

BENNETT, BRICKLIN & SALTZBURG

Subject: Summary of Cases Reported in Pa. Law Weekly of June 22, 2009

Date: June 25, 2009

Products Liability - Section 402A of the Restatement of Torts (2d) Remains the Law In Pennsylvania

Bugosh v. I.U. North America, Pa. Supreme Court, *per curiam*, filed 6/16/09; dissenting statement by Saylor, J., in which Castille, C.J., joined.

The Supreme Court dismissed an appeal as improvidently granted in a strict products liability case which had been granted to consider moving from Section 402A of the Restatement (2d) of Torts to Section 2 of the Restatement (3d) of Torts. In his dissenting statement, Justice Saylor argued that the Supreme Court should have ruled in the case and should have taken the opportunity to overrule the doctrine enunciated in Azzarello v. Black.

Medical Malpractice - Nurses as Expert Witnesses

Freed v. Geisinger Medical Center, Pa. Supreme Court, opinion by Todd, J., filed 6/15/09.

The Supreme Court overruled Flanagan v. Labe, 690 A.2d 183 (Pa. 1997) and held that a registered nurse may testify as to medical causation, at least in matters relating to nursing care. Justice Eakin dissented.

Workers Compensation - Scope of Employment

Department of Labor & Industry v. Workers Compensation Appeal Board, (Savini); Cmwlth Court, opinion by Smith-Ribner, J., filed 6/11/2009.

Claimant, during a break, went for a walk on the street in the industrial park in which her employer's facility was located and fell, breaking her arm, and rendering her temporarily disabled. She was on paid break at the time of the incident.

She asserted a claim for workers' compensation benefits which was granted by the Referee and affirmed by the Workers Compensation Appeal Board. On further appeal to the Commonwealth Court, that court reversed and found in favor of the employer.

The claimant asserted that her injury was within the scope of employment under the so called "Personal Comfort Doctrine," in which an injury arising during work while an employee was attending to personal comfort needs is eligible for benefits. However, the Commonwealth Court explained that the injury did not occur while claimant was in the bathroom or getting a drink, but had actually left the premises to take a walk, which was well beyond the type of personal needs typically recognized as falling under the Personal Comfort Doctrine.