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**A Summary Of Recent Pennsylvania & New Jersey Appellate Court Decisions (august 2006)**

**By Daniel Siegel**

A Summary of Recent Pennsylvania Appellate Court Decisions & Rule Changes

REPORTING DECISIONS THROUGH AUGUST 1 2006

PENNSYLVANIA STATE COURT DECISIONS

1. CIVIL LITIGATION 1.1. AUTOMOBILE INSURANCE

\*Superior Court of Pennsylvania

\*Santorella v. Donegal Mutual Insurance Co., 2006 PA Super 202 (July 31, 2006)

Holding:An individual who owns a registered, uninsured motor vehicle - in a state other than Pennsylvania - is precluded from receiving first party medical benefits under a policy issued to another member of the individual's household. In this case, plaintiff David Santorella, Jr., owned an uninsured car registered in California. The Superior Court denied the plaintiff first party benefits under 75 Pa.C.S.A. § 1714 "because the word `registered" is not qualified by the words `in this Commonwealth' in the statute, we ... refuse to read into the section an exception it does not explicitly declare..."

\*Wheeler v. Nationwide Mutual Fire Insurance Co., 2006 PA Super 197 (July 31, 2006)

Holding:An individual whose motor vehicle insurance policy - on which he or she is a named insured - does not provide income loss, may not recover first party income loss benefits from the insurance policy covering the motor vehicle he or she was driving at the time of the accident.

1.2. DAMAGES

\*Superior Court of Pennsylvania

\*Excavation Technologies, Inc. v. Columbia Gas Co. of Pa., 2006 PA Super 164 (July 7, 2006)

## A Summary Of Recent Pennsylvania New Jersey Appellate Court Decisions (august 2006)

Holding: A utility company is considered to be in the business of supplying information when acting in compliance with the Pennsylvania One Call System and is therefore subject to Section 552(2) of the Restatement (Second) of Torts. In addition, the Court adopts Section 552(3) for negligent misrepresentation cases that arise under the One Call Act. Finally, the Court holds that the economic loss doctrine - which states that no cause of action exists for negligence that results solely in economic damages unaccompanied by physical injury or property damage - does not automatically apply when only economic losses are alleged. Rather, if, in a negligent misrepresentation claim, (1) the defendant was in the business of supplying information, and (2) it was foreseeable that the information would be used and relied upon by third parties, the claim may proceed under Section 552 of the Restatement, and the economic loss doctrine is inapplicable.

### 1.3. MEDICAL MALPRACTICE CLAIMS & CIVIL PROCEDURE/PLEADINGS

\*Superior Court of Pennsylvania

\*Rostock v. Anzalone, 2006 PA Super 191 (July 26, 2006)

Holding: A complaint may be dismissed under the doctrine of lis pendens based upon the pendency of a prior action or an agreement for alternative dispute resolution. The mere filing of a second complaint, identical in all respects to the first with the sole exception that the second complaint alleged, "This is a medical malpractice action," does not make the defense of lis pendens unavailable.

\*McSorley v. Deger, 2006 PA Super 200 (July 31, 2006)

Holding: In a claim alleging lack of informed consent, it is a jury question whether the doctor's actions were within the terms of the consent provided by the patient. In this case, the pre-surgery consent form permitted the physician to perform such surgical or other procedures as are necessary and desirable in the event of unforeseen conditions that necessitate an extension of the original procedure.

### 2. CIVIL PROCEDURE 2.1. FORGERY

\*Superior Court of Pennsylvania

\*De Lage Landen Financial Services, Inc. v. The Urban Partnership, LLC, 2006 PA Super 169 (July 12, 2006)

Holding: Generally, when an allegation of forgery is raised - in this case, it was alleged that the document conferring jurisdiction in Pennsylvania was forged - the party claiming forgery has the burden of proving the existence of a forgery by clear and convincing evidence. Because the allegation of forgery raises an issue of fact, resolution of the issue will turn upon the court's assessment of the witnesses' credibility; however, there is no legal requirement that a party alleging forgery present a handwriting expert to support the claim.

### 3. WORKERS' COMPENSATION 3.1. RETIREMENT

\*Commonwealth Court of Pennsylvania

\*Pries v. Workers' Compensation Appeal Board (Verizon Pennsylvania), No. 1870 C.D. 2005 (July 25, 2006)

Holding:Affirming its decision in County of Allegheny (Dept. of Public Works) v. Workers' Compensation Appeal Board (Weis), 872 A.2d 263 (Pa.Cmwlth. 2005), the Court holds that, in order for disability compensation to continue following retirement, a claimant must show that he or she is seeking employment after retirement and that he was forced into retirement because of his work-related injury. It is the claimant's burden to show that he or she has not withdrawn from the entire work force.

### 3.2. PSYCHIATRIC TREATMENT

\*Commonwealth Court of Pennsylvania

\*Huddy v. Workers' Compensation Appeal Board (U.S. Air), No. 1031 C.D. 2005 (August 1, 2006)

Holding:A Notice of Compensation Payable is properly amended to include depression and anxiety when a claimant proves that the work injury was a substantial contributing factor to the psychological injury/diagnosis.

### 3.3. SUBROGATION

\*Superior Court of Pennsylvania

\*Urmann v. Rockwood Casualty Insurance Co., 2006 PA Super 201 (July 31, 2006)

Holding:A settlement agreement, which apportions a settlement between an injured worker's claim and the worker's spouse's loss of consortium claim, will not be overturned when it is adjudicated by the trial court based upon an evidentiary hearing and the execution of a settlement agreement. In this case, the facts demonstrate that the trial court attempted to assure that the apportionment was fair and consistent with Darr Construction Co. v. Workmen's Compensation Appeal Board (Walker), 522 Pa. 400, 715 A.2d 1075 (1998).

### 3.4. WAIVER OF ISSUES ON APPEAL

\*Commonwealth Court of Pennsylvania

\*McGaffin v. Workers' Compensation Appeal Board (Manatron, Inc.), No. 2168 C.D. 2005 (July 19, 2006)

Holding:Because the claimant failed to raise/preserve the issue before the Workers' Compensation Judge of whether an impairment rating under Section 3006(a.2) of the Act, 77 P.S. § 511.2(1), precludes a termination of benefits, the Court declines to address the issue.

## NEW PENNSYLVANIA RULE OF CIVIL PROCEDURE

### PA.R.CIV.P. 204.11 (FORMAT OF PLEADINGS AND OTHER LEGAL PAPERS)

\*Effective February 1, 2007, all pleadings, motions and other legal papers must conform to the following requirements:

1. Documents must be on 8–1/2 by 11 inch paper 2. Documents shall be on white paper (except dividers and similar sheets) 3. The first sheet shall contain a 3–inch space at the top for court stampings, filing notices, etc. 4. Text must be double–spaced 5. Quotations more than two lines long may be indented and single spaced 6. Margins must be at least one inch on all four sides 7. Letter shall be clear and legible, and no smaller than 12 point in size 8. Lettering shall be on only one side of a page (except for exhibits and supporting documents) 9. Documents must be firmly bound.

## NEW JERSEY STATE COURT DECISION

### WORKERS' COMPENSATION -- INTOXICATION

\*Supreme Court of New Jersey

\*Tluma v. High Bridge Stone, No. A–69–05 (July 19, 2006)

Holding: In order for the statutory defense of intoxication to bar the recovery of workers' compensation benefit, an employer must prove by a preponderance of the evidence that the employee's work–related injuries were caused solely by intoxication.

Remember, visit Pennsylvania Legal Research Links, and make

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your home

page for Pennsylvania research.

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## **New Jersey Home Remodeling**

### **By Total Remodeling**

#### **New Jersey Home Remodeling by Total Remodeling**

##### New Jersey Home Remodeling

The U.S. state of New Jersey lies on the Eastern seaboard, with New York to its north and northeast, and Delaware and Pennsylvania to its west. New Jersey became heavily industrialized soon after the Revolutionary War, with the building of canals and railroads. It retained its position as a heavily industrialized state well after World War II. However, it is now better known as a commuters' state, because many people who live in New Jersey commute to work in New York City, Delaware, and Pennsylvania. People prefer to buy homes in the suburbs of New Jersey's cities and travel to work in other states.

At Total Remodeling, we have done several home remodeling projects in New Jersey. Since New Jersey was one of the original 13 colonies, its craftsmen, architects, and designers absorbed several styles that were popular in the colonial period and also copied Victorian examples. Many homes in New Jersey have been built in the Neoclassical and Victorian styles. Most homes in New Jersey are built of wood, and since New Jersey is bordered on the east by the Atlantic Ocean, the wood does tend to show signs of wear and tear within a few years.

Total Remodeling has done several projects in New Jersey using vinyl siding and roofing products, as well as doors and windows. We have used modern home remodeling products to give a new look to homes designed in the Victorian style. For example, we used vinyl siding products to finish a Second Empire French Victorian house in Maplewood, New Jersey, and received an award for our efforts. The vinyl siding products we use—System 2000 and Elite—replicate the look of cedar clapboard but require less maintenance. Our skilled craftsmen were also able to add and emphasize authentic period details that enhanced the look of the house.

Many homeowners in New Jersey have consulted us on home remodeling projects when they planned to sell their homes. One of our home remodeling projects in New Jersey was for a couple whose children had just joined college—this project took us four years to complete. At the end of this project, the couple hoped to sell their home of 15 years for at least \$300,000, which was the closing price in

their locality. They closed the sale of their home at \$410,000.

Whether or not you plan to sell your home or live in it for the rest of your days, you can always consult us at Total Remodeling for your home remodeling needs.

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