workforce. For disability compensation to continue following retirement, a claimant must show that he or she is seeking employment after retirement or that he or she was forced into retirement because of the work-related injury. When a claimant is forced into retirement because of a work-related injury, the claimant must show that he or she was forced out of not only the pre-injury job, but the entire labor market, or that the claimant continues to actively seek employment.

- ◆ [\*Blong v. Workers' Compensation Appeal Board \(Fluid Containment\)\*](#)  
No. 1569 C.D. 2005 (January 19, 2006)

**Holding:** A claimant who moves permanently to New Zealand has removed himself from the workforce, and an employer is entitled to a suspension of benefits.

##### 4.4. Supersedeas Fund Reimbursement

- ◆ [\*ConocoPhillips v. Workers' Compensation Appeal Board \(Logan\)\*](#)  
No. 515 C.D. 2005 (January 19, 2006)

**Holding:** An employer is not entitled to Supersedeas Fund reimbursement for a "deemed denial" of a request for supersedeas. Once a claimant receives an award of a lump sum payment for retroactive compensation or specific loss benefits and that award is later reversed or modified, the claimant is not required to repay that money. Instead, an employer must resort to repayment from the Fund, provided supersedeas was denied prior to disbursement of the funds to the claimant.

## FEDERAL COURT DECISION OF INTEREST

### 5. JURISDICTION

#### 5.1. Diversity Jurisdiction – Banks

##### ► U.S. Supreme Court

- ◆ [\*Wachovia Bank v. Schmidt\*](#)  
No. 04-1186 (January 17, 2006)

**Holding:** Although “All national banking associations shall ... be deemed citizens of the States in which they are respectively located,” pursuant to 28 U.S.C. § 1348, for purposes of determining citizenship for diversity purposes under 28 U. S. C. 1332, a national bank is a citizen of the state in which its main office is located, as set forth in its articles of association.

### 6. MOTOR VEHICLE INSURANCE

#### 6.1. Bad Faith Claims

##### ► U.S. District Court, Eastern District of Pennsylvania

- ◆ [\*Harris v. Lumberman’s Mutual Casualty Co.\*](#)  
No. 05-CV-5228 (January 23, 2006)

**Holding:** Pennsylvania’s bad faith statute, 42 Pa. C.S.A. § 8371, conflicts with the Motor Vehicle Financial Responsibility Law as to the remedies available under 75 Pa. C.S.A. §§ 1716 and 1797. Because the MVFRL is the more specific statute, it preempts the bad faith statute. In particular, the special provision, section 1797, preempts the bad faith statute, and a claim for statutory bad faith arising from the denial of first party medical benefits will be dismissed. Because section 1716 and the bad faith statute impose different remedies for different degrees of culpable conduct, *i.e.*, unreasonable conduct under section 1716 and bad faith conduct under section 8371, the statutes are reconcilable. Accordingly, section 1716 does not preempt the bad faith statute and a claim for statutory bad faith arising from a carrier’s denial of a claim for lost wages benefits will not be dismissed.

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