IMPORTANT DEVELOPMENTS IN PERSONAL INJURY LAW
TWELFTH ANNUAL UPDATE

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ABOUT MARK K. ALTEMOSE, ESQUIRE

Mark Altemose is a native of Pen Argyl where he attended Pen Argyl High School. He attended college at Lafayette College in Easton, Pennsylvania, where he graduated Cum Laude with Honors in Economics. He attended Villanova University School of Law. He is a Partner with Cohen, Feeley, Altemose & Rambo, P.C., 2851 Baglyos Circle, Suite 200, Bethlehem, PA 18020; phone: (610) 625-2100; email: maltemose@cohenfeeley.com.

During his legal career, Mark has limited his practice to personal injury and construction litigation. He has extensive expertise handling serious injury and death cases involving automobile, trucking and motorcycle negligence; medical malpractice; pharmaceutical malpractice; construction accidents; gas and chemical exposure and explosion accidents; product liability; dog bites; and slips and falls. He has acted as a lead counsel in many well-known Lehigh Valley catastrophic injury and death cases including most recently the Charles Cullen serial murder cases, the DePUY ASR defective hip implant litigation, the Allentown natural gas explosion and the underground propane tank explosion in Bushkill Township. He has achieved many multi-million-dollar results for his clients, several exceeding $10 million, including verdicts of $95 million, $4.36 million, and $1.5 million.

Mark is a member of the Million Dollar Advocates Forum, an organization with membership limited to attorneys who have won verdicts or settlements equal to or exceeding $1 million. He has been an invited lecturer to Bar Associations and other lawyers' groups to discuss the trial strategy and tactics that have enabled him to win large verdicts and settlements for his clients. He also regularly teaches continuing legal education courses to fellow attorneys regarding personal injury litigation and is often selected by Plaintiff and Defense attorneys as an independent mediator and arbitrator in complex personal injury cases.

Mark is Board Certified as a Civil Trial Advocate by the National Board of Trial Advocacy, a Pennsylvania Supreme Court Accredited Agency. He has been elected by his peers Statewide since 2010 as one of the Top 100 Trial Lawyers in Pennsylvania and as a Pennsylvania Superlawyer since 2008. In 2023 and 2024 he was elected to the Pennsylvania Superlawyer Top 100 lawyers list. He was selected as a "Top 100 Trial Lawyer" in Pennsylvania in 2009, as an AV Preeminent Lawyer in 2014 and an AV Preeminent Lawyer-Judicial Edition in 2018.

In 1998, he was elected to Who's Who in American Law. Also in 1998, he was elected to the Board of Governors of the Pennsylvania Association for Justice and served on the Board until 2007. In 1999 he was appointed to the Leadership Council of the New Lawyer Committee of the Pennsylvania Association for Justice; in 2000 he was appointed to Education Committee and in 2001 he was one of only ten attorneys in the State asked to serve as a founding member and director of the Pennsylvania Association for Justice Auto Negligence Section.

Mark served as a member of the Board of Directors of the Lehigh County Bar Association from 2001 to 2005 and spent ten years as Co-chairman of the Lehigh County Bar Association Law Day Committee. He received the Association's Service Award in 1998.

Mark is admitted to practice law in the Courts of the Commonwealth of Pennsylvania, State of New Jersey, the United States District Court for the Eastern and Middle Districts of Pennsylvania, the United States District Court for the District of New Jersey, and the Third Circuit Court of Appeals.

Mark is an active member of the American Bar Association, Lehigh County Bar Association, Northampton County Bar Association, Association of Trial Lawyers of America, Pennsylvania Association for Justice, and the Donald E. Wieand Barristers' Inn, an organization dedicated to professionalism in law and comprised of a select group of attorneys and judges. He was elected Secretary/Treasurer of the Inn in 2007 and Counselor to the Inn in 2011. He was elected President of the Inn in 2013 and served a two-year term.

I. IMPORTANT DEVELOPMENTS IN AUTOMOBILE NEGLIGENCE AND UM AND UIM LAW

A. THE REGULAR USE EXCLUSION IS VALID AND ENFORCEABLE

in *Rush v. Erie Insurance Exchange*, 308 A.3d 780 (Pa. 2024), on November 15, 2015, plaintiff, Matthew Rush, a 40 year old detective for the City of Easton, was operating his ummarked police car owned by the city when he was involved in a motor vehicle accident with two drivers, causing him to suffer severe injuries to his back which ended his career.

Plaintiff recovered the $115,000 liability limits from both drivers. The City of Easton had $35,000 in UIM coverage on the cruiser and plaintiff recovered those limits. Plaintiff also had purchased two personal policies from Erie providing $750,000 in combined stacked UIM benefits, and the case was worth the entire limits. Plaintiff made a UIM claim with Erie and Erie denied the claim based upon regular use exclusion.

The regular use exclusion was as follows:

> **"[T]his insurance does not apply to:**
>
> **10. Bodily injury to "you" or a "resident" using a non-owned "motor vehicle" or a nonowned "miscellaneous vehicle" which is regularly used by "you" or a "resident," but not insured for Uninsured or Underinsured Motorists Coverage under this policy.**

At the time, it appeared well-settled law that regular use exclusions were valid. The Pennsylvania Supreme Court reached this decision twice, the first time in *Burstein v. Prudential Property & Casualty Co.*, 809 A.2d 204 (Pa. 2002) and then again in *Williams v. GEICO Gov't Emples. Ins. Co.*, 32 A.3d 1195 (Pa. 2011). However, in *Gallagher v. GEICO Indem. Co.*, 201 A.3d 131 (Pa. 2019), where the Court invalidated the household exclusion, an exclusion is had previously upheld in prior decisions as a reasonable preclusion of coverage for an unknown risk—the unknown risk being the presence of the insured in another household vehicle not insured under the policy.

The plaintiff in *Gallagher* argued that the precedent was not binding. He argued that the issue before the Court in those cases was whether the exclusion violated general public policy. In *Gallagher*, he argued that the exclusion violated the express language of section 1738 of the Motor Vehicle Financial Responsibility Law ("MVFRL"). Section 1738 required the insurer to provide stacked UIM coverage unless the insured signed a stacking waiver, which Gallagher did not sign. Thus the exclusion acted as a de facto waiver of

coverage without the insured signing a stacking waiver in direct violation of the express language of the statute. The Court, in an opinion issued by Chief Justice Baer, agreed and held that even if it previously held an exclusion did not violate public policy, it can still be struck down if it violated the express terms of the statute. The Court held that it did—it was a de facto waiver of stacking without the insured executing the required stacking waiver.

The statutory section applicable to the regular use exclusion—Section 1731 which is the section requiring the offer of UIM coverage was essentially identical to that of Section 1738. It required that the insurer provide UIM coverage unless the insured signed a waiver of coverage, and Mr. Rush did not sign a waiver. In addition, in upholding the regular use exclusion in *Williams*, the Court—recognizing the similarity between the household and regular use exclusion and the language in Sections 1738 and 1731—relied upon the case of *Erie Insurance Exchange v. Baker*, 972 A.2d 507 (Pa. 2009). Baker was one of the prior precedents to Gallagher where the Court upheld the exclusion. However, the Supreme Court in *Gallagher* held that *Baker* was wrongly decided.

Plaintiff filed a declaratory judgment action against Erie in Ruch, arguing that based upon the Supreme Court's rational for invalidating the household exclusion in Gallagher, it must now invalidate the regular use exclusion.

Plaintiff argued that the ultimate holdings in *Williams* and *Burstein* were that the exclusion did not violate general public policy. Plaintiff pursued the argument made in *Gallagher* that the exclusion violated the express terms of the statute and thus those cases were not binding precedent. Since the statutory language of Sections 1731 and 1738 were identical and the household and regular use exclusions were found to be similar in terms of their purpose by the Supreme Court in *Williams*, and the household exclusion violated Section 1738, the regular use exclusion must violate Section 1731.

The trial court agreed, holding that, like the household exclusion, the regular use exclusion was a de facto waiver of coverage without the insured signing the waiver required by the statute.

Erie appealed to the Superior Court and it affirmed. Erie then appealed to the Supreme Court.

The Supreme Court reversed. In reaching this decision, it did agree that even if the Court found that an exclusion did not violate general public policy, it could invalidate the exclusion if it violated the express terms of the statute. With that in mind, it reviewed its decisions in *Burstein* and *Williams*. The Court acknowledged that the ultimate holdings in those cases were that the regular use exclusion did not violate general public policy, but in so doing, it did review various sections of the MVFRL. In doing so, it observed that the legislature determined that certain coverages were intended to be "universally portable",

meaning that they followed the person no matter what vehicle they were occupying at the time of the accident, or even if they were not in that vehicle. These coverages were first party benefits coverages. The legislature did not provide the same for underinsured and uninsured motorists coverage. As a result, *Burstein* and Williams did address the plain language of the statute in holding that the regular use exclusion was valid. Further, because the legislature did not require universal portability for UIM and UM coverage, insurers were allowed to include any reasonable exclusion not expressly prohibited by the MVFRL.

According to the Court:

> Regardless of its failure to acknowledge the broad implications of its construction of *Section 1731*, the Superior Court's decision in this matter undoubtedly stands for the proposition that UIM coverage is universally portable. In other words, by finding that UIM coverage is mandatory in virtually all instances, absent an insured's voluntary waiver of such coverage, the coverage would necessarily have to follow the person. *Rush, 265 A.3d at 796* (reasoning that UIM coverage applies broadly whenever an insured suffers injuries arising out of the use of a motor vehicle regardless of vehicle ownership); *Burstein, 809 A.2d at 209* (explaining that, pursuant to the concept of universal portability, UIM coverage "follows the person, not the vehicle"). If UIM coverage must follow the person in all circumstances, then an insurer cannot exclude coverage in any situation. The Insureds ignore this fact, insisting that the Superior Court's holding does not invalidate all exclusions. Insureds' Brief at 56. Instead, the Insureds somehow read the Superior Court as "only" holding that an exclusion that violates the language of the MVFRL is invalid, and that the "regular use" exclusion is one such exclusion. *Id.* However, this ignores the Superior Court's actual conclusion that UIM coverage must be available in all circumstances, no matter what motor vehicle is used, except when UIM coverage is waived by the insured. *Rush, 265 A.3d at 797.* Given the nature of the arguments before us and the Superior Court's holding, we cannot ignore the relevance of *Burstein's* discussion to our current analysis. The Superior Court in this matter viewed *Section 1731* in a vacuum. However, this Court understood in *Burstein* that the coverage scheme is not limited to one provision, but rather the entirety of the MVFRL.

Accordingly, the Court held that it was bound by its prior decisions in *Burstein* and *Williams*.

EDITORS NOTE: The Rush decision does NOT stand for the proposition that the regular use exclusion is always valid. You must look at the specific language of the exclusion to see if it excludes coverage for the specific facts of your case. For example, Erie's own regular use exclusion only excludes coverage for the insureds regular "use" of the vehicle. As stated, Erie uses the term "use', not "occupancy". The Superior Court in Erie Ins. Exch. v. E.L, 941 A.2d 1270 (Pa.

Super. 2008), held that the term "use" means driving the vehicle, not occupying it as a passenger. Accordingly, the Court held that the exclusion is not applicable when the insured is a passenger and thus not valid to exclude coverage for passengers.

Also, the Court did not rule on the validity of the exclusion where stacking is also implicated. In his concurring opinion, Justice Wecht argued that the case should be remanded to the trial court to address the stacking issue (since Mr. Rush selected stacking on his personal vehicle policies), but the majority concluded that stacking was not implicated in the case. Mr. Rush was permitted to access his personal policy by virtue of Section 1733, which is the priority of recovery section of the MVFRL. It provides that the first priority UIM coverage by statute is the coverage on the vehicle occupied by the insured and then the insured's personal policy is the excess provider. Consequently, coverage is generally mandated by this provision and not the selection of stacking.

B. *THE COURT DENIED DEFENDANTS' MOTION TO DISMISS THE PUNITIVE DAMAGES CLAIM, WHICH IT FOUND PLAUSIBLY SUPPORTED IN THE PLEADINGS*

In *Shank v. Hanover Intermodal Transp., Inc.*, No. 1:23-cv-01080, 2023 U.S. Dist. LEXIS 149439 (M.D. Pa. Aug. 22, 2023), on June 28, 2023, Plaintiff Elmer Shank filed a complaint against Defendants pursuant to this Court's diversity jurisdiction, alleging claims of negligence under Pennsylvania law in connection with a motor vehicle accident. Plaintiff averred that Defendant Floyd was the operator of a tractor-trailer truck owned by Defendants Hanover and HIT and that, on July 10, 2021, Floyd had been operating the truck within the course and scope of his employment with Hanover and HIT. Plaintiff asserted that, on that date at approximately 10:06 p.m., Plaintiff "had been driving along Route 116 in Bonneauville, Pennsylvania, when he slowed down for another truck who was turning into a driveway in front of him." Plaintiff averred that, while also driving along Route 116, Floyd, "despite a clear sight distance and no obstructions to his view of the vehicles in front of him, failed to observe Plaintiff's vehicle, thereby rear-ending Plaintiff's vehicle and causing Plaintiff's personal injuries." Plaintiff asserted that Floyd "had a sufficient amount of time to recognize Plaintiff's vehicle and avoid the collision." Plaintiff alleged that "[t]he conduct of Defendants rose to the level of outrageous conduct in that Defendants willfully and recklessly ignored the known safety hazards associated with driving a commercial vehicle in an unsafe manner and driving a commercial vehicle in substandard condition for long-haul interstate travel, of which caused Plaintiff's serious and permanent injuries." Plaintiff also asserted that "[a]s a direct and proximate result of the joint careless, reckless, negligent, grossly negligent, and other liability-producing operations of the subject tractor-trailer," Plaintiff had sustained "serious and permanent injuries including, but not limited to, head injury, concussion, and vision issues, some or all of which are permanent in nature and may last into the future."

In Count I of his complaint, asserted against Defendant Hanover, Plaintiff further alleged that his injuries "had been caused by the negligence, carelessness, and recklessness of Defendant Hanover at the corporate level, in addition to failures of its operator/employee, Defendant Floyd, jointly and severally, acting by and through their agents, servants, workers and/or employees, both generally and in the following particular respects":

a. failing to properly train their employees;

b. failing to properly equip their trucks, including the subject Hanover and/or HIT truck;

c. failing to maintain their trucks, including the subject Hanover and/or HIT truck;

d. failing to properly service their vehicles, including the subject Hanover and/or HIT truck;

e. failing to inspect their trucks, including the subject Hanover and/or HIT truck;

f. failing to properly maintain, service, and/or inspect the brakes and brake systems of their trucks, including the subject Hanover and/or HIT [truck];

g. failing to ensure the subject Hanover and/or HIT truck was operated by a properly trained and licensed driver;

h. failing to properly monitor driver performance;

i. promoting and encouraging drivers to rush at the expense of safety;

j. violating commercial motor vehicle regulations;

k. failing to use due care under the circumstances; and

l. negligent hiring, selection, and retention of Defendant [] Floyd.

Plaintiff also asserted that "Hanover knew or should have known that failing to have appropriate safety policies regarding the use, operation, and/or maintenance of their trucks, including the subject Hanover and/or HIT truck, posed a very high risk of serious bodily injury and/or death" and that his injuries were caused by the "negligence, carelessness, recklessness, and/or grossly negligent conduct of Defendant Hanover." Count III of Plaintiff's complaint asserted similar allegations against Defendant HIT.

Count V of Plaintiff's complaint asserted a negligence claim against Defendant Floyd and specifically alleged that "[t]he negligence, carelessness, and recklessness of Defendant Floyd consisted of, but was not limited to the following":

a. failing to maintain proper and adequate control over the subject Hanover and/or HIT truck so as to avoid crashing into another vehicle;

b. failing to maintain a safe distance while operating the subject Hanover and/or HIT truck;

c. failing to maintain the lane of travel while operating the subject Hanover and/or HIT truck;

d. failing to pay proper attention while operating the subject Hanover and/or HIT truck;

e. operating the subject Hanover and/or HIT truck in a negligent and careless manner without due regard for the rights and safety of the Plaintiff;

f. failing to have the subject Hanover and/or HIT truck under such control that it could be readily stopped, turned aside or the speed thereof slackened upon the appearance of danger;

g. failing to remain alert;

h. traveling at an excessive rate of speed under the circumstances in violation of the Federal Motor Carrier Safety Regulations (hereinafter "FMCSR") and applicable laws of the Commonwealth of Pennsylvania;

i. failing to operate the subject Hanover and/or HIT truck in accordance with the FMCSR and the laws of the Commonwealth of Pennsylvania;

j. failing to make necessary and reasonable observations while operating the subject Hanover and/or HIT truck;

k. failing to take evasive action and/or failing to take appropriate and timely evasive action in order to avoid striking Plaintiff;

l. failing to timely and properly apply his brakes;

m. violating both the written and unwritten policies, rules, guidelines and regulations of Hanover, HIT, the Commonwealth of Pennsylvania, and/or the FMCSR;

n. failing to maintain an assured clear distance;

o. failing to apprise himself of and/or abide by the FMCSR;

p. failing to apprise himself of and/or abide by the regulations and laws pertaining to the operations of trucks;

q. failing to properly inspect his truck in violation of the FMCSR;

r. consciously choosing to drive the subject Hanover and/or HIT truck at a high rate of speed for the location and circumstances; and

s. acting with a conscious disregard for the rights and safety of the Plaintiff.

Plaintiff further asserted that "Floyd's operation of the subject Hanover and/or HIT truck represented a foreseeable and unreasonable risk of danger to other vehicles, including the Plaintiff," and that Plaintiff's injuries resulted from Floyd's "negligence, carelessness, and recklessness."

On July 18, 2023, Defendants filed a motion for partial dismissal of Plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), a brief in support of the motion, and an answer to the complaint. Defendants' motion sought dismissal of "Plaintiff's implicit demand for punitive damages, allegations of 'recklessness,' 'gross negligence,' and/or allegations of 'reckless,' 'outrageous,' and/or 'willful' conduct." Defendants maintained that Plaintiff's complaint, grounded in allegations of negligence, "was devoid of any specific factual allegations that would support such allegations" of recklessness or outrageous conduct. Plaintiff filed a brief in opposition to Defendants' motion on August 9, 2023, and Defendants filed a reply brief on August 15, 2023.

In their motion, Defendants asked the Court to dismiss "Plaintiff's implicit or tacit request for punitive damages and any and all allegations of reckless, willful and/or grossly negligent conduct" because, they argued, "the allegations in Plaintiff's complaint did not contain allegations of fact that rose to the level of conduct that could be classified as grossly negligent, reckless, wanton, or willful or to the level of conduct that would warrant an award for punitive damages under Pennsylvania law."

In response, Plaintiff maintained that the complaint stated a claim for punitive damages, arguing that the complaint "contained detailed factual allegations throughout" and that Defendants' motion should be denied because discovery might reveal evidence necessary to justify an award of punitive damages. Plaintiff noted that the complaint contained allegations that all Defendants violated the Federal Motor Carrier Safety Regulations and that Defendants Hanover and HIT did not have appropriate safety policies regarding the maintenance of the truck and did not properly train and monitor Defendant

Floyd. Plaintiff also pointed to the complaint's allegations that Floyd "consciously" chose to drive his vehicle at a "high rate of speed for the location and circumstances," acting with a "conscious disregard for the rights and safety of" Plaintiff.

In Pennsylvania, "[p]unitive damages could be awarded for conduct that was outrageous, because of the Defendant's evil motive or his reckless indifference to the rights of others" and "must be based on conduct which was malicious, wanton, reckless, willful, or oppressive." To be successful, "a punitive damages claim had to be supported by evidence sufficient to establish that (1) a Defendant had a subjective appreciation of the risk of harm to which the Plaintiff was exposed and that (2) he acted, or failed to act, as the case may be, in conscious disregard of that risk." While "punitive damages were an extreme remedy available in only the most exceptional matters," at the motion to dismiss stage, a Court needed only to decide whether the Plaintiff had alleged facts that "plausibly gave rise" to a punitive damages award.

Upon careful review of Plaintiff's complaint and the briefs of the parties, as well as the relevant authorities, the Court concluded that dismissal of Plaintiff's "implicit" request for punitive damages and related allegations of "reckless," "willful" or "grossly negligent" conduct would be premature at that stage of the litigation. In numerous cases with facts analogous to the instant case, federal Courts interpreting Pennsylvania law had declined to dismiss requests for punitive damages prior to discovery, finding that claims of negligence could plausibly support a punitive damages remedy.

Here, Plaintiff had alleged that Defendant Floyd "consciously" drove the Hanover and/or HIT truck at a "high rate of speed for the location and circumstances" and violated Federal Motor Carrier Safety Regulations in connection with the truck's collision with Plaintiff's vehicle. As to the Hanover and HIT Defendants, Plaintiff's complaint alleged independent corporate negligence and recklessness, asserting that both Defendants "knew or should have known that failing to have appropriate safety policies regarding the use, operation, and/or maintenance of their trucks, including the subject Hanover and/or HIT truck, posed a very high risk of serious bodily injury and/or death" and that they failed to properly train, monitor, and supervise Defendant Floyd.

The Court concluded that Plaintiff's allegations plausibly supported a punitive damages remedy at that stage of the proceedings.

EDITOR'S NOTE: The pleading rules are different in federal court than they are in Pennsylvania state court. What must the plaintiff allege in a Complaint filed in state court in order to pursue a claim for punitive damages. For many years, the Courts required that plaintiff include specific facts demonstrating the conscious disregard by the defendant of risks that created a severe risk of harm. However, on November 21, 2022, the Pennsylvania Superior Court decided *Monroe v.*

CBH20, LP, 286 A.3d 785 (Pa. Super. Ct. 2022). In this case, the Court put to bed the long-standing controversy whether recklessness is a separate cause of action requiring a Plaintiff to set forth the material facts in support of the allegation, or a state of mind which Pa.R.C.P. 1019(b) permits a plaintiff to aver generally. The *Monroe* Court noted that "gross negligence and recklessness have not historically been identified as independent causes of action....In other words, gross negligence and recklessness are states of mind; they are forms of negligence, not independent causes of action. Thus, our procedural rules allow the plaintiff to plead gross negligence and recklessness generally." *See* Rule 1019(b); *see also Monroe,* 286 A.3d at 799.

In a footnote, the *Monroe* Court specifically held that the trial courts which have, in the past, required a Plaintiff to set forth specific facts underlying an averment of "recklessness" in the Complaint in order to pursue a claim of recklessness were wrongly decided, stating:

> [T]rial court decisions that have sustained preliminary objections or granted judgment on the pleadings based upon demands for heightened factual averments to support a claim of willful, wanton or reckless conduct did not accurately apply the law. Our ruling today removes any doubt that, so long as plaintiff's complaint (1) specifically alleges facts to state a prima facia case for the tort of negligence, and (2) also alleges that the defendant acted recklessly, the latter state-of-mind issue may only be resolved as a matter of law after discovery has closed.

Id., at 800, n. 6.

II. IMPORTANT DEVELOPMENTS IN EVIDENCE LAW

A. THE TRIAL COURT ALLOWED BLOOD ALCOHOL CONTENT EVIDENCE RELEVANT TO CAUSATION. THE DRIVER'S EXPERT WITNESS WAS QUALIFIED TO TESTIFY ON THE PEDESTRIAN'S IMPAIRMENT. THE COURT RIGHTLY PRECLUDED ARGUMENTS ABOUT AN "UNMARKED CROSSWALK" AS THE PEDESTRIAN CROSSED MID-BLOCK

In *Moffitt v. Miller*, 302 A.3d 1219 (Pa. Super. Ct. 2023), on August 5, 2018, Miller's vehicle collided with Moffitt as she was crossing Route 30 in Downingtown, resulting in Moffitt filing a lawsuit for damages due to negligence. Moffitt's blood alcohol content was recorded at .313%, prompting legal motions regarding evidence presentation prior to the trial. Moffitt's motion to exclude references to her alcohol consumption was rejected, while Miller's motion to exclude Moffitt's liability expert testimony was accepted.

During the trial, Moffitt recounted her activities preceding the incident, stating she felt "normal" before crossing the street. Miller testified he lost sight of Moffitt before the accident occurred. Officer Burkhart noted Moffitt's apparent intoxication upon arriving at the scene. Pietrinferni, a witness from the bar, described Moffitt as appearing "fine" there. Dr. Dackis provided expert testimony, highlighting Moffitt's significantly elevated blood alcohol level and its impact on her judgment.

Ultimately, the jury determined both parties to be 50% negligent and awarded Moffitt $8,500 in damages. Moffitt's subsequent motion for post-trial relief was denied by the Court, which upheld the admissibility of evidence, affirmed Dr. Dackis's testimony, and supported the jury's decision. Moffitt proceeded to appeal the verdict.

The Trial Court based its analysis of the admissibility of Moffitt's blood alcohol content (BAC) on Pennsylvania legal precedents, especially referencing *Coughlin v. Massaquoi*. This case established that evidence of alcohol consumption is admissible to show impairment or unfitness for actions like crossing a street. Moffitt disputed the relevance of Coughlin, arguing that witness testimony contradicted any impairment. However, the Court upheld its decision to admit BAC evidence, considering expert testimony and Moffitt's behavior before the accident.

Moffitt also contested the qualifications of Dr. Dackis to testify on her intoxication, claiming he lacked a toxicology background. The Court found Dr. Dackis's expertise in addiction sufficient and overruled Moffitt's objection.

Another point of contention was the exclusion of testimony suggesting the accident occurred in an unmarked crosswalk. Moffitt argued that this evidence was crucial to her case, but the Court deemed it unnecessary, emphasizing the jury's duty to assess both parties' actions.

Additionally, Moffitt challenged the adequacy of the jury instructions and the verdict's amount. The Court defended its decision, stating the jury's verdict was reasonable given the evidence presented.

In the end, the Court affirmed the judgment, concluding that the jury's decision was consistent with the evidence and legal standards.

III. IMPORTANT DEVELOPMENTS IN CIVIL PROCEDURE LAW

A. THE MINORITY TOLLING STATUTE APPLIES TO BRINGING WRONGFUL DEATH ACTIONS

In *Houk v. Brown*, 2022 Pa. Dist. & Cnty. (C.P. Lawrence November 15, 2021), wrongful death Defendants sought summary judgment on the grounds

that Plaintiffs' suit was not commenced within the governing two-year statute of limitations. The Trial Court denied the motion because limitations on Plaintiffs' wrongful death claims, which arose from the death of their mother, were tolled under the Minority Tolling Statute.

In February 2009, decedent was residing with co-Defendants, a father and son, when she was murdered by the son. Plaintiffs, who were decedent's minor daughters and their guardian, filed a Praecipe to Issue Writ of Summons in May 2012. Little activity followed, although Plaintiffs continued to indicate their intent to proceed with the litigation. Plaintiffs eventually filed a complaint in March 2021, asserting claims for wrongful death against Defendants.

Defendants filed a motion for summary judgment, contending the action should be dismissed as not being commenced within the two-year statute of limitations on wrongful death claims pursuant to 42 Pa.C.S.A. § 5524(2). Defendants maintained the statute of limitations expired in February 2011, yet Plaintiffs' Writ of Summons was not filed until May 2012. Plaintiffs responded that the statute of limitations was tolled under the Minority Tolling Statute. Defendants replied that the proper party to file suit for decedent's wrongful death was the administrator of decedent's estate, which demonstrated that the Minority Tolling Statute did not apply.

The Trial Court denied Defendants' motion. The Minority Tolling Statute tolls limitations to permit minors an opportunity to assert a cause of action if their parent or guardian failed to do so on their behalf. The statute provides that an individual's period of minority does not count toward the time period in which they must commence suit. Instead, the limitations period on the individual's claims commences when the person attains majority.

Here, the Minority Tolling Statute governed the analysis of the statute of limitations on Plaintiffs' claims. Defendants were incorrect in contending that the statute did not apply based on the authority of the administrator of decedent's estate to file suit. merely requires that a wrongful death suit be filed by the administrator of a decedent's estate within six months of decedent's death. If nothing is filed during that time, any person entitled by law to recover damages in such an action may file suit, as was the case here.

The ultimate question was whether the Minority Tolling Statute applies to wrongful death claims. The Court found no decisions by Pennsylvania appellate Courts on the question. However, the reasoning of an analogous New Jersey decision was persuasive. In that case, the New Jersey Court likened the death of a parent to a physical injury sustained by a child, with the result that minority tolling applied to protect the child's ability to assert claims for the resulting injuries. The Court admonished that a child should not lose its claim for the death of a parent simply because a parent or guardian fails to timely file those claims on the minor's behalf.

The Court thus declared that the Minority Tolling Statute applied to Plaintiffs' wrongful death claims and their complaint was not filed after the expiration of the statute of limitations. Defendants' summary judgment motion therefore had to be denied.

B. IN A NEGLIGENCE SUIT, THE LOWER APPELLATE COURT'S HOLDING THAT THE TRIAL COURT IMPROPERLY TRANSFERRED VENUE FROM PHILADELPHIA COUNTY TO BUCKS COUNTY WAS UPHELD BECAUSE THE TRIAL COURT ERRED BY FOCUSING SOLELY ON THE PERCENTAGE OF THE COMPANY'S NATIONAL REVENUE DERIVED FROM A PARTICULAR COUNTY

In *Hangey v. Husqvarna Pro. Prods.*, 304 A.3d 1120 (Pa. 2023), the action was initiated by Ronald and Rosemary Hangey ("the Hangeys") on March 10, 2017, when they filed a civil complaint in the Court of Common Pleas of Philadelphia County against Defendants Husqvarna Professional Products, Inc. ("HPP"), Husqvarna Group, and Trumbauer's Lawn and Recreation, Inc. (collectively, "appellants"). HPP submitted preliminary objections, contesting venue in Philadelphia County. The Hangeys subsequently amended their complaint on April 10, 2017, adding two more Defendants, Husqvarna U.S. Holding, Inc., and Husqvarna AB.

The amended complaint alleged negligence, strict liability, and loss of consortium claims, detailing that on May 16, 2013, Mr. Hangey purchased a Husqvarna riding lawnmower from Trumbauer's in Bucks County. Subsequently, on August 5, 2016, while operating the lawnmower on his property in Wayne County, Mr. Hangey was thrown off the mower, which then rolled over his legs, causing severe injuries. The complaint attributed the accident to a defective lawnmower lacking appropriate safety features.

HPP and Trumbauer each filed preliminary objections to the amended complaint, challenging venue in Philadelphia County under Pennsylvania Rule of Civil Procedure 2179(a), which outlines criteria for proper venue against a corporation. The objections argued that neither appellant regularly conducted business in Philadelphia County.

The Trial Court allowed discovery relevant to venue and personal jurisdiction and dismissed Defendants Husqvarna U.S. Holding, Inc. and Husqvarna AB for lack of personal jurisdiction. It transferred the case against the remaining Defendants to Bucks County, ruling venue improper in Philadelphia County. The Hangeys appealed, contesting only the venue determination.

In its Rule 1925(a) opinion, the Trial Court outlined the facts revealed through venue-related discovery, highlighting that HPP's activities in Philadelphia County satisfied the quality prong but not the quantity prong of the *Purcell* analysis. The Court emphasized that although HPP conducted business in Philadelphia, the amount was de minimis, falling short of the habitual threshold.

The Superior Court reversed the Trial Court's order, asserting that HPP's contacts with Philadelphia, although a small percentage of its national sales, satisfied the quantity prong. It held that considering the nature of HPP's business and its contacts with Philadelphia, the Trial Court erred in relying solely on the percentage of HPP's business in Philadelphia to assess venue.

A dissenting opinion argued that the Trial Court's decision was reasonable and accorded with applicable precedent. It emphasized the Trial Court's discretion in determining venue and concluded that the small percentage of HPP's business in Philadelphia did not meet the quantity prong, consistent with previous rulings.

The Supreme Court granted allocatur on two issues: whether the Superior Court committed legal error in its assessment of the venue and whether it faithfully applied the abuse of discretion standard of review in reversing the Trial Court's decision.

Rules 1006(b) and 2179(a) specify that actions against corporations can only be brought in certain counties where the corporation has a registered office, conducts business, where the cause of action arose, where a transaction took place, or where the property related to the action is located.

Courts evaluate whether a corporation "regularly conducts business" in a county based on a quality-quantity analysis. The quantity prong requires acts to be sufficient in quantity and continuity to be considered general or habitual.

In a case involving HPP, the Trial Court erred by considering only the percentage of HPP's national revenue derived from Philadelphia County to determine if HPP conducted business there regularly. The Court's decision contradicted precedent, which states that regularity of business activities is the key factor, not the proportion of revenue.

The Trial Court's analysis conflicted with previous rulings because it focused solely on revenue percentage without considering the regularity of HPP's business activities in Philadelphia County.

The Superior Court correctly determined that venue was proper in Philadelphia County because HPP regularly conducted business there, as evidenced by its contracts with authorized dealers in the county and consistent sales figures.

The Trial Court's misapplication of the law constituted an abuse of discretion, which justified the Superior Court's decision to overturn the venue transfer, the Supreme Court held. Therefore, the Superior Court's decision to uphold venue in Philadelphia County was affirmed.

IV. IMPORTANT DEVELOPMENTS IN DAMAGES LAW

A. THE REQUIREMENT THAT A CORPORATION REGISTER IN THE STATE TO DO BUSINESS DOES NOT VIOLATE DUE PROCESS

In *Mallory v. Norfolk S. Ry.*, 143 S. Ct. 2028, 216 L.Ed.2d 815 (2023), Robert Mallory sued Norfolk Southern Railway Co. in the Philadelphia County Court of Common Pleas for claims arising under the Federal Employer's Liability Act (FELA). According to his complaint, Mallory was exposed to harmful carcinogens while employed by Defendant in Ohio and Virginia between 1988 through 2005. He did not allege that he suffered any harmful occupational exposures in Pennsylvania but sued in Pennsylvania Court on a theory that the Court could exercise jurisdiction over the Virginia company because it had registered to do business in Pennsylvania.

Under Pennsylvania law, a foreign corporation "may not do business in this Commonwealth until it registers" with the Department of State of the Commonwealth. State law further establishes that registration constitutes a sufficient basis for Pennsylvania Courts to exercise general personal jurisdiction over that foreign corporation. Norfolk Southern Railway objected to the exercise of personal jurisdiction, arguing that the exercise violated the Due Process Clause of the Fourteenth Amendment. The Trial Court agreed and held Pennsylvania's statutory scheme unconstitutional. The Pennsylvania Supreme Court affirmed.

On appeal to the Supreme Court of the United States, the issue was: Does a state registration statute for out-of-state corporations that purports to confer general personal jurisdiction over the registrant violate the Due Process Clause of the Fourteenth Amendment?

A Pennsylvania law requiring out-of-state companies that register to do business in Pennsylvania to agree to appear in Pennsylvania Courts on "any cause of action" against them comports with the Due Process Clause. Justice Neil Gorsuch authored the main opinion of the Court.

The outcome in this case is controlled by the Court's decision in *Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), which held that suits based on the Defendant's consent to jurisdiction do not deny the Defendant due process of law. The Pennsylvania Supreme Court

concluded otherwise based on its erroneous belief that the Court had "implicitly overruled *Pennsylvania Fire in International Shoe Co. v. Washington*, 326 U.S. 310 (1945). However, rather than displace *Pennsylvania Fire, International Shoe* merely paved an additional road to jurisdiction over out-of-state corporations. Thus, the facts of this case fall squarely within *Pennsylvania Fire*, and there is no due process violation.

Justice Ketanji Brown Jackson authored a concurring opinion noting another precedent, *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982), which she found "particularly instructive."

Justice Samuel Alito authored an opinion concurring in part and concurring in the judgment. Justice Alito agreed with the plurality that exercising jurisdiction pursuant to the state registration statute does not violate the Due Process Clause, but he opined that the statute might be unconstitutional on other grounds not before the Court.

Justice Amy Coney Barrett authored a dissenting opinion, in which Chief Justice John Roberts and Justices Elena Kagan and Brett Kavanaugh joined, arguing that compelled state registration does not constitute "consent."

V. IMPORTANT DEVELOPMENTS IN DOG BITE LAW

A. AN UNEXCUSED VIOLATION OF 502A(A) OF THE DANGEROUS DOG LAW CONSTITUTES NEGLIGENCE PER SE

In *GNW et al. v. Villarreal and Villareal*, No. 2573 of 2021, 2021 Pa. Dist. & Cnty. (C.P. Westmoreland Sept. 7, 2022), Defendants' preliminary objection regarding Plaintiffs' Count V, which alleged negligence per se under the Rabies Prevention and Control in Domestic Animals and Wildlife Act ("Rabies Act"), were overruled. The objection claimed that Plaintiffs' negligence per se claim was legally insufficient.

The Pennsylvania Rabies Prevention and Control in Domestic Animals and Wildlife Act ("Rabies Act") is legislation designed to prevent the spread of rabies among domestic animals and wildlife in the state. It outlines measures for the vaccination of domestic animals, including dogs and cats, to protect them from rabies infection. Additionally, the Rabies Act aims to safeguard individuals who may come into contact with potentially rabid animals by ensuring proper vaccination protocols for pets. The act establishes guidelines for the control and management of rabies outbreaks and sets forth procedures for handling situations involving rabid animals. Its provisions help mitigate the risk of rabies transmission and promote public health and safety throughout Pennsylvania.

Next, the order outlined that negligence per se arises when an individual violates a statute designed to prevent public harm. To determine the validity of a negligence per se claim, it must be established whether the statute aims to protect the interests of a specific group of individuals or the general public. In this case, the Rabies Act aimed to protect individuals who may encounter domestic animals potentially infected with rabies if not properly vaccinated.

The Court emphasized that the Rabies Act's purpose aligned with protecting a specific group of people, thus supporting Plaintiffs' negligence per se claim under Count V. The ruling clarified that the analysis of statutes like the Rabies Act is the issue at hand rather than determining whether they create a private cause of action.

Additionally, Defendants withdrew all other preliminary objections, indicating no need for further rulings on those matters. However, Defendants were not precluded from raising these issues in future dispositive motions.

Finally, the Prothonotary was instructed to note the order in the docket to ensure all relevant parties were informed of the decision.

VI. IMPORTANT DEVELOPMENTS IN PRODUCTS LIABILITY LAW

A. INDUSTRY STANDARDS ARE NOT ADMISSIBLE IN EVIDENCE IN A STRICT LIABILITY CASE

In *Sullivan v. Werner Co.*, 306 A.3d 846 (Pa. 2023), plaintiff suffered serious injuries when he fell through a six foot tall rolling scaffold manufactured by the Werner Company and sold by Lowe's. He filed a strict liability against Werner and Lowe's (collectively "defendant"), claiming that the scaffold was defectively designed. According to plaintiff, he assembled the scaffold in the same manner he always assembled it. He was then standing on the top of it, when it suddenly collapsed beneath him "like a trapdoor". He claimed that the scaffold plank gave away. His expert issued a report saying that plaintiff inadvertently rotated the deck pines by either kicking them while working on it or when he moved tools or other materials near the pins. With the deck pins rotated off, the platform would become unseated when the user climbed the rungs or moved the scaffold. It would stay unseated because of a weld protrusion in one of the platform's steel corners. The user would then be unaware that the platform was misaligned, leading to collapse once the user stepped back on the unsecured platform.

Plaintiff's expert alleged that he reviewed other scaffolds and there were safer alternative designs to protect against a platform collapsing during normal use. In particular, other manufactures used four deck pins instead of two to secure the platform as well as positive alignment devices to their deck pins to ensure that they could not be rotated off the platform.

Defendants produced a report from an expert who disagreed with plaintiff's expert. He claimed it was not foreseeable that a user would unknowingly rotate the deck pins. He also rebutted the claims of alternative designs by observing that the design used for the deck pins on the unit was the most prevalent in the industry and complied with ANSI and OSHA standards.

He also claimed that the only way the platform collapsed in the way that plaintiff described was that did not properly place it within the side rails with the deck pins engaged before climbing on it. Plaintiff also could have avoided the accident by following the instruction that the platform be seated within he side rails with the deck pain pins rotated before each use.

Before trial, plaintiff filed a motion *in limine* to bar the admission of any government or industry standards evidence at trial, arguing that the courts have routinely barred such evidence since the Pennsylvania Supreme Court's holding in *Lewis v. Coffing Hoist Div., Duff-Norton Co., Inc.*, 528 A.2d 590 (Pa. 1987), and it was unaffected by the Pennsylvania Supreme Court's decision in *Tincher v. Omega Flex*, 104 A.3d 328 (Pa. 2014). Defendants argued that after *Tincher*, government and industry standards are admissible. The trial court agreed with plaintiff and granted the motion.

During trial, defendant also sought to argue that plaintiff's conduct was the sole cause of the accident, arguing that he was negligent for failing to ensure the platform was seated and the deck pins fully rotated each time he climbed onto the platform. Plaintiff responded by arguing that plaintiff's contributory negligence is inadmissible in a products liability action unless it amounts to assumption of the risk, misuse of a product or highly reckless conduct. The court refused to allow defendant to make this argument and instructed the jury that it could not consider any negligence or lack of due care by plaintiff as part of the defectiveness determination. The trial court gave a similar instruction with regard to causation.

The jury rendered a verdict in favor of plaintiff and awarded plaintiff $2.5 million in damages.

Defendant appealed the above rulings of the trial court to the Superior Court which affirmed, and then appealed to the Pennsylvania Supreme Court.

The Supreme Court also affirmed.

According to the Court, Tincher did not change the long-standing rule that industry standards are inadmissible in a strict liability action.

According to the Court:

> We conclude that evidence of compliance with industry standards is

inadmissible under the risk-utility test in strict products liability cases. In this regard, we reaffirm the post-*Tincher* validity of the rule announced in *Lewis*.

As discussed above, in *Lewis*, this Court concluded that evidence of industry standards and a product's widespread design within an industry "go to the reasonableness of the [defendant's] conduct in making its design choice, [and] that such evidence would have improperly brought into the case concepts of negligence law." *Lewis, 528 A.2d at 594*. The *Lewis* Court explained that the proper focus of a design defect case is on the characteristics of the product and not the conduct of the manufacturer. *Id. at 593*. The Court recognized that *Azzarello* was "in harmony" with focusing on the product and prohibiting the introduction of "negligence concepts" in strict liability cases, and the Court further emphasized that "the Restatement (Second) of Torts makes it clear that the imposition of strict liability for a product defect is not affected by the fact that the manufacturer or other supplier has exercised 'all possible care.'" *Id.* The *Lewis* Court also reasoned that industry standards evidence "would have created a strong likelihood of diverting the jury's attention from the [defendant's product] to the reasonableness of the [defendant's] conduct in choosing its design." *Id. at 594*. Accordingly, *Lewis* held compliance evidence was inadmissible as it had "a tendency to distract the jury from its main inquiry or confuse the issue." *Id.*

> Although *Tincher* overruled *Azzarello*, it did not overrule *Lewis* or criticize its reasoning. In returning to the jury the decision of whether to impose strict liability, the *Tincher* Court emphasized strict liability remained a distinct theory from negligence:
>
> > Nevertheless, the tortious conduct at issue [in strict product liability] is not the same as that found in traditional claims of negligence and commonly associated with the more colloquial notion of 'fault.' In this sense, introducing a colloquial notion of 'fault' into the conversation relating to strict product liability in tort detracts from the precision required to keep this legal proposition within rational bounds.

Tincher, 104 A.3d at 400. Further, while recognizing that strict liability "overlaps in effect with the theories of negligence **and** breach of warranty," the Court distinguished strict liability as "effectuat[ing] a further shift of the risk of harm onto the supplier than either negligence or breach of warranty theory by combining the balancing of interests inherent in those two causes of action." *Id. at 401-02* (emphasis in original). The duty involved in strict liability— to produce and/or market a product without "a defective condition unreasonably dangerous"—is different from the duty of due care in negligence. *Id. at 383* (quoting *Restatement (Second) of Torts § 402A(2)*).

To prove a breach of this duty in design defect cases, *Tincher* replaced the *Azzarello* standard with a "composite test" in which the

consumer-plaintiff may show a defective condition through either (or both) the consumer expectations test or the risk-utility test. *Id. at 401.* In its thorough exposition of the development of strict liability, the Court explained that the consumer expectations test, based on the consumer's expectation that a seller placing a product on the market impliedly represents the product is not unreasonably dangerous, derived from the breach of warranty roots of strict liability. *Id. at 402-03.* Meanwhile, the risk-utility test, focusing on the manufacturer's risk-benefit calculus, reflected its negligence strands. *Id. at 403-04.* Regardless of which test is used, the duty is to provide a product free from a defective condition unreasonably dangerous to the consumer, and liability may be incurred irrespective of fault. *Id. at 403* (recognizing all definitions of defect "effectuat[e] the single policy that those who sell a product are held responsible for damages caused to a consumer by the reasonable use of the product."). In articulating the composite test to prove a defect, the *Tincher* Court did not address the viability of the *Lewis* rule going forward. *Id. at 410.*

Accordingly, the Court reaffirmed the holding in *Lewis*.

The Supreme Court did not accept the causation issue as one of the issues it would decide, but fully affirmed the Superior Court decision.

The Superior Court had held that a defendant can admit the plaintiff's negligence, misuse of the product or recklessness into evidence on the issue of causation based upon the Pennsylvania Courts' interpretation of pre-Tincher precedent: *See Madonna v. Harley Davidson, Inc.*, 708 A.2d 507, 508 (Pa. Super. 1998); *Clark v. Bil-Jax, Inc.*, 2000 PA Super 370, 763 A.2d 920, 923 (Pa. Super. 2000); (quoting *Charlton v. Toyota Industrial Equipment, 714 A.2d 1043, 1047 (Pa. Super. 1998)).* However, the "evidence of a plaintiff's ordinary negligence may not be admitted in a strict products liability action ... unless it is shown that the accident was solely the result of the user's conduct and not related in any [way] with the alleged defect in the product." *Id.* Put differently, "a user's negligence is not relevant if the product defect contributed in any way to the harm." *Madonna, 708 A.2d at 509.*

EDITOR'S NOTE: I disagree that precedent allows for the user's negligence to be admissible at all on the issue of causation. The Pennsylvania Supreme Court so held in *Reott v. Asia Trend, Inc.*, 55 A.3d 1088 (Pa. 2012) (Baer, J.). In *Reott*, The Supreme Court in *Reott* also affirmed prior precedent holding that a user's conduct may be admissible on the issue of causation, but only where the evidence establishes highly reckless conduct/product misuse. Importantly, the Court made it clear that "highly reckless conduct" and "product misuse" are NOT separate defenses. They are one and the same defense, despite the fact that they were often times described in prior precedent as separate defenses with separate elements. *See Reott*, 55 A.3d at 1097 ("While there are some conceptual nuances between assumption of the risk and highly reckless conduct, in that assumption of the risk involves knowledge of the product's defect where highly reckless conduct

does not, we fail, generally, to recognize a similar nuance between product misuse and highly reckless conduct."). The Court held that a user's "highly reckless conduct" could not be raised by a manufacturer merely to rebut the plaintiff's proof of causation. *See id.* at 1098. The Court noted that "under Pennsylvania's scheme of products liability, evidence of highly reckless conduct has the potential to erroneously and unnecessarily blend concepts of comparative/contributory negligence with affirmative proof that a plaintiff's assumption of the risk, product misuse, or as styled herein, highly reckless conduct was the cause of the injury." *Id.* at 1098. Thus, the Court found that it was important to construe "highly reckless conduct" as an affirmative defense with the burden of proof on the defendant. *See id.* Otherwise, "highly reckless conduct allegations by defendants could become vehicles through which to eviscerate a Section 402A action by demonstrating a plaintiff's comparative or contributory negligence." *Id.* In order for the manufacturer to prove the plaintiff engaged in highly reckless conduct, the manufacturer must show that the "plaintiff acted in a manner illustrating the plaintiff's **conscious understanding of the risks involved** either in (1) merely using the product or (2) using the product in an unanticipated and dangerous manner." *Id.* at 1097. **Further,** the defendant must prove that "**the plaintiff would have been injured despite the curing of any alleged defect, or [the plaintiff's conduct] is so extraordinary and unforeseeable as to constitute a superseding cause.**" *Id.* at 1101 (emphasis added).

VII. IMPORTANT DEVELOPMENTS IN PREMISIS LIABILITY LAW

A. AN INDEPENDENT CONTRACTOR IS NOT IMMUNIZED FROM LIABILITY FOR ITS NEGLIGENCE IN CREATING A HAZARD THAT LATER INJURIES A BUSINESS INVITEE BY THE OWNERS ACCEPTANCE OF THE WORK.

In *Brown v. City of Oil City*, 294 A.3d 413 (Pa. 2023), defendant, Struxures was retained by defendant, Oil City, the owner of a library, to remove old steps and then construct new steps for its library. Struxures completed its work and its work was accepted by Oil City. However, the steps, as constructed and installed by Struxures were defectively constructed, and as a result began to deteriorate, a hazardous condition to pedestrians. Oil City observed the hazard. It notified Struxures that the steps were deteriorating and that it considered the steps to be in a dangerous and hazardous condition. Neither Struxures nor Oil City made any attempts to fix the steps or notify customers of the hazard. Almost four years later, plaintiff, a customer of the library, was walking on the steps, and tripped and fell due to the hazard, causing plaintiff to suffer significant injuries.

Plaintiff made a negligence claim against Struxures and Oil City. Struxures filed a motion for summary judgment. Struxures alleged that, pursuant to the Restatement (Second) of Torts Section 385—entitled "Persons Creating Artificial Conditions on Land on Behalf of Possessor; Physical Harm Caused After Work

has been Accepted[1]--its duty to plaintiff ended when the owner accepted its work. Consequently, it could not be held liable for any hazards that it created by its negligence that caused an injury to plaintiff after the work was accepted by the owner, at least when the defect was obvious and known to the owner. Struxures also argued that the owner's knowledge of, and negligence in failing to eliminate the defect, broke the chain of causation between its negligence and plaintiff's injuries as a matter of law, because otherwise the Court "rewards property owners for failing to inspect [their] property" and "shift[s] that burden upon contractors not in possession of the property." *Brown*, 2023 Pa. Lexis 681, *44.

The trial court granted the Motion, the Commonwealth Court reversed, and Struxures appealed to the Pennsylvania Supreme Court. The Pennsylvania Supreme Court affirmed the Commonwealth Court.

The Court first quoted former Justice Musmanno, who "eloquently" stated in *Prost v. Caldwell Stores*, 187 A.2d 273 (Pa. 1963):

> Where a builder creates a hazard which, without the need of a prophetic telescope, proclaims potential injury to the public, he may not plead immunity from liability for resulting damage on the basis that his responsibility ceased with the insertion of the last bolt and the driving of the final nail.

Id. at *43.

The Court then performed a detailed analysis of Section 385. After completing the analysis, the Court held that a contractor whose work was accepted by the owner remains liable to a third party injured after the work was accepted by the owner, and liability attaches irrespective of whether the hazardous condition created by the contractor was latent or obvious to the owner. According to the Court:

> **Based on the foregoing discussion, we hold that a contractor who has created a dangerous condition through work performed for a possessor of land may be liable under Section 385 to all persons suffering injuries caused by the dangerous condition, even if that condition is obvious or apparent in nature.**

---

[1] Section 385 provides as follows:

> One who on behalf of the possessor of land erects a structure or creates any other condition thereon is subject to liability to others upon or outside of the land for physical harm caused to them by the dangerous character of the structure or condition after his work has been accepted by the possessor, under the same rules as those determining the liability of one who as manufacturer or independent contractor makes a chattel for the use of others.

Restatement (Second) of Torts § 385 (1965).

Id. at *45.

The Court also specifically rejected Struxures' second argument that it could not be liable to plaintiff because Oil City's conduct in failing to remedy the defect despite its knowledge of the hazard, was the one and only cause of the injury as a matter of law. The Court held that, as a matter of law, such conduct by the owner of the property does not break the chain of causation. It only serves to make the owner **jointly liable** with the contractor for the harm caused to the plaintiff. According to the Court:

> Our determination regarding a contractor's liability under *Section 385* does not displace a possessor of land's responsibility to protect the public. A possessor of land, like a contractor, also has a social duty to invitees onto his or her land to "keep the premises in a reasonably safe condition." *Watkins v. Sharon Aerie No. 327 Fraternal Order of Eagles, 423 Pa. 396, 223 A.2d 742, 743 (Pa. 1966)*. Our holding today does not alter a possessor of land's potential liability to third parties for injuries caused by a dangerous condition existing on the land, and, therefore, does not preclude the prospect of a possessor being found jointly liable with a contractor for the harm a dangerous condition caused to third parties. *See Builders Supply Co. v. McCabe, 366 Pa. 322, 77 A.2d 368, 371 (Pa. 1951)* ("The universal rule is that when two or more contribute by their wrongdoing to the injury of another, the injured party may recover from all of them in a joint action or he may pursue any one of them and recover from him."). Rather, we agree with the New Jersey Supreme Court that inaction by the owner of property upon becoming aware of a dangerous condition created by a contractor's work arguably "adds him as another possible tortfeasor." *Totten, 245 A.2d at 6.* Indeed, as Brown highlights, the facts of the instant matter demonstrate this, given that Oil City was separately sued by Brown for its own negligence in, for example, failing to maintain or repair the stairs, or taking other actions such as warning users such as Kathryn Brown of their dangerous condition, *see* Brown's Amended Complaint, 5/25/17, at ¶¶ 40-45, and it settled that claim through its payment of $500,000.

Id. at 45-46*.

VIII. IMPORTANT MISCELLANEOUS DEVELOPMENTS IN PERSONAL INJURY LAW

A. *THE DEFINITION OF GROSS NEGLIGENCE*

In the case of *Johnson v. Keane Grp. Holdings, LLC*, 671 F. Supp. 3d 534 (M.D. Pa. May 3, 2023), the Court reviewed the definition of "gross negligence."

In this matter, the Court denied summary judgment in a personal injury case involving a Plaintiff who was injured in at a well site in the oil and gas industry.

The Court noted that the Defendant's indemnification agreement excluded liability for "gross negligence."

Chief Judge Brann of the United States District Court for the Middle District of Pennsylvania noted that the Pennsylvania Supreme Court has never precisely defined the term of "gross negligence."

The Court found the question before it to involve the issue of whether "gross negligence" requires a finding of recklessness on the part of the Defendant. In the end, Judge Brann ruled that "gross negligence" does not require a finding of recklessness.

Judge Brann noted that the difficulty in defining gross negligence arises from the fact that the terms origin is in statutory law rather than common law, which does not recognize degrees of negligence.

Chief Judge Brann stated that gross negligence does not require the intentional indifference or conscious disregard of risks that defines recklessness.

Accordingly, gross negligence was found to require evidence that an actor's conduct was an extreme departure from the relevant standard of care. However, evidence that the actor acted recklessly is not required for a finding of gross negligence.

The Court denied summary judgment in this case given the issues of fact presented on and found that summary judgment was not appropriate on the issue of whether or not the Defendant was grossly negligent under the circumstances presented.

IX. IMPORTANT MISCELLANEOUS DEVELOPMENTS IN SOVEREIGN IMMUNITY LAW

A. *WHERE APPELLANT, WHO SLIPPED AND FELL AS HE WALKED DOWN A METAL RAMP COVERED WITH WATER DUE TO A SPILL BY PRISON KITCHEN STAFF, ALLEGED THAT APPELLEES FAILED TO ADEQUATELY MAINTAIN A NON-SLIP SURFACE ON THE METAL RAMP, CAUSING HIS INJURY, HE HAD ADEQUATELY ALLEGED AN INJURY CAUSED BY A DANGEROUS CONDITION OF COMMONWEALTH AGENCY REAL ESTATE*

In *Pritchard v. Meintel*, 307 A.3d 1269 (Pa. Commw. 2024), Appellant was an inmate, who, at the time of his alleged injury, was confined at the State Correctional Institution at Graterford (SCI-Graterford). The Complaint stated that Appellee Meintel is the Deputy Superintendent of Facility Management at SCI-Graterford and oversaw the safety, care, and custody of all SCI-Graterford inmates. On January 26, 2017, when returning to his housing unit, Appellant slipped and fell as he walked down a metal ramp covered with water due to a spill by kitchen staff, causing injury to his right shoulder. There were no wet floor signs or other precautions to show the ramp was wet. In 2009, a "make-shift wooden ramp" was replaced with a metal ramp, and slip-resistant materials were applied. Over time, Appellees did not maintain the slip-resistant surface of the metal ramp. Following Appellant's injury, Appellees did nothing to repair the slip-resistant feature of the ramp, which had been deteriorating for six years. Appellant alleged that Appellees' negligence in maintaining the metal ramp caused his injuries, and he sought compensatory and punitive damages. He also alleged that Appellees were negligent in allowing the ramp to be in use while it was wet and in failing to post wet floor signs. Appellees filed preliminary objections consisting of five counts, which included a demurrer based on sovereign immunity.

Common Pleas determined that the Complaint was barred by sovereign immunity, as it did not fall within the real estate exception to sovereign immunity set forth in Section 8522(b) of the Judicial Code, 42 Pa.C.S. § 8522(b), commonly known as the Sovereign Immunity Act. Accordingly, it sustained Appellees' demurrer and dismissed the Complaint.

On appeal, the Commonwealth Court explained that the Supreme Court had recently indicated that there must be a determination of "whether the dangerous condition is 'of' the Commonwealth realty. [...] [T]he dangerous condition must derive, originate, or have as its source the Commonwealth realty." It further explained that "the dangerous condition must be an artificial condition or defect of the land itself, as opposed to the absence of such a condition, and that artificial condition or defect must be the cause, or a concurrent cause, of the injury."

The Court then held that the Appellant had pled sufficient facts to proceed under the real estate exception by having alleged that a defect with the real estate itself: namely, the metal ramp.

The Court distinguished prior case law where an inmate sued for having slipped on a wet, waxed floor, as there was no indication that the floor itself was constructed defectively, and thus the Commonwealth was found to be immune.

X. IMPORTANT MISCELLANEOUS DEVELOPMENTS IN DISCOVERY LAW

A. *CRIMINAL HISTORY RECORDS INFORMATION ACT AMENDMENT NOW IN EFFECT THAT PERMITS DISCOVERY OF CERTAIN CRIMINAL HISTORY EVIDENCE NOT PREVIOUSLY DISCOVERABLE*

As of May 3, 2023, certain criminal history records information that was previously not discoverable is now discoverable. *See* Handout on CHRIA supplied separately.

B. *WHERE A FOSTER CHILD MURDERED HIS FOSTER PARENT, ANY COURT FILES OR COURT RECORDS FROM DELINQUENCY OR DEPENDENCY PROCEEDINGS THAT WERE IN DEFENDANTS' POSSESSION WERE PROTECTED FROM DISCOVERY EXCEPT TO THE LIMITED EXTENT OF DISCLOSURES PERMITTED BY § 6307(b) OF THE JUVENILE ACT, 42 PA.C.S. § 6307(a), (b)*

In *Leslie v. Pub. Health Mgmt. Corp.*, 300 A.3d 469 (Pa. Super. Ct. 2023), on May 21, 2021, Antoine Leslie ("Administrator"), the son of Ms. Gilyard and administrator of her estate, brought an action against Defendants/Appellants, alleging in the Complaint that the Turning Points Defendants were a foster family care agency under contract with the Philadelphia Department of Human Services. The Complaint alleged that the Turning Points Defendants and Deborah Croston (collectively, "Defendants/Appellants") and the Doe Defendants placed 17-year-old foster child, Xavier Johnson, with foster care parent Renee Gilyard and that Johnson murdered Gilyard within days after he was placed in her home. The Complaint alleged further that Defendants/Appellants and the Doe Defendants knew at the time of the placement that Johnson had history of violence and, therefore, are liable in negligence for her death because they failed to disclose that history of violence to Gilyard. Appellants/Defendants denied these allegations.

The Administrator, in response to discovery requests, sought documents from Defendants/Appellants regarding Xavier Johnson's foster care case record, including medical and mental health information. Defendants/Appellants contended that certain documents were protected by law, including medical privacy regulations and mental health statutes. The first appeal (2267 EDA 2021) involved document requests made by the Administrator, which Defendants/Appellants objected to, citing legal protections. Despite objections, the Trial Court ordered production of the requested documents. In the second appeal (662 EDA 2021), the Administrator sought answers to interrogatories and documents from Defendants/Appellants concerning insurance coverage and other details related to the case. Defendants/Appellants opposed providing certain responses, leading to a Trial Court order compelling them to comply, which they appealed.

In their first appeal, Defendants/Appellants asked the Superior Court to determine whether the foster care case record is protected from disclosure in its entirety. They argued that Pennsylvania regulations and the Juvenile Act prohibited the release of such records. Specifically, they cited Section 3130.44 of Pennsylvania's regulations regarding confidentiality of foster care case records. While the regulation restricted disclosure, it allowed for exceptions, such as providing information to foster parents for the care of the child. However, disclosure was limited to situations where the foster parent could use the information for the child's welfare at the time of disclosure.

Defendants/Appellants contended that the Juvenile Act also affected the disclosure of records. While it restricted access to Court files and records in certain juvenile proceedings, it did not cover all documents sought in this case. Moreover, recent amendments to the Juvenile Act permitted limited public disclosure of certain juvenile adjudications.

Previous cases had interpreted similar laws, but none directly resolved the issues raised. The Juvenile Act provided certain exceptions and did not wholly shield all records from discovery. For instance, public disclosure was allowed for specific juvenile adjudications under certain conditions. Thus, the Trial Court's ruling that Johnson's entire foster care case record was not fully protected from discovery was upheld to an extent.

The remaining issue was whether the Trial Court erred in ordering production of all the requested documents and ordering such production without any confidentiality order.

Defendants/Appellants argued that the Trial Court's order was overbroad because it required production of all documents and some of the documents were protected from disclosure even if the foster care case record was not entirely protected from discovery. Specifically, they maintained that even if the Administrator had a right to information from the case record based on Gilyard's status as a foster parent and regardless of whether the Court had the power to order disclosure in a personal injury action under Section 3130.44(e), Section 3130.44(f) permitted disclosure "only if the information released did not contain material which ... was protected or made confidential by law." Production therefore could not be ordered as to documents that were protected by other privileges. As discussed above, any Court files or Court records from delinquency or dependency proceedings that were in Defendants/Appellants' possession were protected from discovery except to the limited extent of disclosures permitted by Section 6307(b) of the Juvenile Act.

Defendants/Appellants also argued that the foster care case record contained documents protected by HIPAA and the MHPA. Defendants/Appellants' contention that HIPAA barred the Trial Court from ordering production of medical information concerning Johnson was without

merit. The HIPAA provision on which Defendants/Appellants relied, 45 C.F.R. § 164.508(a), applied only to health plans, health care clearinghouses, and health care providers. In addition, HIPAA permitted disclosure of medical information in litigation in response to a subpoena or discovery request where notice had been given to the patient, as long as a protective order was in place that prohibited the parties from using or disclosing the health information for any purpose other than the litigation and required the return or destruction of all copies of the health information at the end of the litigation.

It was possible that some of the documents ordered produced were protected by the MHPA. The MHPA protected mental health treatment records from disclosure and was not limited to patient communications. The MPHA, however, applied only to involuntary treatment and voluntary inpatient treatment. There was nothing in the record from which it could be determined whether Defendants/Appellants' files concerning Johnson contained records from involuntary mental health treatment and voluntary inpatient mental health treatment.

In addition to requiring disclosure without regard to whether some portions of Appellants' documents were protected from disclosure by privileges other than 55 Pa. Code § 3130.44, the Trial Court did not impose any confidentiality order or restriction on the Administrator's use of the documents. While it did not appear that Defendants/Appellants specifically requested a confidentiality order, the bases on which the discovery order could be permissible under Section 3130.44 required that the production be subject to a confidentiality order.

Gilyard was not a person entitled to information from the foster care case record under Section 3130.44(d) regardless of the purpose for which it was to be used, and her right to obtain case record information as a foster parent was subject to an obligation of confidentiality. Moreover, the overriding purpose of Section 3130.44 was to require that information from the foster care case record be treated as confidential. The Court's authority under Section 3130.44(e) to order disclosure, therefore, should have been construed in light of this overriding confidentiality purpose and should have permitted an order to produce documents or information from the foster care case record only under an order keeping those documents confidential.

Accordingly, in the first appeal (under 2267 EDA 2021), the Court vacated and remanded to the Trial Court, which excluded Johnson's juvenile Court records of delinquency and dependency proceedings, except for limited public disclosure permitted by Section 6307(b) of the Juvenile Act, excluded Johnson's involuntary mental health treatment and voluntary inpatient mental health treatment records, and required entry of a confidentiality order prior to disclosure.

In the second appeal (under 662 EDA 2022), the only claim of error that Defendants/Appellants raised was that the Trial Court lacked jurisdiction to enter

its January 31, 2022, order requiring Defendants/Appellants to provide full and complete responses to the Administrator's third set interrogatories other than Interrogatories 12 and 14 and to produce the documents requested by the third set document requests.

Based on Pa.R.A.P. 1701(a), (c), a collateral order appeal divested the lower Court of jurisdiction only as to the issue on appeal and matters related to or intertwined with that issue.

As discussed, the first appeal was a collateral order appeal involving only the Trial Court's October 21, 2021, order that Defendants/Appellants produce documents "that contain any information concerning Xavier Johnson's medical history, mental health diagnosis, general behaviors, relationships between him and his parents, educational history, life experiences, and previous and/or prospective circumstances." The Trial Court did not enter any order staying the action.

The third set interrogatories and document requests that were the subject of the Trial Court's January 31, 2022, order did not request information or documents concerning Johnson's medical history, mental health diagnosis, behaviors, relationships with parents, educational history, life experiences, or prospective circumstances. Rather, the interrogatories sought identification of witnesses, interviews and statements obtained concerning the action, information concerning investigations conducted by Defendants/Appellants or others concerning Johnson's placement with Gilyard and Gilyard's murder, information concerning statements of witnesses and parties and identification of admissions of a party and documents that Defendants/Appellants intended to use at trial. The document requests were limited to the scope of these interrogatories, as they sought only documents that Defendants/Appellants identified in their third set interrogatory answers.

Defendants/Appellants argued that the discovery sought in the second motion to compel involved the same privilege issues that were the subject of the first appeal. Discovery that requested different information or documents was closely intertwined with an appeal from a prior discovery order if it was subject to the same privilege objection that was at issue in the pending appeal and the issues as to the applicability of the privilege were the same. A Court therefore lacked jurisdiction during the pendency of the appeal to order further discovery that was subject to a privilege objection that was at issue in a pending appeal if the issues as to the applicability of the privilege were the same as in the appeal.

Here, although the privilege that Defendants/Appellants asserted was the same, whether it applied to the third set discovery involved additional, different issues. In the first appeal, the discovery sought documents from Defendants/Appellants' foster care case record and the issue was whether documents and information in the foster care case record were protected from

discovery. On the Administrator's second motion to compel, the issues were whether the third set discovery sought information and documents in the foster care case record and, as to information and documents that were both in the case record and available outside the case record, whether, assuming that the case record was protected from discovery, the requested discovery was within the scope of that protection. The Trial Court ordered the discovery, not based on the privilege ruling that was on appeal, but on the ground that the discovery did not seek information from the foster care case record.

That conclusion was largely correct with respect to Interrogatories 6-11 and 13, as they appeared to primarily seek information created after Gilyard was murdered and Johnson was no longer in the foster care system, and Interrogatories 15 and 16, which sought information concerning admissions of the Administrator and books and magazines that Appellants intended to introduce at trial. It was possible, however, that some information that those interrogatories sought could pre-date the murder and be in or from the case record. Interrogatories 1-5, concerning identification of witnesses, appeared to encompass information that could be obtained both from the case record and from other sources and the information and documents sought by Interrogatories 2(c), and 3-5 were likely to include confidential case record information, some of which may not be available from sources outside the case record.

The mere fact that information available from non-privileged sources was also in a file that was protected from discovery did not shield it from discovery. But because the order required full responses, and some of the interrogatories could include information that was only in the case record, the order did compel discovery that involved the same issue as in the first appeal.

Although this problem could have been avoided by limiting the required responses to information and documents not obtained from the case record, and it appeared that the Administrator and the Trial Court at the hearing may have intended to so limit the order, other than excluding two interrogatories that clearly sought information from the foster care case record, Interrogatories 12 and 14, the order that the Trial Court entered had no such limitation. On this record, it was determined that the Trial Court had jurisdiction to order some of this discovery, but the overlap between the discovery order and the issue in the first appeal created a jurisdictional issue.

Accordingly, in the second appeal under 662 EDA, the order was vacated and remanded for further discovery proceedings to be conducted consistent with this decision and without prejudice to Defendants/Appellants to raise objections of admissibility. In this regard, Defendants/Appellants were to file with the Trial Court a detailed list of what documents and information it possessed and which among that list it considered privileged. At the conclusion of such proceedings, the Trial Court was to enter an order permitting the Administrator to obtain the information and documents to which he was entitled.

C. *FISHING EXPEDITIONS ARE NOT ALLOWED IN DISCOVERY*

In the case of *Rotella v. Community Medical Center*, No. 22-CV-3943 (C.P. Lacka. Co. June 9, 2023 Nealon, J.), the Court addressed the proper breadth and scope of subpoenas for a Plaintiff's prior medical records in a medical malpractice action.

In this case, the Plaintiffs confirmed to the Court that they had no objection to the Defendants seeking records regarding the injured Plaintiff's condition at issue. It was also noted that the Defendants had already secured records on the Plaintiff dating back over twenty years before the treatment which was the subject of this lawsuit.

The Plaintiff challenged additional subpoenas issued by the Defendants that sought any and all records from the time the Plaintiff's birth for any and all conditions and illnesses.

It was the Plaintiff's contention that the Defendants did not have good faith basis to request records of this magnitude. The Plaintiffs otherwise indicated that they did not object to any request of discovery for some reasonable prior time period, such as 3-5 years.

After reviewing the Rules of Civil Procedure and related case law on the responsibility of the Trial Court to oversee discovery between the parties, Judge Nealon noted that it is within the Court's broad discretion to determine the appropriate measures to ensure adequate and prompt discovery of information in a lawsuit.

The Court noted that, generally, discovery is to be liberally allowed with respect to any matter, not privileged, which is relevant to the case being tried. The Court also noted that the relevancy standard applicable to discovery is broader than the standard used at trial for the admission of evidence.

However, the Court also noted that discovery requests must be reasonable, which is to be judged based upon the facts and circumstances of the case. The Court is granted with authority to prohibit any discovery of matters which has been stated too broadly. Judge Nealon noted that, although discovery is to be liberally allowed as a general rule, "fishing expeditions" are not authorized under the Pennsylvania Rules of Civil Procedure.

Judge Nealon noted that, as the Court has observed with increasing frequency, "[w]hile a limited degree of 'fishing' is to be expected with certain discovery requests, parties are not permitted to fish with a net rather than a hook

or a harpoon." Applying the above law to this case, the Court ruled that the subpoena served by the Defendants, as presented, was too broad.

The Court did allow the Defendants to request records and materials for the period of ten years prior a relevant date up to the present.

D. *SECTION 1720 OF THE MVFRL PRECLUDES AN EMPLOYER FROM SUBROGATING ITS PAYMENT OF HEART AND LUNG BENEFITS AGAINST A DRAM SHOP SETTLEMENT THAT ARISES OUT OF A MOTOR VEHYICLE ACCIDENT*

In *Alpini v. W.C.A.B. (Tinicum Twp.)*, 294 A.3d 307 (Pa. 2023), plaintiff, a police officer, was driving his police car while in the course and scope of his employment for his employer when his vehicle was struck by a drunk driver, causing plaintiff to suffer serious injuries. Because of his status as a law enforcement official, he received Heart and Lung benefits which paid for his lost wages and medical expenses, in lieu of traditional workers' compensation benefits.

Plaintiff filed a lawsuit against the drunk driver and the two taverns that served him alcohol. Plaintiff alleged that the taverns were liability under the Dram Shop Act by serving the drunk driver when he was visibly intoxicated. Plaintiff then entered into a settlement with the taverns and drunk driver whereby the drunk driver paid $25,000, one tavern paid $375,000 and the other paid $925,000, for a total settlement of $1,325,000.

Plaintiff's employer paid the sum of $364,024.60 in wage loss and medical benefits under the Heart and Lung Act and sought subrogation against the settlement for the amount it paid, less the statutory deductions for its percentage share of attorney's fees and costs. Plaintiff refused to pay, claiming that the employer was not permitted to subrogate because the claim arose out the maintenance and use of a motor vehicle and Section 1720 of the MVFRL precludes subrogation in any accident arising out of the maintenance and use of a motor vehicle. Employer filed a modification petition with the worker's compensation bureau where it argued that the claims against the tavens arose out of the service of alcohol there, and thus Section 1720 of the MVRL did not apply.

The Workers' Compensation Appeal Board and the Commonwealth Court held that Section 1720 only applies when the cause of action against the defendant arose under the MVFRL—meaning only claims against other drivers or someone who maintains a motor vehicle. However, the Supreme Court disagreed with the Board and Commonwealth Court. According to the Court, Section 1720 applies to any "action...arose out of the maintenance and use of a motor vehicle". It concluded that it must follow the rules of statutory construction

to determine the meaning of "action", and "arose out of". It concluded that under the clear meaning of these terms, the claims against the taverns arose out of the use of a motor vehicle and thus employer did not have a right of subrogation. According to the Court:

> We start by interpreting the word "action." *Section 1991 of the Statutory Construction Act* defines "action" as "[a]ny suit or proceeding in any court of this Commonwealth." *1 Pa. C.S. § 1991*. This Court, in *Bayview Loan Servicing, LLC v. Lindsay, 646 Pa. 381, 185 A.3d 307 (Pa. 2018)*, arguably in an effort to expound upon that default definition, provided that "the term 'action' is a term of art with a precise and settled meaning, namely a judicial proceeding, *i.e.*, a civil action in which the plaintiff seeks some form of relief (for example, legal damages recoupment, set-off, equity or declaratory relief), filed in a court of competent jurisdiction in accordance with the Pennsylvania Rules of Civil Procedure." *Bayview Loan Servicing, 185 A.3d at 313*] (citing 2 Standard Pennsylvania Practice 2d § 6:1; Black's Law Dictionary (10th ed. 2014) (defining "action" as a "civil or criminal judicial proceeding")). Turning to the phrase "arising out of," the MVFRL does not define that phrase, and *Section 1991* of the Statutory Construction Act does not provide a default definition therefor. Black's Law Dictionary, however, defines "arise" as, *inter alia*, "[t]o originate; to stem (from)" and "[t]o result (from)." *Arise*, Black's Law Dictionary 133 (11th ed. 2019). Black's Law Dictionary also provides an example of what could be included under each definition: "[t]o originate; to stem (from)"—*e.g.*, "a federal claim arising under the [United States] Constitution"—and "[t]o result (from)"—*e.g.*, "litigation routinely arises from such accidents." *Id.*] Accordingly, when we consider the definitions of "action" and "arise" together, we must interpret the plain language of *Section 1720 of the MVFRL* to clearly and unambiguously provide that an "action arises out of the maintenance or use of a motor vehicle" if the claimant's lawsuit/judicial proceeding originates, stems, or results from the maintenance or use of a motor vehicle.
>
> Applying that clear and unambiguous interpretation of *Section 1720 of the MVFRL* to the facts of this case, we must conclude that the "action" through which Claimant asserted his Dram Shop Act claims against Tavern Owners "arose out of the maintenance or use of a motor vehicle." Claimant and his wife filed a single lawsuit/judicial proceeding against both Tavern Owners and Driver, wherein they set forth a cause of action against Driver for negligence and separate causes of action against Tavern Owners for violations of the Dram Shop Act. It is that lawsuit/judicial proceeding as a whole, and not the individual causes of action that Claimant and his wife asserted against Tavern Owners for violations of the Dram Shop Act, that constitute the "action" for purposes of *Section 1720*. Additionally, that action originated, stemmed, and/or resulted from the motor vehicle collision involving Driver's vehicle and Claimant's patrol car—*i.e.*, from Driver striking Claimant's patrol car with his vehicle. For these reasons, we hold that *Section 1720* clearly and unambiguously precludes Employer from

subrogating its payment of HLA benefits against Claimant's third-party settlement of his Dram Shop Act claims with Tavern Owners because the action that Claimant and his wife filed against Tavern Owners "arose out of the maintenance or use of a motor vehicle."

XI. IMPORTANT MISCELLANEOUS DEVELOPMENTS IN FIRST PARTY BENEFITS LAW

A. *THE COURT HELD THAT AUTOMOBILE INSURANCE CARRIERS MAY NOT DENY STATUTORILY MANDATED FIRST-PARTY MEDICAL BENEFITS BASED ON THE DRIVER'S LICENSE STATUS*

In the case of *Nationwide Prop. & Cas. Ins. Co. v. Castaneda*, 306 A.3d 397 (Pa. Super. 2023), the Pennsylvania Superior Court held that automobile insurance carriers must provide mandated first party benefits and that such mandated benefits could not be the subject of the exclusions found under 75 Pa. C.S.A. §1718, including the unlicensed driver exclusion.

In this case, the injured party was operating her mother's Nationwide insured vehicle when that vehicle was rear-ended.

Although the injured party was a permissive user of his mother's vehicle, the injured party driver did not have a valid driver's license at the time of the accident.

The Nationwide Insurance policy had an exclusion for first party medical benefits that applied if the injured party did not have a valid driver's license and was neither a named insured nor a resident relative of the named insured.

In this case, because the injured party did not have a valid driver's license, Nationwide denied the claim.

The injured party challenged the validity of the exclusion and argued that first party medical benefits were mandatory under the Pennsylvania Motor Vehicle Financial Responsibility Law.

Nationwide filed a declaratory judgment action seeking a judicial declaration that it did not have to pay the benefits under an application of the exclusion. The Trial Court ruled in favor of Nationwide and the injured party appealed.

On appeal, the Pennsylvania Superior Court ruled that no "unlicensed driver" exclusion was not valid in this context of first party benefits coverage which is mandated under the MVFRL.

As such, the Pennsylvania Superior Court held that the injured party was entitled to coverage for her medical expenses claims unless one of the limited exclusions allowed under §1718 applied to the claim. The Court noted that the unlicensed driver exclusion was not listed among the limited exclusions to such coverage under §1718. The Trial Court decision was therefore reversed.

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Team 1 Presentation

Relevant CHRIA Provisions

LexisNexis

18 Pa.C.S. § 9102

Pa.C.S. documents are current through 2022 Regular Session Act 166; P.S. documents are current through 2022 Regular Session Act 166

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes (§§ 101 — 9901) > Title 18. Crimes and Offenses (Pts. I — III) > Part III. Miscellaneous Provisions (Chs. 91 — 95) > Chapter 91. Criminal History Record Information (Subchs. A — I) > Subchapter A. General Provisions (§§ 9101 — 9106)

§ 9102. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administration of criminal justice." —The activities directly concerned with the prevention, control or reduction of crime, the apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders; criminal identification activities; or the collection, storage dissemination or usage of criminal history record information.

"Audit." —The process of reviewing compliance with applicable Federal and State laws and regulations related to the privacy and security of criminal history record information.

"Automated systems." —A computer or other internally programmed device capable of automatically accepting and processing data, including computer programs, data communication links, input and output data and data storage devices.

"Central repository." —The central location for the collection, compilation, maintenance and dissemination of criminal history record information by the Pennsylvania State Police.

"Criminal history record information." —Information collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, dates and notations of arrests, indictments, informations or other formal criminal charges and any dispositions arising therefrom. The term does not include intelligence information, investigative information or treatment information, including medical and psychological information, or information and records specified in section 9104 (relating to scope).

"Criminal justice agency." —Any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of

its annual budget to such function. Criminal justice agencies include, but are not limited to: organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards, the facilities and administrative offices of the Department of Public Welfare that provide care, guidance and control to adjudicated delinquents, and such agencies or subunits thereof, as are declared by the Attorney General to be criminal justice agencies as determined by a review of applicable statutes and the State and Federal Constitutions or both.

"Disposition." —Information indicating that criminal proceedings have been concluded, including information disclosing that police have elected not to refer a matter for prosecution, that a prosecuting authority has elected not to commence criminal proceedings or that a grand jury has failed to indict and disclosing the nature of the termination of the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions of criminal proceedings in the Commonwealth shall include, but not be limited to, acquittal, acquittal by reason of insanity, pretrial probation or diversion, charge dismissed, guilty plea, nolle prosequi, no information filed, nolo contendere plea, convicted, abatement, discharge under rules of the Pennsylvania Rules of Criminal Procedure, demurrer sustained, pardoned, sentence commuted, mistrial-defendant discharged, discharge from probation or parole or correctional supervision.

"Dissemination." —The oral or written transmission or disclosure of criminal history record information to individuals or agencies other than the criminal justice agency which maintains the information.

"Expunge."

(1) To remove information so that there is no trace or indication that such information existed;

(2) to eliminate all identifiers which may be used to trace the identity of an individual, allowing remaining data to be used for statistical purposes; or

(3) maintenance of certain information required or authorized under the provisions of section 9122(c) (relating to expungement), when an individual has successfully completed the conditions of any pretrial or posttrial diversion or probation program.

"Intelligence information." —Information concerning the habits, practices, characteristics, possessions, associations or financial status of any individual compiled in an effort to anticipate, prevent, monitor, investigate or prosecute criminal activity. Notwithstanding the definition of "treatment information" contained in this section, intelligence information may include information on prescribing, dispensing, selling, obtaining or using a controlled substance as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

"Investigative information." —Information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information.

"Police blotter." —A chronological listing of arrests, usually documented contemporaneous with the incident, which may include, but is not limited to, the name and address of the individual charged and the alleged offenses.

"Repository." —Any location in which criminal history record information is collected, compiled, maintained and disseminated by a criminal justice agency.

"Treatment information." —Information concerning medical, psychiatric, psychological or other rehabilitative treatment provided, suggested or prescribed for any individual charged with or convicted of a crime.

History

Act 1979-47 (H.B. 462), P.L. 116, § 2, approved July 16, 1979, eff. Jan. 1, 1980; Act 1979-127 (H.B. 830), P.L. 556, § 2, approved Dec. 14, 1979, eff. immediately; Act 1982-138 (S.B. 439), P.L. 476, § 3, approved June 11, 1982, eff. in 180 days; *Act 1990-207* (H.B. 1141), P.L. 1332, § 3, approved Dec. 19, 1990, eff. immediately; *Act 2004-173* (S.B. 72), P.L. 1349, § 2, approved Nov. 29, 2004, eff. in 60 days.

Annotations

LexisNexis® Notes

Notes

EDITOR'S NOTES.

Section 4 of Act 1979-127 provides that "(a) The provisions of *18 Pa.C.S. § 9122(a)(1)* (relating to expungement) shall not be applicable to criminal proceedings initiated or completed prior to the effective date of this amendatory act unless requested by an individual as provided in 18 Pa.C.S. Ch. 91 Subch. F (relating to individual right of access and review). (b) The provisions of *18 Pa.C.S. § 9152(d)(3)* and (4) (relating to procedure) shall only apply to criminal history record information disseminated after the effective date of this amendatory act."

Case Notes

Administrative Law: Governmental Information: Freedom of Information: Compliance: Deletion of Material

Administrative Law: Governmental Information: Freedom of Information: Defenses & Exemptions: Law Enforcement Records

LexisNexis

18 Pa.C.S. § 9106

Pa.C.S. documents are current through 2022 Regular Session Act 166; P.S. documents are current through 2022 Regular Session Act 166

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes (§§ 101 — 9901) > Title 18. Crimes and Offenses (Pts. I — III) > Part III. Miscellaneous Provisions (Chs. 91 — 95) > Chapter 91. Criminal History Record Information (Subchs. A — I) > Subchapter A. General Provisions (§§ 9101 — 9106)

§ 9106. Information in central repository or automated systems.

(a) General rule. Intelligence information, investigative information and treatment information shall not be collected in the central repository. This prohibition shall not preclude the collection in the central repository of names, words, numbers, phrases or other similar index keys to serve as indices to investigative reports.

(b) Collection of protected information.

(1) Intelligence information may be placed in an automated or electronic criminal justice system only if the following apply:

(i) The criminal justice agency has reasonable suspicion of criminal activity.

(ii) Access to the intelligence information contained in the automated or electronic criminal justice system is restricted to the authorized employees of the criminal justice agency and cannot be accessed by any other individuals inside or outside of the agency.

(iii) The intelligence information is related to criminal activity that would give rise to prosecution for a State offense graded a misdemeanor or felony, or for a Federal offense for which the penalty is imprisonment for more than one year. Intelligence information shall be categorized based upon subject matter.

(iv) The intelligence information is not collected in violation of State law.

(2) Intelligence information may not be collected or maintained in an automated or electronic criminal justice system concerning participation in a political, religious or social organization, or in the organization or support of any nonviolent demonstration, assembly, protest, rally or similar form of public speech, unless there is a reasonable suspicion that the participation by the subject of the information is related to criminal activity or prison rule violation.

(3) Investigative information and treatment information contained in files of any criminal justice agency may be placed within an automated or electronic criminal justice information system, provided that access to the investigative information and treatment information

contained in the automated or electronic criminal justice information system is restricted to authorized employees of that agency and cannot be accessed by individuals outside of the agency.

(c) Dissemination of protected information.

(1) Intelligence information may be placed within an automated or electronic criminal justice information system and disseminated only if the following apply:

(i) The information is reliable as determined by an authorized intelligence officer.

(ii) The department, agency or individual requesting the information is a criminal justice agency which has policies and procedures adopted by the Office of Attorney General in consultation with the Pennsylvania State Police which are consistent with this act and include:

(A) Designation of an intelligence officer or officers by the head of the criminal justice agency or his designee.

(B) Adoption of administrative, technical and physical safeguards, including audit trails, to insure against unauthorized access and against intentional or unintentional damages.

(C) Labeling information to indicate levels of sensitivity and levels of confidence in the information.

(iii) The information is requested in connection with the duties of the criminal justice agency requesting the information, and the request for information is based upon a name, fingerprints, modus operandi, genetic typing, voice print or other identifying characteristic.

(2) If an intelligence officer of a disseminating agency is notified that intelligence information which has been previously disseminated to another criminal justice agency is materially misleading, obsolete or otherwise unreliable, the information shall be corrected and the recipient agency notified of the change within a reasonable period of time.

(3) Criminal justice agencies shall establish retention schedules for intelligence information. Intelligence information shall be purged under the following conditions:

(i) The data is no longer relevant or necessary to the goals and objectives of the criminal justice agency.

(ii) The data has become obsolete, making it unreliable for present purposes and the utility of updating the data would be worthless.

(iii) The data cannot be utilized for strategic or tactical intelligence studies.

(4) Investigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties, and the request is based upon a name, fingerprints, modus operandi, genetic typing, voice print or other identifying characteristic.

(5) Each municipal police department accessing automated information shall file a copy of its procedures with the Pennsylvania State Police for approval. Such plan shall be reviewed within 60 days.

(6) Each district attorney accessing automated information shall file a copy of its procedures with the Office of Attorney General for approval. Such plan shall be reviewed within 60 days.

(d) Secondary dissemination prohibited. A criminal justice agency which possesses information protected by this section, but which is not the source of the information, shall not disseminate or disclose the information to another criminal justice agency but shall refer the requesting agency to the agency which was the source of the information. This prohibition shall not apply if the agency receiving the information is investigating or prosecuting a criminal incident in conjunction with the agency possessing the information. Agencies receiving information protected by this section assume the same level of responsibility for the security of such information as the agency which was the source of the information.

(e) Notations of the record. Criminal justice agencies maintaining intelligence information, investigative information or treatment information must enter, as a permanent part of an individual's information file, a listing of all persons and agencies to whom they have disseminated that particular information, the date of the dissemination and the purpose for which the information was disseminated. This listing shall be maintained separate from the record itself.

(f) Security requirements. Every criminal justice agency collecting, storing or disseminating intelligence information, investigative information or treatment information shall insure the confidentiality and security of such information by providing that, wherever such information is maintained, a criminal justice agency must:

(1) institute procedures to reasonably protect any repository from theft, fire, sabotage, flood, wind or other natural or manmade disasters;

(2) select, supervise and train all personnel authorized to have access to intelligence information, investigative information or treatment information;

(3) insure that, where computerized data processing is employed, the equipment utilized for maintaining intelligence information, investigative information or treatment information is dedicated solely to purposes related to the administration of criminal justice or, if the equipment is not used solely for the administration of criminal justice, the criminal justice agency is accorded equal management participation in computer operations used to maintain the intelligence information, investigative information or treatment information.

(f.1) Child abuse investigations.

(1) Notwithstanding any other provision of this chapter and pursuant to the confidentiality provisions under 23 Pa.C.S. Ch. 63 (relating to child protective services), a criminal justice agency may disseminate information relating to an allegation or instance of child abuse to a county agency or the Department of Human Services for the purpose of investigating the allegation or instance of abuse or to a children's advocacy center for the purpose of providing services to investigating agencies, as those terms are defined in *23 Pa.C.S. § 6303* (relating to definitions), or to a multidisciplinary review team, multidisciplinary investigative team or child

fatality or near fatality review team for the purposes specified in *23 Pa.C.S. § 6365* (relating to services for prevention, investigation and treatment of child abuse).

(2) A person who is in receipt of confidential information under this subsection and disseminates the information to a person not specifically authorized to receive the information commits a violation of this section.

(g) Penalties. Any person, including any agency or organization, who violates the provisions of this section shall be subject to the administrative penalties provided in section 9181 (relating to general administrative sanctions) and the civil penalties provided in section 9183 (relating to civil actions) in addition to any other civil or criminal penalty provided by law.

History

Act 1979-47 (H.B. 462), P.L. 116, § 2, approved July 16, 1979, eff. Jan. 1, 1980; Act 1979-127 (H.B. 830), P.L. 556, § 3, approved Dec. 14, 1979, eff. immediately; *Act 1990-207* (H.B. 1141), P.L. 1332, § 4, approved Dec. 19, 1990, eff. in 60 days; *Act 2021-42* (H.B. 954), § 1, approved June 30, 2021, eff. August 29, 2021.

Annotations

LexisNexis® Notes

Notes

Editor's Notes

Section 4 of Act 1979-127 provides that "(a) The provisions of *18 Pa.C.S. § 9122(a)(1)* (relating to expungement) shall not be applicable to criminal proceedings initiated or completed prior to the effective date of this amendatory act unless requested by an individual as provided in 18 Pa.C.S. Ch. 91 Subch. F (relating to individual right of access and review). (b) The provisions of *18 Pa.C.S. § 9152(d)(3)* and (4) (relating to procedure) shall only apply to criminal history record information disseminated after the effective date of this amendatory act."

Amendment Notes

The 2021 amendment added (f.1).

Case Notes

Administrative Law: Governmental Information: Freedom of Information: Compliance: Deletion of Material

LexisNexis®

18 Pa.C.S. § 9121

Pa.C.S. documents are current through 2022 Regular Session Act 166; P.S. documents are current through 2022 Regular Session Act 166

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes > Title 18. Crimes and Offenses > Part III. Miscellaneous Provisions > Chapter 91. Criminal History Record Information > Subchapter C. Dissemination of Criminal History Record Information

Notice

This section has more than one version with varying effective dates.

§ 9121. General regulations. [Effective until June 28, 2019]

(a) Dissemination to criminal justice agencies. — Criminal history record information maintained by any criminal justice agency shall be disseminated without charge to any criminal justice agency or to any noncriminal justice agency that is providing a service for which a criminal justice agency is responsible.

(b) Dissemination to noncriminal justice agencies and individuals. — Criminal history record information shall be disseminated by a State or local police department to any individual or noncriminal justice agency only upon request. Except as provided in subsection (b.1):

(1) A fee may be charged by a State or local police department for each request for criminal history record information by an individual or noncriminal justice agency, except that no fee shall be charged to an individual who makes the request in order to apply to become a volunteer with an affiliate of Big Brothers of America or Big Sisters of America or with a rape crisis center or domestic violence program.

(2) Before a State or local police department disseminates criminal history record information to an individual or noncriminal justice agency, it shall extract from the record the following:

(i) All notations of arrests, indictments or other information relating to the initiation of criminal proceedings where:

(A) three years have elapsed from the date of arrest;

(B) no conviction has occurred; and

(C) no proceedings are pending seeking a conviction.

(ii) All information relating to a conviction and the arrest, indictment or other information leading thereto, which is the subject of a court order for limited access as provided in section 9122.1 (relating to order for limited access).

(3) A court or the Administrative Office of Pennsylvania Courts may not disseminate to an individual, a noncriminal justice agency or an Internet website any information relating to a conviction, arrest, indictment or other information leading to a conviction, arrest, indictment or other information, which is the subject of a court order for limited access as provided in section 9122.1 (relating to order for limited access).

(b.1) Exception. — Subsection (b)(1) and (2) shall not apply if the request is made by a county children and youth agency or the Department of Public Welfare in the performance of duties relating to children and youth under the act of June 24, 1937 (P.L.2017, No.396), known as the County Institution District Law, section 2168 of the act of August 9, 1955 (P.L.323, No.130), known as The County Code, the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, 23 Pa.C.S. Ch. 63 (relating to child protective services) or 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

(b.2) Additional exceptions. Subsection (b)(2) (ii) and (3) shall not apply if the request is made by a State agency to be used only as authorized under section 9124 (relating to use of records by licensing agencies).

(c) Data required to be kept. — Any criminal justice agency which disseminates criminal history record information must indicate to the recipient that the information disseminated is only that information contained in its own file, the date of the last entry, and that a summary of the Statewide criminal history record information may be obtained from the central repository.

(d) Extracting from the record. — When criminal history record information is maintained by a criminal justice agency in records containing investigative information, intelligence information, treatment information or other nonpublic information, the agency may extract and disseminate only the criminal history record information if the dissemination is to be made to a noncriminal justice agency or individual.

(e) Dissemination procedures. — Criminal justice agencies may establish reasonable procedures for the dissemination of criminal history record information.

(f) Notations on record. — Repositories must enter as a permanent part of an individual's criminal history record information file, a listing of all persons and agencies to whom they have disseminated that particular criminal history record information and the date and purpose for which the information was disseminated. Such listing shall be maintained separate from the record itself.

History

Act 1979-47 (H.B. 462), P.L. 116, § 2, approved July 16, 1979, eff. Jan. 1, 1980; Act 1979-127 (H.B. 830), P.L. 556, § 3, approved Dec. 14, 1979, eff. immediately; Act 1982-138 (S.B. 439), P.L. 476, § 4, approved June 11, 1982, eff. in 180 days; *Act 1996-76* (S.B. 1323), P.L. 480, § 1, approved July 2, 1996, eff. in 60 days; *Act 1998-149* (H.B. 148), P.L. 1103, § 6, approved Dec. 21, 1998, eff. in 60 days; *Act*

2002-129 (S.B. 612), P.L. 888, § 1, approved Oct. 28, 2002, eff. immediately; *Act 2016-5* (S.B. 166), § 1, approved February 16, 2016, eff. November 14, 2016.

End of Document

LexisNexis

18 Pa.C.S. § 9121

Pa.C.S. documents are current through 2022 Regular Session Act 166; P.S. documents are current through 2022 Regular Session Act 166

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes (§§ 101 — 9901) > Title 18. Crimes and Offenses (Pts. I — III) > Part III. Miscellaneous Provisions (Chs. 91 — 95) > Chapter 91. Criminal History Record Information (Subchs. A — I) > Subchapter C. Dissemination of Criminal History Record Information (§§ 9121 — 9125)

§ 9121. General regulations.

(a) Dissemination to criminal justice agencies. — Criminal history record information maintained by any criminal justice agency shall be disseminated without charge to any criminal justice agency or to any noncriminal justice agency that is providing a service for which a criminal justice agency is responsible.

(b) Dissemination to noncriminal justice agencies and individuals. — Criminal history record information shall be disseminated by a State or local police department to any individual or noncriminal justice agency only upon request. The following apply:

(1) A fee may be charged by a State or local police department for each request for criminal history record information by an individual or noncriminal justice agency, except that no fee shall be charged to an individual who makes the request in order to apply to become a volunteer with an affiliate of Big Brothers of America or Big Sisters of America or with a rape crisis center or domestic violence program.

(2) Except as provided for in subsections (b.1) and (b.2), before a State or local police department disseminates criminal history record information to an individual or noncriminal justice agency, it shall extract from the record the following:

(i) All notations of arrests, indictments or other information relating to the initiation of criminal proceedings where:

(A) three years have elapsed from the date of arrest;

(B) no disposition is indicated in the record; and

(C) nothing in the record indicates that proceedings seeking conviction remain pending.

(ii) All information relating to a conviction and the arrest, indictment or other information leading thereto, which is the subject of a court order for limited access as provided in section 9122.1 (relating to order for limited access).

(iii) All information relating to a conviction or nonconviction final disposition, and the arrest, indictment or other information leading to the arrest or indictment which is subject to a court order for limited access as provided for in section 9122.2 (relating to clean slate limited access).

(3) A court or the Administrative Office of Pennsylvania Courts may not disseminate to an individual, a noncriminal justice agency or an Internet website any information which is the subject of a court order for limited access as provided in section 9122.1 or 9122.2.

(b.1) Exception. — Subsection (b)(1) and (2) shall not apply if the request is made by a county children and youth agency or the Department of Human Services in the performance of duties relating to children and youth under the act of June 24, 1937 (P.L.2017, No.396), known as the County Institution District Law, section 2168 of the act of August 9, 1955 (P.L.323, No.130), known as The County Code, the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code, 23 Pa.C.S. Ch. 63 (relating to child protective services) or 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

(b.2) Additional exceptions. —

(1) Subsection (b)(2)(ii) and (iii) shall not apply if the request is made under a court order:

(i) In a case brought under 23 Pa.C.S. Ch. 53 (relating to child custody) or 61 (relating to protection from abuse).

(ii) By an employer against whom a claim of civil liability has been brought as described under section 9122.6 (relating to employer immunity from liability) for purposes of defending against a claim of civil liability.

(2) Subsection (b)(2) shall not apply:

(i) To the verification of information provided by an applicant if Federal law, including rules and regulations promulgated by a self-regulatory organization that has been created under Federal law, requires the consideration of an applicant's criminal history for purposes of employment.

(ii) To the verification of information provided to the Supreme Court, or an entity of the Supreme Court, in its capacity to govern the practice, procedure and conduct of all courts, the admission to the bar, the practice of law, the administration of all courts and supervision of all officers of the judicial branch.

(c) Data required to be kept. — Any criminal justice agency which disseminates criminal history record information must indicate to the recipient that the information disseminated is only that information contained in its own file, the date of the last entry, and that a summary of the Statewide criminal history record information may be obtained from the central repository.

(d) Extracting from the record. — When criminal history record information is maintained by a criminal justice agency in records containing investigative information, intelligence information, treatment information or other nonpublic information, the agency may extract and disseminate only the criminal history record information if the dissemination is to be made to a noncriminal justice agency or individual.

(e) Dissemination procedures. — Criminal justice agencies may establish reasonable procedures for the dissemination of criminal history record information.

(f) Notations on record. — Repositories must enter as a permanent part of an individual's criminal history record information file, a listing of all persons and agencies to whom they have disseminated that particular criminal history record information and the date and purpose for which the information was disseminated. Such listing shall be maintained separate from the record itself.

History

Act 1979-47 (H.B. 462), P.L. 116, § 2, approved July 16, 1979, eff. Jan. 1, 1980; Act 1979-127 (H.B. 830), P.L. 556, § 3, approved Dec. 14, 1979, eff. immediately; Act 1982-138 (S.B. 439), P.L. 476, § 4, approved June 11, 1982, eff. in 180 days; *Act 1996-76* (S.B. 1323), P.L. 480, § 1, approved July 2, 1996, eff. in 60 days; *Act 1998-149* (H.B. 148), P.L. 1103, § 6, approved Dec. 21, 1998, eff. in 60 days; *Act 2002-129* (S.B. 612), P.L. 888, § 1, approved Oct. 28, 2002, eff. immediately; *Act 2016-5* (S.B. 166), § 1, approved February 16, 2016, eff. November 14, 2016; *Act 2018-56* (H.B. 1419), § 1, approved June 28, 2018, eff. June 28, 2019.

End of Document

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18 Pa.C.S. § 9183

Pa.C.S. documents are current through 2022 Regular Session Act 166; P.S. documents are current through 2022 Regular Session Act 166

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes (§§ 101 — 9901) > Title 18. Crimes and Offenses (Pts. I — III) > Part III. Miscellaneous Provisions (Chs. 91 — 95) > Chapter 91. Criminal History Record Information (Subchs. A — I) > Subchapter I. Sanctions (§§ 9181 — 9183)

§ 9183. Civil actions.

(a) Injunctions. — The Attorney General or any other individual or agency may institute an action in a court of proper jurisdiction against any person, agency or organization to enjoin any criminal justice agency, noncriminal justice agency, organization or individual violating the provisions of this chapter or to compel such agency, organization or person to comply with the provisions of this chapter.

(b) Action for damages.

(1) Any person aggrieved by a violation of the provisions of this chapter or of the rules and regulations promulgated under this chapter, shall have the substantive right to bring an action for damages by reason of such violation in a court of competent jurisdiction.

(2) A person found by the court to have been aggrieved by a violation of this chapter or the rules or regulations promulgated under this chapter, shall be entitled to actual and real damages of not less than $ 100 for each violation and to reasonable costs of litigation and attorney's fees. Exemplary and punitive damages of not less than $ 1,000 nor more than $ 10,000 shall be imposed for any violation of this chapter, or the rules or regulations adopted under this chapter, found to be willful.

History

Act 1979-47 (H.B. 462), P.L. 116, § 2, approved July 16, 1979, eff. Jan. 1, 1980.

Annotations

LexisNexis® Notes

Case Notes

Crime Victim Right of Access

Effective May 2, 2023

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18 Pa.C.S Pt. III, Ch. 91, Subch. F.1

Pa.C.S. documents are current through 2022 Regular Session Act 166; P.S. documents are current through 2022 Regular Session Act 166

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes (§§ 101 — 9901) > Title 18. Crimes and Offenses (Pts. I — III) > Part III. Miscellaneous Provisions (Chs. 91 — 95) > Chapter 91. Criminal History Record Information (Subchs. A — I) > Subchapter F.1. Crime Victim Right of Access [Effective May 2, 2023] (§§ 9158 — 9158.7)

Subchapter F.1. Crime Victim Right of Access [Effective May 2, 2023]

History

Act 2022-134 (H.B. 2525), § 1, approved November 3, 2022, effective May 2, 2023.

End of Document

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18 Pa.C.S. § 9158

Pa.C.S. documents are current through 2022 Regular Session Act 166; P.S. documents are current through 2022 Regular Session Act 166

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes (§§ 101 — 9901) > Title 18. Crimes and Offenses (Pts. I — III) > Part III. Miscellaneous Provisions (Chs. 91 — 95) > Chapter 91. Criminal History Record Information (Subchs. A — I) > Subchapter F.1. Crime Victim Right of Access [Effective May 2, 2023] (§§ 9158 — 9158.7)

§ 9158. Definitions. [Effective May 2, 2023]

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Child abuse." As defined in *23 Pa.C.S. § 6303(b.1)* (relating to definitions).

"Crime victim." As defined as "direct victim" in section 103 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act.

"Domestic violence." An offense under section 2701 (relating to simple assault), 2702 (relating to aggravated assault), 2709.1 (relating to stalking) or 2718 (relating to strangulation) perpetrated against a family or household member, as defined in *23 Pa.C.S. § 6102* (relating to definitions).

"Records information officer." The head of the criminal justice agency or designee.

"Request for dissemination." A request under section 9158.2 (relating to access).

"Requesting party." A crime victim or a defendant in a civil action in which a crime victim is a party.

"Sexual abuse." Conduct which occurs in this Commonwealth and would constitute an offense under any of the following provisions:

Section 3011(a)(1) or (2) or (b) (relating to trafficking in individuals).

Section 3012 (relating to involuntary servitude) as it relates to sexual servitude.

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3124.2 (relating to institutional sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 4302 (relating to incest).

Section 6312 (relating to sexual abuse of children).

Section 6320 (relating to sexual exploitation of children).

"Third-party victim." A crime victim other than the crime victim making a request for dissemination and other than the crime victim who is the plaintiff in the underlying civil action.

History

Act 2022-134 (H.B. 2525), § 1, approved November 3, 2022, effective May 2, 2023.

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18 Pa.C.S. § 9158.1

Pa.C.S. documents are current through 2022 Regular Session Act 166; P.S. documents are current through 2022 Regular Session Act 166

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes (§§ 101 — 9901) > Title 18. Crimes and Offenses (Pts. I — III) > Part III. Miscellaneous Provisions (Chs. 91 — 95) > Chapter 91. Criminal History Record Information (Subchs. A — I) > Subchapter F.1. Crime Victim Right of Access [Effective May 2, 2023] (§§ 9158 — 9158.7)

§ 9158.1. Right to access. [Effective May 2, 2023]

A requesting party or a requesting party's legal representative may obtain criminal history investigative information under this subchapter for use in or investigation of an actual or potential civil action in this Commonwealth relating to that criminal history investigative information.

History

Act 2022-134 (H.B. 2525), § 1, approved November 3, 2022, effective May 2, 2023.

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18 Pa.C.S. § 9158.2

Pa.C.S. documents are current through 2022 Regular Session Act 166; P.S. documents are current through 2022 Regular Session Act 166

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§ 9158.2. Access. [Effective May 2, 2023]

(a) General rule.

(1) A requesting party may request the dissemination of criminal history investigative information that is directly related to a civil action pending in a court in this Commonwealth.

(2) A crime victim or the crime victim's representative may request the dissemination of criminal history investigative information that is material and necessary to the investigation or preparation of a civil action in this Commonwealth.

(b) Request. A request for dissemination shall include an unsworn statement by the requesting party or the requesting party's legal representative, made subject to the penalties of section 4904 (relating to unsworn falsification to authorities), that the requested information is directly related to a civil action pending in a court in this Commonwealth or, if the requesting party is a crime victim or the crime victim's legal representative, material and necessary to the investigation or preparation of a civil action in this Commonwealth. A request for dissemination shall identify or describe the information sought with sufficient specificity to enable the criminal justice agency to ascertain which information is being requested.

(c) Service. A request for dissemination shall be served on the records information officer. Service shall be effective upon receipt of the request by the records information officer or head of the criminal justice agency via personal service or certified mail with receipt.

(d) Dissemination. Subject to section 9158.3 (relating to denial), a criminal justice agency shall disseminate criminal history investigative information in response to a request for dissemination within 60 days of receipt of the request for dissemination or by the date returnable on the request for dissemination, whichever is later. The criminal justice agency may impose reasonable fees for costs incurred to comply with the request.

(e) Receipt of information. Dissemination of information under this section may be made to the requesting party or the requesting party's legal representative, or the attorney for the requesting party or the requesting party's legal representative, as directed by the request for information.

Criminal history investigative dissemination obtained under this subchapter shall be discoverable in a civil action directly related to the crime, unless otherwise nondiscoverable or privileged from discovery.

(f) Subpoenas. A criminal justice agency may, in its sole discretion, respond to a subpoena in a pending civil action seeking disclosure of criminal history investigative information as a request for dissemination under this subchapter. Nothing under this subchapter shall relieve a criminal justice agency of also responding to a subpoena as otherwise required by law or court rule.

History

Act 2022-134 (H.B. 2525), § 1, approved November 3, 2022, effective May 2, 2023.

End of Document

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18 Pa.C.S. § 9158.3

Pa.C.S. documents are current through 2022 Regular Session Act 166; P.S. documents are current through 2022 Regular Session Act 166

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes (§§ 101 — 9901) > Title 18. Crimes and Offenses (Pts. I — III) > Part III. Miscellaneous Provisions (Chs. 91 — 95) > Chapter 91. Criminal History Record Information (Subchs. A — I) > Subchapter F.1. Crime Victim Right of Access [Effective May 2, 2023] (§§ 9158 — 9158.7)

§ 9158.3. Denial. [Effective May 2, 2023]

(a) Grounds. A criminal justice agency shall deny a request for dissemination if the criminal justice agency determines:

(1) That, absent reasonable redactions, the dissemination of the requested information:

(i) endangers a person or public safety;

(ii) adversely affects an investigation or ongoing prosecution; or

(iii) relates to law enforcement's use of confidential informants or discloses investigative techniques and procedures .

(2) Either that:

(i) The criminal history investigative information is not:

(A) directly relating to a civil action pending in a court in this Commonwealth; or

(B) material and necessary to the investigation or preparation of a civil action in this Commonwealth.

(ii) Dissemination of the requested information would identify a third-party victim of child abuse, domestic violence or sexual abuse, unless the criminal justice agency determines that reasonable redaction of the information will prevent identification of the third-party victim.

(b) Service of denial. The criminal justice agency shall serve a denial in writing to the requesting party within 60 days of receipt of the request for dissemination or by the date returnable on the request for dissemination, whichever is later, identifying the grounds for denial.

History

Act 2022-134 (H.B. 2525), § 1, approved November 3, 2022, effective May 2, 2023.

End of Document

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18 Pa.C.S. § 9158.4

Pa.C.S. documents are current through 2022 Regular Session Act 166; P.S. documents are current through 2022 Regular Session Act 166

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes (§§ 101 — 9901) > Title 18. Crimes and Offenses (Pts. I — III) > Part III. Miscellaneous Provisions (Chs. 91 — 95) > Chapter 91. Criminal History Record Information (Subchs. A — I) > Subchapter F.1. Crime Victim Right of Access [Effective May 2, 2023] (§§ 9158 — 9158.7)

§ 9158.4. Judicial review. [Effective May 2, 2023]

(a) Petition for review. Subject to subsection (d), a requesting party may file a petition for review appealing a denial under section 9158.3(a)(2) (relating to denial), which shall include the following:

(1) The request for dissemination.

(2) Proof of service of the request for dissemination.

(3) The denial.

(4) Other information necessary to determine whether the criminal history investigative information should be disseminated under this subchapter.

(b) Time for petition. A petition for review shall be filed within 45 days of service of a denial of a request for dissemination of information.

(c) Location of filing. A petition for review shall be filed before the court of common pleas in any judicial district in which the criminal justice agency that issued the denial is located. For a criminal justice agency with Statewide jurisdiction, the petition for review shall be filed in Commonwealth Court.

(d) Judicial review. A denial under section 9158.3(a)(1) shall not be subject to judicial review.

(e) Relief. In a proceeding under this section, a court may award declaratory and injunctive relief only. The court shall direct a criminal justice agency to produce the requested information if the requesting party proves entitlement to access under this subchapter by a preponderance of the evidence.

History

Act 2022-134 (H.B. 2525), § 1, approved November 3, 2022, effective May 2, 2023.

End of Document

LexisNexis

18 Pa.C.S. § 9158.5

Pa.C.S. documents are current through 2022 Regular Session Act 166; P.S. documents are current through 2022 Regular Session Act 166

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes (§§ 101 — 9901) > Title 18. Crimes and Offenses (Pts. I — III) > Part III. Miscellaneous Provisions (Chs. 91 — 95) > Chapter 91. Criminal History Record Information (Subchs. A — I) > Subchapter F.1. Crime Victim Right of Access [Effective May 2, 2023] (§§ 9158 — 9158.7)

§ 9158.5. Protection of information. [Effective May 2, 2023]

(a) General rule. Nothing under this subchapter shall be construed to permit the dissemination of otherwise nondiscoverable or privileged information, including:

(1) Grand jury investigative materials.

(2) Medical, mental health or treatment information.

(3) Materials protected by an applicable attorney-client or work product privilege.

(4) Materials protected by 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

(5) Materials subject to 42 Pa.C.S. Ch. 67A (relating to recordings by law enforcement officers).

(6) Information that is otherwise prohibited or protected from disclosure or dissemination by Federal or State law.

(b) Exemption. The following personal identification information with respect to an individual other than the requesting party shall be exempt from dissemination:

(1) A person's Social Security number.

(2) A person's driver's license number.

(3) Personal finance information.

(4) A person's home, cellular or personal telephone numbers.

(5) A person's e-mail address, employee number or other confidential personal identification number.

(c) Protection. A criminal justice agency shall be subject to protection under *1 Pa.C.S. § 2310* (relating to sovereign immunity reaffirmed; specific waiver) and *42 Pa.C.S. §§ 8541* (relating to governmental immunity generally) and 8545 (relating to official liability generally) for dissemination of criminal history investigative information under this subchapter.

(d) Use of information. Information obtained under this subchapter shall be used only in connection with an actual or potential civil action directly relating to that criminal history investigative information.

(e) Violation. Use of information obtained under this subchapter to harass, intimidate or threaten another shall constitute a misdemeanor of the second degree.

History

Act 2022-134 (H.B. 2525), § 1, approved November 3, 2022, effective May 2, 2023.

End of Document

LexisNexis

18 Pa.C.S. § 9158.6

Pa.C.S. documents are current through 2022 Regular Session Act 166; P.S. documents are current through 2022 Regular Session Act 166

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes (§§ 101 — 9901) > Title 18. Crimes and Offenses (Pts. I — III) > Part III. Miscellaneous Provisions (Chs. 91 — 95) > Chapter 91. Criminal History Record Information (Subchs. A — I) > Subchapter F.1. Crime Victim Right of Access [Effective May 2, 2023] (§§ 9158 — 9158.7)

§ 9158.6. Current dissemination not limited. [Effective May 2, 2023]

Nothing in this chapter shall:

(1) Prohibit a police department from furnishing, upon request, a certified copy of a full report of a police investigation to an insurance company for the purpose of processing a claim for coverage under an applicable policy.

(2) Prohibit notifications authorized by the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act.

History

Act 2022-134 (H.B. 2525), § 1, approved November 3, 2022, effective May 2, 2023.

End of Document

LexisNexis®

18 Pa.C.S. § 9158.7

Pa.C.S. documents are current through 2022 Regular Session Act 166; P.S. documents are current through 2022 Regular Session Act 166

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes (§§ 101 — 9901) > Title 18. Crimes and Offenses (Pts. I — III) > Part III. Miscellaneous Provisions (Chs. 91 — 95) > Chapter 91. Criminal History Record Information (Subchs. A — I) > Subchapter F.1. Crime Victim Right of Access [Effective May 2, 2023] (§§ 9158 — 9158.7)

§ 9158.7. Rules and regulations. [Effective May 2, 2023]

(a) Attorney General. The Attorney General, in cooperation with appropriate criminal justice agencies, shall promulgate rules and regulations as necessary to implement this subchapter and establish reasonable fees.

(b) Supreme Court. The Supreme Court shall promulgate rules as necessary to implement this subchapter.

History

Act 2022-134 (H.B. 2525), § 1, approved November 3, 2022, effective May 2, 2023.

End of Document