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A Summary Of Recent State & Federal Appellate & Trial Court Decisions

By Daniel Siegel

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 f 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.

1.2. Motor Vehicles Claims - Uninsured Motorist Actions

° Superior Court of Pennsylvania

f 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

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2.1. Pre-Trial Procedure

° Commonwealth Court of Pennsylvania

f 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

f 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

f 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

f 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

f 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

f 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

f 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.

f 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

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f 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 DECISIONS OF INTEREST

5. JURISDICTION

5.1. Diversity Jurisdiction - Banks

° U.S. Supreme Court

f 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

f 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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The United State Court System, an Eye for Research

By Matthew Abts

A Cup of Tea, Coffee, or Something Else

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Whenever investigating an individual or business, one of the most basic checks is for lawsuits, criminal charges, and bankruptcy filings. But how do you research the court system? Is there one simple site to go to where you pop in a name and are rewarded with a listing of all court filings across the country pertaining to that individual? No such luck ... yet, anyway! To understand court research, you first need to understand a bit about the USA's court system.

There are two major separate court entities in the USA, the State court system and the Federal court system. The Federal court system is divided into three branches, the federal criminal, civil, bankruptcy, and appeals courts. These courts are not 'single entities' — there are a number of federal courts scattered across the United States, each covering a certain geographic district within a 'circuit'. For a map of the circuits, see www.uscourts.gov/images/CircuitMap.pdf. For example, there is a Northern Mississippi district court, as well as a Southern. Cases are prosecuted by US Attorneys, who are elected, or Assistant US Attorneys, who are government employees. Regarding federal law, federal statutes are divided into sections called Titles. Title 11, for example, deals with bankruptcy, and under that Title you will find Chapters, such as Chapter 7 regarding liquidation of a business. All personal and business bankruptcies fall under federal statutes and are dealt with in federal court, and bankruptcies make up nearly 70% of all federal court cases. This makes researching whether an individual has a history of bankruptcy a considerably simpler matter, since only the relevant federal court needs to be searched. Title 18 contains the majority of the criminal statutes for the federal criminal court. Note that in many cases it can be decided for an individual to be tried in the federal rather than State court

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system, under federal-question jurisdiction rules, for a variety of reasons. For example, in a recent case where two teens burned a cross in a black family's yard, it was decided to prosecute them in federal rather than State court — the penalties that could be imposed by the federal court system were greater. Likewise, cases involving citizens from different States will be tried in Federal courts if the monetary amount involved in the case is greater than \$75,000. There are a number of other types of cases that are likewise defaulted to federal court, including cases involving patents or copyrights, cases challenging State laws (usually for Constitutional reasons), and cases involving federal agencies.

The State court system is somewhat more complex in its terminology, since this terminology differs from State to State, but in the end the terminology resolves into a system of 'upper' and 'lower' courts in civil and criminal matters. The State civil court was an 'upper' and 'lower' court, as does the State criminal court. In some States, these are referred to as the 'supreme' and 'county' courts, or the 'superior' and 'justice' courts. The upper courts tend to deal with more important subjects, or crimes with stiffer penalties (such as armed robbery, cases of gross malpractice, and often divorce). Lower courts will deal with misdemeanor crimes and small money claims (ie, small claims court). In criminal cases of all sorts, the prosecutor is usually the United States government (from the State's attorney office), and the case will be listed as The State of Wherever V. Lastname. Upper and lower courts are relatively simple to understand — big money cases or cases involving serious crimes go the upper, and

everything of lesser importance to the lower, but don't forget that most divorces are tried in the upper court! Unfortunately, the State court system doesn't stop there, but also includes, depending on the State, a variety of other courts such as the municipal court or traffic court, which handle matters specific to their speciality (ie, argue traffic tickets in traffic court). There are also appellate courts, for dealing with appeals.

So, now that we understand the court system a bit better, how do we go about finding court records? For Federal courts, this is a relatively simple matter: The majority of records are accessible through a system called PACER (Public Access to Court Electronic Records). PACER allows searching different courts by a variety of fields, including name. You as a citizen can sign up for PACER with a credit card at

<http://pacer.psc.uscourts.gov/>

— the service isn't free, but only charges a few dollars for good

documentation on most cases. Note that some districts still aren't in the PACER system (for example, the Alaska district court) — in this case, you can always pay a visit to the nearest district federal courthouse. Every district has one, and the records should be open to the public for free. Feel free to drive there and peruse! If the district court is further than you want to travel, there are courthouse researchers across the country who make a living looking up court records for those too far away from the court to visit in person.

State records are somewhat more complex. To access these records over the Internet, not only should the State records be online, but also the individual county in question. Most State higher court and

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appellate courts are online with free searching, but many lower (county) courts are not, only offer some records, or charge high fees. Of course, if you're only interested in researching cases in your area, all you need to do is drive to your local county courthouse, where the records are, by Federal law, public access. Your county courthouse should not charge you a fee to access these records, they should be free to peruse. Charging a fee online is for 'electronic access', not for seeing the actual documents themselves. Once again, if the county is outside your area you can hire a courtresearcher to do the job for you. To find county court researches and county/State courts on the Internet, simply do a search engine search for 'Countyname county court', and follow the links from there.

Matthew Abts is an x-military private investigator specializing in background investigations and judicial claims processing.

The United State Court System, an Eye for Research

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