LITIGATION UPDATE

April, 2015

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COVERAGE

***Pennsylvania National v. St. John*, 106 A.3d 1 (Pa. 2014)**

Penn National's insured negligently installed underground plumbing for St. John's dairy farm such that waste water infiltrated a clean water system, slowly poisoning the dairy herd. St. John observed the deleterious effects on his herd during the first of Penn National's three consecutive liability policy periods, though the cause of the harm (i.e., the underground leaks) was not discovered until the final policy period. Penn National, citing the "first manifestation" rule of coverage trigger, contended that only its policy in effect during the "first manifestation" of property damage provided coverage to the exclusion of its subsequent policies, regardless when the cause was discovered or whether the harm had continued throughout all the policy periods. The trial court, the Superior Court, and the Supreme Court agree, refusing to extend the *J.H. France Refractories* multiple or continuous trigger of coverage beyond asbestos-related disease cases. Under the "first manifestation" rule, coverage is triggered when harm caused by the insured first manifests, even if the cause of the harm is not then known. Once coverage is triggered, it does not trigger again.

***Allstate v. Wolfe,* 105 A.3d 1181 (Pa. 2014)**

On certification from the Third Circuit Court of Appeals, the Supreme Court addressed whether statutory bad faith causes of action can be assigned. In tort litigation, Wolfe sued the Allstate insured for both compensatory and punitive damages. After settlement negotiations failed, Wolfe at trial obtained a judgment against the Allstate insured for $15,000 in compensatory damages and $50,000 in punitive damages. Wolfe obtained an assignment of rights from the Allstate insured to pursue Allstate for bad-faith damages under the Actions on Insurance Policies statute for unreasonably failing to settle the tort case prior to verdict. At trial of the bad-faith action, Wolfe obtained a $50,000 punitive damage award. On appeal, the Supreme Court rules that since contract causes of action are generally assignable, and since the Actions on Insurance Policies statute does not prohibit assignments, assignments of bad faith claims are permitted.

***Bruno v. Erie Insurance Company*, 106 A.3d 48 (Pa. 2014)**

Bruno purchased a home and then insured it through Erie. During renovations, Bruno discovered areas of black mold and contacted Erie to initiate a claim under the homeowner's coverage. Erie's adjuster and engineer told Bruno the mold was harmless, he could continue with renovations, and any alleged health problems associated with mold were an overblown media frenzy. Bruno resumed renovations which revealed more mold and caused a second engineer visit with similar advice. Bruno's family developed health problems, so Bruno had the mold tested, revealing that the mold was toxic and hazardous to human health. Erie still refused payment under the policy but eventually, six months after the initial discovery of mold, paid its $5,000 mold policy limit. The Brunos vacated the home which was later demolished as the mold could not be eradicated. Bruno sued Erie and the engineer. Erie sought dismissal under the "gist of the action" doctrine since the alleged tort claim was, in reality, a claim for breach of contract. The engineer sought dismissal due to Bruno's failure to file a Pa.RCP 1042.3(a) Certificate of Merit. Under the "gist of the action" doctrine, the nature of the duty alleged to have been breached is the critical determinative factor in establishing whether a claim is truly one in tort or for breach of contract. The mere labeling of the claim in pleadings does not control. If the duty breached is one created by the parties by the terms of their contract (a specific promise to do something that a party would not ordinarily have been obligated to do but for the existence of the contract), then the claim is for breach of contract. If, however, the claim involves the violation of a broader social duty owed to all individuals, imposed by the law of torts and existing regardless of any contract, then the claim is for tort. The mere existence of a contract between the parties, however, does not, *ipso facto*, classify the claim as one for breach of contract. Here, the claim against Erie was not for failing to pay the $5,000 policy limit (since, in due course, it did) but rather for allegedly negligent actions investigating the claim, rendering unfounded advice about whether mold was harmless, denying adverse human health consequences, and advising that renovations could continue. Such allegations sound in tort, not contract. As for failure to file a Certificate of Merit against the engineer, that obligation only applies to claims asserted against a licensed professional by a patient or client of the licensed professional, which Bruno was not.

***American National Property v. Hearn*, 93 A.3d 880 (Pa. Super. 2014)**

Russell, "hanging out" with friends, was playing a videogame called "Dance, Dance Revolution" when Hearn hit him in the groin from behind. Russell underwent emergency surgery, resulting in possible permanent infertility. Hearn admitted hitting Russell on purpose as a joke. Russell's suit against Hearn alleged that Hearn had specific intent to cause harm in the unprovoked attack. American National, Hearn's liability carrier, raised its intentional harm exclusion in denying coverage. The exclusion applied to bodily injury "which is expected or intended by any insured even if the actual injury or damage is different than expected or intended." The Superior Court affirms the grant of summary judgment to American National, noting that the exclusionary language is broader than that referenced in earlier appellate decisions on similar cases, particularly the "even if the actual injury or damage is different than expected or intended" clause. The Superior Court also dismisses challenges to American National's reservation of rights letters, confirming that Pennsylvania counterbalances the insurance carrier's broad obligation to defend even claims as to which coverage might not apply by providing the carrier the option of defending subject to a reservation of its right later or simultaneously to contest coverage. The insurance carrier need only give timely notice to the insured that it has not waived the benefit of its defenses under the policy.

VENUE

***Bratic v. Rubendall*, 99 A.3d 1 (Pa. 2014)**

Residential Warranty, represented by Rubendall, sued Bratic in Dauphin County, litigation which ended in favor of Bratic by summary judgment. Bratic then sued Residential Warranty and Rubendall in Philadelphia County, asserting wrongful use of civil proceedings and common law abuse of process claims based on the Dauphin County dismissed suit. Residential Warranty and Rubendall sought transfer of venue based on *forum non conveniens*, alleging that witnesses and evidence were in Dauphin County and that trial in Philadelphia County would cause hardship to the defendants and their witnesses. Residential Warranty and Rubendall presented affidavits of witnesses, all of whom lived over 100 miles from Philadelphia, each stating that trial in Philadelphia "would be both disruptive and a personal and financial hardship." The trial court ordered transfer of venue to Dauphin County, the Superior Court en banc reversed, and the Supreme Court granted allowance of appeal to clarify requirements for transfer of venue based on *forum non conveniens* as expressed in its earlier *Cheeseman* decision. A petition to transfer venue should be granted only if the defendant demonstrates, with detailed information on the record, that plaintiff's chosen forum is oppressive or vexatious to the defendant. The *Cheeseman* decision did not increase the level of "oppressive or vexatious" a defendant must show, but rather corrected a practice that had developed in lower courts of giving excessive weight to the "public interest" factor. Instead, the trial court was to weigh the totality of factors. If there exists any proper basis for the decision to transfer venue, that decision must stand. Distance from the courthouse is a major factor. As between Philadelphia County and adjoining Bucks County, for instance, travel is a mere inconvenience. As between Philadelphia County and counties 100 miles away, inconvenience becomes oppressiveness. The trial court decision to transfer venue to Dauphin County was reinstated.

***Hyun Jung Lee v. Thrower*, 102 A.3d 1018 (Pa. Super. 2014)**

Lee filed suit in Philadelphia CCP for injuries allegedly suffered in an auto accident at the Penn State campus in Centre County. Thrower sought to transfer venue to Centre County based on *forum non conveniens*. The trial court transferred venue. On appeal, the Superior Court affirms. Thrower presented affidavits, accepted by the trial court as credible, demonstrating that a multi-day trial in Philadelphia would be oppressive to witnesses from Centre County who had family and childcare commitments and job responsibilities. Travel beyond contiguous counties can be onerous, not just inconvenient. The Supreme Court dismisses Lee's suggestion that use of videotaped witness depositions could ameliorate the alleged oppressiveness. Such videotapes, countered by Lee's personal appearance at trial, would not be an acceptable alternative to offer defendants.

***Zurich v. Budzowski*, 95 A.3d 339 (Pa. Super. 2014)**

Following a Dauphin County multi-vehicle accident, tort litigation was instituted in both Philadelphia County and Dauphin County. Zurich, a defendant's liability carrier, filed a separate interpleader action in Dauphin County to deposit its $1,000,000 limits, stopping Pa.RCP 238 delay damages. Defendants in the Philadelphia County tort litigation unsuccessfully sought to transfer venue to Dauphin County on *forum non conveniens* grounds. Those defendants then sought to coordinate the Philadelphia County litigation with the Dauphin County interpleader action in Dauphin County under Pa.RCP 213.1. The Philadelphia County trial court agreed. The Superior Court reverses. Coordination of litigation in different counties is appropriate only when there is a predominating question of law or fact common to the suits, which did not exist between the tort and interpleader actions.

IMMUNITY

***Patton v. Worthington Associates,* 89 A.3d 643 (Pa. 2014)**

Worthington was hired as the general contractor for an addition to the Christ United Methodist Church building. Worthington entered into a subcontract with Patton Construction for the carpentry work. Earl Patton was Patton Construction's sole shareholder. Earl Patton was hurt on the job and brought suit against Worthington for alleged failure to maintain a safe working condition. Worthington moved for summary judgment based on statutory employer immunity. The trial court denied the motion for summary judgment and the case proceeded through trial and a $1,500,000 verdict against Worthington. On appeal, the Supreme Court reverses, indicating that Worthington was entitled to statutory employer status and immunity. Patton Construction was clearly a subcontractor, not an independent contractor, since its contract was with general contractor Worthington and not with owner Christ United Methodist Church. That Earl Patton was the owner of Patton Construction did not change the subcontractor status.

***Sheard v. J.J. DeLuca Company*, 92 A.3d 68 (Pa. Super. 2014)**

Sheard was an employee of Delta, a subcontractor of J.J. DeLuca on a construction site in Delaware. After a job injury, Sheard sued J.J. DeLuca for maintaining an unsafe workplace. In New Matter, J.J. DeLuca raised workers' compensation immunity. The case proceeded to trial and resulted in an award in excess of $2,000,000. J.J. DeLuca filed a motion for new trial without raising workers' compensation immunity but then petitioned to amend to include statutory employer status. The trial court denied the petition, ruling the defense waived. The Superior Court reverses. Workers' compensation immunity is a non-waivable defense provided it is raised within the scope of the proceedings. As long as the proceedings continue, even throughout the appellate process, the relevant court may consider a claim of statutory employer immunity. Here, J.J. DeLuca did raise statutory employer immunity in its New Matter and, even though the issue was not addressed during trial or in the first post-trial motion, the issue was preserved. Since the issue was not waived, the Superior Court determined that J.J. DeLuca was indeed a statutory employer entitled to immunity.

***White v. City of Philadelphia*, 103 A.3d 1053 (Pa. Cmwlth. 2014)**

White, on a bicycle, was chased by an unmarked police vehicle. During the pursuit, the police officer did not identify himself nor did he activate any audio or visual signs, sirens, lights, or alerts. The unmarked vehicle eventually struck White's bicycle, causing White to suffer severe injuries. While as a general rule a police officer has no duty of care to a fleeing offender, that rule applies only when the police officer has first taken some action which would cause a reasonable person to know he is being asked to stop or otherwise realize he is being pursued by police. This is an objective standard, not an inquiry into the subjective thoughts of the fleeing suspect. In the case in hand, there was no evidence that White should have known he was being pursued by a police officer.

***Sellers v. Township of Abington*, 106 A.3d 679 (Pa. 2014)**

Simons, with Sellers as a passenger, engaged in a high-speed flight from police officers, eventually exiting the road and hitting trees and a parked pickup truck. Sellers was ejected from the vehicle, suffering fatal injuries. The trial court granted summary judgment to the police officer and township since those defendants owed no duty of care to fleeing drivers. The Supreme Court rules that that immunity extends as well to claims by unknown passengers in a fleeing vehicle.

***Gale v. City of Philadelphia*, 86 A.3d 318 (Pa. Cmwlth. 2014)**

Garriya was taken into custody by the police, handcuffed, and placed in the back of a police cruiser. Inexplicably, he managed to commandeer the police cruiser, drive it onto the Benjamin Franklin bridge, and strike a vehicle operated by Gale, causing serious injuries. Gale sued the City of Philadelphia for permitting negligent operation of a police cruiser. The Tort Claims Act generally provides immunity subject to limited exceptions. The "motor vehicle exception," however, applies only where the vehicle is being operated by a local agency employee authorized to operate the vehicle and does not apply to the failure of a local agency employee to control a vehicle or the operator of a vehicle. Since Garriya was not a local agency employee authorized to operate the vehicle, the motor vehicle exception to immunity did not apply and the Gale suit was properly dismissed.

***Muldrow v. SEPTA*, 88 A.3d 269 (Pa. Cmwlth. 2014)**

Muldrow, a SEPTA bus passenger, alleged injury when she fell down bus steps leading to the street level. The trial court entered summary judgment for SEPTA, citing the Sovereign Immunity Act. The Commonwealth Court on appeal confirms that, unless a statutory exception applies, SEPTA is entitled to immunity. Since the bus was stopped at the time of Muldrow's accident, the motor vehicle exception to immunity did not apply. A stopped bus is not "in operation" for purposes of the exception. In addition, the "personal property" exception did not apply either, since the bus, a motor vehicle, is not considered "personal property" under the statute.

***Hall v. Southwestern Pennsylvania Water Authority*, 87 A.3d 998 (Pa. Cmwlth. 2014)**

Hall was injured in a single vehicle accident. He lost control of his vehicle on a patch of ice. A SPWA broken water line allowed water to flow onto the highway which then pooled and froze. Hall sued SPWA because of the broken water line and sued PennDOT for permitting inadequate drainage on the road surface. The trial court granted summary judgment to PennDOT based on Sovereign Immunity. The Commonwealth Court affirms. PennDOT is generally entitled to immunity absent a statutory exception. Under the real estate exception, any dangerous condition must derive, originate from, or have as its source the Commonwealth realty. The exception does not apply if the Commonwealth property merely facilitates the dangerous condition. Here, the dangerous condition did not derive from the road itself but rather from leakage from a broken pipe. Any deficiency of the road drainage system simply facilitated the pooling of water but did not create any icy patch on the road.

***Sanchez-Guardiola v. City of Philadelphia*, 87 A.3d 934 (Pa. Cmwlth. 2014)**

Sanchez-Guardiola was injured at the Philadelphia Airport when she tripped on an unmarked platform or stage 12 to 14 inches higher than the rest of the floor surface. She sued the City under the "care, custody, or control of real property" exception to the Tort Claims Act. She failed, however, to present evidence that the platform was permanently attached or affixed in any manner to the airport terminal floor. Absent such proof, the platform or stage constituted moveable personal property akin to furniture. As such, the platform did not create a hazardous condition constituting a defect in the real estate itself and thus did not fall within the exception.

***Zauflik v. Pennsbury School District*, 104 A.3d 1096 (Pa. 2014)**

Zauflik, a student who lost her leg in a school bus accident, sued Pennsbury School District and obtained a verdict in excess of $14,000,000. Zauflik appealed the trial court's application of the $500,000 damages cap under the Tort Claims Act. The Pennsylvania Supreme Court rejects all of Zauflik's challenges to the Tort Claims Act, including a challenge based on the school district's purchase of excess liability coverage above $500,000.

WORKERS' COMPENSATION

***Cruz v. WCAB (Kennett Square Specialties)*, 99 A.3d 397 (Pa., 2014).**

The Supreme Court addresses the proper allocation of the burden of proof as between an employee and an employer concerning an injured employee's eligibility to obtain work under federal immigration law. The Supreme Court also addresses the ramifications of invoking Fifth Amendment rights against self-incrimination during civil proceedings. Cruz was admittedly injured in the course of employment. During ensuing WC hearings, Cruz' attorney objected to questions concerning Cruz' citizenship, whether he was an undocumented worker, and whether he possessed a "green card." Cruz' counsel similarly objected to questions concerning Cruz' alleged illegal use of another's Social Security number. The Supreme Court first determines that Cruz did not have the burden in a claim petition of establishing employment eligibility under federal immigration law. Proving an injury in the course of employment is sufficient. Once initial compensability is proved, an employer can suspend benefits by proving that ongoing disability is not related to the work-related injury. Here, the employer bore the burden of establishing that Cruz' loss of earning power was due to his employment ineligibility status under federal law. While Cruz' invocation of his Fifth Amendment right against self-incrimination gives rise to an adverse inference, any such inference is too speculative, standing alone, to constitute substantial evidence establishing that loss of earning power was not related to the original work-related injury. In a concurring opinion, Justice Saylor notes that Cruz never actually invoked his Fifth Amendment rights, so no adverse inference was appropriate. Counsel raised objections after which Cruz neither answered nor invoked his Fifth Amendment rights. The privilege can only be raised by the witness, not by counsel via objections.

***Marazas v. WCAB (Vitas Healthcare)*, 97 A.3d 854 (Pa. Cmwlth. 2014)**

Given a delivery itinerary he did not like, Marazas, a truck driver, quit. Vitas Healthcare, his employer, escorted him to the truck so that he could remove his personal belongings. After doing so, he tripped while still on Vitas Healthcare's premises, suffering injuries. Marazas bought a tort suit against Vitas Healthcare, which in pleadings admitted that Marazas was an employee in the course of employment and alleged that workers' compensation provided an exclusive remedy. Marazas dismissed his tort action and brought a WC claim, which Vitas Healthcare defended on course of employment grounds. Marazas contended that the tort pleadings judicially estopped Vitas Healthcare from denying employment status and course of employment. As for judicial estoppel, the Commonwealth Court notes that the prior inconsistent pleading is admissible as a prior inconsistent statement but that judicial estoppel arises only when there has been an adjudication or decision based on the material statement at issue. The tort action was voluntarily withdrawn, there was no adjudication or decision, so no judicial estoppel could arise. As to scope of employment, however, Marazas was acting pursuant to his employer's direction to remove personal belongings and clean out the truck and thus remained under Vitas Healthcare’s supervision despite his resignation. Though unable to establish judicial estoppel, Marazas was still entitled to workers' compensation benefits.

***Cooney v. WCAB (Patterson Uti)*, 94 A.3d 425 (Pa. Commonwealth. 2014)**

Serrano sought widow’s WC benefits following the death of Cooney. Serrano alleged a common law marriage with Cooney in Wyoming in 2003. Benefits were denied because Wyoming did not recognize common law marriage. Though the elements necessary to establish common law marriage status in Pennsylvania were performed in Wyoming, they were never subsequently performed in Pennsylvania prior to the abolition of common law marriage effective 1/1/05. Since Serrano was not a common law spouse under either Wyoming law or Pennsylvania law, she was not entitled to fatal WC benefits.

***Young v. WCAB (Chubb Corporation)*, 88 A.3d 295 (Pa. Cmwlth. 2014)**

Young, a Pennsylvania resident, was injured in the course of employment in a motor vehicle accident in Delaware and thereafter received Pennsylvania WC benefits. Young settled a third-party action against the Delaware tortfeasor for $160,000. The Commonwealth Court rules that Pennsylvania law, not Delaware law, applies to the subrogation rights of the employer. Under a conflict of laws analysis, Pennsylvania was the state with the most significant interest in determining the right of an employer to subrogation where it has made payments under Pennsylvania law.

***Wetzel v. WCAB (Parkway Service Station)*, 92 A.3d 130 (Pa. Commonwealth. 2014)**

Wetzel suffered injuries, eventually fatal, while attempting to stop a thief from leaving his employer's premises after an attempted robbery. Wetzel chased the thief to a getaway car but was then run over. Parkway contended that it had instructed all employees "not to be heroes by resisting robbery attempts" and defended the fatal claim petition, alleging violation of a positive work rule and voluntary abandonment of the course and scope of employment. The Commonwealth Court reverses the WCAB denial of benefits. Since Wetzel was injured during work hours on the employer's premises, the employer had the burden that establishing that Wetzel had abandoned his course of employment while he was engaged in something wholly foreign thereto. Wetzel's pursuit of a thief was not so far removed from his job duties as store manager as to constitute abandonment of the course of his employment or as engaging in something wholly foreign thereto.

MISCELLANEOUS LIABILITY

Spitsin v. WGM Transportation, 97 A.3d 774 (Pa. Super. 2014)

Johnson was a taxi driver for WGM with Spitsin as a passenger. Spitsin stopped at a convenience store ostensibly for an ATM withdrawal but instead attempted to flee and avoid paying the fare. As a bystander stopped and held Spitsin, Johnson repeatedly kicked and punched him, causing serious injuries. Spitsin sued Johnson and WGM, seeking damages from the latter on a *respondeat superior* theory. On appeal, the Superior Court confirms dismissal of the *respondeat superior* claim. While part of Johnson's employment involved collecting fares from customers, he was inherently authorized only to use reasonable means. Kicking a restrained customer in the head was so excessive and dangerous as to be without responsibility or reason. Johnson's actions were so grossly disproportionate to the responsibility at hand that it would be unreasonable to hold WGM liable for such an event.

Octave v. Walker, 103 A.3d 1255 (Pa. 2014)

Octave attempted to commit suicide by jumping under a tractor trailer operated by Walker. Octave's wife, in her own right and on behalf of Octave as an incapacitated person, brought suit against Walker and several other parties, alleging negligence. In discovery, defendants sought Octave's mental health and involuntary commitment records, particularly concerning his prior suicide attempts. Octave filed an Amended Complaint alleging only physical injuries, removing allegations of mental injuries, thus purportedly also removing Octave's mental condition as an issue in the case. The trial court precludes discovery based on the Mental Health Procedures Act which provides broad confidentiality with regard to mental health treatment. The Supreme Court notes that evidentiary privileges are generally viewed to be in derogation of the search for truth and are thus disfavored by the courts. The Supreme Court rules that a patient waives his MHPA confidentiality protections where, judged by an objective standard, he knew or reasonably should have known his mental health would be placed directly at issue by filing a lawsuit. Here, Octave knew or reasonably should have known his mental health would be at issue.

***Conway v. The Cutler Group*, 99 A.3d 67 (Pa. 2014)**

Fields purchased a new home from The Cutler Group in 2003. In 2006, Fields sold the house to Conway. In 2008, Conway discovered water infiltration around some of the windows, allegedly caused by construction defects. Conway sued The Cutler Group, alleging breach of the home builders' implied warranty of habitability. The trial court dismissed Conway's suit because there was no contractual relationship between The Cutler Group and Conway. The Superior Court reverses but the Supreme Court reverses again, reinstating dismissal of the Conway suit. The implied warranty of habitability does not extend beyond its contract law origins. Absent contractual privity (which Conway did not have with The Cutler Group), no cause of action exists.

***Grimes v. Enterprise Leasing Company*, 105 A.3d 1188 (Pa. 2014)**

Grimes rented a car from Enterprise which then claimed she owed for a fender scratch and sent her an invoice for $840.42. Grimes retained counsel and sued Enterprise under the Unfair Trade Practices and Consumer Protection Law, in particular the provision prohibiting "fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding," which she claimed the unconscionable fees were. Under the UTPCPL, the aggrieved party must prove "any ascertainable loss of money or property, real or personal." Enterprise counterclaimed for $840.42 which Grimes admitted she had not paid. Enterprise moved for judgment on the pleadings, further stating, though, that if the court dismissed the case it would cease collection efforts. The trial court dismissed the UTPCPL claim since Grimes, in light of Enterprise's waiver of collection, could not prove pecuniary loss. Grimes appealed, noting that her attorney's fees constituted pecuniary loss. The Supreme Court disagrees. The UTPCPL requires ascertainable losses and then separately provides for an award of costs and reasonable attorney's fees. By statutory construction, costs and reasonable attorney's fees therefore do not qualify as ascertainable loss. In the absence of any ascertainable loss, the UTPCPL claim was properly dismissed.

***Chiurazzi Law v. MRO Corporation*, 97 A.3d 275 (Pa. 2014)**

Chiurazzi Law obtained medical records on behalf of its clients from MRO Corporation, a medical records reproduction service provider. Chiurazzi Law alleged that MRO charged rates in excess of those permitted under the Medical Records Act. MRO contended that it had, in fact, charged amounts – albeit the maximum – permitted under the MRA. The Supreme Court rules that a medical records reproduction service provider may charge only the "actual and reasonable expenses of reproducing the charts or records" but in no event more than the specific amounts listed in the statute.

***Landay v. Rite Aid of Pennsylvania*, 104 A.3d 1272 (Pa. 2014)**

Landay brought a class-action suit against Rite Aid, alleging that the pharmacy violated the Medical Records Act by charging a $50 flat fee for reproduction of pharmacy records. The MRA, in contrast, has a schedule of fees which, if applicable, would be lower than $50. The Supreme Court determines that the MRA does not apply to pharmacies because pharmacies are not "healthcare facilities."

***Cordes v. Associates of Internal Medicine*, 87 A.3d 829 (Pa. Super. 2014)**

Cordes sued Associates of Internal Medicine for malpractice. At trial, the jury returned a defense verdict. On appeal, Cordes alleged prejudicial irregularities in jury selection and failure to remove jurors for cause. The trial court, faced with for-cause challenges, must consider not just the fact of partiality but also the prospect or appearance of partiality or bias. The challenges in this case presented situational relationships of the challenged jurors to parties or to interested non-parties. A sufficiently close situational relationship between the prospective juror and a party to the litigation or to an entity with an interest in the outcome of the litigation creates a presumption of prejudice, the projective juror's protestations of impartiality notwithstanding. Here, one juror was employed by a non-party health system that also employed a defendant physician. Another juror's spouse was a patient of the defendant physician. Another juror's parents were patients of the defendant physicians. The trial court should have stricken these three jurors for cause.

***Roth v. Ross*, 85 A.3d 590 (Pa. Super. 2014)**

Roth obtained a verdict against Ross for damages arising out of an automobile accident, with damages specifically awarded for future medical expenses. Ross opposed delay damages for that portion of the verdict for future medical expenses since they did not constitute "bodily injury" as contemplated by Pa.RCP. 238. The Superior Court disagrees. The rule requires delay damages in cases seeking monetary relief for bodily injury. Future medical expenses incurred in treating accident related injuries are, by definition, monetary relief for bodily injury.

***Harris v. Philadelphia Facilities Management Corporation*, 106 A.3d 183 (Pa. Cmwlth. 2014)**

After a single-vehicle motorcycle accident, Harris sued defendants, alleging that their excavation work created irregularities in the roadway which caused him to lose control of his motorcycle. A police officer investigated the accident, prepared a report, but did not testify at trial. Pretrial, Harris sought to preclude only those portions of the police accident report that suggested Harris' own negligence. The trial court instead precluded all opinions from the police report. At trial, Harris attempted to put portions of the police report into evidence either through direct testimony of his accident reconstruction expert or cross-examination of the defense accident reconstruction expert. The Commonwealth Court confirms that the trial court properly precluded the use of any opinions from the police report. The accident reconstruction experts would have been permitted to consider facts or data in the police report in rendering their own opinions but Harris could not via these experts indirectly admit favorable opinions from the police accident report.

***Bilka v. Commonwealth of Pennsylvania*, 92 A.3d 1253 (Pa. Cmwlth. 2014)**

Bilka appealed suspension of his driver's license for refusing to submit to chemical testing following arrest for DUI while operating a bicycle. A bicycle is a "vehicle" within the meaning of the Implied Consent Law. Bicycle operators may not only be charged and convicted of DUI but are also subject to penalties for refusing chemical testing.

***Schemberg v. Smicherko*, 85 A.3d 1071 (Pa. Super. 2014)**

Schemberg, a police officer, observed Smicherko urinating in public against the side of a private residence. When Schemberg approached, Smicherko fled, Schemberg pursued, and Schemberg eventually fell, suffering injuries. Smicherko pleaded guilty to public urination. Schemberg sued Smicherko, alleging negligence *per se* for violating a local ordinance by preventing a public servant from effecting lawful arrest. The Superior Court reverses dismissal of the negligence *per se* claim. Smicherko attempted to prevent Schemberg from performing his duty by fleeing, in the middle of the night, through a poorly lit area of uneven terrain. Accepting these averments as true, and giving Schemberg all reasonable inferences therefrom, a fact finder could reasonably conclude that Smicherko's conduct created a substantial risk of bodily harm, thus violating the local ordinance, thus justifying a negligence *per se* claim.

LAWYERS

***Meyer Darragh Buckler Benbenek & Eck v. Law Firm of Malone Middleman*,, 95 A.3d 893 (Pa. Super. 2014)**

While associated with Meyer Darragh, Weiler represented Eazor in a motor vehicle accident case. Weiler's employment agreement with Meyer Darragh provided that should he leave the firm and take any files, Meyer Darragh would be entitled to two-thirds of any fee received on such files. Weiler left Meyer Darragh, went to Malone Middleman, and took the Eazor file, which eventually settled for $235,000. Meyer Darragh sued Eazor, Weiler, and Malone Middleman for a share of the resulting fee. The Superior Court rules that Meyer Darragh had no *quantum meruit* action against either Weiler or Malone Middleman. A discharged attorney may pursue a *quantum meruit* attorney fee claim only against the former client. Meyer Darragh, however, was entitled to collect a fee pursuant to Weiler's employment contract. That written agreement that Meyer Darragh was to receive two thirds of any fee was binding not only on Weiler but on Malone Middleman as well.

***Gerold v. Vehling*, 89 A.3d 767 (Pa. Cmwlth. 2014)**

Hewett and her father disputed property distribution following the death of his wife/her mother. The parties executed a written settlement agreement but Hewett thereafter hired attorney Langford to file a Petition to Enforce Written Settlement Agreement. The father and daughter subsequently complied with the terms of the settlement agreement. Several years later, while the dormant Petition to Enforce was still open on the dockets, Langford sought court permission to withdraw as counsel. In the Petition to Withdraw, Langford noted that Hewett was demanding additional services beyond the scope of the initial representation and that Hewett, in any event, had not paid for the services originally rendered. The trial court permits withdrawal. On appeal, the Superior Court affirms. Whether to permit withdrawal of an appearance is within the discretion of the trial court. The Pennsylvania Rules of Profession Conduct provide that breach of an agreement to pay fees is a valid basis to seek withdrawal.

***Saint Luke's Hospital v. Vivian*, 99 A.3d 534 (Pa. Super. 2014)**

After successfully defending a medical malpractice action, Saint Luke's brought a wrongful use of civil proceedings action against the prior plaintiffs and their counsel. In the course of discovery, Vivian demanded the files, including billing records, of St. Luke's defense counsel in the original medical malpractice action. Saint Luke's sought a protective order, asserting attorney-client and attorney work product privileges. The Superior Court affirms denial of the request for a protective order. When the wrongful use of civil proceedings action seeks recovery of defense costs in the underlying medical malpractice action, the attorney-client and attorney work product privileges are waived. Saint Luke's witnesses should not be protected from answering questions concerning the work for which attorney's fees are sought as damages and from answering questions that are germane to the credibility of the hospital's personnel. The work product privilege is not absolute and items may be deemed discoverable if the product sought becomes a relevant issue in the action.

***Daniel v. City of Philadelphia*, 86 A.3d 955 (Pa. Cmwlth. 2014)**

Daniel allegedly slipped and fell on City property on 6/19/10 and then filed suit against City on 5/22/12. Daniel, however, did not attempt service of the complaint within the statute of limitations but rather served the city 8 months later, long after the statute of limitations would have expired. The Superior Court applies the *Lamp v. Heyman* rule which requires a good faith effort to serve the complaint in a timely manner. Because Daniel failed to attempt service timely, her claim was barred by the statute of limitations.

***Greater Erie Industrial Development Corp v. Presque Isle Downs*, 88 A.3d 222 (Pa. Super. 2014)**

Following litigation about a contractual obligation as part of a real property sale, Presque Isle untimely filed a PaRAP 1925(b) statement. Though the statement was untimely, the trial court nevertheless accepted it and issued a PaRAP 1925(a) opinion. On appeal, the Superior Court notes that neither the trial court nor the Superior Court are able to ignore the untimeliness of a PaRAP 1925(b) statement. Absent a proper PaRAP 1925(b) statement, all issues for appeal are waived.

***Stabley v. Great Atlantic & Pacific Tea Company*, 89 A.3d 715 (Pa. Super. 2014)**

Stabley sued a supermarket after its employee negligently pushed some shopping carts into her, knocking her down. Stabley served the complaint on 9/26/12. On 10/26/12, a legal representative of the supermarket requested, and Stabley granted, a 30 day extension to plead. When no answer was filed, Stabley on 12/6/12 gave a further extension until 12/10/12. On 1/3/13, Stabley sent the 10-day notice on intent to default. Five days after the 1/13/13 deadline passed, Stabley finally entered a default judgment against the supermarket. On 1/29/13, the supermarket filed a Petition to Open Default Judgment. In order to prevail, the supermarket had to show that the Petition to Open was promptly filed, that the default could be reasonably explained or excused, and that there was a meritorious defense to the underlying claim. The supermarket met the first and third requirements. The trial court, however, rejected the supermarket's explanation for its delay and the Superior Court affirms. The defendant ignored several negotiated extensions of time and then even ignored the statutorily mandated 10-day notice. The trial judge had the discretion to determine that this conduct was not reasonable.

UM/UIM

***Clarke v. MMG Insurance Company*, 100 A.3d 271 (Pa. Super. 2014)**

Clarke was injured in an accident while driving his motorcycle insured by American Modern. Clarke also had coverage on two automobiles with MMG. After recovering from the tortfeasor and from American Modern's primary UIM coverage, Clarke sought MMG's excess UIM coverage. MMG denied coverage on the basis of a "household exclusion." While several Pennsylvania cases have affirmed the general validity of "household exclusions," MMG's policy language differed from standard forms. Though Pennsylvania will enforce "household exclusions," it does not require same. Here, the MMG policy language did not actually exclude UIM coverage where the household vehicle had primary UIM coverage.

***Erie Insurance Group v. Catania*, 95 A.3d 320 (Pa. Super. 2014)**

Catania was injured by a UM vehicle while driving a delivery truck in the course of his employment. He sought UM benefits from Erie, his personal carrier. Erie denied coverage, citing the "regularly used non-owned vehicle" exclusion. The Superior Court affirms the denial of coverage. The Superior Court further rejects Catania's arguments that his reasonable expectations of coverage were not met and that Erie, to justify the exclusion, had the burden of proving its own risk analysis in determining UM premiums.

***Egan v. USI Mid-Atlantic,* 92 A.3d 1 (Pa. Super. 2014)**

Police officers injured while occupying Bristol Township police vehicles sought UM/UIM benefits from Bristol Township's Zurich policy. USI Holdings, the broker on the policy, obtained a backdated (i.e., to a pre-accident date) UM/UIM rejection form signed by the managing director of Bristol Township. Initially, only USI Holdings and Bristol Township knew that the forms were backdated. The Superior Court rules that although UM/UIM coverage is not stacked on commercial policies, unstacked coverage must still be offered. A commercial insured may reject UM/UIM coverage but only through proper rejection forms. A backdated form is not proper and thus is not valid.

***Bumbarger v. Peerless Indemnity*, 93 A.3d 872 (Pa. Super. 2014)**

Bumbarger purchased a policy covering two vehicles and properly rejected stacking of UM/UIM coverage. A third vehicle was then added by endorsement but without a new waiver of stacking. A fourth vehicle was added not by endorsement but rather by amended policy declarations. After an accident, Bumbarger demanded stacked UM benefits which Peerless denied based on the original waiver of stacking. Because Bumbarger added the third vehicle to the policy by way of endorsement, Peerless under *Sackett I* was required to obtain a new waiver of stacking but failed to do so. As a result, UM/UIM coverage defaulted to stacked coverage.

MVFRL

***Doctor's Choice Physical Medicine v. Travelers*, 92 A.3d 813 (Pa. Super. 2014)**

Travelers through a PRO challenged the reasonableness of chiropractic treatments provided by Doctors Choice. The parties agreed that no national or regional norms had been developed or recognized for the treatments at issue. The PRO, despite the absence of national or regional norms, did not establish written criteria based on typical patterns of practice in the geographical area of service, a deficiency which rendered the PRO invalid, a conclusion affirmed by the Superior Court. In addition, since the PRO was invalid, Travelers did not qualify for safe haven protection from attorney's fees. In the absence of a valid PRO, Doctors Choice was entitled to recover attorney's fees for its successful effort to get its bills paid.