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LITIGATION UPDATE

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LIABILITY

***Seeton v. Adams*, 50 A.3d 268 (Pa. Cmwlth. 2012)**

Seeton, a Humane Society Police Officer, sought a writ of mandamus to compel the District Attorney to bring criminal charges against a local sportsman's club for conducting live pigeon shoots. Seeton contended that the pigeon shoots violated the Animal Cruelty Law. The club, instead of using clay pigeons, launched live pigeons into the air to be fired upon by club members who were then given points based on where the dead or injured pigeons landed. "Trapper boys" gathered up any wounded pigeons and dispatched them by breaking their necks or cutting their heads off. The District Attorney declined to pursue criminal charges. The common law writ of mandamus lies to compel a public official's performance of a ministerial act or a mandatory duty. A writ of mandamus is not proper to interfere with the public official's exercise of discretion. A writ of mandamus may be used to force a public official to exercise discretion but is not available to compel an official to exercise discretion in a particular way. Here, the District Attorney used his discretion to not bring criminal charges against the club. A writ of mandamus was not available to review or reverse that exercise of discretion. Both the District Attorney and the *en banc* Commonwealth Court agreed that the live pigeon shoot was "shocking," but noted that any remedy was with the legislature.

***Wimble v. Parx Casino,* 40 A.3d 174 (Pa. Super. 2012)**

Wimble alleged injury from a trip-and-fall at a casino in Bucks County but filed suit in Philadelphia County. The trial court granted Preliminary Objections to transfer the case to Bucks County. To support venue in Philadelphia County, Wimble had alleged that Parx Casino regularly conducted business in Philadelphia via advertising and that its "sister corporations" (i.e., corporations sharing a common ownership) were located in and did business in Philadelphia County. The Superior Court affirms the transfer of venue. Advertising is not conduct of sufficient quality to generate venue in a county. In addition, the conduct of related corporations does not establish proper venue for the defendant corporation.

***Bratic v. Rubendall*, 43 A.3d 497 (Pa. Super. 2012)**

Braddock brought an action in Philadelphia County for wrongful use of civil proceedings and abuse of process. The underlying litigation, the parties, and the witnesses were all from Dauphin County. The only connection with Philadelphia County was that all of the defendants occasionally conducted business there. Defendants sought successfully to transfer venue from Philadelphia County to Dauphin County. On appeal, a split panel of the Superior Court upholds the transfer. In a hearing *en banc*, the Superior Court, split 6 to 3, reverses the transfer, keeping the case in Philadelphia County. The majority stresses the significant difference between inconvenient venue and oppressive venue. Only the latter justifies a transfer of venue. The majority also discounts the numerous potential witness affidavits which purported to establish extreme inconvenience. Several witnesses were principals of defendant parties and thus inconvenience to them is of little consequence. As to non-party witnesses, the majority finds the affidavits insufficiently particularized to satisfy the heavy burden to prove oppressive venue. The dissent notes that the majority has exceeded its limited "abuse of discretion" scope of review and has created an excessively high burden for defendants seeking to transfer venue on *forum non conveniens* grounds.

***Stoner v. Penn* Kleen, 59 A.3d 612 (Pa. Super. 2012)**

Stoner brought suit in Philadelphia County for an accident that occurred in Adams County. One defendant was in York County and the other defendants were not in PA. The defendants conceded proper venue in Philadelphia County but the York County defendant sought transfer based on *forum non conveniens*. The trial court transferred the litigation to Adams County. The Superior Court affirms. By affidavits submitted in support of the motion to transfer venue, the York County defendant established that Philadelphia venue would not merely be inconvenient but would impose such a substantial burden that it would be oppressive and vexatious. All of the fact witnesses were in Adams County and the defendants' witnesses were all in York County. Because of the great distance to Philadelphia County, the York County defendant would have to close its business down to attend trial. The trial court did not commit an abuse of discretion in transferring venue.

***Balletta v. Spadoni,* 47 A.3d 183 (Pa. Cmwlth. 2012)**

At a sheriff's sale of foreclosed properties, Balletta tried to purchase property and pay with gold and silver, rather than by credit or check. The sheriff refused the gold and silver and then told a newspaper reporter that he thought Balletta was an anarchist and might be part of an anarchist movement engaging in paper terrorism to clog the courts. The sheriff further stated that Balletta might be a "fellow traveler" or part of an anti-government group that did not believe paper money was legal tender. The local solicitor told the reporter that Balletta may be an opportunist and may have been seeking to hold up the sale of the property for years. Balletta, denying any link to organized movements, said he was simply trying to purchase $4,000,000 worth of real property with gold and silver. Balletta also said that the other bidders were using "illegitimate paper money" or "worthless paper money backed by nothing more than black ink." Balletta sued the sheriff and solicitor for libel. Apparently anticipating immunity defenses, Balletta alleged "constitutional defamation" (i.e., directly granted by the Pennsylvania Constitution) as well as common-law libel. Although the Pennsylvania Constitution admittedly references a right to possess and protect reputation, the Commonwealth Court notes that no state case law permits an action for monetary damages based on a claimed violation of the state Constitution, no case law recognizes an action for "constitutional defamation," and an alternative remedy exists in the form of a suit for common-law defamation. The Commonwealth Court then further notes, however, that an action for defamation does not fall within any exceptions to governmental immunity, so the claims against the County Sheriff Office and the County Solicitor Office were properly dismissed. Since Balletta alleged willful misconduct as to the sheriff and the solicitor personally, those claims, in theory, might not be covered by governmental immunity. The comments attributed to the sheriff and the solicitor, however, were not defamatory. Expressions of opinion based on non-defamatory facts do not support a claim for defamation. Here, the facts were not in dispute: Balletta attempted to purchase property with gold and silver and Balletta said the successful bidders paid with "illegitimate paper money" or "worthless paper money backed by nothing more than black ink." Opinions based on these facts, including opinions descriptive of political, economic, or sociological philosophy, do not give rise to an action for libel.

***Richmond v. McHale*, 35 A.3d 779 (Pa. Super. 2012)**

Counsel in litigation alleging sexual abuse of a minor met informally in the plaintiff counsel's office to review the status of the case and any pending discovery requests. During that meeting, defense counsel twice accused plaintiff counsel of using discovery tactics to extort money from the defendant. Plaintiff counsel thereafter sued defense counsel for slander. That suit was dismissed on Preliminary Objections. Communications in the regular course of judicial proceedings which are pertinent and material to the litigation are absolutely privileged. The privilege extends beyond communications made in open court and also encompasses pleadings, conferences, less formal meetings, and even correspondence between counsel. The privilege is absolute and cannot be destroyed by abuse.

***Szymanski v. Dotey*, 52 A.3d 289 (Pa. Super. 2012)**

Szymanski and Dotey litigated removal of a privacy hedgerow separating their properties. Szymanski won at the magistrate court level but lost at Court of Common Pleas arbitration. Szymanski appealed for a trial de novo after which his attorney withdrew as counsel due to non-payment of fees. The court listed the case for trial, allegedly mailing the trial notice to Szymanski. Szymanski denied receiving the trial notice. On the appointed date, the court entered a verdict for Dotey when Szymanski did not appear for trial. On appeal, the Superior Court reverses. Although the Court Administrator testified that she prepared the trial notice, she did not testify that she placed it in the mail or directed others to do so.

***ANS Associates v. Gotham Insurance Company*, 42 A.3d1074 (Pa. Super. 2012)**

One of the defendants, a New York corporation, was allegedly served by certified mail, though plaintiff acknowledged it could not produce a signed receipt card. Plaintiff alleged, however, that subsequent conduct of that defendant demonstrated that it had received the complaint. A default judgment was entered. On appeal, the Superior Court reverses. Improper service is not merely a procedural defect that can be ignored because a defendant learns about the action. The default was opened.

***Schiavone v. Aveta*, 41 A.3d 861 (Pa. Super. 2012)**

Schiavone and Arnoul had an accident in PA while Arnoul was driving vehicle provided by Aveta, his employer. Aveta, a NJ corporation, did no work in PA but did provide Arnoul, a PA resident, with a vehicle to travel to and from home, work, and jobs. Aveta challenged PA personal jurisdiction. The PA Long Arm Statute provides jurisdiction over non-resident defendants if jurisdiction is authorized under the Statute and if the exercise of jurisdiction comports with constitutional principles of due process. As to the first requirement, specific jurisdiction is permitted if the defendant through an agent causes harm by an act or omission in PA. Although commuting employees are generally not in the course of employment for WC purposes under the "coming and going rule," an exception to the "coming and going rule" applies when the employer has provided a vehicle to the employee as part of the employment contract. Such an employee then remains within the scope of employment. The exception to the general rule applied to Arnoul and thus the first prong of establishing specific jurisdiction was met. As for the second prong concerning due process, Aveta, already subject to the PA WC law by virtue of the exception to the "coming and going rule," should reasonably assume that such activity would subject it to PA jurisdiction.

***Scampone v. Highland Park Care Center*, 57 A.3d 582 (Pa. 2012)**

Following the death of Mother, a 94 year old resident at Highland Park Nursing Home, Estate sued the nursing home Owner and the nursing home Management Company, alleging both corporate negligence and vicarious liability for the negligent acts of employees. At trial, some former nursing home employees testified that they often had inadequate time to accomplish necessary tasks, suggesting a failure to staff adequately. The jury awarded just under $200,000. On appeal, the Pennsylvania Supreme Court addressed whether the corporate negligence theory, initially announced with regard to hospitals in ***Thompson v. Nason Hospital***, similarly applied to nursing homes. Corporate negligence is distinguished from vicarious liability. Although a corporation can be vicariously liable for the conduct of its employees committed within the scope of employment, corporations under the corporate negligence theory can also be held liable for the corporate decision making process. Under Section 323 of the Restatement (Second) of Torts, one who undertakes to render services to another is subject to liability to the other for physical harm resulting from a failure to exercise reasonable care if such failure to exercise care increases the risk of harm or the harm is suffered because of the other's reliance upon the undertaking. Neither the cited Restatement section nor the earlier ***Thompson*** decision limit application of these legal principles to hospitals. The question is whether the injured party can establish a relationship with defendants that creates a duty of care under Section 323. The corporate negligence theory, as a result, can apply to nursing homes and, by extension, to any corporations which owe a duty under Section 323.

***Setlock v. Pinebrook Personal Care and Retirement Center*, 56 A.3d 904 (Pa. Super. 2012)**

Ryan resided at Pinebrook under a contract which included an arbitration clause. Pinebrook arranged for Ryan, with a Pinebrook attendant, to be transported to a doctor's visit during which she suffered injuries allegedly due to Pinebrook's negligence. The Pinebrook assistant pushing Ryan in a wheelchair without leg lifts, allowing Ryan's feet to hit the ground and catapult her out of the wheelchair. Pinebrook claimed that the incident fell within the arbitration agreement. On appeal, the Superior Court disagrees. Although the arbitration agreement broadly applied to claims arising out of Ryan's Pinebrook residency, neither the contract nor the arbitration agreement made specific reference to tort liability, though the parties were free to have expressly included same. The dissent notes that the majority ignores the strong Pennsylvania public policy in favor of arbitration.

***Quality Care Options v. Unemployment Compensation Board of Review*, 57 A.3d 655 (Pa. Cmwlth. 2012)**

The unemployment compensation claimant was a "direct care worker" who received assignments from Quality Care Options. Claimant had signed an Independent Contractor Agreement which acknowledged that he was not an employee of Quality Care Options, that he could seek assignments from other sources, that he could accept or refuse any assignment, that Quality Care Options did not supervise his work activities, and that he would perform duties as instructed by the client, not by Quality Care Options. Claimant was paid by the hour but without deductions for taxes or other withholdings. His income was reported to the government on a Form 1099. The Commonwealth Court reverses the determination that claimant was entitled to unemployment compensation benefits. While no single factor listed above was dispositive, the Commonwealth Court concludes that the relationship between claimant and Quality Care Options was not that of an employer and employee.

***Weiley v. Albert Einstein Medical Center*, 51 A.3d 202 (Pa. Super. 2012)**

Son sued a hospital, a medical school, and a funeral home when, after Father's death, the hospital released the corpse to the funeral home for transport to the medical school for dissection and medical study. Son alleged that he did not consent to such use of the body and that the defendants intentionally or negligently failed to contact him after his father's death and failed to follow earlier instructions that Father's organs and tissue not be harvested for donation or his body used for medical experiments. Son sought recovery for negligent and intentional infliction of emotional distress, for interference with a dead body, and for punitive damages. The trial court granted defendants' Preliminary Objections. On appeal, the Superior Court affirms in part and reverses in part. As to intentional interference with a dead body, Pennsylvania has adopted Section 868 of the First Restatement of Torts which provides:

> A person who wantonly mistreats the body of a dead person or who without privilege intentionally removes, withholds or operates upon the dead body is liable to the member of the family of such person who is entitled to the disposition of the body.

As to the "wantonly" requirement, the Superior Court notes that there must be at least a willingness to inflict injury, a conscious indifference to perpetration of the wrong. As to the "intentional" requirement, the Superior Court notes there must be either a desire to cause mental distress or knowledge that the conduct is substantially certain to result in mental distress. Under these tests, Son had at least alleged a cause of action against the hospital. As to the medical school, however, Son failed to overcome immunity granted under the Anatomical Gift Act. As to the funeral home, Son failed to allege conduct meeting the "wantonly" and "intentional" requirements. As for the claims of negligent infliction of emotional distress, Son, absent a showing of a special fiduciary duty of care by the hospital, could not state a cause of action. The Superior Court remanded the intentional infliction of emotional distress claim against the hospital.

***Shiner v. Ralston*, – A.3d – (Pa. Super. 2013)**

Ralston's vehicle caused an accident when it left its lane of travel, crossed a grassy median, and hit Shiner approaching from the opposite direction. Ralston took no evasive action before the collision and medical evidence established that Ralston was unconscious, and perhaps already dead, by the time the accident occurred. Ralston obtained summary judgment on the theory that the accident was the result of a sudden and unforeseeable medical emergency, precluding a finding of negligence. On appeal, the Superior Court distinguishes between the "sudden emergency doctrine" and the "sudden medical emergency defense." The former is a legal principle that an individual will not be held to the usual degree of care when confronted with a sudden and unexpected position of peril created in whole or in part by someone else. That doctrine did not apply in the present case. The "sudden medical emergency defense," in contrast, is an affirmative defense which must be pleaded in New Matter, which, the Superior Court notes, Ralston failed to do. To prevail under the "sudden medical emergency defense," Ralston had to establish the absence of symptoms prior to the date of the collision. Although there was no evidence of symptoms in Ralston's medical records, that did not conclusively establish the absence of symptoms sufficient for a grant of summary judgment. At trial, Ralston must establish to the satisfaction of the jury that the medical symptoms which caused the accident were unforeseen.

***Herring v. City of Jeannette*, 47 A.3d 202 (Pa. Cmwlth. 2012)**

Herring's property was damaged when the City contracted for demolition of an abandoned adjoining property. Cost to repair the damage was $31,500. The fair market value of the property before damage, however, was only $24,000 and an expert opined that the demolition damage reduced that fair market value by $12,000. The trial court ruled that $24,000, the fair market value before damage, was the maximum Herring could ever recover. The City conceded that amount and the judge entered an order in that amount. On appeal, the Commonwealth Court affirms. Regardless whether damage is permanent or reparable, Herring as a matter of law could never recover more than the pre-damage fair market value of the property. The only exception to this general rule permits recovery of repair costs regardless of market value where the property is a special use or special purpose property, such as a bridge or a specialized or specially located building with unique requirements or features which make market value an inadequate indicator of value. The exception was not applicable in this case.

***Ziegler v. Easton Suburban Water Authority*, 43 A.3d 553 (Pa. Cmwlth. 2012)**

After a water main broke, causing damage to his home, Ziegler sued the Water Authority, alleging that the foundation of his house had shifted, that plaster walls within the house had cracked, that the framing of the door shifted such that he could no longer open or close it, that his property suffered extensive soil erosion, and that an external retaining wall fell. The water company conceded negligence but contested causation and damages. Ziegler had an expert on causation issues but the trial court precluded Ziegler's other witnesses, contractors giving estimates for or actually performing repairs. The trial court ruled that these witnesses were experts yet had not been properly identified as such, had not submitted proper expert reports and had not complied with Pa. R.C.P. 4003.5 expert witness discovery. Without these witnesses, Ziegler received only a small verdict from which he appealed. Ziegler contended that Pa. R.C.P. 4003.5 applies only to discovery against experts acquired or developed in anticipation of litigation or for trial. The repair contractors were not hired in that capacity and should not have been subject to the rules on expert discovery. The Commonwealth Court agrees. Repair estimates and reports were prepared as part of the repair work and were disclosed in the course of regular discovery. Compliance with Pa. R.C.P. 4003.5 discovery was not required. The contractors should have been permitted to testify concerning the scope of repairs and the cost of repairs.

***Conway v. Cutler Group*, 57 A.3d 155 (Pa. Super. 2012)**

Cutler Group constructed a home for Fields. Fields sold the home to Conway. Conway discovered latent defects in the home which caused water infiltration. Conway sued Cutler Group, alleging breach of implied warranty of habitability. Fields was not named in the suit nor did Conway seek recovery on a breach of contract theory. The trial court granted summary judgment to Cutler Group on the theory that Conway was not in privity with Cutler Group. On appeal, the Superior Court reverses. Pennsylvania recognizes an implied warranty of habitability under which the builder-vendor impliedly warrants that the home he has built and is selling is constructed in a reasonably workmanlike manner and that it is fit for the purpose intended, habitation. Under this legal doctrine, the risks of latent construction defects are shifted from the buyer to the builder-vendor. The doctrine covers defects which would not be apparent to the ordinary purchaser as a result of a reasonable inspection. In a case of first impression, the Superior Court rules that the doctrine of implied warranty of habitability is not restricted to the initial buyer but rather applies to any subsequent buyers of the property as well, provided the claim is brought within the 12 year Statute of Repose.

***Milliken v. Jacono*, 60 A.3d 133 (Pa. Super. 2012)**

Milliken sought recovery for fraud and misrepresentation after purchase of a residence from Jacono, unaware that the property had previously been the site of a murder/suicide, a fact Jacono did not disclose pre-sale. In addition to any stigma related to the murder/suicide, Milliken claimed she had also suffered through various paranormal events in the house. The Superior Court rules that only defects in the actual physical structure of a property, as opposed to what it terms pyschological damage, must be disclosed pre-sale. Otherwise, a seller might be required to disclose prior burglaries in the house or the neighborhood, whether a child molester lived nearby, whether the next-door neighbor is loud and obnoxious, whether the property was built on an old Indian burial ground, or whether on some days you can smell a nearby sewage plant. Since murder/suicide is not an objective material defect, Jacono had no obligation to disclose same and summary judgment in her favor is affirmed.

***Bruckshaw v. Frankford Hospital*, 58 A.3d 102 (Pa. 2012)**

Bruckshaw sued Frankford Hospital before a jury of 12 members and 8 alternates. Neither the trial judge nor the jurors themselves knew which were principal jurors and which were alternates. The parties and a court officer did know. During trial, one principal juror was dismissed and replaced with the first alternate. An alternate was also dismissed. At the end of evidence and closings, as the court officer was segregating principal jurors from alternates, he dismissed one principal juror, substituting the final (rather than the next) alternate. The court officer advised no one of this action. The reconstituted jury, with the late substituted alternate as the foreman, returned a defense verdict, split 10 to 2, the constitutional minimum. Bruckshaw eventually realized the unannounced substitution and moved for a new trial. The trial court declined, noting that the alternate, in any event, had already been agreed to by all parties as an acceptable potential juror and thus no prejudice resulted. The trial court also noted that Bruckshaw could not establish that the undisclosed substitution of jurors caused a different trial result. The Supreme Court reverses, announcing that removal of a juror can only be done by a trial court, on the record, with notice to parties, for cause. The aggrieved party is not required to establish prejudice. A new trial was granted.

***Maribel v. Morales*, 57 A.3d 144 (Pa. Super. 2012)**

Maribel, a bus passenger, was injured in a collision between the bus and a Comcast truck. Each driver claimed to have the green light. Despite a pretrial order prohibiting reference at trial to Comcast's size or wealth, both Maribel's attorney and the bus company made such references at trial. In addition, Maribel's attorney in closing argument stated that there were no "brothers" on the Comcast legal team. The jury was composed of ten African-American women, one African-American man, and one Caucasian woman. In response to Comcast's objections, the trial court gave a curative instruction on the race issue but declined to give any curative instruction concerning references to the size and wealth of Comcast. The jury awarded Mirabel $350,000, allocating liability 75% to Comcast and 25% to the bus company. After post-trial motions, the trial court awarded a new trial on damages only. On appeal, the Superior Court reverses. There are certain circumstances where the comments of counsel are so offensive or egregious that no curative instruction can adequately obliterate the taint. Mirabel's counsel's attempt to use race to appeal to the jury was so offensive that no curative instruction could suffice. That taint affected both liability and damages so a trial *de novo* was the only proper remedy. With regard to the improper references to the size and wealth of Comcast, a curative instruction may have been appropriate in the absence of the earlier order prohibiting such references. When Mirabel and the bus company violated that order, however, and in the absence of any curative instruction, a new trial was required on both liability and damages.

***Octave v. Walker*, 37 A.3d 604 (Pa. Cmwlth. 2012)**

Octave, either standing or sitting by the roadside, was struck by a passing tractor-trailer. After investigation, the state police concluded that Octave had attempted suicide by jumping in front of the vehicle. During Octave's ensuing suit for damages, defendants sought discovery of Octave's mental health history. Citing the Mental Health Procedures Act, Octave objected and also amended his complaint to delete claims for emotional harm, leaving only claims for bodily injury. The MHPA imposes confidentiality on mental health records, promoting a public policy to enable effective treatment of mental health illness by encouraging patients to offer information freely without suffering from fear of disclosure. These statutory protections, however, may be waived by placing mental health at issue. Such waiver occurs not just when plaintiff seeks recovery for emotional harm but also when plaintiff files suit where causation will be at issue. Here, Octave's mental state was relevant to the actual cause of the accident. Barring access to his mental health records would be unfair and grossly prejudicial.

***Landay v. Rite Aid*, 40 A.3d 1280 (Pa. Super. 2012)**

A lawyer filed a class action complaint against Rite Aid for violation of the Pennsylvania Medical Records Act which, in broad terms, provides that medical service suppliers may charge only estimated actual and reasonable expenses for reproducing patient records. Instead of estimating actual and reasonable expenses, Rite Aid just charged a flat $50 for any record production. Rite Aid contended that it was not subject to the PMRA because it was not a medical service supplier and because the prescription purchasers were not its patients. The Commonwealth Court disagrees. Under the Pharmacy Act which regulates Rite Aid, prescription purchasers are clearly patients. The accompanying regulations also establish that a pharmacy is a healthcare provider. The class action complaint against Rite Aid was reinstated and the case remanded for further proceedings.

***Tayar v. Camelback Ski Corporation*, 47 A.3d 1190 (Pa. 2012)**

Tayar was injured at Camelback while using the "family" tubing slopes. On "family" tubing slopes, a Camelback employee at the top of the hill controls the flow of snow tubers down the hill, assuring that no one starts down before the prior snow tuber has reached the bottom and cleared the area. Tayar went down the "family" tubing slope but the Camelback employee failed to control the flow of subsequent tubers, sending them down too soon. Tayar collided with another tuber and suffered multiple fracture injuries. Before using the "family" tubing slope, Tayar signed a release which purported to apply to any claims of injury, including injuries as the result of negligence or any other improper conduct on the part of the snow tubing facility. In the ensuing tort litigation, Tayar claimed that the release, which did not reference Camelback employees, did not apply to individual employees but rather only to direct corporate negligence. The Supreme Court disagrees. Corporations can only act through agents or employees so the release necessarily extended to them. Tayar also alleged, however, that the release did not apply to reckless conduct but rather only to negligent conduct. The Supreme Court agrees. On a scale with negligent conduct and intentional conduct at opposite ends, reckless conduct falls closer to intentional conduct. Reckless conduct requires conscious action or inaction which creates a substantial risk of harm to others, whereas negligence suggests only unconscious inadvertence. Although the Camelback employee's testimony seemed to indicate simple negligence, that issue could not be resolved by summary judgment but rather had to be presented to the fact finder. The Supreme Court notes that it was not asked to address claims of "gross negligence," so whether that type of conduct can be released in advance remains an issue for another day.

***Gubbiotti v. Santey*, 52 A.3d 272 (Pa. Super. 2012)**

Gubbiotti claimed injury from a motor vehicle accident involving Santey. Gubbiotti sued Santey but Santey thereafter filed for bankruptcy, listing Gubbiotti as a creditor holding unsecured non-priority claims. A Santey served a Suggestion of Bankruptcy on Gubbiotti. The Bankruptcy Court eventually entered an order discharging all debts. Santey thereafter filed an amended New Matter in the tort case, pleaded the discharge in bankruptcy, then moved for, and obtained, summary judgment. On appeal, Gubbiotti alleged that he sought recovery not against Santey but rather against the insurance policy covering Santey at the time of the accident. Though 40 Pa.C.S.A. § 117 does provide that a liability carrier is not released by bankruptcy of its insured, that provision applies only to judgments that have been entered against the insolvent or bankrupt insured. Where, as here, no judgment had been entered, neither Santey nor his insurance carrier could be liable to Gubbiotti.

***Rosenberry v. Evans*, 48 A.3d 1255 (Pa. Super. 2012)**

Ten year old Alexander, accompanied by his grandparents, visited an apartment leased to King to choose a puppy from a litter of pit bulls. The litter was owned by Evans, King's girlfriend. While Alexander handled one of the pit bull puppies, the mother pit bull suddenly bit him in the face, ripping off part of his nose. Suit was brought on Alexander's behalf against the landlord, the tenant, and dog owner. The trial court granted the landlord's motion for summary judgment. As a general rule, an animal's owner is responsible for injuries to others caused by the animal. Pennsylvania does not, however impose absolute liability upon dog owners for injuries caused by dogs. Proof of negligence is required. With regard to a landlord, the victim must prove that the landlord owed a duty of care, that he breached that duty, and that the injuries were proximately caused by the breach. A landlord out of possession is not liable for attacks by animals kept by a tenant on leased premises where the tenant has exclusive control over the premises. A duty may arise to prevent injuries if the landlord has actual knowledge of a dangerous animal on the rented premises. Constructive knowledge is not sufficient. In the present case, there was serious doubt as to whether plaintiff could prove that the dog in question even had dangerous propensities. The evidence indicated that the dog was kind and gentle and that there had been no prior incidents of attacking people or other animals. The dog apparently did have a tic which caused it to snap its jaws shut from time to time but not in an aggressive way or in respoinse to external stimuli. There was no evidence the tic had ever caused any other bite or injury. Plaintiff provided no evidence that the landlord knew of the tic, much less any dangerous propensity. Summary judgment for the plaintiff was affirmed.

***Longwell v. Giordano*, 57 A.3d 163 (Pa. Super. 2012)**

Longwell sued both his landlord and a contractor when he fell due to an uneven edge between a driveway and a grass area. Longwell was aware of the uneven edge and was aware he was proceeding down the driveway with inadequate light, but thought, incorrectly, he had allowed himself an adequate margin of safety. The trial court granted the landlord and the contractor summary judgment. On appeal, the Superior Court reverses in part. Different legal principles apply to claims against the landlord and to claims against the contractor. As to the landlord, Section 360 of the Restatement applied which made the landlord liable for defects on the property unless the defect was so obvious that a reasonable man would regard it as foolhardy to voluntarily encounter it. Whether Longwell's conduct was foolhardy was a question of fact. The evidence, in fact, indicated that Longwell, fully aware of the danger, thought he had taken adequate precautionary measures. As to the contractor, however, Section 385 of the Restatement applied where the contractor could be liable only upon plaintiff's proof that the danger was one unlikely to be discovered. Here, the danger was admittedly discovered, thus the contractor had no duty to plaintiff.

***B.J.'s Wholesale Club v. WCAB (Pearson)*, 43 A.3d 559 (Pa. Cmwlth. 2012)**

Pearson, a "greeter" at B.J.'s Wholesale Club, suffered an injury when a customer rolled a cart wheel over her foot. B.J.'s provided a light-duty (i.e., seated) job at the same pay. Pearson, after a night of heavy drinking, reported to work with a blood alcohol level of .108, for which she was terminated. She appealed the denial of reinstatement of her workers' compensation disability benefits. Although admitting being drunk the day before her termination and arriving at work with a .108 blood alcohol level, Pearson denied that she was actually under the influence of alcohol and thus should not have been terminated for cause. The WCJ and the WCAB reinstate disability benefits but the Commonwealth Court reverses. Pearson's blood alcohol level was sufficient to establish violation of the employer's drug and alcohol rules, thus justifying termination for cause, thus precluding reinstatement of the workers' compensation disability benefits.

***Frazier v. WCAB (Bayada Nurses)*, 52 A.3d 241 (Pa. 2012)**

Frazier, injured in a SEPTA bus accident in the course and scope of employment with Bayada Nurses, received workers' compensation. She also settled a tort claim against SEPTA for $75,000. That settlement agreement purported to be for damages not covered by workers' compensation (e.g., pain and suffering). Bayada thereafter filed a claim petition to recover its workers' compensation lien from Frazier. The Supreme Court on appeal had to reconcile apparently conflicting provisions of the workers' compensation law: Section 319 provides subrogation rights to Bayada and Section 23 of Act 44 protects government entities such as SEPTA from subrogation claims. The Supreme Court concludes that as long as the settlement is properly crafted (i.e., pays only for damages not covered by workers' compensation) the provisions of both sections of the statute can be enforced. SEPTA pays only the tort liability it owes, the claimant is not double dipping on damages, and Bayada is not entitled to subrogation. Though Bayada will have paid damages absent fault, the legislature in this type of case has simply balanced conflicting public policies.

***Seebold v. Prison Health Services*, 57 A.3d 1232 (Pa. 2012)**

Seebold, a corrections officer at Muncy Prison, was assigned to strip search female inmates before and after they received visitors. Seebold sued PHS (the medical services vendor at the prison) for failing to warn staff and inmates about MRSA and failing to protect them from acquiring MRSA from infected inmates. The Supreme Court refused to recognize or create a cause of action imposing an affirmative duty upon physicians to warn and advise third-party non-patients of MRSA. The Supreme Court distinguished these present circumstances from a duty imposed on health care professionals to convey a warning to an at-risk third party threatened with imminent violence.

***Sulkava v. Glastone Finland Oy*, 54 A.3d 884 (Pa. Super. 2012)**

The trial court issued two Orders on the same day, one dismissing claims against some defendants, a second dismissing claims against the other defendants. Plaintiff filed a single appeal from the two Orders. The Superior Court returned the appeal documents to plaintiff, indicating that only one Order per appeal is permitted under PaRAP 512. Plaintiff then, after expiration of the original appeal period, filed two amended appeals, one for each Order. Defendants filed a motion to quash the appeals as untimely. The Superior Court allows the appeals. The original appeal of the two Orders, while not procedurally correct, was not a fatal defect.

COVERAGE

***Richardson v. Pennsylvania Insurance Department*, 54 A.3d 420 (Pa. Cmwlth. 2012)**

Richardson applied for Fair Plan coverage for his residence. The Fair Plan is created by statute to make insurance coverage available to protect property for which basic property insurance is not available through the normal insurance market. The Fair Plan exposure is reinsured through a funding arrangement shared by all insurance companies doing business in Pennsylvania. On his application for coverage, Richardson denied that there was any existing property damage to the residence. A provisional policy was issued by the Fair Plan subject to a later inspection of the property. The inspection revealed a collapsing rear porch area. Richardson said he would repair the rear porch soon but then did not reply when the Fair Plan followed up for proof of repairs. After receiving a notice of intended cancellation, Richardson requested that his home remain insured because his intended porch repairs were put on hold due to an ongoing criminal investigation. Although Richardson contacted the Bureau of Consumer Services (a state agency separate from the Fair Plan), he never provided any proof of the repairs. His policy was canceled. On Christmas Eve, his home was destroyed by fire unrelated to the condition of the rear porch. The Commonwealth Court upheld the policy cancellation.

***Miller v. Poole*, 45 A.3d 1143 (Pa. Super. 2012)**

Helen Poole purchased a homeowner's policy. On the day before her death, while she was hospitalized, her son and grandson moved into her house since their new apartment was not yet available. Upon Helen Poole's death, her son obtained a life estate in the house, so the son and grandson then moved permanently into the house. The grandson thereafter ignited a gas stove to light a cigarette and left the house without turning off the stove. A fire ensued, damaging the adjacent property owned by Miller, who sued and obtained a judgment against the grandson. The homeowner's carrier denied coverage to the grandson, claiming her was not a relative resident in Helen Poole's household. Miller filed a DJ Action to establish coverage for the grandson to pay the judgment. The trial court ruled that the grandson's overnight stay on the day before Helen Poole's death was insufficient to render him a member of her household. On appeal, the Superior Court reverses. The language "your relatives if residents of your household" was reasonably susceptible to more than one interpretation and thus the interpretation favoring coverage applied. The Superior Court also noted that the insurance carrier took Statements under Oath from the son and grandson pursuant to a policy provision which required such statements from "insureds," a status the carrier could not later deny.

***Berg v. Nationwide Mutual*, 44 A.3d 1164 (Pa. Super. 2012)**

Back in 1996, Berg's Jeep suffered property damage covered by Nationwide's auto policy. Berg elected to have the Jeep repaired at a body shop participating in Nationwide's guaranteed repairs program. The repair process took four months. Berg later learned that Nationwide's initial appraisal would have declared the Jeep a total loss but that Nationwide obtained a second appraisal which determined that the vehicle could be repaired. Berg also later learned that certain structural damage to the Jeep was not properly repaired. Berg sued Nationwide and the repair shop. The trial court bifurcated Berg's claims into a substantive phase (including claims under the Unfair Trade Practices and Consumer Protection Law) and a "bad faith" phase. In the first phase, the jury awarded about $2,000 against the repair shop and about $300 against Nationwide. In the "bad faith" phase, the trial court refused evidence that Nationwide had spent $1,000,000 defending Berg's claims, refused to force Nationwide to produce its allegedly privileged documents, and further refused to review either the documents or a privilege log *in camera*. The trial court ruled in favor of Nationwide on the bad faith claim. On appeal, the Superior Court reverses. Berg's bad faith claim fell within the Actions on Insurance Policies statute since it arose under an insurance policy, even if the guaranteed property damage repair program was not provided in the policy itself. In addition, the phase one trial finding that Nationwide violated the UTPCPL, while not mandating a ruling for Berg in the "bad faith" phase, did suffice to preclude a directed verdict in Nationwide's favor. On remand for a new "bad faith" trial, the Superior Court directs the trial court that Berg, subject to laying a proper foundation, can introduce evidence of Nationwide's alleged litigation strategy in defending small claims (presumably the evidence that Nationwide spent $1,000,000 to defend this claim). Also, the trial court on remand should review documents or a complete privilege log to determine whether Nationwide's assertion of a privilege was proper.

UM/UIM

***Jones v. Unitrin Auto and Home*, 40 A.3d 125 (Pa. Super. 2012)**

Jones signed Unitrin's UIM waiver form which deviated from the statutorily mandated language by adding:

> By rejecting this coverage, I am also signing the waiver on Page 13 rejecting stacked limits of underinsured motorist coverage.

A split panel of the Superior Court rules that the additional language conflates the issues of underinsurance coverage and underinsurance stacking, thereby creating ambiguity in the UIM rejection form where, absent the added language, none existed. The UIM waiver invalid and thus UIM coverage is required.

***Shipp v. Phoenix Insurance Company*, 51 A.3d 219 (Pa. Super. 2012)**

Shipp purchased automobile coverage from Phoenix for three vehicles but signed a rejection of stacked UIM coverage. Shipp thereafter substituted different vehicles for two of the originally insured vehicles and then also dropped the third vehicle from the policy. Shipp made other policy changes to comprehensive and collision coverages. Phoenix at no time sought new signed rejection of stacked UIM coverage forms. Following Shipp's son's fatal accident, Shipp sought stacked UIM coverage. The trial court granted summary judgment in Shipp's favor. The Superior Court reverses. First, the "newly acquired vehicle" portion of the policy provided continuous, rather than finite, coverage for a new vehicle and thus under ***Sackett II*** no new waiver of stacking form was required. In addition, the present case involved replacement vehicles, not newly acquired vehicles, so there was no new purchase of insurance requiring any coverage selections.

***Vanderhoff v. Harleysville Insurance Company*, 40 A.3d 744 (Pa. Super. 2012), appeal granted 55 A.3d 1056 (Pa. 2012)**

Claiming that a "phantom vehicle" caused an accident, Vanderhoff sought Harleysville UM benefits. Harleysville disputed the existence of any "phantom vehicle" since Vanderhoff, in violation of the MVFRL and insurance contract provisions, did not immediately report same either to the police or to Harleysville. That issue reached the Supreme Court which remanded for trial on whether Harleysville was prejudiced by any late report. The trial court again ruled for Vanderhoff. Harleysville then presented evidence that, when a "phantom vehicle" case is reported, it immediately hires an investigator to speak to the police officers and the claimant, to take photographs, and to seek witnesses in the area. Delay in reporting a "phantom vehicle" renders much of that investigative work useless. Harleysville also presented a defense attorney who indicated that immediate investigation is necessary in "phantom vehicle" cases since the defense relies heavily upon fresh memories. Harleysville produced an accident investigator who stated that a late report of a "phantom vehicle" causes some evidence (e.g., skid marks and other marks on the highway) to become unavailable. An accident reconstruction expert echoed the testimony of the accident investigator. The trial court, however, again ruled for Vanderhoff, noting that Harleysville could not specify just what evidence was lost by delay in this case. On appeal, the Superior Court reverses. To prove prejudice, Harleysville needed to show only lost opportunities, not specific lost evidence.

***Marlette v. State Farm,* 57 A.3d 1224 (Pa. 2012)**

Marlette obtained a $700,000 UM verdict against State Farm which the trial court molded to $250,000, the State Farm policy limit. The issue on appeal was whether Pa. R.C.P. 238 "delay damages" are assessed on the $700,000 verdict or on the $250,000 molded verdict. The Supreme Court rules that "delay damages" are limited to the amount of the legally recoverable molded verdict.

***Bole v. Erie Insurance Exchange*, 50 A.3d 1256 (Pa. 2012)**

Finazzo drove negligently during a hurricane, causing his car to crash. Bole, a volunteer rescue worker, responded to an emergency call about the crash, but crashed on his own property when a bridge collapsed as he drove over it. Finazzo was underinsured so Bole sought UIM benefits from Erie, his own personal carrier on the theory that Finazzo was a UIM tortfeasor and that the "rescue doctrine" created a causal connection between Finazzo's original negligence and Bole's injuries. Under the "rescue doctrine," the original tortfeasor remains liable since one could reasonably foresee that rescuers summoned to an accident site might be injured in the process. Erie contended, and the Supreme Court agreed, that the "rescue doctrine" will not make an original tortfeasor liable (and thus a UIM carrier liable) for injuries attributable to a superseding cause. Here, the arbitrators had determined that the collapse of the bridge on Bole's property was a superseding cause. Such determinations are generally made by the fact finder. UIM benefits were properly denied.

Rother v. Erie Insurance Exchange, 57 A.3d 116 (Pa. Super. 2012)

Rother lived with his mother, an Erie insured. Rother did not own a car. To commute to his new job, Rother used a vehicle owned by his father and had been doing so for two weeks at the time of the accident. Rother's use of his father's vehicle was, except for emergencies, restricted to the work commute. Rother was within that scope of permission at the time of the accident. Rother sought UIM benefits from Erie which, in turn, denied coverage under its "regular use" exclusion, noting that the father's vehicle was used regularly by Rother, was not owned by Rother or his mother, and was not insured on the Erie policy. The trial court granted summary judgment to Rother. The Superior Court reverses. The issues on appeal were whether Rother could "regularly" use the vehicle if restrictions were placed on the use and if the use occurred over only a short period of time. The Superior Court holds that restrictions on use of a vehicle are not incompatible with "regular use" of that vehicle. In addition, use for only a couple of weeks also was not incompatible with "regular use" where the pattern of use was consistent and habitual rather than incidental or casual. The Erie properly denied UIM benefits.

***Adamitis v. Erie Insurance Exchange*, 54 A.3d 371 (Pa. Super. 2012)**

Adamitis, a BARTA bus driver, was injured in an accident involving the bus and a UIM driver. Adamitis sought UIM benefits from Erie, his personal carrier, since BARTA did not provide UIM coverage on the bus. Erie denied coverage based on a "regular use" exclusion. Adamitis claimed that the "regular use" exclusion was not in his original policy but rather was allegedly sent to him at a subsequent renewal. He denied ever seeing or understanding any "regular use" exclusion. The trial court rules that Adamitis received and should have understood the "regular use" exclusion. The trial court also relies on prior Supreme Court precedent in ***Williams*** and ***Burstein*** which upholds the validity of "regular use" exclusions even when the insured is driving one of his employer's fleet vehicles. The Superior Court simply applies this Supreme Court precedent with the further clarification that the "regular use" exclusion is not ambiguous and can be added to a policy at renewal.

***Smith v. Rohrbaugh*, 54 A.3d 892 (Pa. Super. 2012)**

Before the tort trial against a UIM tortfeasor, Smith settled his UIM claim for $75,000, including the UIM carrier's waiver of subrogation. Smith had also already received $15,000 in wage first-party benefits. At the tort trial, the jury awarded $50,000. Rohrbaugh, citing ***Pusl v. Means***, sought to mold the verdict to $0 in light of the $75,000 UIM settlement. The trial court agreed. On appeal, the Superior Court, sitting *en banc,* reverses, and also reverses ***Pusl v. Means***, ruling that Section 1722 of the MVFRL (Preclusion of Recovering Required Benefits) does not require an offset between UIM benefits and tort recoveries. While this ruling, in light of the UIM carrier's waiver of subrogation, appears to provide a windfall to Smith, that is a settlement issue between Smith and the UIM carrier which does not involve the tortfeasor. On a separate issue, Smith appealed the trial court's refusal to award costs. Smith submitted a Bill of Costs which included both record costs (i.e., filing fees, sheriff fees) and other out of pocket expenses (i.e. expert witness fees, videographer fees, etc). The Superior Court allows only record costs, expanded to include extra copies of exhibits that the trial court requested for its own use, for a total of about $340 instead of $10,250.

MVFRL

***Franklin v. Department of Transportation*, 39 A.3d 453 (Pa. Cmwlth. 2012)**

Franklin's minor son took Kresch's vehicle without permission and was involved in an accident. Kresch sued Franklin and her son and obtained a $2,500 default judgment against Franklin under the Parental Liability Act. Under that statute, any parent whose child is found liable for a tortious act can be held liable to the victim for up to $2,500. When Franklin failed to pay the $2,500 judgment, her license was revoked under Section 1771(a) of the MVFRL concerning failure to pay judgments arising out of motor vehicle accidents. The Commonwealth Court reverses. The judgment against Franklin was not based on her ownership or operation of any motor vehicle but rather only upon her parental relationship to the tortfeasor. Since Franklin had no involvement, direct or indirect, in the motor vehicle accident, her license could not be suspended.

***Corbin v. Khosla*, 42 A.3d254 (Pa. 2012)**

Corbin, an uninsured motorist, sought economic and non-economic damages from Khosla following an automobile accident. At issue on appeal was Corbin's claim for economic damages which the trial court denied under the ***McClung*** and ***Bryant*** precedents. The Supreme Court reverses. An uninsured motorist is precluded from collecting first-party benefits (i.e., wage and medical benefits) only on a first-party basis. The prohibition does not extend to third-party claims such as presented by Corbin against Khosla (abrogating ***McClung v. Breneman*** and ***Bryant v. Ready***).

***Herd Chiropractic Clinic v. State Farm Mutual*, – A.3d – (Pa. 2013)**

Herd Chiropractic provided services to a State Farm insured injured in an automobile accident. State Farm challenged some of the provided services through a PRO. Herd sued State Farm for about $1,380 in unpaid bills. Herd Chiropractic prevailed at trial and the trial court added $27,000 in attorney's fees. With regard to attorney's fees and costs, Pennsylvania follows the "American Rule" under which even successful parties are responsible for their own attorney's fees and most costs, absent a statute allowing recovery. The Pennsylvania Supreme Court reverses the trial court and the Superior Court and holds that the MVFRL authorizes an award of attorney's fees only when the insurance carrier has not pursued PRO review of bills.

***McWeeney v.Strickler,* – A.3d – (Pa. Super. 2013)**

McWeeney, driving an auto owned by Brandt, her fiancé, collided with Strickler's car. Brandt's "limited tort" policy on the vehicle listed McWeeney as a principal driver. McWeeney resided with Brandt but was not related by blood or marriage. The "limited tort" policy granted "insured" status to anyone using the vehicle with permission. The MVFRL, however, more restrictively defines "insured" to relatives resident in the household with the "named insured." The Superior Court addressed whether an insurance policy may define "insured" more broadly than the MVFRL thus binding a permissive driver to the owner's election of limited tort. Since such policy language would restrict "full tort" coverage to a lesser scope of persons than the MVFRL requires, the statutory language, not the policy language, applied to McWeeney, rendering her eligible for a full-tort recovery.

LAWYERS

***Salsman v. Brown*, 51 A.3d 892 (Pa. Super. 2012)**

Salsman and Brown litigated a real estate dispute. Brown's attorney sent a settlement offer to Salsman's attorney. Salsman accepted the offer but Brown thereafter failed to make the settlement payment. Salsman sought to enforce the settlement agreement. Brown answered that his attorney was never authorized to make the settlement offer and thus the settlement was not binding on him. At a hearing, Brown's attorney, since discharged from representation, did not testify due to an alleged attorney-client privilege, so Brown's testimony that he had not authorized counsel to make the offer was uncontradicted. The trial court nevertheless entered an order enforcing the settlement, noting that the court did not believe Brown's testimony. On appeal, the Superior Court reverses, since, on the evidence presented, the trial court could not reach the legal conclusion that Brown's counsel had express authority to bind his Brown to the settlement offer. The Superior Court remands for a new hearing, advising that Brown's counsel should testify. Although the terms of the settlement offer may once have been subject to attorney-client privilege, an exception applied when Brown attacked the integrity and professionalism of counsel by claiming counsel made an unauthorized offer.

***Coleman v. Duane Morris*, 58 A.3d 833 (2012)**

Coleman, using Duane Morris as counsel, sold a business subject to a provision that outstanding business taxes would be the responsibility of the new owner and that Coleman would no longer be personally liable. The new owner failed to pay the taxes and Coleman continued to be personally liable. Coleman sued Duane Morris for legal malpractice. In defense, Duane Morris contended that its exposure could only ever be refund or forgiveness of its fees which, in fact, had not even been paid. Duane Morris cited ***Bailey v. Tucker*** for the proposition that legal malpractice damages based on breach of contract are limited to legal fees plus interest. The Superior Court, however, notes that ***Bailey v. Tucker*** applies only to criminal actions. In legal malpractice breach of contract actions based on civil suits, the claim for damages may include any actual loss. Here, Coleman alleged that he sold his business without receiving the bargained-for result (i.e., release from personal liability for business taxes owed), so Coleman could claim the value of the stock as well as interest and penalties accrued on the unpaid taxes. These consequential damages were reasonably foreseeable and within the contemplation of the parties at the time they made the contract for legal services.

***Huber v. Etkin,* 58 A.3d 772 (Pa. Super. 2012)**

Huber ended his partnership with Etkin and took contingency files upon departure. Huber and Etkin did not have a written partnership agreement. The issue on appeal was whether contingency fees from cases that were initiated during the partnership, but realized following dissolution of the partnership, were the property of the partnership or the property of the attorney chosen by the client following dissolution. The Superior Court *en banc* concludes that any contingency fees realized post-dissolution are assets of the partnership. Contingency cases qualify as "unfinished partnership business" for which the partners owed each other a continuing fiduciary duty. Handling the contingency files to a conclusion (and thus obtaining fees) was simply winding up partnership business.

***Ruby v. Abington Memorial Hospital*, 50 A.3d 128 (Pa. Super. 2012)**

Erbstein was employed by the Beasley firm. Under his employment agreement, if he took contingency files upon leaving the firm, he was entitled to 25% of any eventual fee and the Beasley firm was entitled to the remaining 75%. Erbstein left the firm, took a contingency file, went to the YRCH firm, and continued to handle the contingency file. When Erbstein later became ill, other YRCH attorneys handled the contingency file, recovering about $650,000 in attorneys' fees. Erbstein and YRCH contended that the fee split provided in the employment agreement was against public policy and, in any event, did not bind YRCH. The trial court and the Superior Court disagree. Since the contingency case was "unfinished partnership business" when Erbstein left, neither Erbstein nor, in turn, YRCH could alter the rights of the remaining partners at the Beasley firm. The Superior Court also disagreed with any contention that the fee agreement constituted a restrictive covenant or that quantum meruit should apply. The Beasley firm was entitled to 75% of the recovered fee regardless of what amount would have been justified under quantum meruit.

JUDGES

***In re Arnold*, 51 A.3d 931 (Pa. Ct. Jud. Disc. 2012)**

Arnold, a Chester County Magisterial District Judge, in the regular course of business received a citation filed in her court by the state police against her son, charging him with harassment, a summary offense, arising out of an altercation with another of her sons. Arnold instructed her staff to not docket the citation. Her son, who was on probation, had an extensive arrest record for crimes ranging from simple assault and harassment to possession with intent to deliver and also had an indecent assault conviction. If discovered by the son's probation officer, the new citation might have affected the son's probation status. Arnold delayed several months and only eventually docketed the citation because of the state police inquired. Contrary to Chester County rules, she then transferred the citation to another judge who held a hearing, after which the charges were dismissed by an order signed by Arnold, not the judge who held the hearing. The court of judicial discipline ruled that Arnold was subject to formal discipline.

***Perry v. State Civil Service Commission*, 38 A.3d 942 (Pa. Cmwlth. 2012)**

Perry, a Department of Labor and Industry Worker's Compensation Judge Manager, had been employed by the state for over 30 years. Evidence established that Perry occasionally left his licensed handgun in his car while parked in a lot leased to the state, twice brought his handgun into the office (once in a briefcase and once in a holster), and once showed his handgun to a co-employee in his car while driving back from a business meeting in Harrisburg. When Perry's supervisor received this information, she directed Perry to report to her office the next morning without disclosing the reason for the meeting. At the meeting, Perry was frisked by state police before then meeting with his supervisor, who then presented the details of the evidence against him. Perry was shortly thereafter suspended pending completion of the investigation. A month later, he was terminated. On appeal, the Commonwealth Court affirms. Perry received adequate notice of the charges against him although he did not receive specific notice of the charges before the first meeting. The evidence demonstrated that he violated the Commonwealth's policies concerning firearms in the workplace. That one or more of the instances were allegedly unintentional made no difference. Perry's claim to Second Amendment protection was likewise unavailing since the right to bear arms is not unlimited.

***In re Cioppa*, 51 A.3d 923 (Pa. Ct. Jud. Disc. 2012)**

Cioppa was an Allegheny County Magisterial District Judge. The charges against him involved two separate landlord-tenant matters in his court. In the first, he made sexual advances to the defendant. She resisted those advances but in return for Cioppa's promise that he would rule in her favor, she allowed the judge to take pictures of her in his chambers. When the case was called to trial, he did rule in her favor. In the second, Cioppa made similar sexual advances to a defendant. She resisted those advances but Cioppa gave her his business card with his cell phone number, asking her to call so they could go on a date. In return, he would make her case "go away." That defendant did not call. When her case was called to trial, she lost. Despite admittedly vague language in the Rules Governing Standards of Conduct of Magisterial District Judges entitled "Impropriety and Appearance of Impropriety to be Avoided," the Court of Judicial Discipline rules that Cioppa's conduct was so extreme as to fall within any interpretation of the law and thus formal discipline was appropriate.

***In re Merlo*, 58 A.3d 1 (Pa. 2012)**

The Judicial Conduct Board recommended that Merlo, an Allentown Magisterial Distrivct Judge, be removed from office and barred from ever holding judicial office again. On appeal, the Supreme Court affirms. During a two year period under review, Merlo had called off from work or taken vacation on 30% of the workdays. In addition, even when Merlo appeared in court, she was always at least one to two hours late, keeping litigants, witnesses, and lawyers waiting. Merlo generally did not give advance notice of her failures to appear in court but, instead, she would call in late in the morning to state she would not be in. In addition, with regard to landlord-tenant cases, she instructed her staff in her absence to enter judgment by agreement or by default, where appropriate, and to send out orders, even though Merlo herself was not present for any proceedings. If landlord-tenant matters were not resolved by default or by agreement, they were to be rescheduled for another day when Merlo might be present. When Merlo was in court, she was generally abusive to litigants and attorneys, berating one teenage traffic citation defendant as "a dog" and telling an attorney who was raising objections to "shut up." She would not allow a defendant to raise Fifth Amendment rights and purported to hold that defendant in contempt.