

A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH AUGUST 2, 2012

PENNSYLVANIA APPELLATE COURT DECISIONS

I. CIVIL LITIGATION

A. *Attorney Discipline*

- [*Office of Disciplinary Counsel v. Cappuccio, No. 79 DB 2009 \(Pa., July 17, 2012\)*](#)

- **Holding:** In an attorney disciplinary matter, when an attorney holds public office/serves in a public capacity, this position may be viewed as an aggravating factor to the misconduct. Thus, disbarment is proper when an attorney served in a public capacity and used the position to gain access to his minor victims.

B. *Mailbox Rule*

- [*Szymanski v. Dotey, 2012 PA. Super 141 \(July 11, 2012\)*](#)

- **Holding:** In order to invoke the "mailbox rule," and the resulting presumption that a piece of mailed reached its destination by due course of mail, a party must present competent evidence that the letter was signed in the usual course of business and that the item was placed in the regular place of mailing.

C. *Mandatory Arbitration Clauses - Breach of Fiduciary Duty Claims*

- [*Elwyn v. Deluca, 2012 PA Super 136 \(July 2, 2012\)*](#)

- **Holding:** When an organization executes a contract with a second organization that is owned or led by one of its board members, and the first organization subsequently brings a breach of fiduciary duty suit against the board member relating to his duties as a board member and a separate breach of contract suit against the second organization, the breach of fiduciary duty claim is not bound by a mandatory arbitration clause in the contract between the first and second organizations.

D. *Motor Vehicle Insurance*

- [*Liberty Mutual Insurance Co. v. Sweeney, Nos. 11-4074 & 11-4810 \(3rd Cir., August 2, 2012\)*](#)

- **Holding:** A "business use" exclusion in an insurance policy does not bar a claim for uninsured motorist benefits when the insured, who was operating a rental vehicle that was to be delivered to a customer the next day, took the vehicle home for the night and was injured while operating the vehicle to go to the grocery store for a short trip. The Third Circuit ruled that the "business use" clause, which excluded coverage when bodily injury was "sustained while using" a non-owned motor vehicle in any kind of business, did not bar the claim.

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 decision for you to read in its entirety. Try it!

E. PHRA Claims – Discrimination

- [*Girard Financing Co. v. Pennsylvania Human Relations Commission, No. 2189 C.D. 2011, \(Pa.Cmwlt., July 27, 2012\)*](#)
 - **Holding:** Under Section 5(h)(8) of the Pennsylvania Human Relations Act, 43 P.S. § 955(h)(8), when a claim involves reverse redlining, it is proper for the court to investigate, prosecute, and remedy unlawful discrimination practices in the issuance of commercial loans. Moreover, when the individuals filing the complaint are personally liable for the loans, they have bring the claims under the PHRA. The statute of limitations in a claim for predatory lending does not run, however, until 180 days after the last asserted occurrence of the practice.

F. Releases – Exculpatory Clauses

- [*Tayar v. Camelback Ski Corp., Inc., No. 67 MAP 2010 \(Pa., July 18, 2012\)*](#)
 - **Holding:** Releasing recklessness in a pre-injury release is against public policy, even if the exculpatory clause arises in a voluntarily recreational setting involving private parties. Justice Eakin filed a [concurring and dissenting opinion](#). Justice Baer also filed a [concurring and dissenting opinion](#).

II. WORKERS' COMPENSATION

A. Employer Liability Outside of the Workers' Compensation Act

- [*Kostrzykij v. Pentron Laboratory Technologies, LLC, 2012 PA Super 152 \(July 27, 2012\)*](#)
 - **Holding:** A plaintiff fails to set forth a *prima facie* claim for fraudulent misrepresentation and avoid the exclusivity provisions of the Workers' Compensation Act pursuant to *Martin v. Lancaster Battery*, 530 Pa. 11, 606 A.2d 444 (1992) by failing to present any evidence that the employer intended to mislead, actively misled, or deliberately misrepresented the dangers of a chemical in the workplace.

III. ALLOCATUR GRANTED

A. The Pennsylvania Supreme Court has granted allocatur in the following matters on the issues stated:

- [*Comella v. GGNSC Mt. Lebanon, L.P., No. 26 WAL 2012 \(Pa., July 16, 2012\)*](#)
 - Whether this Court should overturn the Superior Court's decision in *Stewart v. GGNSC-Canonsburg, L.P.*, 9 A.3d 215, 220 (Pa. Super. 2010), and hold that an Arbitration Agreement, subject to the Federal Arbitration Act, will be upheld where the record is devoid of any evidence that the choice of Arbital forum is integral to the operation of the Agreement.
- [*Braun v. Wal-Mart Stores, Inc., No. 551 EAL 2011 \(Pa., July 2, 2012\)*](#)
 - Whether, in a purported class action tried to verdict, it violates Pennsylvania law (including the Pennsylvania Rules of Civil Procedure) to subject Wal-Mart to a "Trial by Formula" that relieves Plaintiffs of their burden to produce class-wide "common" evidence on key elements of their claims.