

BENNETT, BRICKLIN & SALTZBURG

Subject: Summary of Cases Reported in Pa. Law Weekly of November 10, 2008

Date: November 13, 2008

Damages - Recovery of Medical Bills by Minor

Shaffer-Doan v. The Pennsylvania Department of Public Welfare, Cmwlth. Court, opinion by Jubelirer, J., filed November 3, 2008 (PICS No. 08-1849).

The Commonwealth Court held that a minor can recover for medical and medically related expenses incurred before he or she turns 18, if the minor's parents or guardian fail to file a claim within the two year statute of limitations. An earlier decision by the Superior Court in Bowmaster v. Clair, 933 A.2d 86 (2007) held that a child may not recover benefits for medical expenses before their 18th birthday. The Bowmaster case is presently awaiting argument before the State Supreme Court. Stay tuned.

Damages - Punitive Damages - Driving While Intoxicated

Drauch v. Applegate, C.P. Centre County, opinion by Grine, J., filed 10/17/08 (PICS NO. 08-1830).

Plaintiff asserted a negligence claim against the driver and owner of a vehicle for personal injuries and included a punitive damage claim against each on the basis of the driver's driving while intoxicated and the owner's permitting him to drive under the influence. Both defendants filed preliminary objections.

The court overruled the driver's preliminary objections and noted that punitive damages may only be awarded where a defendant's conduct is found to be malicious, wanton, willful, reckless or oppressive. The court found only one case that addressed punitive damages related to a driving under the influence claim. In Focht v. Rabada, 268 A.2d 157 (Pa. Super. 1970), the Superior Court concluded that depending on the circumstances, driving under the influence may be considered outrageous conduct showing a reckless indifference to others. However, as to the owner, the court held that a claim for punitive damages could not be asserted on the theory that the owner permitted the defendant to drive while under the influence.

Insurance - Denial of Coverage - No Occurrence

USAA Casualty Insurance Co. v. Bateman, USDC, E.D. Pa., opinion by Baylson, J., filed October 30, 2008 (PICS NO. 08-1824).

Defendant insured had sold her home to buyers who upon moving into the property discovered that defendant had not disclosed material defects in the seller's disclosure form. They then brought suit against the defendant alleging, *inter alia*, negligent misrepresentation. Defendant sought defense from her homeowner's carrier which denied defense and filed the declaratory judgment action. The carrier then filed a motion for summary judgment which the court granted. The court agreed with the carrier that the acts alleged in the underlying complaint could not be fairly characterized as an "accident," relying on State Farm Fire & Casualty Company v. Czop, U.S. Court of Appeals, 2004 W.L. 632724 (E.D. Pa. 2004). The Court of Appeals held that even if the plaintiff's action alleged negligent misrepresentation, State Farm would still have no obligation to defend or indemnify Czop, as the damages claimed clearly arose out of a breach of contract and not from an accident.

The Court also referenced Kvaerner Metals v. Commercial Union Insurance Company, 903 A.2d 888 (Pa. 2006), in which the Supreme Court noted that an accident is an unexpected and undesirable event that implies a degree of fortuity. The court also found that the harm alleged in the underlying complaint did not constitute "property damage" as defined in the policy.