

COMMERCE PROGRAM OPINIONS

A

*ACCOUNTANT/CLIENT PRIVILEGE - Accountant/Client Privilege did not Attach Where Heir to Shareholder Subpoenaed Documents in the Possession of Closely-Held Corporation's Accountant - Accountant/Client Privilege is not as Broad as Attorney/Client Privilege - Stockholders have Right to View Corporate Records to Determine Mismanagement and Valuation of Stock Pursuant to 15 Pa.C.S.A. § 1508 - C.P.A. Law, 63 P.S. § 9.1, Supports Request by Estate of Deceased Shareholder for Access to Accountant's Records Where Shareholder's Stocks Were Required to be Sold Back to the Corporation after his Demise Pursuant to a Buy-Sell Agreement - Under C.P.A. Law, Estate would Qualify as Heir or Successor to Deceased Client*

Wolfington v. Wolfington Body Company, Inc., et al., February 2000, No. 3417 (Herron, J.)(August 8, 2000 - 14 pages)

*ACCOUNTING - Pennsylvania Law Does Not Permit Equitable Accounting In the Absence of Allegations of a Fiduciary Duty, Fraud or Misrepresentation, Mutual or Complicated Accounts or Lack of Adequate Remedy at Law*

First Union National Bank et al. v. Quality Carriers, April 2000, No. 2634 (Sheppard, J.)(October 10, 2000 - 49 pages)  
Shareholders are entitled to an accounting where they allege that accounts at issue are mutual and complicated

Mogilyansky v. Sych, June 2000, No. 3709 (Herron, J.)  
(April 30, 2001 - 8 pages) (Complaint alleges facts to support request for an accounting)

Poeta v. Jaffe, et al., November 2000, No. 1357 (Sheppard, J.)(May 30, 2001 - 9 pages) (where partners who have withdrawn from law firm are alleging breach of contract, they have anadequate remedy of law and are not entitled t o a n accounting in equity)

Babiarz v. Bell Atlantic - Pennsylvania, Inc. August, 2000,  
No. 1863 (Herron, J.) (July 10, 2001 - 38 pages) (Claim for  
Accounting by Employee Based on Employer's Use of Marketing  
Idea is Viable Where Other Substantive Claims Survive  
Demurrer)

*ACCOUNTING - An Accounting Will Not Be Granted When Plaintiff Fails  
to Allege That Defendant Wrongfully Possesses Anything That Belongs  
to Plaintiff - An Accounting Will Not Be Granted Merely Because  
Defendant Requests Information That Could be Obtained Through  
Discovery*

Shared Communications Servs. v. Greenfield, May 2001  
No. 3417 (Herron, J.) (November 19, 2001 - 9 pages)

*ACCOUNTING - Plaintiffs Have Set Forth All the Prerequisites For An  
Accounting As to Monies Paid to Defendants in Response to Allegedly  
Misleading Closing Costs Estimates*

Koch v. First Union Corp., et al, May 2001, No. 549  
(Herron, J.) (January 10, 2002 - 26 pages)

*ADEQUATE REMEDY AT LAW - Complaint Seeking Declaratory Judgment Is  
Dismissed Because It Alleges, inter alia, That Plaintiff Had  
Satisfied a Judgment That Was At Issue in a Still Pending Prior  
Action So That Plaintiff Has an Adequate Remedy to Resolve This  
Dispute Through the Still Pending 1992 Prior Action*

Tyburn Railroad Co. v. Consolidated Rail Co., May 2001,  
No. 2805 (Herron, J.) (October 26, 2001 - 8 pages)

*ADMISSION/JUDICIAL - An Admission in a Pleading Constitutes a*

*Judicial Admission That Has the Effect of Withdrawing a Fact From Issue and Dispensing Wholly with the Need for Proof of the Fact*

James J. Gory Mechanical Contracting, Inc. V. Philadelphia Housing Authority, February 2000, No. 453 (J. Herron)  
(July 11, 2001 - 29 pages)

*AGENCY - Agent Is Not Relieved From Tort Liability by Virtue of His Employment or Agency Relationship But an Authorized Agent of a Disclosed Principal Generally Is Not Personally Liable Under Breach of Contract Theory - Employment or Agency Relationship Cannot Protect Defendants from Tort Claims Asserted Against Them*

Advanced Surgical Services, Inc. v. Innovative Devices, Inc., August 2000, No. 1637 (Herron, J.)(January 12, 2000)

*AGENCY - The Existence of an Agency Relationship Is a Question of Fact*

MESNE Properties, Inc., et al. v. Penn Mutual Life Insurance Co., July 2000, No. 1483 (Herron, J.) (August 13, 2001 - 6 pages)

*AGENCY/APPARENT AUTHORITY - Apparent Authority Exists Where a Principal, by Words or Conduct, Leads People with Whom the Agent Deals to Believe That the Principal Has Granted the Agent the Authority He or She Purports to Exercise - The Burden of Establishing an Agency Relationship Is On the Party Asserting the Relationship*

Peltz v. Nationwide Mutual Insurance Co., January 2001, No. 127 (Herron, J.) (August 13, 2001 - 27 pages)

*AGENCY/DUTY OF LOYALTY - Preliminary Injunction Is Denied on Claim of Breach of Duty of Loyalty Where There Is no Evidence that Employee Competed with Employer During Period of Employment or Used Trade Secrets*

Medical Resources Inc. v. Bruce Miller and Northeast Open MRI, Inc., November 2000, No. 2242 (Sheppard, J.)(January 29, 2001 - 14 pages)

*AMICUS BRIEF - In the Absence of Specific Precedent, Filing an Amicus Brief With a Pennsylvania Trial Court is Permissive*

Milkman v. American Travelers' Life ins.. Co., June 2000,  
No. 3775 (Herron, J.) (November 26, 2001 - 24 pages)

*APPEAL - An Order Dismissing Preliminary Objections as to Which Division Within the Court of Common Pleas Has Jurisdiction Does Not Involve a Controlling Question of Law Meriting Amendment of the Order to Permit Appeal*

Parsky v. First Union Corp., February 2000, No. 771 (Herron, J.) (August 23, 2000 - 6 pages)

*ARBITRATION - Where Service Contract Included Broad Arbitration Clause, Court Will Not Resolve Entire Controversy Over Whether the Contract Expired to Stay Arbitration - Whether Arbitration Clause Survived Contract's Termination is Question of Scope - Contract Contained no Limiting Language as to the Time to Demand Arbitration Despite "Work Delay" Clause*

CGU Insurance Co. v. Pinkerton Computer Consultants, Inc.,  
June 2000, No. 2178 (Sheppard, J.) (August 31, 2000 - 10 pages)

*ARBITRATION - Scope of Arbitration Agreement does not Extend to Nonparties - Premature Appeal Where Court has not acted on Petition for Preliminary Injunction - Appealability of Order Denying Arbitration*

Manchel, Esquire, Individually and as liquidating partner of Manchel, Lundy & Lessin v. Robert Hochberg, John Haymond, Haymond, Napoli & Diamond, P.C. and Marvin Lundy, December 1999, No. 1277 (Sheppard, J.) (March 31, 2000 - 10 pages)

*ARBITRATION - Where Partnership Agreement Provides for the Selection of a Liquidator by Arbitration, This Arbitration Provision Extends Only to the Selection of the Liquidator and Not to Disputes Over Interpretation of the Partnership Agreement Itself - A Liquidator's Award Is Not an Arbitrator's Award*

McLafferty v. Cohen, September 2000, No. 3321 (Herron, J.)  
(May 10, 2001 - 7 pages)

*ARBITRATION - Non-signatory to Arbitration Agreement Cannot Be Compelled to Arbitrate*

Thermacon Enviro Systems, Inc. V. GMH Associates, March 2001, No. 4369 (Herron, J.) (July 18, 2001 - 12 pages)

*ARBITRATION - Where Preliminary Objections Raise Arbitration Provision But Defendant Has Failed to Make a Request for Arbitration, the Objections Will Be Held Under Advisement For 30 Days to Allow Defendant Either to File a Motion to Compel Arbitration or to Initiate an Arbitration Procedure*

4701 Concord, LLC v. Fidelity National Title Insurance Co. Of New York, April 2001, No. 1481 (Herron, J.) (August 28, 2001 - 11 pages)

*ARBITRATION - Dispute Involving Consumer Fraud As To Home Equity Loan Is Beyond the Scope of an Arbitration Agreement For Construction Repairs on Plaintiffs' Homes*

Koch v. First Union Corp., et al, May 2001, No. 549  
(Herron, J.) (January 10, 2002 - 26 pages)

*ARBITRATION - Where Plaintiffs Allege That Fraud, Corruption or Some Other Irregularity Causes an Unfair Arbitration Award, a Court Does Not Lack Subject Matter Jurisdiction to Review the Award That Determined the Fee Allocation for Attorneys Who Prosecuted Claims Against the Tobacco Industry*

Levin, Esquire et al. V. Gauthier, Esquire, May 2001, No. 374 (Sheppard, J.) (January 14, 2002 - 10 pages)

*ARBITRATION - Where Defendant's Preliminary Objection Asserted that Arbitration Should be Compelled, Court Declined to Enforce Arbitration Provision to Avoid Repetitive, Piecemeal Litigation, To Achieve an Efficient and Orderly Disposition of Claims and To*

*Fulfill the Goal Underlying the Joinder of Certain Indispensable Parties Which Would Have Been Contravened Had the Parties Been Compelled to Arbitrate.*

University Mechanical & Engineering Contractors, Inc. v. Insurance Company of North America, November 2000, No. 1554 (Sheppard, J.) (October 28, 2002 - 12 pages)

*ARBITRATION/AGENTS/WAGE PAYMENT AND COLLECTION LAW - Where Corporation Is Bound by Arbitration Provision and Complaint Alleges That Defendants Are Agents and Employees of That Corporation, Then Defendants May Invoke Arbitration Provision - Assertion of a Claim Under the Wage Payment and Collection Law Does Not Prevent Invocation of Arbitration Provision*

Weiner v. Pritzker & DeRusso, April 2001, No. 2846 (Sheppard, J.) (December 11, 2001 - 7 pages)

*ARBITRATION AWARD - Petition to Vacate Dismissed with Prejudice Where the Pleadings Failed to Establish with Legal and Factual Sufficiency that Petitioner was Denied a Full and Fair Hearing or that the Award was Tainted by Fraud, Misconduct or Bias or That the Award was Subject to an Irregularity Which Justified Vacating It - Preliminary Objections Asserting Lack of Jurisdiction, Prior Pending Action and Agreement for Alternative Dispute Resolution Which Purportedly Bar Court From Hearing the Petition are Overruled Where 42 Pa.C.S.A. § 7342 Has Consistently Been Held to Allow Pennsylvania Trial Courts to Hear Appeals of Arbitration Awards - Pa. R. Civ. P. 126 Permits the Court to Disregard Procedural Defects For Failure to Attach Verification to Petition or to Plead in Paragraphs Where Substantive Rights of Parties are Not Affected and No Harm Arises - Attorney Fees Not Warranted Despite Petitioner's Procedural Delays Because Such Delays Do Not Rise to the Level of Being Vexatious.*

Marvin Lundy, Esq. v. Donald F. Manchel, Esq., June 2002, No. 932 (Cohen, J.) (August 21, 2002 - 10 pages).

*ARBITRATION AWARD - Arbitration Award Involving Reinsurance Policy Will Not Be Vacated Where Petitioner Fails to Demonstrate By Clear, Precise and Indubitable Evidence that It Was Denied a Fair Arbitration Hearing - Where Contract Specifies Arbitration Pursuant*

to the Pennsylvania Arbitration Act, the Arbitration Award Is Reviewed Under 42 Pa.C.S.A. §7314 - Arbitrators Did Not Refuse or Improperly Exclude Material Factual Evidence on Crucial Factual Issues - Petitioner Was Not Denied a Full and Fair Hearing on the Issue of Whether Four Policies Qualified as "Heating Degree Day" Policies Merely Because It Could Not Elicit Testimony Regarding Other Policies That Had Nothing to Do With the Parties or Their Controversy - Petitioner Was Not Denied a Full and Fair Hearing Because of Failure to Complete Cross-Examination of Key Witness Where A Substitute Witness Was Provided, Petitioner Was Permitted to Give an Offer of Proof as to the Incomplete Testimony, Deposition Testimony Might Have Been Referenced and It Was Allowed to Argue New Evidence in Its Closing - Manifest Disregard of the Law Standard for Vacating Arbitration Award Is Not Applicable

Republic Western Insurance Co. v. Legion Insurance Co., July 2000, No. 3342 (Sheppard, J.)(January 25, 2001 -32 pages)

ARBITRATION AWARD - Petition to Vacate Common Law Arbitration Award Is Denied Pursuant to 42 Pa.C.S.A. § 7341 Where Petitioners Fail To Present Adequate Transcript Evidence

Lang Tendons, Inc. v. American Spring Wire Corp., November 2000, No. 2695 (Herron, J.)(February 5, 2001 - 6 pages)

Lang Tendons, Inc. v. American Spring Wire Corp., November 2000, No. 2695 (Herron, J.)(March 6, 2001)(Denying Motion for Reconsideration)

ARBITRATION/COMPEL - Court Has Subject Matter Jurisdiction Where Plaintiff Claims There Was No Agreement to Arbitrate - Where Arbitration Agreement is Triggered Exclusively by Party's Execution of an Agreement for Margin Trading and Plaintiff Establishes Fraud in the Execution of the Agreement for Margin Trading, Plaintiff Has Specifically Pled Fraud in the Execution of the Arbitration Agreement - The Agreement to Arbitrate Is Void Where There Was No Clear and Express Intent of the Parties to Arbitrate.

Marguerita Downes v. Morgan Stanley, September 2001, No. 2985 (Herron, J.) (September 23, 2002 - 22 pages)

*ARBITRATION/COMPEL - Where Motion to Compel Arbitration Requires Choosing Between Arbitration Clauses in Two Different Agreements, the Court's Focus is Limited to Determining Which Arbitration Provision Encompasses the Parties' Dispute - Substantive Determinations Concerning the Expiration of the Underlying Agreement Containing the Arbitration Provision Should be Determined by the Arbitrators and Not the Court*

Taylor Hospital Corporation v. Blue Cross of Greater Philadelphia, April 2000, No. 923 (Herron, J.)  
(April 23, 2001 - 26 pages)

*ARBITRATION/COMPEL - Where Plaintiff Asserts That Arbitration Should Not Be Compelled Because Its President Did Not Recall Signing the Client Agreement Containing the Arbitration Provision, the Mere Lack of Recollection (As Opposed to Denial) Does Not Create a Material Issue of Fact as to Whether the Proffered Signature is His - Arbitration Is Compelled Where the Claims of Negligence and Breach of Fiduciary Duty as to an Alleged Liquidated Brokerage Account Falls Within the Arbitration Provision*

Children's Services Inc. V. Fullman and Salomon Smith Barney, Inc. July 2001, No. 1627 (Herron, J.) (October 24, 2001, 5 pages)

*ARBITRATION/COMPEL/CONFLICTING PROVISIONS - Arbitration Agreement Will Not Be Enforced Where Employment Agreement Contains Conflicting Sections Providing for Arbitration and Injunctive Relief With Litigation of the Issues in Court*

Omicron Systems, Inc. v. Weiner, August 2001, No. 669  
(Herron, J.) (March 14, 2002 - 14 pages)

*ARBITRATION/CONSTRUCTION CONTRACT - Intent of Parties Unambiguously Limited Scope of Arbitration to Claims Not Exceeding \$100,000 - Similarity of Standards for Arbitrability under the Federal Arbitration Act and Pennsylvania Uniform Arbitration Act - Policy*



*Favoring Arbitration - Arbitration as a Contractual Matter - Specific Language Controls Over General*

Zoological Society of Philadelphia v. Intech Construction, Inc., February 2000, No. 1008 (Sheppard, J.)(May 16, 2000 - 10 pages)

*ARBITRATION/WAIVER - Although a Line of Pennsylvania Precedent Holds That a Mandatory Arbitration Provision Deprives a Court of Subject Matter Jurisdiction, Recent Precedent Recognizes That the Defense of Arbitration May be Waived - Defendant Waived Arbitration by Engaging in Discovery, Participating in Court Sponsored Settlement Conference and Waiting Until a Week Before Scheduled Trial to Request Arbitration*

James J. Gory Mechanical Contracting, Inc. V. PHA, February 2000, No. 453 (Herron, J.) (April 10, 2001 - 5 pages)

James J. Gory Mechanical Contracting, Inc. V. PHA, February 2000, No. 453 (Herron, J.) (July 11, 2001 - 29 pages)

*ASSIGNMENT - No Pennsylvania Case Has Addressed Whether the Assignment of Contractual Rights Includes Assignment of Causes of Action Arising From Those Rights - Where Assignment Provided for the Unconditional Transfer of all Present and Future Rights in Notes and Mortgages and the Assignor's Conduct Implies That it Assigned its Unjust Enrichment Claim Arising From Those Rights, There is a Material Issue of Fact as to the Exact Extent of the Assignment*

Resource Properties XLIV v. PAID et al, November 1999, No. 1265 and March 2000, No. 3750 (Sheppard, J.) (June 5, 2001 - 13 pages)

*ASSIGNMENT/INSURANCE - Even Though Express Language of Assignment*

*Clause Required Insurer's Consent Prior to an Assignment, Insured's Assignment of Rights After Rendering of Jury Verdict is Valid Since Assignment Occurred After Insured Against Loss - Namely the Jury Verdict.*

Patricia M. Egger, Administratrix of the Estate of Charles Egger v. Gulf Insurance Company, et al., May 2001, No. 1908 (Sheppard, J.) (September 11, 2002 - 16 pages)

*ASSIGNMENT/REAL PROPERTY - Because Florida Law Implies a Warranty of Good Title in an Assignment of an Interest in Real Property, the Parcel That Is Assigned Would Grant Good Title to the Property*

Terra Equities v. First American Title Insurance Co. March 2000, No. 1960 (Sheppard, J.) (August 9, 2001 - 17 pages)

*ATTORNEY/BREACH OF CONTRACT - Breach of Contract Claim Against Attorney Is Legally Sufficient Where Complaint Alleges that Attorneys' Engagement Letter Stated Their Goal Was "to Deliver to You Quality Legal Services"*

Red Bell Brewing Co., v. Buchanan Ingersoll, P.C. et al. May 2000, No. 1994 (Sheppard, J.) (March 13, 2001 - 16 pages)

*ATTORNEY-CLIENT PRIVILEGE/AT-ISSUE EXCEPTION - Privilege Does Not Apply to Identified Documents Where The Issue of Attorney's Involvement and Representation in Putative Class Action is At Issue With Respect to Class Certification Because Attorney is Married to Named Representative And Attorney's Involvement Could Give Rise to an Impermissible and Non-Waivable Conflict of Interest Which Would Negate the Adequacy of Representation Requirement - Plaintiffs Were Not Sufficiently Specific As to Which Documents Were Privileged And Other Documents Were Admittedly in the Record*

Gocial, et al. v. Independence Blue Cross and Keystone Health Plan East, Inc., December 2000, No. 2148 (Herron, J.) (September 4, 2002 - 9 pages)

*ATTORNEY/DISQUALIFICATION - Pennsylvania Has Adopted the Advocate/Witness Rule Which Precludes an Attorney From Acting as an Advocate During a Trial When He Will be Called as a Material Witness - This Rule Does Not Apply to Preclude an Attorney From Representing a Client During the Pre-Trial Stage*

Golomb & Honik, P.C. v. (Tareq H.) Ajaj, et al., November 2000, No. 425 (Herron, J.) (April 5, 2000 - 6 pages)

*ATTORNEY/DISQUALIFICATION - Defendants' Motion to Disqualify Plaintiff's Counsel Due to Conflict of Interest Under Rule 1.9 Is Denied Where Defendants Failed to Demonstrate a Pre-existing Attorney-Client Relationship Between It and Plaintiff's Counsel - An Attorney Representing a Corporation Represents the Corporation and Not Its Shareholders - Determining Whether an Attorney-Client Relationship Exists By Implication Within a Closely-Held Corporation Requires Careful Factual Analysis - An Attorney's Access to Corporate Documents in the Course of Due Diligence Does Not, Alone, Create an Attorney-Client Relationship With the Corporation's Shareholders - Rule 3.7 Requires Disqualification of an Advocate-Witness at Trial Only So That a Motion to Disqualify Months Before the Trial Date Is Premature*

First Republic Bank v. Steven Brand, August 2000, No. 147 (Herron, J.) (April 30 2001 - 20 pages)

*ATTORNEY/DISQUALIFICATION - Present Record Does Not Support Disqualification of Attorney for Conflict of Interest Under Rule 1.7 Based on Allegation That He is Materially Limited to Protecting His Own Interests Since He Was Involved in the Disputed Settlement Agreement for Money Rather Than the Desired Purchase of Property - Attorney Need Not be Disqualified in Pre-Trial Stage Pursuant to Rule 3.7 Even if He is Ultimately Shown to be a Material and Necessary Witness at Trial*

Albert M. Greenfield & Co., Inc. V. Wolf, Block, Schorr & Solis-Cohen et al., May 2000, No. 1555 (Herron, J.) (May 14, 2001 - 19 pages)

*ATTORNEY/DISQUALIFICATION - Plaintiff's Attorney Is Not Disqualified*

*Because His Attorney-Wife Was Formerly Employed by Defendant Where Defendant Fails to Present Evidence That Pennsylvania Rules of Professional Conduct 4.2 or 1.8(i) Were Violated - Adoption of a Per Se Rule of Disqualification of an Attorney Based on the Former Employment of His Spouse Is Unsupported By Either Relevant Precedent or the Rules of Professional Conduct Invoked by Defendant*

ACE American Insurance Co. v. Columbia Casualty Co. et al.,  
July 2001, No. 77 (Herron, J.) (November 26, 2002 - 27 pages)

*ATTORNEY/DISQUALIFICATION/CLOSE CORPORATION - Ten Factors May Be Considered When Determining Whether an Attorney-Client Relationship Is Formed Between a Close Corporation's Attorney and a Minority Shareholder - Attorney-Client Relationship Is Alleged in Complaint by Assertions That Minority Shareholder Had No Separate Representation and He sought Advice From the Corporation's Attorney on Individual Matters Related to His Dispute With Other Shareholders of the Close Corporation, Thereby Giving Attorney Information Unavailable to Other Persons - Where Motion to Disqualify Counsel Raises Factual Issues, Additional Discovery Is Ordered*

Borrello v. Borrello, April 2001, No. 1327 (Herron, J.)  
(August 28, 2001 - 23 pages)

*ATTORNEY/MALPRACTICE - Attorney's Violation of Rule of Professional Conduct Does Not Support Malpractice Claim Against Him*

DeStefano & Associates, Inc. V. Roy S. Cohen, et al.,  
June, 2000, No. 2775 (Herron, J.) (April 9, 2001 - 10 pages)

*ATTORNEY-CLIENT FILE/RETENTION OF COPY - Law Firm May Retain Copy of Client File That Has Been Copied At the Law Firm's Expense*

Quantitative Financial Strategies, Inc. v. Morgan Lewis

& Bockius, LLP, December 2001, No. 3809 (Herron, J.)  
(March 12, 2002 - 22 pages)

*ATTORNEYS FEES - Although Under Pennsylvania Law, a Litigant Cannot Recover Attorneys' Fees From Adverse Party Absent Statutory Authorization, a Clear Agreement Among the Parties or Some Other Exception, the Remedy of Indemnity Is an Exception to the Rule Limiting Recoupment of Attorneys' Fees from an Adverse Party*

Treco Inc. v. Wolf Investments Corp., Inc., March 2000, No. 1765 (Herron, J.)(February 15, 2001 - 9 pages)

Waterware Corporation v. Ametek et al, June 2000, No. 3703 (Herron, J.) (April 17, 2001 - 15 pages)

*ATTORNEY FEES - Where Breach of Contract Claim is Asserted, Attorney Fees May Not Be Claimed Absent Allegation that Contract or Statute Provided for Such Fees*

The Brickman Group, Ltd. v. CGU Insurance, July 2000, No. 909 (Herron, J.)(January 8, 2001)

*ATTORNEY FEES - Claim for Attorney Fees is Stricken Where Plaintiff Fails to Cite Statute, Agreement or Recognized Exception Authorizing Such Award - Because Shareholder's Claims are Deemed Direct, Rather than Derivative, ALI § 7.18 Would Not Apply as a Basis for Attorney Fees.*

Baron v. Pritzker, Omicron consulting, Inc., August 2000, No. 1574 (Sheppard, J.) (March 6, 2001 - 27 pages)

## B

*BAD FAITH - The Only Basis for A Private Bad Faith Action Against an Insurer is 42 Pa.C.S.A. § 8371 - Failure to Renew an Insurance Policy or Failure to Abide by Alleged Agreement to Renew an*

*Insurance Policy Does Not Fall Within the Bad Faith Statute*

*The Brickman Group, Ltd. v. CGU Insurance Co.*, July 2000, No. 909 (Herron, J.)(January 8, 2001 - 22 pages)

*BAD FAITH/DAMAGES - If a Plaintiff Is Successful in Asserting a Bad Faith Claim, a Court May Award Interest in the Amount of the Claim, Punitive Damages or Assess Court Costs - There is No Basis for Referring a Matter to a State Agency Under Section 8371*

*Trujillo v. State Farm Mutual Insurance Co.*, March, 2001 No. 2047 (Herron, J.) (December 6, 2001 - 31 pages)

*BAD FAITH/STATUTE OF LIMITATIONS - Bad Faith Claim Is Both Tort-like and Contract-like in Nature - The 6 Year Catch-All Statute of Limitations Applies to a Bad Faith Claim, So That Plaintiff's Claim Is Not Barred - Dismissal of Contract Action Does Not Require Dismissal of Bad Faith Claim*

*Trujillo v. State Farm Mutual Insurance Co.*, March, 2001 No. 2047 (Herron, J.) (December 6, 2001 - 31 pages)

*BANK HOLDING COMPANY ACT ("BHCA") - Where Bank's Conduct Was Reasonable in Joining Transfer of the Creditor's Lease and the Remainder of its Assets Plaintiff Did Not Establish Its Claim for Violation of the BHCA*

*Academy Industries Inc. V. PNC N.A. et al*, May 2000, No. 2383 (Sheppard, J.) (May 20, 2002 - 34 pages)

*BANKRUPTCY - Where Plaintiff Filed for Bankruptcy on Same Day It Filed Complaint, Its Cause of Action Became the Property of the Bankruptcy Estate - Bankrupt Plaintiff May Not Prosecute Its Claims Merely Because Bankruptcy Court Appointed Law Firm to Represent Trustee - Trustee May Prosecute the Claims But, if He Abandons Them, Bankrupt Plaintiff May Then Pursue Them*

Destefano & Associates, Inc. V. Roy Cohen et al, July 2000,  
No. 2775 (Herron, J.) (July 1, 2001 - 2 pages)

*BANKRUPTCY/INDISPENSABLE PARTY - Corporate Plaintiff That Filed Bankruptcy Petition is Not Indispensable Party to Individual Plaintiff's Contract and Tort Claims Because Corporation Lost Its Rights and Interests to These Claims When it Filed for Bankruptcy*

DeStefano & Associates, Inc. V. Roy Cohen et al., June 2000  
No. 2775 (Herron, J.) (April 9, 2001 - 9 pages)

*BANKRUPTCY/STAY - Absent Extraordinary Circumstances the Automatic Stay Provisions Afforded to Debtors Under 11 U.S.C. §362 Do Not Apply to Non-Debtor Third Parties - To Determine Whether the Narrow Exception of "Extraordinary Circumstances" Applies to the Nondebtor Defendant in this Case, Depositions Pursuant to Phila.Civil Rule \*206.1(E) and Pa.R.C.P. 206.7 Are Ordered*

Medline Industries, Inc. v. Beckett Healthcare, Inc. et al.,  
September 2000, No. 295 (Herron, J.)(February 22, 2001 - 6  
pages)

*BANKRUPTCY/STAY-STANDING - The Automatic Stay Incident to a Bankruptcy Petition Applies Only to Actions Against a Debtor and Not to Actions by a Debtor - Upon the Filing of a Bankruptcy Petition, the Debtor Loses Standing to Pursue Any Claims That May Have Accrued as of That Time and Instead the Bankruptcy Trustee Has Standing to Sue - If the Bankruptcy Trustee Formally Abandons a Claim, Standing Reverts to the Debtor to Bring Suit in His Own Name - Preliminary Objections to Complaint Filed by Debtor Corporation Are Sustained Where Plaintiff/Debtor Failed to Allege That Trustee Abandoned Claim*

DeStefano & Associates, Inc. V. Roy Cohen et al., June 2000,  
No. 2775 (Herron, J.) (April 9, 2001 - 10 pages)

*BANKRUPTCY/SUBJECT MATTER JURISDICTION - Where Disputed Property Was Transferred out of Bankruptcy Estate to Defendants, State Court May Exercise Jurisdiction Because the Dispute Is Generally Beyond the Limits of the Bankruptcy Court's Jurisdiction*

Apria Healthcare, Inc. v. Tenet Healthsystem, Inc., February 2000, No. 289 (Herron, J.)(February 12, 2001 - 10 pages)

*BID/BOND - Bid Did Not Have a Fatal Defect to Justify the Issuance of an Injunction Where the Bond Was Executed by a Person Who Was Not Certified in Pennsylvania as an Insurance Agent*

Carr & Duff, Inc. V. SEPTA - February 2002, No. 4101 (Sheppard, J.) (April 12, 2002 - 9 pages)

*BID: PUBLIC CONSTRUCTION CONTRACT - Philadelphia Taxpayer has Standing to Contest Alleged Violation of Competitive Bidding Laws Where School District Solicited Bids for a Public Contract - Contractor, who was also Disappointed Bidder, had Standing as a Taxpayer Where it Did Business in Philadelphia and Paid Philadelphia Business Privilege and Wage Taxes - Injunction Should be Granted Where Plaintiffs Establish that Contractor's Bid Failed to Comply With the Mandatory Bid Bond Requirements of the Bid Instructions - Handwritten or Typed Insertions to a Form Contract Are Construed to Reflect the Parties' Intent*

Rogers and Devine Bros., Inc. v. The School District of Philadelphia, April 2000, No. 2387 (Herron, J.)(June 6, 2000 -35 pages)

*BID: PUBLIC CONSTRUCTION CONTRACT - School District did not Abuse Its Discretion in Rejecting Bid that was not Signed and did not Include a Consent of Surety Letter as Required by the Bid Instructions - The Omissions in Plaintiff's Bid were Material Defects*

MC Painting Corporation v. The School District of Philadelphia and AppleWood Enterprises, Inc., May 2000, No. 2265 (Herron, J.)(June 20, 2000 - 9 pages)

*BID: PUBLIC CONSTRUCTION CONTRACT - School District Did Not Abuse Its Discretion in Rejecting Contractor's Bid Where Contractor Did Not Meet the Five-Year Experience Requirement Set Forth in the Bidding Specifications*



Zinn Construction, Inc. v. School District of Philadelphia,  
June 2000, No. 3369 (Herron, J.)(July 10, 2000 - 3 pages)

*BID: PUBLIC CONSTRUCTION CONTRACT - Taxpayer's Petition to Enjoin the City From Awarding a Bid to a Contractor Is Granted Where the Bid Is Defective Because Post-bid Discussions Resulted in a Substantive Change That Would Violate the Competitive Bidding Law By Giving Competitive Advantage to Prospective Bidder*

Buckley & Co., Inc. V. City of Philadelphia, July 2001,  
No. 833 (Herron, J.) (September 10, 2001 - 23 pages)

*BID: PUBLIC CONSTRUCTION CONTRACT - Taxpayer's Petition to Enjoin Publicly Bid Contract is Granted Where it is Shown That the Successful Bid, Though Facially Responsive, Was Materially Defective Where it Failed to Meet the 10% DBE Participation Goal Because the Purported "Regular Dealer" Could Not be Considered a Regular Dealer in the Precast Concrete Copings for the Project - Absent an Injunction, the Defendant Contractor Would Obtain an Unfair Competitive Advantage That Offends the Purpose of Competitive Bidding - The Balance of Harm Weighs in Favor of Granting the Injunction to Protect the Taxpayer's Right to a Fair Bidding Process*

Buckley & Company, Inc. V. City of Philadelphia, et al.,  
March 2002, No. 1894 (Herron, J.) (May 22, 2002 - 33 pages)

*BID: PUBLIC CONSTRUCTION CONTRACT - Preliminary Objections Are Overruled Where Complaint Alleges That Public Bidding Requirements Were Violated Where Bid Requirements Limited Bidders to One Manufacturer's Product - Where Issues of Fact Are Raised as to the Legitimacy of Limiting the Selection to This Project, Additional Discovery is Necessary*

International Fiber Systems, Inc. v. City of Philadelphia  
October 2001, No. 968 (Sheppard, J.) (June 27, 2002 -  
17 pages)

*BREACH OF CONTRACT--CONTRACT CONSTRUCTION - Case was Dismissed where the Court as a Matter of Law Found that the Plain Meaning of*

the Contract did not Support Plaintiff's Claim for Breach of Contract. Under Pennsylvania Law, where Contract Language is Unambiguous, a Court is Limited to a Review of the Plain Meaning of the Contract Language to Determine the Intent of the Parties. Parol Evidence may not be Considered to Interpret the Terms of an Unambiguous Contract.

Trigen-Philadelphia Energy Corporation v. Drexel University,  
December, 2001, No. 2160 (Sheppard, J.) (October 8, 2002 - 6  
pages)

BREACH OF CONTRACT, TORTIOUS INTERFERENCE, & PROMISSORY ESTOPPEL --  
Case Dismissed on Summary Judgment where Lease Required Landlord's  
Written Approval for Tenant's Sublease. Court Found that Landlord  
Did Not Give Written Approval, there was No Oral Modification of  
the Lease and that the Statute of Frauds would have Barred any Oral  
Modification of the Lease. Plaintiff's Claim that Landlord  
Interfered with its "Prospective Sublease" failed because the  
Sublease was Conditioned upon Landlord's Acceptance and Landlord  
Could Legally Withhold Approval of Sublease Where Proposed Sublease  
Would Have Required Zoning Variance. Plaintiff Could Not Support  
its Claim for Promissory Estoppel without Evidence of an Express  
Promise.

Kane's Office Furniture, Inc. v. PREFERRED REAL ESTATE  
INVESTMENTS, INC., March 2002, No. 1671 (Cohen, G., J.)  
(November 21, 2002 - 9 pages)

## C

CAPACITY TO SUE - Unregistered Foreign Limited Partnership Doing  
Business in Pennsylvania Lacks Capacity to Sue in Pennsylvania  
Courts - Foreign Limited Partnership Does Not Have to Register If  
It Does Not Conduct Business in This State - Under the Foreign  
Business Corporation Law, Regularly Conducting Business Does Not  
Encompass the Regular Acquisition and Collection of Debts Even  
Through Offices and Agents Located in Pennsylvania

Wamco XVV Ltd. v. Gregg Desouza et al., July 2000, No. 4385

(Herron, J.) (April 3, 2001 - 21 pages)

*CAPACITY TO SUE - Corporation's Name Change Does Not Eliminate Its Right to Enforce Restrictive Covenant Agreement Against Its Former Employee Where Plaintiff Disclosed Both Its Past and Present Corporate Names*

Omicron Systems, Inc. V. Weiner, August 2001, No. 669  
(Herron, J.) (March 14, 2002 - 14 pages)

*CHOICE OF LAW - Under Choice of Laws Principles, Delaware Law Applies Where Contracts Provide That Delaware Law Applies, the Relevant Transactions Bear a Reasonable Relation to Delaware, the Contracts Were Executed in Delaware, and Defendant's Performance Under the Contract Occurred in Delaware - While There Is No Appellate Pennsylvania Precedent on Whether Contractual Choice of Law Provision Extends to Tort Claims, Delaware Substantive Law Will Be Applied Pursuant to the Parties' Stipulation - Under Pennsylvania Law, a Pennsylvania Court Applies Pennsylvania's Evidentiary Sufficiency Standard and Procedural Rules Regardless of Which State's Substantive Law Applies*

Textile Biocides, Inc. v. Avecia, Inc. January 2000, No. 1519, (Herron, J.) (July 26, 2001 - 46 pages)

*CHOICE OF LAW - Under Pennsylvania Conflict of Law Rules, Pennsylvania's Evidentiary Sufficiency Standard Should Be Applied to a Claim Regardless of Which State's Substantive Law Applies - Where Substantive Law of Two States Conflict as to Standard for Establishing Defamation Against a Corporation, Choice of Laws Analysis is Necessary - Pennsylvania Substantive Law Applies to Defamation Action Where Plaintiff/Corporation's Principal Place of Business is Pennsylvania Because Pennsylvania Has the Greatest Interest in Protecting the Plaintiff's Reputation.*

Hemispherex Biopharma, Inc. v. Asensio, July 2000, No. 3970  
(Sheppard, J.) (September 6, 2001 - 17 pages)

*CHOICE OF LAW - In a Contract Action, To Determine the Applicable Law It Is Necessary As a Threshold Matter to Consider the Language*

of the Contract - Pennsylvania Courts Give Effect to the Choice of Law Provisions in a Contract - Under Pennsylvania's Conflict of Law Rules, a Pennsylvania Court Should Apply Pennsylvania Procedural Rules Even When Applying the Substantive Law of Another State

Branca v. Conley, February 2001, No. 227 (Herron, J.)  
(October 30, 2001 - 11 pages)

CHOICE OF LAW - If the Laws of Competing States Do Not Differ, No Choice of Law Analysis Is Required - Although Pennsylvania, Kentucky and Ohio Law Recognize the Right of a Consumer to Recover Economic Loss From a Manufacturer of a Defective Product, These Jurisdictions Differ as to the Requirement of Privity of Contract in Asserting Breach of Warranty Claims - Under Pennsylvania and Ohio Law Privity is Not Required for a Claim of Breach of Warranty Based on Tort, But Under Kentucky Law Privity is Required - There is No Conflict of Law for Negligence, Strict Liability and Intentional Misrepresentation Claims Among Pennsylvania, Kentucky, and Ohio - These Jurisdictions Conflict as to Claims for Negligent Misrepresentation Because Ohio Law Requires a Plaintiff to Show Privity of Contract While Pennsylvania and Kentucky Law Do Not Require Privity

Teledyne Technologies Inc. v. Freedom Forge Corp., May 2000, No. 3398 (Sheppard, J.) (April 19, 2002 - 38 pages)

CHOICE OF LAW - *Where There Is a Conflict Between Pennsylvania and Delaware Law as to the Requirement of Showing Individualized Proof of Reliance for a Claim of Common Law Fraud in a Class Action , Pennsylvania Conflict of Law Rules Must Be Applied - Pennsylvania Law Applies Where All Three Defendants Are Registered to Do Business in Pennsylvania, the Partnership Property Is Located in Philadelphia, the Stream of Revenue Flows From Philadelphia and Pennsylvania Law Has Evinced An Interest In Creating a Presumption of Reliance Where Fraud Is Alleged Within the Context of a Fiduciary Duty*

Wurtzel v. Park Towne Place Associates Limited Partnership, et al., June 2001, No. 3511 (Herron, J.)(November 5, 2002 - 54 pages)

*CIVIL CONSPIRACY - Commonwealth Sufficiently Set Forth Claim For Civil Conspiracy Because Parent Corporation and Its Subsidiary Are Treated as Separate Entities Absent Allegation That They Are "Alter Egos" - Respective Employees of Both Corporations May Be Liable for Civil Conspiracy*

Commonwealth of Pennsylvania v. BASF Corporation, April 2000, No. 3127 (Herron, J.) (March 15, 2001 - 34 pages)

*CIVIL CONSPIRACY - Amended Complaint Sufficiently Sets Forth Count for Civil Conspiracy Where It Alleges that Defendants Conspired to Tortiously Interfere With Each Other's Respective Contract With Plaintiff and to Breach Each Respective Contract and Where It Alleges That Plaintiff Suffered Actual Damages By Being Deprived of Permanent Placement Fee From the Hiring By Defendant of Other Defendant*

Solomon Edwards Group, LLC v. Voicenet, et al., June 2000, No. 1822 (Sheppard, J.)(March 29, 2001 - 10 pages)

*CIVIL CONSPIRACY - Claim for Civil Conspiracy Premised on Alleged Conspiracy Between Corporation and Its Officers is Dismissed Where Corporate Officers Allegedly Acted as Agents of Corporation Rather Than for Their Own Individual Benefit*

First Republic Bank v. Brand, August 2000, No. 147 (Herron, J.) (June 4, 2001 - 20 pages)

*CIVIL CONSPIRACY - An Action for Civil Conspiracy Requires Assertion of a Civil Cause of Action for a Particular Act - The Requisite Underlying Causes of Action for Civil Conspiracy Are Set*

*Forth in the Claims for Rescission, Unjust Enrichment, Breach of Fiduciary Duty and Fraud*

Babiarz v. Bell Atlantic - Pennsylvania, Inc. August, 2000,  
No. 1863 (Herron, J.) (July 10, 2001 - 38 pages)

*CIVIL CONSPIRACY - Plaintiff Corporations' Civil Conspiracy Claim Against Two Defendants Involved in the Sale of Four Snow Removal Trucks Is Sufficiently Specific and Sets Forth All Elements of This Claim*

V-Tech Services, Inc. V. Murray Motors, et al, February 2001, No. 1291 (Herron, J.) (October 11, 2001) (2 opinions addressing distinct objections of each defendant)

*CIVIL CONSPIRACY/PARENT CORPORATION AND WHOLLY OWNED SUBSIDIARY - A Parent Corporation and Its Wholly Owned Subsidiary Do Not Automatically Constitute a Single Entity For the Purposes of a Civil Conspiracy So Summary Judgment May Not Be Entered Where There Are Material Issues of Fact As To Whether the Two Entities Are Distinct*

Advanced Surgical Services, Inc. V. Innovative Devices, Inc., August 2000, No. 1637 (Herron, J.) (November 8, 2001, 16 pages)

*CIVIL CONTEMPT AND SANCTIONS - Motion for Civil Contempt Denied Where Petitioner Fails to Show that Defendant Volitionally Violated the Injunction Order - Defendant has Expressed an Intent to Tender Payments Pursuant to the Order But Was Thwarted by Plaintiff's Refusal to Post Additional Bond - Plaintiff Shall be Required to Post Additional Bond to Remove Obstacle to Defendant's Compliance with Order*

T.J.S. Brokerage & Co., Inc. v. Hartford Casualty Insurance Co. and Peterman Co., December 1999, No. 2755 (Herron, J.) (July 21, 2000 - 8 Pages)

CHOICE OF LAW - Where There Is a Conflict Between Pennsylvania and Delaware Law as to the Requirement of Showing Individualized Proof of Reliance for a Claim of Common Law Fraud in a Class Action , Pennsylvania Conflict of Law Rules Must Be Applied - Pennsylvania Law Applies Where All Three Defendants Are Registered to Do Business in Pennsylvania, the Partnership Property Is Located in Philadelphia, the Stream of Revenue Flows From Philadelphia and Pennsylvania Law Has Evinced An Interest In Creating a Presumption of Reliance Where Fraud Is Alleged Within the Context of a Fiduciary Duty

Wurtzel v. Park Towne Place Associates Limited Partnership, et al., June 2001, No. 3511 (Herron, J.)(November 5, 2002)

CLASS ACTION/CERTIFICATION - A Class Action Premised on Breach of Contract and Breach of Duty is Certified For All Individuals and Other Business Entities Who Incurred Capital Gains Tax Liability Due to the Conversion of Nine (9) Common Trust Funds to an Evergreen Fund Where the Trustee by Letters Assured That No Tax Liability Would Thereby Be Incurred - Differences in the Underlying Trust Documents Would Not Defeat the Commonality Requirement For Class Certification Where Defendant Does Not Identify Specific and Significant Differences - Subclasses May be Created if Later Refinement of Issues Reveals That Different Contractual Provisions Merit Different Interpretations

Parsky v. First Union Corporation, February 2000, No. 771 (Herron, J.) (May 8, 2001 - 29 pages)

CLASS ACTION/CERTIFICATION - Class Action by Homeowners Against Loan Broker Who Charged a Mortgage Broker Fee Cannot Be Certified Because Plaintiffs' Claims Do Not Present Predominating Common Questions of Fact and Law - A Private Class Action Plaintiff Asserting a Claim Under Section 9.2 of the UTPCPL Must Show a Causal Connection Between the Unlawful Practice and Plaintiffs' Loss - Proving That An Agency Relationship Existed Between the Class Members and Defendant Loan Brokers Raises Individual Factual Questions

Floyd v. Clearfield, February 2001, No. 2276  
(Herron, J.) (October 8, 2001 - 15 pages)

*CLASS ACTION/CERTIFICATION - Where Class Action Complaint Raises Individual Questions as to the Class Members' Awareness of and Reliance on Saturn's Alleged Misrepresentation That the Upholstery in the 1996 Saturns Had Been Treated With a Fabric Protection Chemical, the Class May Not Be Certified Because the Complaint's Claim, inter alia, for Breach of the UTPCPL Does Not Present Questions of Fact and Law That Are Common to the Class - Claim for Breach of Express Warranty as to Whether the Upholstery Was Treated With Scotchgard Likewise Raises Issue of Individual Facts as to Whether Those Representations Formed a Basis of the Bargain for Plaintiff's Purchase of Saturn Vehicle*

Green v. Saturn Corp., January 2000, No. 685 (Herron, J.)  
(October 24, 2001 - 16 pages)

*CLASS ACTION/CERTIFICATION - Whether Class Certification Should Ultimately Be Granted Should Not Be Raised by Preliminary Objection*

Koch v. First Union Corp., et al, May 2001, No. 549  
(Herron, J.) (January 10, 2002 - 26 pages)

*CLASS ACTION/CERTIFICATION - Class Action Is Certified As To Claims of Unjust Enrichment and Breach of Implied Warranty of Merchantability Under the UCC in the Marketing of Cold-Eeze*

Tesauro v. The Quigley Corp., August 2000, No. 1011  
(Herron, J.) (January 25, 2002 - 19 pages)

*CLASS ACTION/CERTIFICATION - Class Action by Providers and Subscribers, Seeking Reimbursement and/or Coverage for Purportedly Medically Necessary Chiropractic Treatment, and Setting Forth Otherwise Viable Claims for Breach of Contract, Breach of the Implied Duty of Good Faith and Violations of the UTPCPL, Cannot be Certified Where Individual Questions of Fact As to the Threshold Determination of Medical Necessity Predominate Over the Common Questions.*



Eisen, et al. v. Independence Blue Cross, et al., August 2000, No. 2705 (Herron, J.) (July 26, 2002 - 26 pages).

*CLASS ACTION/CERTIFICATION - Class Action Is Certified Consisting of 194 Limited Partners as of May 29, 2001 Who Assert Claims for Breach of Contract, Breach of Fiduciary Duty and Common Law Fraud Against the Defendants General Partner, Affiliate of General Partner and Partnership - Common Law Fraud Claim Presents Common Issues of Law and Fact Based on Presumption of Reliance Arising From the Fiduciary Duty of the Partners - Class Representative Has Standing to Represent the Class Since His Claims Fall Within the Claims of the Proposed Class, Thereby Satisfying the Typicality Requirement of Pa.R.C.P. 1702(3)*

Wurtzel v. Park Towne Place Associates Limited Partnership, et al., June 2001, No. 3511(Herron, J.)(November 5, 2002 - 54 pages)

*CLASS ACTION/CERTIFICATION/MOTOR VEHICLE REPAIRS - Class Action Is Certified Consisting of All Persons in the United States Insured by Erie Insurance Company With a Claim After February 1994 for Vehicle Repairs Where Non-Original Equipment Manufacturer ("OEM") Crash Parts Were Specified For Their Repairs - The Quality of Non-OEM Parts Including the Contested Crash Parts Can Be Addressed on a Class Wide Basis - In Determining Whether the Contested Crash Parts and OEM Parts Are of "Like Kind and Quality" Under the Insurance Policy, a Court Must Consider the Design and Material of the Part Replaced (Not Its Age, Condition or Use) So That Valuation Issues May Be Addressed on a Class-Wide Basis -- Choice of Law Issues Among 12 Relevant Jurisdictions Can Be Resolved Through Certification of Sub-Classes -- Bad Faith Claim May Be Certified -- UTPCPL Claim Is Certified Based on the 1996 Amendment to the Catch-All Provision*

Foultz v. Erie Insurance Co., February 2000, No. 3053 (Herron, J.) (March 13, 2002 - 33 pages)

*CLASS ACTION/CERTIFICATION/SETTLEMENT - Certification Is Granted For a Class of Persons Who Purchased From American Travelers*

*Guaranteed Renewable Long Term Care and Home Healthcare From January 1989 Until Present and Whose Premiums Were Increased by the Defendants - Class Action May Not Be Settled Without a Hearing and Judicial Consideration of Seven Factors*

Milkman v. American Travelers Life Insurance Co., June 2000,  
No. 3775 (Herron, J.) (November 26, 2001 - 24 pages)

*CLASS ACTION/COMMUNICATION - Class Action Plaintiffs' Petition for Preliminary Injunction to Prevent Defendant Drug Company From Sending Medical Authorizations to Consumers Who Report Adverse Reactions to Baycol is Denied - Defendants Have Not Violated Pennsylvania Rule of Professional Conduct 4.2 Which Prohibits Attorneys From Contacting Individuals Represented by Counsel Because Defendants Were Authorized by Law to Communicate With Consumers Who Make an Adverse Drug Report - These Communications Do Not Violate Pa. R.C.P. 1713*

Lewis v. Bayer A.G., August 2001, No. 2353 (Herron, J.)  
(June 12, 2002 - 25 pages)

*CLASS ACTION/CONFLICT OF INTEREST - Impermissible and Non-Waivable Conflict of Interest Exists Where Attorney Remains Counsel of Record According to Contingent Fee Agreements Which Have Not Been Terminated or Modified and Attorney is Married to Named Class Representative*

Gocial, et al. v. Independence Blue Cross and Keystone Health Plan East, Inc., December 2000, No. 2148 (Herron, J.)  
(September 4, 2002 - 9 pages)

*CLASS ACTION/DISCONTINUANCE - Class Action Suit May Not Be Discontinued Without Court Approval - Court Must Analyze Specific Factors to Protect Putative Members of the Class from Prejudicial and Binding Action by the Representative Parties*

Garner v. Chrysler Financial Corp., July 2000, No. 1585  
(Herron, J.)(December 20, 2000 - 3 pages)

Greer v. Fairless Motors, Inc., May 2000, No. 4175 (Herron,  
J.)(December 20, 2000)(December 20, 2000 - 3 pages)

Smalls v. Gary Barbera's Dodgeland, August 2000, No. 2204  
(Class Action Alleging That Automobile Dealer Induced  
Plaintiffs to Finance Purchases at Inflated Rates Due to a  
"Kick Back" in Form of "Dealer Reserve")

*CLASS ACTION/NOTICE - Given the Extension of Personal Jurisdiction  
Boundaries by the United States Supreme Court in 1985 and the  
Purpose for Permitting Class Actions in Pennsylvania, the current  
Pennsylvania Rules of Civil Procedure on Class Actions Allow the  
Use of an "Opt Out" Procedure for Nonresident Class Action  
Plaintiffs*

Parsky v. First Union Corporation, February 2000, No. 771  
(Herron, J.) (August 17, 2001 - 10 pages)

*CLASS ACTION/NOTICE - Proposed Forms of Notice in Pending Class  
Action are Deemed Insufficient and Vague Where They Fail to Give A  
Fair Recital of the Subject Matter and Proposed Terms - Form of  
Notice Should Provide More Detail and Should Be in Enumerated  
Paragraphs - Individual Notice by First-Class Mail May Be  
Accomplished to Class Members Readily Identifiable and Additional  
Notification Through Print Media Outlets and the Internet-  
Publication of Notice on Defendant's Website May Be Prejudicial and  
is Not Warranted in this Instance to Minimize Plaintiffs' Expense  
for Providing Notice.*

Tesauro v. The Quigley Corporation, August 2000, No. 1011  
(Sheppard, J.) (August 14, 2002, 7 pages)

*CLASS ACTION/NOTICE - Notice in a Class Action Must Give a Fair  
Recital of the Subject Matter, the Proposed Terms and Inform the  
Class Members of an Opportunity To Be Heard*

Milkman v. American Travelers Life Insurance Co., June 2000,  
No. 3775 (Herron, J.) (November 26, 2001 - 24 pages)

*CLASS ACTION/OPT OUT PROVISION - Opt Out Procedure in Class Action Is Adopted for Pennsylvania Residents and Nonresidents in the Interest of Judicial Economy*

Milkman v. American Travelers Life Insurance Co., June 2000, No. 3775 (Herron, J.) (November 26, 2001 - 24 pages)

*CLASS ACTION/SETTLEMENT/APPROVAL - Settlement of Class Action Involving Sale of Long-Term Care and Home Health Care Insurance Policies Is Entitled to Presumption of Fairness Since Four Threshold Criteria Are Met - Settlement Offers Individual Class Members a Moderate If Not Overwhelming Benefit - The Value of a Class Action Is Determined by the Benefit Obtained by the Class Not the Cost or Benefit to the Defendant - Settlement Is Approved Where It Is Limited to Actions Related to the Policies and Covers Only Those Claims Arising From the Factual Scenario Presented in the Complaint - The Settlement Satisfies the Seven Factors Required Under Pennsylvania Law - The Proposed Attorneys' Fees Met the Requirements of Rule 1716 and Are Appropriate Under the Lodestar Test - Incentive Award For Class Representatives Is Approved*

Milkman v. American Travelers Life Insurance Co., June 2000, No. 3775 (Herron, J.) (April 1, 2002 - 63 pages)

*CLASS ACTION/STANDING/SUMMARY JUDGMENT - Where Summary Judgment Is Granted Prior to Class Certification It is Not Binding On the Putative Class But Only on the Named Parties - Rules of Standing Apply to Class Action Plaintiffs and Require a Causal Connection Between the Named Plaintiff and Named Defendant - Parent Corporation Is Not Normally Liable For Contractual Obligations of Its Subsidiary - Plaintiffs Do Not Have Standing to Sue Defendants Where They Have No Contractual Relationship - Summary Judgment Is Granted As to Those Defendants With Whom Plaintiffs Failed to Establish the Requisite Causal Connection*

Eisen et al. V. Independence Blue Cross, August 2000, No. 2705 (Herron, J.) (May 6, 2002 - 14 pages)

*CLOSELY HELD CORPORATION/DEMAND REQUIREMENT - Where Closely-Held corporations Are Involved, Court has Discretion to Treat*

*Plaintiff/Shareholder's Claims -- Including Those for Corporate Waste -- as Direct Claims for Which Demand is Not Required*

Baron v. Pritzer, Omicron Consulting, Inc. August 2000,  
No. 1574 (Sheppard, J.) (March 6, 2001 - 27 pages)

*COLLATERAL ESTOPPEL - Prior Order Denying Corporate Client's Motion to Disqualify Attorney From Representing Other Party Does Not Estop Corporate Client from Seeking Damages For Attorney's Malpractice*

Red Bell Brewing Co., v. Buchanan Ingersoll, P.C. et al.  
May 2000, No. 1994 (Sheppard, J.) (March 13, 2001 - 16  
pages)

*COLLATERAL ESTOPPEL - Where Language in the Insurance Policy in Another Case Against the Same Defendant Differs from the Policy Language in the Case Being Considered, Issues Are Distinct, and Collateral Estoppel Does Not Estop Insurance Company from Presenting a Defense*

Peltz v. Nationwide Mutual Insurance Co., January 2001, No.  
127 (Herron, J.) (August 13, 2001 - 27 pages)

*COMMERCIAL DISPARAGEMENT - Complaint Sets Forth Viable Claim For Commercial Disparagement by Alleging Damages as a Result of Defendant's False Statements of Fact Concerning Company's Ability to Perform Its Contract*

Levin v. Schiffman and Just Kidstuff, Inc., July 2000, No.  
4442 (Sheppard, J.) (February 1, 2001 - 26 pages)

*COMMERCIAL DISPARAGEMENT - Plaintiffs Set Forth Claim for Commercial Disparagement By Alleging That Defendants Published False Disparaging Statements About the Legal Services They Provide With the Intent to Damage Plaintiffs' Relationship With Their Clients and the Publications Caused Pecuniary Damage*

Phillips v. Selig, July 2000, No. 1550 (Sheppard, J.)

(September 19, 2001 - 20 pages)

*COMMERCIAL DISPARAGEMENT - Judicial Privilege Applies to Claims of Commercial Disparagement - Statements Made In the Regular Course of Judicial Proceedings Material to the Advancement of a Party's Interest Fall Within the Scope of Judicial Privilege and Cannot Serve as the Basis of Claims of Defamation*

Bocchetto v. Gibson, April 2000, No. 3722 (Sheppard, J.)  
(March 13, 2002 - 19 pages)

*COMPLAINT/AMENDMENT - Leave to Amend a Complaint May Be Denied Where It Would Violate a Positive Rule of Law - Complaint May Not Be Amended to Add a Plaintiff Who Lacks Standing to Assert a Breach of Contract Claim Because It Is Neither a Party to the Contract Nor an Intended Beneficiary*

Terra Equities, Inc., v. First American Title Insurance Co.  
March 2000, No. 1960 (Sheppard, J.) (March 16, 2001 -  
9 pages)

*COMPLAINT/AMENDMENT - Leave to Amend a Complaint May Be Denied Where It Would Violate a Positive Rule of Law or Result in Prejudice to the Opposing Party - An Amendment to a Pleading May Not Introduce a New Cause of Action After the Statute of Limitations Has Run*

MESNE Properties, Inc., et al. v. Penn Mutual Life Insurance Co., July 2000, No. 1483 (Herron, J.) (August 13, 2001 - 6 pages)

*COMPLAINT/AMENDMENT - Plaintiff's Motion for Leave to Amend His Complaint Is Granted Where it Is Not Against Positive Rule of Law but Merely Amplifies Factual Averments and Adds Exhibits but Does Not Assert New Cause of Action, Leave to Amend Is Denied as to Those Claims Dismissed with Prejudice.*

Babiarz v. Bell Atlantic-Pennsylvania, et al., August 2000,  
No. 1863 (Herron, J.)(July 10, 2001 - 38 pages)

*COMPLAINT/AMENDMENT - Plaintiff's Motion for Leave to Amend its Complaint Is Denied Insofar as the Proposed Amendments Regarding Insurer's Reserving Decisions or Insertion of Higher Deductible Do Not Cure Original Defects as to Fiduciary Duty Claim or Statutory Bad Faith Pursuant to 42 Pa.c.s.a. § 8371 and Proposed Claim for Fraud Is Barred by Gist of the Action Doctrine; Motion Is Granted to Amplify Factual Averments for Existing Contract Claim.*

The Brickman Group, Ltd v. CGU Insurance Company, July 2000,  
No. 909 (Herron, J.)(August 3, 2001 - 12 pages)

*CONFESSION OF JUDGMENT - Criteria for Opening and Striking a Judgment - Order Opening Confessed Judgment Lacks Res Judicata Effect - Warrants of Attorney in Note and Guaranty Do Not Merge - Strict Construction of Warrants of Attorney to Confess Judgment - Technical Errors May be Amended - Partner May be Jointly and Individually Liable to Confession of Judgment where General Partner Signed Note on Behalf of Partnership - Exercise of Warrant of Attorney in a Note against Principal Obligor Does Not Exhaust the Warrant of Attorney in the Obligor's Separate Guaranty - Judgment Containing Excessive Attorney's Fees Should be Modified Not Stricken*

DAP Financial Management Co. v. Ciotti, January 2000, No. 1566  
(Sheppard, J.)(May 16, 2000 - 21 pages)

*CONFESSION OF JUDGMENT - Defendants Presented Meritorious Defense for Opening Judgment Confessed Against them Pursuant to a General Indemnity Agreement Where Surety Company Failed to Notify Defendants of Settlement of Bond Claims Prior to Paying those Claims Arising from Termination of Defendants' Construction Agreement*

Mountbatten Surety Co., Inc. v. USA Con-Force Waterproofing Co., et al., May 2000, No. 1967 (Herron, J.)(August 9, 2000 - 5 pages)

*CONFESSION OF JUDGMENT -Judgment Could Not Be Confessed Against*

*Guarantors Where Guaranty Agreement Lacks Its Own Warrant of Attorney - Excessive Judgment May be Modified Rather than Stricken - Failure of Complaint to Allege that Judgment Has Not Been Previously Entered Is a Material Defect Requiring that Judgment Be Stricken*

Harbour Hospital Services, Inc. v. Gem Laundry, et al., August 2000, No. 207 (Herron, J.) (November 28, 2000 - 25 pages)

*CONFESSION OF JUDGMENT - Where Corporate Vice President Signed Promissory Note Containing Confession of Judgment Provision, Judgment May Not Be Stricken Because He Had Apparent Authority to Bind Corporation - Judgment Could Not Be Opened Where Petitioner Fails to Present Sufficient Evidence that Corporate Vice President Lacked Authority to Sign Note - Where Warrant of Attorney Is Explicit and Unambiguous With No Condition or Limitation Upon the Entry of Judgment by Confession, No Jury Question Is Presented as to the Ambiguity of the Note*

Morrison v. Correctional Physician Services, October 2000, Nos. 3040, 3041, 3042 (Sheppard, J.) (December 20, 2000 -16 pages)

*CONFESSION OF JUDGMENT - Where Deposition Testimony Concedes that Defendant Garage Door Manufacturer Defaulted on Note by Failing to Make Payment of Principal and Interest When Due Under Forbearance Agreement, It Failed to Present Meritorious Defense Necessary to Open Confessed Judgment - Fraud Defense Asserted by Guarantors Is Barred by Parol Evidence Rule Where Express Terms of Written Guaranty Contradict the Alleged Prior Assurances by Bank that It Would Not Sue the Guarantors Until the Assets of the Principal Debtor Had Been Exhausted - Parol Evidence rule Applies to Fraud in the Inducement But Not Fraud in the Execution - Excessive Attorney Commission Is Reduced Without Opening the Judgment*

PNC Bank, National Association v. Howard Snyder and Cathy Snyder, June 2000, No. 1342 (Sheppard, J.) (February 14, 2001 - 13 pages)

*CONFESSION OF JUDGMENT - Petition to Strike Confessed Judgment Was Not Untimely Because Mandatory 30 Day Filing Period Does Not Commence Until Service of an Execution Notice - Petition Did Not*



*Raise a Meritorious Defense of Inadequate Itemization Where Confession of Judgment Complaint Lists the Principal Balance Due, Interest Due and Attorneys' Fees - Alleged Violations of Equal Credit Opportunity Act Do Not Constitute A Meritorious Defense on Facts Alleged*

Sovereign Bank v. Mintzer, July 2000, No. 1501 (Herron, J.)(November 15, 2000 - 8 pages)

*CONFESSION OF JUDGMENT - An Assignee of a Promissory Note May Exercise a Warrant of Attorney to Confess Judgment - Extension of Payment Period is Not Grounds For Striking Off a Confessed Judgment Where Extension Documents Are Not Part of Record of the Confessed Judgment - Even if Lender Extends the Payment Period of the Note, That Extension is Not a Ground For Opening the Confessed Judgment Where the Borrower Failed to Meet the Extended Deadlines for Payment - Plaintiff's Failure to Register to do Business in Pennsylvania When Required to Register is Grounds for Opening a Confessed Judgment - Borrower Failed to Meet the Burden of Proof That Foreign Limited Partnership Lacked the Capacity to Sue Due to Failure to Register to do Business in Pennsylvania Because Under the Foreign Business Corporation Law Regularly Conducting Business Does Not Encompass the Regular Acquisition and Collection of Debts Even Through Offices and Agents Located in Pennsylvania - Borrowers' Argument That Lender Waived Its Right to Demand Lump Sum Payment of Full Loan Balance Does Not Constitute Meritorious Defense to a Confessed Judgment Absent Evidence of Prejudice to the Borrower - Under Pa. R.C.P. 2959(a)(3), a Petition to Open a Confessed Judgment Must Be Denied as Untimely Unless Petitioner Can Show Compelling Reason for Delay in Filing and Mere Lack of Knowledge of Facts Underlying a Defense is Not a Compelling Reason Absent Allegations That Would Explain Failure to Learn Discoverable Facts*

Wamco XVV V. Gregg Desouza et al., July 2000, No. 4385  
(Herron, J.) (April 3, 2001 - 21 pages)

*CONFESSION OF JUDGMENT - Judgment Confessed Against Contractor and Surety Should be Opened Where They Present Meritorious Defenses of*

*Waiver of Deadlines and Lack of Default Supported by Evidence Sufficient to Require That These Issues be Submitted to a Jury - Where Performance Bond Containing Warrant of Attorney Incorporates Default Provisions of Construction Contract, Confessed Judgment May be Opened Where Contractor Produces Requisite Evidence That They Had Not Defaulted on Contract*

Philadelphia School District v. GM Powers, Inc./Choice Construction and Aegis Security - July 2000, No. 3520, (Sheppard, A.) (July 12, 2001 - 26 pages)

*CONFESSION OF JUDGMENT - Tenant's Petition to Open or Strike Confessed Judgment Is Denied Where Petition Neither Presents Meritorious Defense Nor Points Out a Defect in the Complaint - Plaintiff Did Not Impermissibly Confess Judgment for Both Possession and Rent Where Plaintiff Abandoned the Premises In Disrepair*

Nine Penn Center Associates, LP v. Coffees of the World, Corp. July, 2001, No. 3249 (Herron, J.) (January 28, 2002 - 5 pages)

*CONFESSION OF JUDGMENT - Motion to Strike Confessed Judgment On the Grounds That the Warrant Has Been Exhausted Is Denied Because a Warrant of Attorney May Be Used More Than Once If Parts of the Debt Are Still Outstanding - Claim That Confessed Judgment Should Be Opened Because of Fraud Is Denied Where Defendants Fail to Present Clear and Convincing Evidence of Fraud - Motion to Open Confessed Judgement Is Granted Where Defendants Present Sufficient Evidence That the Collateral Security Provision For a Loss Reserve of \$1.1 Million Constitutes a Penalty*

The Mountbatten Surety Co. v. Landmark Construction Corp., October 2001, No. 3341 (Herron, J.) (9 Pages - May 3, 2002)

*CONFESSION OF JUDGMENT - Alternatively to Its Equitable Subrogation Claim, Plaintiff May Recover on Its Confession of Judgment Claim Where the Respective Loan Documents Contained Confession of Judgment Clauses, Assignment to Plaintiff Was Proper and Assignor's Satisfaction of the Debt, Even if Faulty, Does Not Warrant Ruling Otherwise*

Resource Properties XLIV, Inc. v. Philadelphia Authority for Industrial Development, et al., November 1999, No. 1265 and Resource Properties XLIV, Inc. v. Growth Properties, Ltd., et al., March 2000, No. 3750 (Sheppard, J.) (August 2, 2002 - 23 pages)

*CONFESSION OF JUDGMENT/PETITION TO OPEN/TIMELINESS - Petition to Open or Strike a Confessed Judgment Is Not Untimely Where the Parties Dispute Whether the Rule 2958.1 Notice Was Served on the Defendant/Surety and Where Plaintiff Failed to File an Affidavit of Service of the Rule 2958.1 Notice Until the Day Defendant Filed a Petition to Open or Strike the Confessed Judgment*

Philadelphia School District v. Tri-County Associates Builders, Inc. And Commonwealth Insurance Company, May 2001, No. 2183 (Sheppard, J.) (August 16, 2001 - 12 pages)

*CONSIDERATION - Defendants May Not Challenge a Contract for Lack of Consideration Where They Failed to Raise Lack of Consideration as an Affirmative Defense*

First Republic Bank v. Brand, August 2000, No. 147 (Herron, J.) (January 8, 2002 - 8 pages)

*CONSTRUCTION CONTRACT/CARDINAL CHANGE DOCTRINE - The Cardinal Change Doctrine May Apply to Actions By Contractors Against Government Entities as a Tool of Contract Interpretation But Not as a Separate Claim*

JHE Incorporated v. SEPTA, November 2001, No. 1790 (Sheppard, J.) (May 17, 2002 - 21 pages)

*CONSTRUCTIVE TRUST - A Constructive Trust May Be Established As An*

*Equitable Remedy Where It Is Necessary to Avoid Unjust Enrichment*

Mogilyansky v. Sych, June 2000, No. 3709 (Herron, J.)  
(April 30, 2001 - 8 pages)

*CONSTRUCTIVE TRUST - Plaintiff May Maintain His Cause of Action for Imposition of a Constructive Trust as Incident to His Claims for Unjust Enrichment, Breach of Fiduciary Duty and Fraud*

Babiarz v. Bell Atlantic - Pennsylvania, Inc. August, 2000,  
No. 1863 (Herron, J.) (July 10, 2001 - 38 pages)

*CONTEMPT - Defendant Is Held in Contempt for Failing to Appear at Hearing With Either No Excuse or an "Eleventh Hour" Request for a Continuance - Where Defendant Engages in Dilatory or Obdurate Behavior, Attorney Fees May Be Awarded - Because Defendant Failed to Respond to the Rule to Show Cause, All Averments of Fact in the Contempt Petition Are Deemed Admitted*

Divergilis v. Silver, July 2001, No. 1563 (Herron, J.)  
(May 2, 2002 - 11 pages)

*CONTRACTS/BREACH - Preliminary Injunction Denied Where Plaintiff Fails to Establish that the Parties Reached an Enforceable Agreement as to an Exclusive Print Agency for a One Year Period - Negotiations Concerning a Possible Future Agreement do not Constitute an Enforceable Agreement Where no Essential Terms Established Price, Delivery Date and Quantity - Plaintiff Failed to Establish that Breach of Contract Caused Irreparable Harm to Reputation or Future Earnings*

Creative Print Group, Inc. v. Country Music Live, Inc. and Mark Michaels, May 2000, No. 283 (Sheppard, J.) (June 13, 2000 - 12 pages)

*CONTRACTS/BREACH - Breach of Contract Claim May Not Be Maintained Against Defendant Who Is Not a Party to the Contract - Corporation*

*is Not Bound by Contracts of its Subsidiaries*

Hospicomm, Inc. v. International Senior Development, LLC.,  
August 2000, No. 2195 (Herron, J.)(January 9, 2001 - 14 pages)

*CONTRACTS/BREACH - Complaint Fails to Set Forth Claim for Breach of Contract by Soliciting Plaintiffs' Clients Where Contract Does Not Prohibit Soliciting Clients, Retaining Their Fees or Working Less Than Full-Time*

J. Goldstein & Co., P.C. v. Goldstein, January 2001, No.  
3343(Herron, J.) (June 14, 2001 - 12 pages)

*CONTRACTS/BREACH - Demurrer to Breach of Contract Claim For Sales and Service Fees Under Operating and Marketing Agreements is Overruled Where There are Unclear Factual Issues Concerning the Triggering of These Requirements - Demurrer to Claim for Termination Fees is Sustained Where Complaint Fails to Plead the Performance of Conditions Precedent to Recovering These Fees*

Harbour Hospital Services v. GEM Laundry, July 2000, No.  
4830,& August 2000, No. 207 (Sheppard, J.) (July 18, 2001  
27 pages)

*CONTRACTS/BREACH - Where Representation Agreement Required Defendant to Refer Negotiations for Rental Spaces to Plaintiff, Complaint Set Forth Claim for Breach of Contract with the Requisite Specificity When Alleging that Defendant Entered into Two-Year Lease Without Plaintiff's Knowledge*

The Flynn Company v. Cytometrics, Inc., June 2000, No. 2102  
(Sheppard, J.)(November 17, 2000 - 14 pages)

*CONTRACTS/BREACH - Where Defendant Was Required by Contract to Use "Best Efforts" to Place Membership Interests and is Alleged in Complaint to Have Made "No Effort," Complaint Sets Forth a Breach of Contract Claim Under New York Law*

EGW Partners, L.P. v. Prudential Insurance Co., March 2001,  
No. 336 (Sheppard, J.) (June 22, 2001 - 17 pages)

*CONTRACTS/BREACH - Breach of Contract Claim Against Union Is Legally Insufficient Where Union Was Not a Party to the Contract Entered Into by a Predecessor Union and Plaintiffs Fail to Plead Facts That Would Support Imposition of Successor Liability*

Phillips v. Selig, July 2000, No. 1550 (Sheppard, J.)  
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*CONTRACTS/BREACH - Plaintiff's Breach of Contract Claim Is Sufficiently Specific Where It Alleges the Essential Terms of the Agreement and Its Breach*

Temple University v. Johanson, M.D., December, 2000, No. 353  
(Herron, J.) (November 15, 2001, 6 pages)

*CONTRACTS/BREACH - Claim for Breach of Contract or Breach of Warranty May Not Be Maintained Against Defendant Absent Contract or Other Allegation Establishing Contractual Privity or Showing that Warranty Was Intended to Flow to Defendant*

Precision Towers, Inc. v. Nat-Com, Inc. and Value Structures, Inc., April 2002, No. 2143 (Cohen, J.) (September 23, 2002 - 9 pages)

*CONTRACTS/BREACH - Summary Judgment on Breach of Contract Claim is Granted Where Record Established No Evidence of Written Contract Identifying the Terms of a Purported Contracts Between Plaintiff And Defendant Insurance Broker*

Methodist Home for Children, et al. v. Biddle & Company, Inc., April 2001, No. 3510 (Sheppard, J.) (October 9, 2002 - 10 pages)

*CONTRACTS/BREACH/CONFLICTING DOCUMENT - Demurrer to Breach of Contract Claim Is Sustained Where Document Affixed to Support This Claim Was a Letter of Intent Expressing Intent Not to be Bound,*

*Thereby Negating Allegations of Contract to Purchase Plaintiff's Interest in Closely-Held Corporation*

Liss v. Liss, June 2001, No. 2063 (Herron, J.)  
(March 22, 2002 - 31 pages)

*CONTRACTS/BREACH/SEVERABILITY/PARENT CORPORATION AND WHOLLY OWNED SUBSIDIARY/AMBIGUITIES - An Agreement Constitutes a Binding Contract Where There Is An Intent to Form a Contract and Consideration - The Intent of the Parties Must Be Considered to Determine Whether a Contractual Provision Is Severable - Where Defendant Is Not Bound By the Buy Out Provisions of a Contract, Summary Judgment Is Entered in His Favor - Defendant Parent Corporation Is Not Bound By the Contracts of Company That Merged With Defendant's Wholly Owned Subsidiary Because That Would Be Tantamount to Piercing the Corporate Veil*

Advanced Surgical Services, Inc. V. Innovative Devices, Inc., August 2000, No. 1637 (Herron, J.) (November 8, 2001, 16 pages)

*CONTRACTS/BREACH/CONSTRUCTION- Housing Authority Breached Construction Contract by Failing to Pay for Services Performed and by Failing to Ensure That Preliminary Project Milestones Were Met - Plaintiff is Entitled to Damages for Plumbing Work for Which it Was Never Paid and Damages for the Delay in the Project's Completion - Pursuant to 73 Pa.C.S. §1628 (repealed), The Contractor Working Under a Public Contract is Also Entitled to Interest on the Amount Outstanding*

James J. Gory Mechanical Contracting, Inc. v. Philadelphia Housing Authority, February 2000, No. 453 (Herron, J.)  
(July 11, 2001 - 29 pages)

*CONTRACTS/BREACH DOWNCODING - Complaint By Physician Alleging Breach of Contract by Insurer Lacked the Requisite Specificity in Setting Forth the Specific Time Period for the Alleged Breach by Downcoding - Complaint Lacks Specificity in Failing to Identify the Contractual Provisions That Were Breached*

Corson v. IBC, December 2000, No. 2148 (Herron, J.)

(June 15, 2001 - 10 pages)

Gregg v. IBC, December 2000, No. 3482 (Sheppard, J.)  
(June 14, 2001 - 20 pages)

*CONTRACTS/BREACH/STOCK OPTION AGREEMENT - Plaintiff Set Forth Viable Claim For Breach of Contract Where Complaint Alleges That Defendant/Employer Promised Stock Options Pursuant to Offer of Employment But Failed to Grant It Entirely*

Denny v. Primedica Argus Research Laboratories, April 2000,  
No. 3792 (Sheppard, J.) (May 2, 2001 - 9 pages)

*CONTRACTS/BREACH OF DUTY OF GOOD FAITH - Every Contract in Pennsylvania Imposes on Each Party a Duty of Good Faith and Fair Dealing - The Implied Duty of Good Faith is Closely Related to the Doctrine of Necessary Implication - Shareholder's Complaint Sets Forth Claim For Breach of Duty of Good Faith Where it Alleges that Defendant Shareholder Failed to Submit Insurance Forms Necessary for a Determination of Disability to Trigger Buy-Out Agreement*

Baron v. Pritzker, Omicron Consulting, Inc., August 2000,  
No. 1574 (Sheppard, J.) (March 6, 2001 - 27 pages)

*CONTRACTS/BREACH OF DUTY OF GOOD FAITH - Where Complaint Fails to State How Defendant/Drug Manufacturer Breached its Contract, No Claim for Breach of Duty of Good Faith is Presented*

Commonwealth of Pennsylvania v. BASF Corporation, April 2000, No. 3127 (Herron, J.) (March 15, 2001 - 34 pages)

*CONTRACTS/BREACH OF DUTY OF GOOD FAITH - Delaware Law Imposes a Covenant of Good Faith and Fair Dealing in Every Contract - Where Contract Gives Discretion to a Party To Secure Government Approval of Its Plans, the Contractual Duty of Good Faith Requires That the Party Take Reasonable Steps to Secure That Approval - Contractual Duty of Good Faith Does Not Imply Duties That Contravene the Express Terms of the Contract or Impose Additional Substantial*



## Obligations

Textile Biocides, Inc. v. Avecia, Inc. January 2000, No. 1519, (Herron, J.) (July 26, 2001 - 46 pages)

*CONTRACTS/BREACH OF DUTY TO NEGOTIATE IN GOOD FAITH - Demurrer Sustained because Parties did not have a Binding Contract to Purchase or Finance Olde City Properties where Exchange of Letters Merely Contained Recommended Terms and Conditions - These Letters at best Constituted an Offer to Enter into Negotiations Not an Offer to Enter into a Contract - Letter Imposing Extensive Due Diligence Period did not constitute an Acceptance or a Binding Contract but was a Counter Offer - Pennsylvania Courts have not Decided Whether a Cause of Action for Breach of a Duty to Negotiate in Good Faith is Cognizable - Purported Agreement to Negotiate in Good Faith Here Did Not Evidence a Mutual Intent to be Bound by Specific Terms - Plaintiffs Have Failed to State Cause of Action for Breach of Agreement to Negotiate in Good Faith*

Caplen et al. v. Richard W. Burick and the City of Philadelphia, Trustee Acting by the Board of Directors of City Trusts Girard Estate, February 2000, No. 3144 (Sheppard, J.) (August 4, 2000 - 39 Pages)

*CONTRACTS/BREACH/NEGLIGENCE - Under Pennsylvania Law and "Gist of the Action Doctrine", Claim for Negligent Breach of Contract is Dismissed - Where Complaint Alleges That Defendants Mismanaged the Commercial Laundry Operations Required by Their Operating Agreement, These Allegations of Negligence Do Not Set Forth a Breach of Contract Claim*

Harbour Hospital Services v. GEM Laundry, July 2000, No. 4830, & August 2000, No. 207 (Sheppard, J.) (July 18, 2001 - 27 pages)

*CONTRACTS/COMMERCIAL IMPRACTICALITY - A Consent Decree With the EPA to Close Defendant's Facility Is Not a Grounds For Invoking the Doctrine of Commercial Impracticality Due to Increased Costs Especially Where the Consent Decree Was Entered Into Prior to the Parties' Contract*

Rohm and Haas Co. v. Crompton Corp., November 2001, No. 215  
(Herron, J.) (April 29, 2002 - 12 pages)

*CONTRACTS/CONSTRUCTION - An Unambiguous Contract Provision Must Be Given Its Plain Meaning - Where Partnership Agreement Unambiguously Provided For Post-Dissolution Distribution of Fees, the Court May Interpret It as a Matter of Law*

Cohen v. McLafferty, July 2000, No. 923 (Herron, J.)  
(June 15, 2001 - 9 pages)

*CONTRACTS/COVENANT OF GOOD FAITH - A Covenant of Good Faith Is Implied in Every Contract Including Those That Arise in a Creditor-Lender Relationship - The Covenant of Good Faith Does Not Override the Express Terms of the Contract But Instead Fills in Those Terms That Have Not Been Expressly Stated - Defendant Bank Breached the Covenant of Good Faith Implied in its Agreement with Plaintiff When It Used the Term "Other Insurance" to Require the Purchase of Terrorism Insurance Where Plaintiff Alleges That Such Insurance Is Either Unavailable or Prohibitively Expensive*

Philadelphia Plaza - Phase II v. Bank of America National Trust and Savings Association, April 2002, No. 3745  
(Herron, J.) (June 21, 2002 - 15 pages)

*CONTRACTS/DOCTRINE OF NECESSARY IMPLICATION - Doctrine of Necessary Implication is Inapplicable to Plaintiff's Claim That Defendant Bank's Negotiations With a Potential Note Taker Impairs Plaintiff's Right to Redeem the Mortgage Where Plaintiff Has the Right to Redeem the Mortgage at Issue by Paying the Entire Mortgage*

Philadelphia Plaza - Phase II v. Bank of America National Trust and Savings Association, May 2002, No. 332  
(Herron, J.) (May 30, 2002 - 15 pages)

*CONTRACTS/ENFORCEMENT OF LOST AGREEMENTS - A Lost Agreement Is Enforceable If Plaintiff Proves By Clear and Convincing Evidence the Existence of the Agreement; an Unsuccessful, Diligent and Bona Fide Search for the Agreement; and the Contents of the Agreement*

United Products Corp. v. Transtech Manufacturing, Inc., August 2000, No. 4051 (Sheppard, J.) (November 9, 2000 - 40 pages)

*CONTRACTS/FORCE MAJEURE PROVISION/FAILURE TO PERFORM - Force Majeure Provision in Requirements Contract Did Not Excuse Defendant's Failure to Perform Due to the Closure of Its Facility Based on EPA Consent Decree - Defendant Failed to Allege Facts Suggesting How Closure of Its Facility Was Beyond Its Control - The Consent Decree Cannot Be an Event Beyond Defendant's Control Where Defendant Had Considerable Control Over Its Negotiation*

Rohm & Haas v. Crompton, November 2001, No. 215 (Herron, J.) (April 29, 2002 - 12 pages)

*CONTRACTS/FRAUD - Preliminary Injunction Denied Where Plaintiff Failed to Establish the Requisite Irreparable Harm to Enjoin an Alleged Breach of Asset Transfer Agreement*

Romy, M.D., Riverside Medical Center, P.C., Allegheny Pain Institute, P.C., RMC North Associates, P.C., Spine Center-Northfields Division, P.C., Spine Center Lehigh Valley, P.C. and Riverside Medical Services Corp. v. American Life Care, Inc., L-Four Five, LLC, TSC Management of Pennsylvania, Inc., Warren Haber, John L. Teeger and Eric D. Rosenfeld, December 1999, No. 752 (Sheppard, J.) (March 7, 2000 - 16 pages)

*CONTRACTS/INSURANCE FLOOD POLICY - Where Insurance Policy Establishes Deductible for Flood Loss Based on Property's Location in a Particular Flood Zone and There Are Two Reasonable Though Conflicting Interpretations Concerning the Zone in which*

*the Property in Dispute Is Located, Summary Judgment May Not Be Granted Because Ambiguities Are Construed in Favor of the Insured*

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Sylvania Gardens v. Legion Insurance Co., August 2000, No. 734  
(Sheppard, J.)(February 14, 2001 - 7 pages)

CONTRACTS/INTEGRATION/PAROL EVIDENCE - A Court May Admit Parol Evidence If A Contract Is Either Ambiguous or Not Integrated - Where Complaint Alleges that Contract Is Not Integrated, Parol Evidence May Be Considered to Determine Whether the Contract Represents the Final and Complete Expression of the Parties' Agreement - Where Plaintiffs Allege that Consulting Agreement Intentionally Omitted the Parties' Obligations for a Three Year Period from July 1999 through July 2002 and That the Parties Always Intended that the Agreement Should Be in Effect during that Period, Parol Evidence in the Form of Memoranda Could Be Considered to Determine the Parties' Intent in the Absence of an Integration Clause

First Union National Bank et al. v. Quality Carriers, Inc., April 2000, No. 2634 (Sheppard, J.)(October 10, 2000 - 49 pages)

CONTRACTS/INTENTIONAL INTERFERENCE - Pennsylvania Law Permits an Intentional Interference Action Based on Both Existing and Prospective Contractual Relations - Allegations that Defendant's Comments Interfered with Potential Transactions Are Sufficient to Sustain Claim for Intentional Interference with Contractual Relations

Fennell v. Van Cleef, et al., May 2000, No. 2754 (Herron, J.)(September 25, 2000 - 6 pages)

CONTRACTS/INTENTIONAL INTERFERENCE - Where Attorneys Allege That Defendants' Actions Interfered With Their Contract With Their Clients, They Have Set Forth an Element of a Claim for Tortious Interference Even if They Voluntarily Withdrew Their Representation After Defendants' Alleged Interference - To Determine Whether Plaintiffs Have Established the Requisite Purposeful Action by Defendants for an Intentional Interference Claim, the Focus Should be on the Conduct at the Relevant Time Rather Than at the Present Time - Determination of Damages is for the Fact Finder

Golomb & Honik, P.C. v. Aja, November 2000, No. 425  
(Herron, J.) (June 19, 2001 - 6 pages)

*CONTRACTS/INTENTIONAL INTERFERENCE - New York Law Protects a Parent Corporation's Interference in its Subsidiary's Contract as Privileged in the Absence of Malice or Illegality*

EGW Partners, L.P. v. Prudential Insurance, March 2001  
No. 336 (Sheppard, J.) (June 22, 2001 - 17 pages)

*CONTRACTS/INTENTIONAL INTERFERENCE - Provider of Staffing Services to Nursing Homes Set Forth Viable Claim for Intentional Interference With Contractual Relations by Alleging That After It Placed Defendant With a Nursing Home Position, Defendant Terminated His Employment But Then Entered Into New Agreement With the Nursing Home - Corporate Agent Acting Within the Scope of His or Her Agency Cannot Be Liable For Intentional Interference With a Corporate Contract*

ZA Consulting LLC v. Wittman, April 2001, No. 3941  
(Herron, J.) (August 28, 2001 - 8 pages)

*CONTRACTS/INTENTIONAL INTERFERENCE - Where Complaint Alleges That Defendant Employee Competed With Current Employer, Defendant's Claim That His Solicitation of Clients Was Privileged is Without Merit*

Goldstein v. Goldstein, January 2001, No. 3343 (Herron, J.)  
(June 14, 2001, 12 pages)

*CONTRACTS/INTENTIONAL INTERFERENCE - Claim For Intentional Interference With Contractual Relations by Hospital Against Defendant Who Hired Physician Despite Restrictive Covenant is Sufficiently Specific Where it Enables a Defendant to Prepare a*

*Defense*

Temple University v. Johanson, M.D., December, 2000, No. 353  
(Herron, J.) (November 15, 2001, 6 pages)

CONTRACTS/INTENTIONAL INTERFERENCE - *Plaintiff's Claim for Intentional Interference With Contractual Relations Is Insufficient Due to Plaintiff's Failure to Establish a Reasonable Probability That it Would Have Reached an Agreement With Another Bank in the Absence of Defendant Bank's Actions*

Philadelphia Plaza - Phase II v. Bank of America National Trust and Savings Association, May 2002, No. 332  
(Herron, J.) (May 30, 2002 - 15 pages)

CONTRACTS/INTENTIONAL INTERFERENCE - *Summary Judgment May Not Be Granted as to Plaintiff's Claim for Intentional Interference With Contractual Relations Because the Issue of Whether the Defendant Actions Were Privileged or in Good Faith is a Question of Fact For the Jury*

Academy Industries, Inc. V. PNC, N.A. et al, May 2000,  
No. 2383 (Sheppard, J.) (May 20, 2002 - 34 pages)

CONTRACTS/INTENTIONAL INTERFERENCE - *Claim For Intentional Interference With Contractual Relations is Legally Insufficient Where It Fails to Allege Intent*

Worldwideweb Network Corp. V. Entrade Inc. And Mark Santacrose, December 2001, No. 3839 (Herron, J.)  
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CONTRACTS/INTENTIONAL INTERFERENCE WITH EXISTING AND PROSPECTIVE CONTRACTUAL RELATIONSHIPS - *Plaintiffs' Claim for Interference With Existing or Prospective Contractual Relations Is Defective for Failure to Allege Defendant's Intent to Interfere With Those*

## Contracts

Amico v. Radius Communications, January 2000, No. 1793  
(Herron, J.) (October 29, 2001 - 15 pages)

*CONTRACTS/PARTNERSHIP AGREEMENT/BREACH - Summary Judgment on Breach of Contract Claim is Granted Where Active Partners Retroactively Modified Retirement Benefits Pursuant to a General Amendment Provision in their Partnership Agreement to the Detriment of Retired Partners Who Had Completed the Requisite Years of Service and Received Retirement Compensation Under the Agreement*

Abbott v. Schnader Harrison Segal & Lewis LLP, June 2000, No. 1825 (Herron, J.) (February 28, 2001 - 26 pages)

*CONTRACTS/SUMMARY JUDGMENT - Insurer's Motion for Summary Judgment is Granted Where Plaintiff Is Not a Named Insured and the Language of the Fidelity Bond Precludes Plaintiff From Acting as a Third Party Beneficiary*

Guaranty Title & Trust Company v. Commonwealth Assurance & Abstract Company, March 2001, No. 370 (Sheppard, J.)  
(May 28, 2002 - 1 page)

*CONTRACTS/TERMINATION/EVERGREEN PROVISION - Defendant Executors Effectively Terminated Management Agreement According to Its Unambiguous Terms So That Judgment on the Pleadings Is Granted - Parol Evidence Forbids Consideration of Antecedent Contemporaneous Agreements to Vary Terms of Contract That Parties Intend to Represent a Complete Statement of Their Agreement - Plaintiffs Failed to Establish That Contract Contained an "Evergreen" Provision With a Rolling Three Year Term*

RRR Management Co., Inc. V. Basciano et al, January 2001  
No. 4039 (Sheppard, J.) (March 4, 2002 - 21 pages)

*CONTRACTS/TORTIOUS INTERFERENCE - Claim for Tortious Interference with Contractual Relations Must Involve A Contractual Relationship*

*Between Plaintiff and a Third Party - Valid Claim for Tortious Interference Exists Based on Allegation That Defendants Interfered With Plaintiff's Contractual Relations with Its Customers*

Advanced Surgical Services Inc. v. Innovative Devices, Inc.,  
August 2000, No. 1637 (Herron, J.)(January 12, 2001  
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*CONTRACTS/TORTIOUS INTERFERENCE - Where Shareholders Allege That Corporation Intentionally Sought to Deprive Them of Payments Under Their Notes by Interfering With a Transaction, Corporation's Actions Cannot be Considered Privileged as a Matter of Law*

First Republic Bank v. Brand, August 2000, No. 147  
(Herron, J.) (June 4, 2001 - 20 pages)

*CONTRACTS/TORTIOUS INTERFERENCE - Building Consultant for Surety Company is Not Liable for Tortious Interference With Contract Where It Was Legally Justified to Assist Surety by Apprising It of the Status of a Construction Project - Building Consultant Is Not Liable for Tortious Interference of Contract Where the Contract at Issue Had Terminated Before Building Consultant Had Become Involved With the Project*

San Lucas Construction Co. v. St. Paul Mercury Insurance Co.  
February 2000, No. 2190 (Sheppard, J.) (October 11, 2001 -  
10 pages)

*CONVERSION - Allegation that Defendant Health Care Provider Refused to Cooperate in Returning Medical Equipment Supplied by Plaintiff Set Forth Viable Claim for Conversion Because Defendant's Intentional Non-cooperation and Effective Control of*

*Medical Equipment that Could Not Be Removed Without Endangering the Lives of Patients Constitutes an Unreasonable Withholding of Possession*

Apria Healthcare, Inc. v. Tenet Healthsystem, Inc., February  
2000, No. 289 (Herron, J.)(February 12, 2001 -10 pages)

*CONVERSION - Claim For Conversion is Set Forth Where Plaintiff*



*Originally Had Rights to Money That Defendant Wrongfully Appropriated After it Had Been Entrusted to Him - Conversion Claim Cannot be Predicated on the Same Facts as a Contract Claim in a Complaint Where the Proper Remedy Lies in Breach of Contract - Where Physicians Allege That Insurers Failed to Pay for Services Rendered They do Not Set Forth Claim for Conversion*

Gregg v. IBC, December 2000, No. 3482 (Sheppard, J.)  
(June 14, 2001 - 20 pages)

*CONVERSION - Plaintiff Fails to Set Forth Claim of Conversion Against His Employer as to His Idea for Bell Atlantic Ready Where He Concedes That He Voluntarily Submitted This Idea Pursuant to a Solicitation to Help Employer Compete in Marketplace*

Babiarz v. Bell Atlantic - Pennsylvania, Inc. August, 2000,  
No. 1863 (Herron, J.) (July 10, 2001 - 38 pages)

*CONVERSION - Claim For Conversion Is Set Forth Where Plaintiff Alleges That Defendant Failed to Pay for Goods Supplied to it For Resale or Transfer*

Thermacon Enviro Systems, Inc. V. GMH Associates, March 2001, No. 4369 (Herron, J.) (July 18, 2001 - 12 pages)

*CONVERSION - Despite Designation of Count in complaint as "Constructive Trust", It Will Be Treated as a Claim for Conversion Due to the Facts Alleged - Two Year Statute of Limitations Applies to Bar Conversion Claim*

Mogilyansky v. Sych, June 2000, No. 3709 (Herron, J.)  
(February 4, 2002 - 7 pages)

*CONVERSION - Plaintiff Fails to Set Forth Claim of Conversion Where Plaintiff's Rights Were Acquired through a Contract, Monies did not Originally Belong to Plaintiff and Proper Remedy Lies in Breach of Contract.*

Duane Morris v. Nand Todi, October 2001, No. 1980 (Cohen, J.)  
(September 3, 2002 - 10 pages)

*CORPORATE LIABILITY - Corporation Surviving a Merger Is Responsible for the Liabilities of Each of the Corporations So Merged and Consolidated - Corporations that Were Not Signatories of a Consulting Agreement May Not Be Held Liable Thereunder in the Absence of Allegations Sufficient to Pierce the Corporate Veil - Shareholder May Not Bring Action Against Individual Director Unless the Action is Brought as a Derivative Action on Behalf of the Corporation - Under Pennsylvania Law, Individual Corporate Officers May Not Be Held Liable in the Absence of Evidence of Particular Malfeasance*

First Union National Bank et al. v. Quality Carriers, Inc.,  
April 2000, No. 2634 (Sheppard, J.)(October 10, 2000 - 49  
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*CORPORATE VEIL/PIERCING - Plaintiffs Have Not Alleged Sufficient Facts to Pierce the Corporate Veil Based on a Claim of Misleading Home Equity Loans Where the Identified Lender Was Another Entity and the Complaint Fails to Allege That Defendant (1) Was Grossly Undercapitalized, (2) Failed to Adhere to Corporate Formalities, (3) Substantially Intermingled Personal and Corporate Affairs or (4) Used the Corporate Form to Perpetrate a Fraud*

Koch v. First Union Corp., et al, May 2001, No. 549  
(Herron, J.) (January 10, 2002 - 26 pages)

*CORPORATION, CLOSE/CUSTODIAN/OPPRESSION OF MINORITY SHAREHOLDER- A Custodian May Be Appointed For Closely Held Corporation When the Directors Have Acted Illegally, Oppressively or Fraudulently Toward One or More Holders of 5% of Its Outstanding Shares - U.S. Courts Have Taken 3 Approaches to Determine Whether a Minority Shareholder Is Being Oppressed - Although Pennsylvania Courts Have Generally Adopted the "Reasonable Expectations" Test to Define Oppression, They Have Not Addressed Oppression Within a Close Corporation - Precedent From New Jersey Provides Persuasive Guidance on Defining Oppression and Reasonable Expectations of Minority Shareholders in Close Corporations - Allegations That Individual Defendant Shareholders Excluded a Minority Shareholder From Management Decisions and Impeded His Ability to Obtain Corporate Financial and Other Information May Constitute Oppressive Behavior Within a Close Corporation that Would Be Grounds, If Proven, For the Appointment*

*of a Custodian - Fraudulent or Illegal Behavior Is Distinguishable From Oppressive Behavior Directed Solely at the Shareholder's Investment in the Corporation*

Borrello v. Borrello, April 2001, No. 1327 (Herron, J.)  
(August 28, 2001 - 23 pages)

*CORPORATION, CLOSE/STANDING/SHAREHOLDER - 50% Shareholder Has Standing to Assert Direct Claims for Breach of Fiduciary Duty, Conversion and Civil Conspiracy Against Other 50% Shareholder Where Plaintiff Alleges a Wrongful Deprivation of His Right to Ownership and Other Corporate Benefits Through Defendant's Oppressive, Fraudulent and Conspiratorial Conduct*

Liss v. Liss, June 2001, No. 2063 (Herron, J.)  
(March 22, 2002 - 31 pages)

*CORPORATIONS/CONTRACTS - Parent Corporation Is Not Liable For the Contractual Obligations of a Subsidiary Even If It Is a Wholly-Owned Subsidiary Absent Allegations That Would Compel Piercing Corporate Veil*

Commonwealth of Pennsylvania v. BASF Corporation, April 2000, No. 3127 (Herron, J.) (March 15, 2001 - 34 pages)

*CORPORATIONS/CUSTODIAN - Complaint Sets Forth Valid Claim for Appointment of Custodian Where It Alleges that Defendant is the Director in Control of Two Corporations, the Plaintiff Holds 50% of the Shares in Those Corporations, and Defendant has Caused the Corporations to Commit Various Illegal Acts Toward Plaintiff as a Shareholder*

Baron v. Pritzker, Omicron Consulting, Inc., et al., August 2000, No. 1574 (Sheppard, J.) (March 6, 2001 - 27 pages)

*CORPORATION/ELECTIONS - Where Corporate Board Acts Improperly By Moving Date of Annual Meeting to Perpetuate Its Own Control of the Corporation, Plaintiff Has Shown The Requisite Clear Right to Relief for a Preliminary Injunction - Injunctive Relief May Be*

*Granted Where Corporation or Its Directors Interfere With the Fair Election of Officers - Interference With a Shareholder's Election Rights Constitutes Immediate and Irreparable Harm*

Jewelcor Management, Inc. v. Thistle Group Holdings, Co.,  
March 2002, No. 2623 (Herron, J.) (March 26, 2002-16 pages)

*CORPORATION/EQUITABLE RELIEF - Both Equitable and Statutory Relief Are Available for Claims Premised on Oppression by a Controlling Shareholder of a Closely Held Corporation Where Complaint Alleges that Plaintiff/Shareholder Was Frozen Out of Management and His Compensation Cut While Corporate Funds Were Improperly Used for Defendant's Personal Expenses*

Baron v. Pritzker, Omicron Consulting, Inc., et al, August  
2000, No. 1574 (Sheppard, J.) (March 6, 2001 - 27 pages)

*CORPORATION/FOREIGN/CERTIFICATE OF AUTHORITY - Discovery is Ordered Where There Are Disputed Facts as to Whether Foreign Corporation Obtained a Certificate of Authority to Conduct Business in Pennsylvania That is a Prerequisite for Litigating in Pennsylvania*

Worldwideweb Network Corp. V. Entrade Inc. And Mark Santacrose, December 2001, No. 3839 (Herron, J.)  
(June 20, 2002 - 10 pages)

*CORPORATION/TRANSFER RESTRICTIONS - Pursuant to 15 Pa.C.S.A. §1529(f) Oral First Option Agreement Concerning Sale of Corporate Shares Is Unenforceable Against Transferee Who Lacks Actual Knowledge of the Restriction at the Time of Transfer - To Be Enforceable Against a Transferee Without Actual Knowledge, A Transfer Restriction Must Be in Writing and Its Existence Noted Conspicuously on the Fact of the Security*

Pence v. Petty, December 2001, No. 593 (Herron, J.)(February 6, 2001 - 6 pages)

*COSTS/VEXATIOUS CONDUCT - Plaintiff Who Obtained Injunction*

*Ordering Repairs to Buildings Is Entitled to Counsel Fees and Costs as Sanction Where Defendants' Conduct Was Dilatory, Obdurate, Vexatious, Arbitrary and in Bad Faith in Defying Injunction by Failing to Begin Repairs and Obtaining Reconsideration of Order Based on Affidavit Falsely Averring That Compliance With the Order Was Not Possible*

Elfman v. Berman, February 2001, No. 2080 (Herron, J.)  
(August 30, 2001 - 28 pages)

*COUNTERCLAIM - Pennsylvania Rule of Civil Procedure 1031 Narrowly Restricts the Assertion of Counterclaims to Defendants*

Legion Insurance Co. V. Doeff, May 2000, No. 3174  
(Sheppard, J.) (June 6, 2001 - 12 pages) (Non-defendant assignee of defendant's offensive claims but not his liabilities may not assert counterclaim; where defendant assigned his claims he has no claim to assert against plaintiff)

First Republic Bank v. Brand, August 2000, No. 147  
(Herron, J.) (June 4, 2001 - 20 pages)

*COVENANT OF GOOD FAITH - There is No Separate Claim for Breach of Covenant of Good Faith - Claim for Breach of Covenant of Good Faith is Subsumed Within Breach of Contract Claim*

JHE Incorporated v. SEPTA, November 2001, No. 1790  
(Sheppard, J.) (May 17, 2002 - 21 pages)

*COVENANT OF GOOD FAITH/PRELIMINARY INJUNCTION - Plaintiff Did Not Establish the Requisite Clear Right for Relief for a Preliminary Injunction Based on Breach of Covenant of Good Faith Because Plaintiff Seeks to Enjoin Defendant Bank From Disclosing Information to a Prospective Note Purchaser That is Permitted Under the Relevant Agreement Between the Plaintiff and Defendant - An Implied Covenant of Good Faith May Not Be Used to Imply Terms That are Inconsistent With the Express Terms of the Contract*

Philadelphia Plaza - Phase II v. Bank of America National Trust and Savings Association, May 2002, No. 332

(Herron, J.) (May 30, 2002 - 15 pages)

COVENANT OF GOOD FAITH/PRELIMINARY OBJECTION - A Covenant of Good Faith is Implied in Every Contract Including Those That Arise in a Creditor-Lender Relationship - The Covenant of Good Faith Does Not Override the Express Terms of the Contract But Instead Fills in Those Terms That Have Not Been Expressly Stated - Plaintiff Sets Forth Viable Claim Based on Allegations That Defendant Bank Breached the Covenant of Good Faith Implied in Its Agreement With Plaintiff When it Used the Term "Other Insurance" to Require the Purchase of Terrorism Insurance That Plaintiff Alleges Was Unavailable or Prohibitively Expensive

Philadelphia Plaza - Phase II v. Bank of America National Trust and Savings Association, May 2002, No. 332  
(Herron, J.) (May 30, 2002 - 15 pages)

COVENANT OF QUIET ENJOYMENT/INJUNCTION - Where Tenant Showed That Landlord Had Turned Off Water in Building So That City Would Shut Down Building and Force Tenant Out, the Tenant Was Entitled to a Preliminary Injunction Ordering the Landlord to Restore the Water and Remedy Other Violations of the City Code Such That the City Would Reopen the Building

Elfman v. Berman, February 2001, No. 2080 (Herron, J.)  
(August 30, 2001 - 28 pages)

COVENANT OF QUIET ENJOYMENT/MITIGATION OF DAMAGES - Because Tenants Were Entitled to Specific Performance of the Implied and Express Covenants of Quiet Enjoyment in Their Lease, They Were Not Obligated to Mitigate Damages By Relocating to an Alternative Space That Cost Nearly Twice as Much as Their Leased Premises

Elfman v. Berman, February 2001, No. 2080 (Herron, J.)  
(October 2, 2001 - 9 pages)

CROSS CLAIMS/ADDITIONAL DEFENDANT - Where a Defendant Joins an Additional Defendant, the Liability Must Be Premised on the Same Cause of Action Alleged by the Plaintiff in His Complaint - Where Plaintiff's Business Was Destroyed by Fire and He Brought Action

*Against His Landlord and Insurer for Breach of Fiduciary Duty and Bad Faith, the Landlord's Cross Claims Against the Insurer Are Dismissed Because the Alleged Liabilities Invoke Separate and Distinct Causes of Action - The Liability Asserted Against the Landlord For Failure to Replace and Repair the Building Arise From the Lease While the Claims Against the Insurer Arise From the Policy*

Rader v. Travelers Indemnity Co., March 2000, No. 1199  
(Herron, J.) (January 17, 2002 - 8 pages)

*CUSTODIAN/APPOINTMENT - Custodian May Be Appointed in Closely Held Corporation Where Those in Control of the Corporation Have Acted Oppressively or Fraudulently*

Liss v. Liss, June 2001, No. 2063 (Herron, J.)  
(March 22, 2002 - 31 pages)

## D

*DAMAGES - Plaintiff's Recovery on Equitable Claims Limited By Portion of Judgment Owed By Entity Entirely Owned By Plaintiff - Otherwise Plaintiff Would Make Profit to Which It Was Not Entitled*

Resource Properties XLIV, Inc. v. Philadelphia Authority for Industrial Development, et al., November 1999, No. 1265 and Resource Properties XLIV, Inc. v. Growth Properties, Ltd., et al., March 2000, No. 3750 (Sheppard, J.) (August 2, 2002 - 23 pages)

*DAMAGES/CONSEQUENTIAL - Allegations in Plaintiff Contractor's Complaint Setting Forth Sums Due for Additional Work, Overhead, Lost Bonding Capacity and Profits Are Sufficient to Establish Claim for Consequential Damages*

JHE Incorporated v. SEPTA, November 2001, No. 1790

(Sheppard, J.) (May 17, 2002 - 21 pages)

*DAMAGES/LOST PROFITS - Plaintiffs' Claim for Lost Profits Should Not Be Dismissed Where Expert Reports Are Presented to Support This Claim*

Amico v. Radius Communications, January 2000, No. 1793  
(Herron, J.) (October 29, 2001 - 15 pages)

*DECLARATORY JUDGMENT ACT - Complaint by Condominium Owner Set Forth an "Actual Controversy" Requisite for the Court's Exercise of Jurisdiction Where It Sought Declaration that Council Election Was Null and Void by Challenging the Validity of the Code and Bylaws as well as the Legitimacy of the Residential Manager*

Pantelidis v. Barclay Condominium Association, August 200, No. 3819 (Herron, J.)(December 8, 2000 - 5 pages)

*DECLARATORY JUDGMENT ACTION - Material Issues of Fact As to When the Condition of a Patient Seeking Emergency Medical Treatment Has Stabilized Preclude Granting Summary Judgment on Hospital's Request for a Declaratory Judgment as to (1) Whether Hospital or Health Maintenance Organization Must Obtain Informed Consent Before Transfers to Another Hospital and (2) Whether HMO Must Pay Hospital for Medically Necessary Services Whether the Services Are Rendered Before or After Stabilization*

Temple University v. Americhoice, January 2001, No. 2283  
(Herron, J.) (September 17, 2001 - 11 pages)

*DECLARATORY JUDGMENT ACTION - Complaint Established the Requisite "Actual Controversy" for the Exercise of Jurisdiction Where It Alleges that Defendant Breached a Contract Even Where the Parties Had Terminated that Contract*



Greater Philadelphia Health Services II Corp. v. Complete Care Services, L.P., June 2000, No. 2387 (Herron, J.)(November 20, 2000 - 7 pages)

*DECLARATORY JUDGMENT ACTION - Where Plaintiffs Seek a Declaration as to Future Damages for Medical Services to be Rendered in the Future, Demurrer to Declaratory Judgment Action is Sustained - Attorney Fees May Not be Recovered Under Declaratory Judgment Act*

Gregg v. IBC, December 2000, No. 3482 (Sheppard, J.)  
(June 14, 2001 - 20 pages)

*DEFAMATION - Allegation that Defendant Called Individual Plaintiff "A Liar, a Thief, and a Crook" As a Matter of Law Is Capable of Setting Forth a Claim for Defamation - Pennsylvania Law Permits a Corporation to Bring an Action for Defamation*

Fennell v. Van Cleef, et al., May 2000, No. 2754 (Herron, J.)(September 25, 2000 - 6 pages)

*DEFAMATION - Corporation May Be Either a Private or Public Figure for Purposes of Defamation Action - Corporation May Not Be Deemed a Public Figure Merely Because it Received Federal Research Grants or Because the Effectiveness of Its Drug Product Has Been Subjected to Peer Review Articles - Controversy Regarding the Value of Plaintiff's Stock and Effectiveness of Its Drug is Not a Public Controversy But May Have Been Created by Defendants' Publications - Under Pennsylvania Law, Where Corporation Is a Private Figure Plaintiff Seeking to Recover For Harm Inflicted as a Result of Publication of Defamatory Statements, Plaintiff Must Prove That the Defamatory Matter Was Published With "Want of Reasonable Care and Diligence to Ascertain the Truth or With Negligence"*

Hemispherex Biopharma, Inc. v. Asensio, July 2000, No. 3970  
(Sheppard, J.) (September 6, 2001 - 17 pages)

*DEFAMATION - Plaintiff Attorney Sets Forth Viable Defamation Claim Based on Allegation That Defendant Publicly Attacked Him as*

*Incompetent, Dishonest and Unethical Because Such Statements Attack Plaintiff's Competence in the Legal Profession as Well as His Honesty*

Phillips v. Selig, July 2000, No. 1550 (Sheppard, J.)  
(September 19, 2001 - 20 pages)

DEFAMATION - Contractor Sets Forth Claim for Defamation Where It Alleges That Subcontractor Disseminated a False Memorandum Stating That the Contractor Over-billed for Services Performed, Thereby Damaging the Contractor's Reputation and Exposing It To Economic Harm

Middletown Carpentry Inc. V. C. Arena, June 2001, No. 2698  
(J. Sheppard) (November 27, 2001 - 12 pages)

DEFAMATION/JUDICIAL PRIVILEGE/DAMAGES - Defamation Claim Based on the Faxing of a Copy of a Complaint to the Legal Intelligencer Cannot Be Maintained Because the Statements in the Complaint and the Activity of Faxing Them Fall Within the Scope of Judicial Privilege - Statements Made in the Regular Course of Judicial Proceedings Material to the Advancement of a Party's Interest Fall Within the Scope of Judicial Privilege and Cannot Serve as the Basis of Claims of Defamation, Intentional Interference With Contract or Commercial Disparagement - Generalized Statements About An Attorney's Duty to Provide Client With Adequate Information Are Not Defamatory - Defamation Claim Cannot Be Sustained Where No Damages of Any Kind Are Alleged

Bocchetto v. Gibson, April 2000, No. 3722 (Sheppard, J.)  
(March 13, 2002 - 19 pages)

DEMURRER -Where Complaint Alleges that Letter Acknowledged Existence of 5 Year Insurance Contract and that Defendant Orally Promised to Extend It on the Same Terms, Plaintiff Set Forth Viable Claim for Breach of Contract to Sell Policies On the Same Terms for 5 to 6 Consecutive Years - Viable Promissory Estoppel Claim Is Presented by Allegations that Plaintiff Relied on Insurer's Promises And Passed Up Opportunities to Purchase Insurance Policies From Other Insurance Companies - Viable Claim for Specific Performance Is Presented by Allegations That 6 Year Insurance

## Contracts Are Irreplaceable

Brickman Group, Ltd. v. CGU Insurance Co., July 2000, No. 909  
(Herron, J.)(January 8, 2000 - 22 pages)

*DEMURRER - As a General Rule, a Demurrer Cannot Aver the Existence of Facts Not Apparent From the Face of the Challenged Pleading - As a Limited Exception to This Rule, Where Plaintiff Avers the Existence of a Written Agreement and Relies Upon it to Establish His Cause of Action, the Defendant May Properly Annex and Reference That Agreement Without Creating a Speaking Demurrer*

Babiarz v. Bell Atlantic - Pennsylvania, Inc. August, 2000,  
No. 1863 (Herron, J.) (July 10, 2001 - 38 pages)

*DEMURRER - Broker's Complaint Seeking Commission Is Dismissed Because Under the Newly Amended Real Estate Licensing and Registration Act a Broker Agreement Must Be in Writing or Include a Written Memorandum of the Agreement's Terms*

Roddy, Inc. V. Thackray Crane Rental, Inc., May 2001, No.  
1566(Sheppard, J.) (September 20, 2001 - 12 pages)

*DEMURRER - While a Complaint May Set Forth Allegations of Facts, a Court May Disregard the Alleged Legal Effect of the Underlying Events*

Poeta v. Jaffe, November 2000, No. 1357 (Sheppard, J.)  
(October 2, 2001 - 10 pages)

*DEMURRER - A Demurrer Tests the Legal Sufficiency of a Complaint - A Demurrer Admits All Well-Pleaded Material Facts Set Forth in the Pleadings as Well as Reasonable Inferences*

Hydrair v. National Environmental Balancing Bureau, February  
2000, No. 2846 (Herron, J.) (July 27, 2000 - 19 pages)

Abrams v. Toyota Motor Credit Corp. - April 2001, No. 503  
(Herron, J.) (December 5, 2001 - 23 pages)

*DEMURRER - Demurrer Seeking Dismissal of Entire Complaint is Denied*

*Where it Fails to Provide Specific Reasons for Dismissal*

*Flynn v. Peerless Door & Glass, Inc.*, November 2001, No. 830  
(*Sheppard, J.*) (May 15, 2002 - 7 pages)

DEMURRER/IMPROPER JOINDER - *Plaintiff May Amend to Add New Defendant upon Discovery of Facts Implicating Additional Defendant Where Such Amendment Would Not Prejudice the Rights of Existing Parties.*

*IndyMac Bank v. Bey*, August 2001, No. 3200 (*Sheppard, J.*)  
(September 12, 2002 - 10 pages)

DEMURRER/MISTAKE - *Objection that Plaintiff's Claim Should Be Dismissed Because Plaintiff Made Mistake or Was Negligent Raises Questions of Fact and Must Be Overruled.*

*IndyMac Bank v. Bey*, August 2001, No. 3200 (*Sheppard, J.*)  
(September 12, 2002 - 10 pages)

DEMURRER/MONEY DAMAGES - *Plaintiff's Alternative Claim for Monetary Relief from Defendant Second Mortgagee Is Not Sustainable Where Plaintiff Released Its Mortgages upon Presentation of Allegedly Fraudulent Money Orders by Defendant Mortgagor and Defendant Second Mortgagee Did Not Cause Damages - Plaintiff May Seek to Reinstate its First Priority Mortgage Against Second Mortgagee.*

*IndyMac Bank v. Bey*, August 2001, No. 3200 (*Sheppard, J.*)  
(September 12, 2002 - 10 pages)

DERIVATIVE ACTION - *Action Will Not Be Treated As a Derivative*

*Action Where the Name of the Plaintiff Set Forth in the Caption is an Individual and the Court IV in Question Is Presented as a Claim for a Constructive Trust on Behalf of That Individual - Claim Designated as "Constructive Trust" Based on the Facts Alleged Actually Sets Forth a Claim for Conversion - Two Year Statute of Limitations Applies to Conversion Claim*

Mogilyansky v. Sych, June 2000, No. 3709 (Herron, J.)  
(February 4, 2002 - 7 pages)

*DETRIMENTAL RELIANCE - Demurrer to Claim for Detrimental Reliance Is Overruled Because Detrimental Reliance Is in Essence Another Name for a Claim of Promissory Estoppel*

Thermacon Enviro Systems, Inc. V. GMH Associates, March 2001, No. 4369 (Herron, J.) (July 18, 2001 - 12 pages)

*DISCOVERY - Motion to Compel Production of Ballots Cast in Election of Condominium Council is Granted Under Pa.R.C.P.4003.1(a) as well as Relevant Statutes and Precedent - Under Pa.C.S. §5508, a Member of a Nonprofit Corporation Has the Right to Inspect Records of Proceedings of the Members For Any Proper Purpose - Under 68 Pa.C.S. §3316 of the Uniform Condominium Act, Records of the Condominium Shall Be Made Reasonably Available for Examination by Any Unit Owner*

Pantelidis v. The Barclay Condominium Association, August 2000, No. 3819 (Herron, J.) (January 18, 2000 - 4 pages)

*DISCOVERY / PRIVILEGED DOCUMENTS - An Attorney Who Inadvertently Receives Confidential or Privileged Documents Must Return the Documents Because That Attorney has Ethical Obligations That May Surpass the Limitations Implicated by the Attorney-Client Privilege and That Apply Regardless of Whether the Documents Retain Their Privileged Status - To Determine Whether an Attorney Who Inadvertently Receives Confidential or Privileged Documents May Not Make Use of the Information Discovered in Those Documents, a Court Considers the Reasonableness of the Precautions Taken to Prevent*

*Disclosure, the Inadvertence, Extent and Number of Disclosures, the Steps Taken After Learning of the Disclosure and the Time Frame in Which Those Steps Were Taken, and Issues of Fairness and Reasonableness, Including the Utility of Extending the Attorney-Client Privilege and the Prejudice the Receiving Party Would Suffer.*

Herman Goldner Company, Inc. v. Cimco Lewis Industries, March 2001, No. 3501 (Herron, J.) (July 19, 2002 - 10 pages)

## E

*ECONOMIC DEVELOPMENT FINANCING LAW - City Did Not Violate the Economic Development Financing Law by Permitting PAID to Issue Bonds to Finance the Stadiums Because PAID Must Place a Disclaimer on the Bonds Disclosing That the General Credit Is Not Pledged - The Terms of the Bonds Are Subject to the City's Approval so That It May Ensure That the Required Disclaimer Is Present*

Consumers Education & Protective Association et al. v. City of Philadelphia, January 2001, No. 2470 (Sheppard, J.) (April 30, 2001 - 20 pages)

*ECONOMIC LOSS DOCTRINE - Economic Loss Doctrine Does Not Bar Plaintiff's Claim For Intentional Interference with Contract and Fraud Claims*

Amico v. Radius Communications, January 2000, No. 1793 (Herron, J.) (January 9, 2001 - 8 pages)

*ECONOMIC LOSS DOCTRINE - Pennsylvania's Economic Loss Doctrine Precludes Recovery for Economic Loss in Negligence Actions Where Plaintiff Suffers no Physical or Property Damage - Claim for Negligent Misrepresentation IS Stricken Where Plaintiff Fails to Allege Physical Damage or Harm - Economic Loss Doctrine Does Not*

*Preclude Claim Based on Intentional Fraud*

First Republic Bank v. Brand, August 2000, No. 147 (Herron, J.)(December 19, 2000 - 19 pages)

*ECONOMIC LOSS DOCTRINE - Economic Loss Doctrine Precludes Company That Constructs Sewer Controls From Recovering Under Negligent Misrepresentation Claim for Solely Economic Damages Caused by Defective Sensor or the Consequential Costs Associated With Replacing the Sensors, Loss of Good Will, Harm to Reputation or Reassignment of Employees - Economic Loss Doctrine Does Not Preclude Recovery for Replacing Other Component Parts of the Sewer System not Manufactured by Defendant*

Waterware Corporation v. Ametek et al, June 2000, No. 3703 (Herron, J.) (April 17 2001 - 15 pages)

*ECONOMIC LOSS DOCTRINE - Where Counterclaim Alleges That Installation of New Flooring Damaged Existing Flooring, a Claim for Negligence or Strict Liability Is Not Barred by Economic Loss Doctrine Because There Is An Allegation of Damage to "Other Property"*

Stonhard v. Advanced Glassfiber Yarns, April 2001, No. 2427 (Herron, J.) (November 21, 2001 - 7 pages)

*ECONOMIC LOSS DOCTRINE - Claim of Emotional Distress Is Not Barred By the Economic Loss Doctrine Where the Counterclaim Alleges Physical Harm*

Legion Insurance Co. V. Doeff, May 2000, No. 3174 (Sheppard, J.) (December 18, 2001 - 11 pages)

*ECONOMIC LOSS DOCTRINE - Corporation's Claim for Negligent Supervision by Bank of Its Employee For Failing to Alert Plaintiff to Embezzlement by Plaintiff's Agent is Barred by the Economic Loss Doctrine Where Plaintiff Alleged Only Economic Loss*

IRPC Inc. V. Hudson United Bancorp. February 2001, No. 474 (Sheppard, J.) (January 18, 2002 - 15 pages)

ECONOMIC LOSS DOCTRINE - *Doctrine Applies to Services Contract to Bar Plaintiff's Claim for Negligence and Gross Negligence Arising out of Defendant's Allegedly Improper Repair of Plaintiff's Truck and Direct Consequential Damages Arising from That Repair.*

Ashburner Concrete and Masonry Supply, Inc. v. O'Connor Truck Sales, Inc., December 2000, No. 489 (Herron, J.)(August 10, 2001 - 10 pages)

ECONOMIC LOSS DOCTRINE - Economic Loss Doctrine Under Pennsylvania Law Precludes Recovery for Economic Loss in a Negligence or Strict Liability Action Where the Plaintiff Has Suffered No Physical Injury or Property Damage But the Doctrine Would Not Bar Intentional Misrepresentation Claims - Economic Loss Doctrine Does Not Bar Tort Claims By Manufacturer of Aircraft Piston Engines Against Manufacturer of Components For the Engines' Crankshafts Where Plaintiff Shows Damage to Other Property Such as Damage to Aircraft, Personal Injuries and Damage to the Engines Into Which the Crankshafts Were Assembled - Damages Incurred in Recalling and Testing Plaintiff's Crankshafts Are Economic and Thus Precluded As Tort Claims Under the Economic Loss Doctrine Although They May Be Sought in the Warranty Claims

Teledyne Technologies Inc. v. Freedom Forge Corp., May 2000, No. 3398 (Sheppard, J.) (April 19, 2002 - 38 pages)

ECONOMIC LOSS DOCTRINE - *Economic Loss Doctrine Bars Claim for Negligent Misrepresentation Absent Allegation That Plaintiff Suffered Physical Injury or Property Damage*

JHE Incorporated v. SEPTA, November 2001, No. 1790 (Sheppard, J.) (May 17, 2002 - 21 pages)

ECONOMIC LOSS DOCTRINE - Negligence Claim Asserting That Defendants Were Negligent In Failing to Finalize Registration Statement and Complete Registration of Plaintiff's Stock Shares Is Barred by



Economic Loss Doctrine Where Plaintiff Fails to Allege Anything But Economic Loss

Worldwideweb Network Corp. V. Entrade, Inc. And Mark Santacrose, December 2001, No. 3839 (Herron, J.)  
(June 20, 2002 - 10 pages)

*ECONOMIC LOSS DOCTRINE/UTCPL - The Economic Loss Doctrine Does Not Bar UTCPL Claims In The Nature of Fraud and Intentional Tort For the Same Policy Justification Underlying This Court's Excepting Intentional Common Law Torts Claims From the Economic Loss Doctrine Namely This Court Does Not Believe That Outright Dishonesty Is Properly Redressed in a Breach of Contract or Warranty Claim - Further, the Pennsylvania Legislature Enacted UTCPL While Cognizant of the Existence of Common Law Contract Remedies and Thus Intended for UTCPL to Afford Customers Additional Separate Remedies To Prevent Unfair or Deceptive Practices.*

Oppenheimer v. York, March 2002, No. 4348 (Sheppard, J.)  
(October 25, 2002 - 15 pages)

*EMERGENCY TREATMENT AND ACTIVE LABOR ACT (EMTALA) - Because EMTALA Provisions Do Not Set Forth a Hospital's Obligations After the Condition of Patient Seeking Emergency Medical Treatment Has Stabilized, This Act is Not Dispositive as to Declaratory Judgment Action by Hospital Seeking a Declaration of its Obligations in Transferring a Patient*

Temple University v. Americhoice, January 2001, No. 2283  
(Herron, J.) (September 17, 2001 - 11 pages)

*EMINENT DOMAIN/APPOINTMENT OF BOARD OF VIEWERS - Petition that Alleges Nothing More Than Breach of Contract Action Cannot Be Transformed Into an Inverse Condemnation Claim Merely Because the Allegedly Breaching Party Is a Government Entity - Board of Viewers Cannot Be Appointed Where Petition Does Not Set Forth a Legally Sufficient Claim for Inverse Condemnation*

D'Ginto v. SEPTA , August 2001, No. 2475 (Herron, J.)  
(January 23, 2002 - 5 pages)

*EMOTIONAL DISTRESS/INTENTIONAL AND NEGLIGENT INFLICTION - Claim For Intentional Infliction of Emotional Distress Must Assert That Extreme or Outrageous Conduct Intentionally or Recklessly Caused Severe Emotional Distress - Claim For Intentional Infliction of Emotional Distress Is Set Forth Where Physician Alleges That Insurer Demanded That He Sign An Affidavit Adverse to His Interests and the Insurer Withdrew Its Representation of Him in Malpractice Action on the Eve of Trial - Claim for Emotional Distress Is Not Barred by Economic Loss Doctrine Where the Counterclaim Alleges Physical Harm - Plaintiff Sets Forth Claim for Negligent Infliction of Emotional Distress Since He Asserts That the Defendant Owed Him a Fiduciary Duty Under the Policy*

Legion Insurance Co. V. Doeff , May 2000, No. 3174  
(Sheppard, J.) (December 18, 2001 - 11 pages)

*EMOTIONAL DISTRESS/INTENTIONAL AND NEGLIGENT INFLICTION - Claim for Intentional Infliction of Emotional Distress is Incomplete Where it Fails to Allege Outrageous or Extreme Conduct by Defendant Attorney*

Legion Insurance Co. V. Doeff , May 2000, No. 3174  
(Sheppard, J.) (June 6, 2001 - 12 pages)

*EQUITABLE CONVERSION - Under the Doctrine of Equitable Conversion Where a Contract That Promised the Establishment of an Easement Was Entered Into Prior to the Assignment of a Parcel, the Easement Constituted an Encumbrance That Implicated the Title Policy*

Terra Equities v. First American Title Insurance Co. March 2000, No. 1960 (Sheppard, J.) (August 9, 2001 - 17 pages)

*EQUITABLE SUBROGATION - A Claim for Equitable Subrogation Consists of the Following Elements: (1) The Claimant Has Paid The Creditor to Protect His Own Interests; (2) The Claimant Did Not Act as a*

Volunteer; (3) The Claimant Is Not Primarily Liable for the Debt; (4) The Entire Debt Has Been Satisfied - For Federal Courts, Another Element a Plaintiff Must Establish Is that Allowing Subrogation Will Not Cause Injustice to the Rights of Others - Pennsylvania Courts Do Not Explicitly Consider Potential Injustice As An Element of the Plaintiff's Claim But as a Factor to be Considered by the Court - Where Predecessor in Interest Incurred Liability Solely Due to Default of Borrower, Plaintiff Did Not Act As Volunteer - Failure of Complaint to Allege that No Injustice Will Result From Granting Requested Relief Is Not Fatal or a Basis for Granting Preliminary Objections

Resource Properties XLIV v. Philadelphia Authority for Industrial Development, et al., November 1999, No. 1265 and Resource Properties XLIV, Inc. v. Growth Properties, Inc., March 2000, No. 3750 (Sheppard, J.) (November 7, 2000 - 14 pages)

EQUITABLE SUBROGATION - Plaintiff Established Its Right to Recovery on Equitable Subrogation Claim Where the Record Showed Plaintiff Inherited the Rights of the Original Claimant, the Claimant Paid the Creditor to Protect Its Own Interests and Did Not Act Voluntarily, the Claimant Was Not Primarily Liable for the Debt, the Entire Debt Had Been Satisfied and the Record Did Not Show an Injustice to Others Would Result By Plaintiff's Recovery

Resource Properties XLIV, Inc. v. Philadelphia Authority for Industrial Development, et al., November 1999, No. 1265 and Resource Properties XLIV, Inc. v. Growth Properties, Ltd., et al., March 2000, No. 3750 (Sheppard, J.) (August 2, 2002 - 23 pages)

EQUITY JURISDICTION - Trial Court May Hear Equity Claims Even When Plaintiff Erroneously Filed an Action at Law Because the Equity Side of the Court Is Always Open and to Dismiss or Sever Equity Claims Would Result in Piecemeal Litigation.

IndyMac Bank v. Bey, August 2001, No. 3200 (Sheppard, J.) (September 12, 2002 - 10 pages)

*EXCULPATORY CLAUSE/INDEMNITY AGREEMENT - Exculpatory Clauses, While Not Favored at Law, May be Valid - Exculpatory Clauses Are Strictly Construed - Exculpatory Clause Unambiguously Releases Surety From Liability for Discharging Its Obligations Under the Bonded Contract and Taking Over the Contract's Completion or the Contract's Monies in the Event of Default by the General Contractor*

*San Lucas Construction Co., Inc. v. St. Paul Mercury Insurance Co., February 2000, No. 2190 (Sheppard, J.)*  
(March 14, 2001 - 17 pages)

## **F**

*FALSE ADVERTISING CLAIM - Viable False Advertising Claim Under the Unfair Trade Practice and Consumer Protection Law, 73 P.S. §201-2(4)(v), Is Set Forth Where Class Action Complaint Alleges that Webpage Book Offering and Book Dustjacket Gave Wrong Author Credit for Writing Book - Because Plaintiff Alleges that False Representations as to Author Were Likely to Affect Purchasing Decision, Causation Was Adequately Pleaded*

*Kelly v. Penguin Putnam, Inc., August 2000, No. 980 (Herron, J.)*(November 29, 2000 - 5 pages)

*FALSE LIGHT INVASION OF PRIVACY CLAIM - Plaintiff Lawyer Sets Forth Viable Claim For False Light Invasion of Privacy When He Alleges That the Defendants Publicly Accused Him of Dishonesty and Incompetence With Knowledge That the Accusations Were Untrue and Would Place Him in a False Light Before His Client*

*Phillips v. Selig, July 2000, No. 1550 (Sheppard, J.)*  
(September 19, 2001 - 20 pages)

*FIDUCIARY DUTY - Pennsylvania Does Not Recognize Cause of Action for Breach of Fiduciary Duty For Failure to Renew Insurance Policy*

*The Brickman Group, Ltd. v. CGU Insurance Co., July 2000, No. 909 (Herron, J.)*(January 8, 2001 - 22 pages)

*FIDUCIARY DUTY - Employee Has Set Forth Breach of Fiduciary Claim*

*Against Employer When He Alleges That He Disclosed His Marketing Idea to His Supervisors Under the Belief That the Idea Would be Protected and He Would Get Recognition But Employer Disclosed the Idea to Another Company to Deprive Plaintiff of His Property and Proper Compensation*

Babiarz v. Bell Atlantic - Pennsylvania, Inc. August, 2000, No. 1863 (Herron, J.) (July 10, 2001 - 38 pages)

*FIDUCIARY DUTY - A Member of a Limited Liability Company May Be Held Liable for Breach of Fiduciary Duty to Another Member Where the Operating Agreement Provides That Management is Vested in the Members*

Harbour Hospital Services v. GEM Laundry, July 2000, No. 4830, & August 2000, No. 207 (Sheppard, J.) (July 18, 2001 - 27 pages)

*FIDUCIARY DUTY - Plaintiffs Have Alleged Fiduciary Duty as to Defendants Who Acted as Financial Advisors With Vastly Superior Knowledge About Home Equity Loans and Who Had Access to Plaintiff's Highly Personal Financial Information - Plaintiffs Fail to Establish Fiduciary Duty Owed by Defendant/Lenders*

Koch v. First Union Corp., et al, May 2001, No. 549 (Herron, J.) (January 10, 2002 - 26 pages)

*FIDUCIARY DUTY - While Controlling or Majority Shareholder Owes Minority Shareholder a Fiduciary Duty, A Claim For Breach of Fiduciary Duty Cannot Be Maintained Where Plaintiff Fails to Allege That Defendant Was a Controlling Shareholder*

First Republic v. Brand, August 2000, No. 147 (Herron, J.) (January 8, 2002 - 11 pages)

*FIDUCIARY DUTY - Summary Judgment on Breach of Fiduciary Duty is Granted Where Record Failed to Show Disparity of Expertise Between*

*the Parties to Warrant Finding a Fiduciary Relationship*

Methodist Home for Children, et al. v. Biddle & Company, Inc., April 2001, No. 3510 (Sheppard, J.) (October 9, 2002 - 10 pages)

*FIDUCIARY DUTY/BREACH - A Breach of Fiduciary Duty Claim Against a Health Insurer by Its Subscribers Cannot Survive Demurrer Because a Breach of Fiduciary Duty Claim Sounds Only in Contract, It Is Redundant of the Subscriber Plaintiffs' Claim for Breach of the Implied Duty of Good Faith and Pre-Contract Conduct Cannot be a Basis for a Breach of Fiduciary Duty Claim Against a Healthcare Insurer*

Pennsylvania Chiropractic Association v. Independence Blue Cross, August 2000, No. 2705 (Herron, J.) (July 16, 2001 36 pages)

*FIDUCIARY DUTY/CREDITOR & DEBTOR - Where Creditor Gains a Substantial Control Over the Debtor's Business, a Fiduciary Duty May Exist - Such a Fiduciary Duty Exists Where Creditor Came Into Debtor's Premises and Began Running the Business, Cashed Checks, Fired Personnel, and Negotiated the Sale of the Debtor's Business - The Standard for Determining Breach of This Fiduciary Duty is "Good Faith" and Not "Commercial Reasonableness" - Summary Judgment May Not Be Granted on This Claim of Breach of Fiduciary Duty Where There Are Issues of Fact Concerning Defendant's Actions*

Academy Industries, Inc. V. PNC, N.A. et al, May 2000, No. 2383 (Sheppard, J.) (May 20, 2002 - 34 pages)

*FIDUCIARY DUTY/EMPLOYER - Employee and Agency Relationship Creates a Fiduciary Duty Not to Compete by Soliciting Employer's Clients*

Goldstein & Co., P.C. v. Goldstein CPA, January 2001, No. 3343(Herron, J.) (June 14, 2001 - 12 pages)

FIDUCIARY DUTY/PARTNERS - Where Partners Withdraw From Law Partnership Prior to its Dissolution, the Remaining Partners do Not Owe the Withdrawing Partners a Duty of Good Faith or Fiduciary Duty After Their Withdrawal

Poeta v. Jaffe et al, November 2000, No. 1357 (Sheppard, J.) (May 30, 2001 - 9 pages)

FIDUCIARY DUTY/PARTNERS - *Amended Complaint Sets Forth a Viable Claim for Breach of Fiduciary Duty By Alleging That Plaintiffs Remained Partners Until the Law Firm Dissolved, Thereby Giving Rise to Fiduciary Duties Owed to Them Throughout the Winding Up Process*

Poeta v. Jaffe et al, November 2000, No. 1357 (Sheppard, J.) (October 2, 2001 - 10 pages)

FIDUCIARY DUTY/PARTNERS - *Because the Relationship Between General Partners and Limited Partners Is Similar to the Relationship Between Directors and Shareholders, General Fiduciary Principles for Directors Apply to General Partners - General Partner Breached Its Fiduciary Duty to Limited Partners By Misinforming Them That Merger Could Be Consummated Without Vote of the Limited Partners - A Limited Partner Suffers Irreparable Harm Where He Is Deprived of His Right To Vote on the Merger of the Limited Partnership*

Wurtzel v. Park Towne Place Apartments, June 2001, No. 3511 (Herron, J.) (September 11, 2001 - 20 pages)

FIDUCIARY DUTY/SHAREHOLDERS - Shareholders Do Not Have to Prosecute Their Claims as a Derivative Action Where They Allege the Corporation Failed to Safeguard the Interest of a Particular Group of Shareholders Who Held the Notes at Issue Rather Than Asserting Claims on Behalf of all the Shareholders - counterclaim Presents Sufficient Factual Allegations That the Defendant Shareholders

Exercised the Requisite Control

First Republic Bank v. Brand, August 2000, No. 147  
(Herron, J.) (June 4, 2001 - 20 pages)

*FORUM NON CONVENIENS - Petition to Dismiss Complaint due to Forum Non Conveniens Denied Where Defendant Insurer Failed to Show that Plaintiff's Choice of Forum Was Vexatious or Oppressive - Petitioner Has the Burden of Providing a Court with Such Evidence of Vexatiousness or Oppressiveness as Names of Witnesses to be Called, a General Statement Describing Their Testimony and Their Potential Hardships - Test Balancing Public and Private Hardships is No Longer Permissible*

Terra Equities, Inc. v. First American Title Insurance Co.,  
March 2000, No. 1960 (Sheppard, J.) (August 2, 2000 - 17  
pages)

*FORUM NON CONVENIENS - Motion By Pennsylvania Corporation Seeking Dismissal of Plaintiff's Action Filed in Philadelphia on the Grounds of Forum Non Conveniens Is Denied Where Defendant Failed to Meet Its Burden of Showing That Plaintiff's Choice of Forum is Oppressive and Vexatious*

University Mechanical & Engineering Contractors, Inc. V.  
November 2000, No. 1554 (Sheppard, J.) (December 7, 2001 -  
18 pages)

*FORUM NON CONVENIENS - Petition to Transfer Venue Based on Forum Non Conveniens Is Granted Where Defendants Met Their Burden of Showing Why Litigating This Action in Philadelphia Would Be Vexatious and Oppressive - Neither the Plaintiff Nor Nine of the Ten Defendants Are Located in Philadelphia - None of the Events Giving Rise to This Lawsuit Involving the Alleged Substandard Construction of a Continuing Care Retirement Facility Occurred in Philadelphia - Most of the Defendants' Witnesses Are Not Located in Philadelphia*



Grace Community, Inc. V. KPMG Peat Marwick, LLP,  
February 2001, No. 478 (Sheppard, J.) (April 8, 2002 - 8  
pages)

*FORUM NON CONVENIENS - Petition by Steel Mill Owner Located in Washington County to Transfer Action From Philadelphia Based on Forum Non Conveniens Is Granted Where Defendant Presents Affidavits By Its Witnesses That Litigation in Philadelphia Would Cause Them Undue Hardship - Holding Trial in Philadelphia Would Be Vexatious Where the Relevant Events Occurred 300 Miles Away and None of the Operative Facts Took Place in Philadelphia*

International Mill Services, Inc. V. Allegheny Ludlum Corp.,  
June 2001, No. 1559 (Herron, J.) (April 11, 2002 - 9 pages)

*FORUM NON CONVENIENS - Petition to Dismiss Complaint due to Forum Non Conveniens Denied Where Defendant Corporation Failed to Meet its Burden of showing that Plaintiffs' Choice of Forum for Putative Class Action Was Vexatious or Oppressive.*

Dearlove v. Genzyme Transgenics Corporation, November 2001,  
No. 1031 (Sheppard, J.) (July 19, 2002 - 13 pages)

*FORUM SELECTION CLAUSE - Additional Insured Is Entitled to Same Coverage as Named Insured and Has the Same Right to Test the Limits and Validity of Policy Provisions - Where Forum Selection Clause Is Challenged, a Court Must Determine Whether the Parties Freely Agreed to this Limitation and Whether Such Agreement Is Unreasonable at the Time of Litigation - Forum Selection Clause Will Not Be Enforced Where Plaintiff Establishes That Staggering Costs of Simultaneously Litigating Cases in England and Philadelphia Would Compel the Abandonment of Any Defense in the English Proceedings*

Miltenberg & Samton, Inc. v. Assicurazioni Generali, S.p.A.,  
January 2000, No. 3633 (Herron, J.) (October 11, 2000 - 20  
pages)

*FORUM SELECTION CLAUSE - Forum Selection Clause in Subcontract is Not Applicable Where the Claims at Issue in the Law Suit Are Independent of That Subcontract - Application of the Forum Selection Clause Would not be Reasonable Where Its Enforcement Would Preclude Plaintiff From Suing Jointly and Severally Liable Defendants in the Same Forum*

Gary Lorenzon Contractors, Inc. V. Allstates Mechanical Ltd.  
December 2000, No. 1224, (Sheppard, J.)  
(May 10, 2001 - 9 pages)

*FORUM SELECTION CLAUSE - Forum Selection Clause Designating Pennsylvania Is Enforced Where Movant Argued That It Bestowed Jurisdiction on Him Only If the Word "Personal" Preceded the Word "Jurisdiction"*

First Union Commercial Corp. V. Medical Management,  
February 2000, No. 3673 (Herron, J.) (July 26, 2000 -  
10 pages)

*FORUM SELECTION CLAUSE - Forum Selection Clause Designating North Dakota is Enforced Where Plaintiffs Failed to Show That Their Freely Agreed Upon Forum Selection Clause Should Not Be Enforced Because To Do So Would Seriously Impair Their Ability to Pursue Their Claim*

Credit America, Inc. V. Intercept Corp., et al, February  
2001, No. 3923 (Herron, J.) (October 2, 2001 - 5 pages)

*FORUM SELECTION CLAUSE - Where Engagement Letter Signed by Shareholders' Companies Contained Forum Selection Clause, the Shareholders Were Bound by That Clause Selecting a New York Forum*

Kelly et al v. Bear, Stearns & Co., Inc., April 2001, No.  
2346 (Sheppard, J.) (December 18, 2001)

*FORUM SELECTION CLAUSE/VENUE - Forum Selection Clause is Enforced Where It Has Been Freely Agreed Upon by the Parties and Where it is Not Unreasonable at the Time of Litigation - In the Absence of Fraud, Failure to Read a Provision is Not an Excuse or Defense to a Forum Selection Clause - Maryland is Not an Unreasonable Forum in This Case*

Nelson Medical Group v. Phoenix Health Corporation,  
December 2001, No. 3078 (Sheppard, J.) (May 28, 2002  
- 6 pages)

*FRAUD - Complaint Fails to Set Forth Viable Fraud Claim Where it Merely Asserts That Defendant Made False Statements to Others About Plaintiff's Work But Fails to Allege That Plaintiff Relied on Any False Statements*

Hydrair, Inc. v. National Environmental Balancing Bureau,  
February 2000, No. 2846 (Herron, J.) (April 23, 2001 -  
19 pages)

*FRAUD - Employee's Claim for Fraud Withstands Demurrer Where it Alleges That Defendants Had a Present Intent to Not Honor Their Promises to Compensate Plaintiff Adequately and Failed to Recognize Plaintiff for His Idea Despite Their Assurances*

Babiarz v. Bell Atlantic - Pennsylvania, Inc. August, 2000,  
No. 1863 (Herron, J.) (July 10, 2001 - 38 pages)

*FRAUD - Plaintiff's Fraud Claim Involving the Sale of 4 Snow Removal Trucks Is Sufficiently Specific Since It Sets Forth All Elements of Fraud Since the Complaint Stated That Defendant Represented That the Four Trucks Sold Where Suitable for Salt When They Were Allegedly Defective*

V-Tech Services, Inc. v. Murray Motors Co., Inc. February  
2001, No. 1291 (Herron, J.) (October 11, 2001 - 8 pages)

*FRAUD - Plaintiffs Set Forth Viable Claim For Fraud as to Attorney Fee Agreement For Attorneys Who Prosecuted Claim Against Tobacco Industry Where They Set Forth the Material Facts Upon Which Their Fraud Claim is Based*

Levin, Esquire et al. v. Gauthier, Esquire, May 2001, No. 374(Sheppard, J.) (January 14, 2002 - 10 pages)

*FRAUD - Fraud Claim is Not Set Forth Where Plaintiff Fails to Allege That Defendants Made a Misrepresentation With the Intention of Deceiving Plaintiffs Into Relying Upon It - Fraud Claim by Physicians Against Insurer Premised on Provider Agreement Are Precluded by Gist of Action Doctrine Because Plaintiffs Fail to Allege Any Misrepresentation Independent of the Provider Agreement*

Gregg v. IBC, December 2000, No. 3482 (Sheppard, J.) (June 14, 2001, 20 pages)

*FRAUD - Where Counterclaim Fails to Set Forth a Misrepresentation as to Telecommunications Rates That Will Be Charged in the Future, a Demurrer to a Fraud Claim Is Sustained - Breach of a Promise to Do Something in the Future is Not Fraud*

Shared Communications Servs. v. Greenfield, May 2001 No. 3417 (Herron, J.) (November 19, 2001 - 9 pages)

*FRAUD - Tenant Failed to Set Forth Legally Sufficient Claim for Fraud Based on Landlord's Alleged Misrepresentation of the Square Footage of Office Space Rented Where Tenant Failed to Allege that Landlord made the Misrepresentation "with knowledge of its falsity or recklessness as to whether it was true or false" and "with the intent of misleading another into relying upon it"*

Holl & Associates, P.C. v. 1515 Market Street Associates, P.C., May 2000, No. 1964 (Herron, J.)(August 10, 2000 - 7 pages)

*FRAUD/EVIDENCE - Under Pennsylvania Law, Fraud Must Be Proven By Clear and Convincing Evidence*

Textile Biocides, Inc. v. Avecia, Inc. January 2000, No. 1519, (Herron, J.) (July 26, 2001 - 46 pages)

*FRAUD/GIST OF THE ACTION - To Determine Whether Action Sounds in Tort or Contract, Court Must Distinguish between Tort Actions Arising From Breach of Duties Imposed as a Matter of Social Policy and Contract Actions Arising From Breach of Duties Imposed by Mutual Consensus - Complaint Does Not Set Forth a Tort Claim Where the Alleged Breach Derives Solely from a Representation Agreement that Plaintiff Would Be Defendant's Exclusive Real Estate Broker and Negotiator*

The Flynn Company v. Cytometrics, Inc., June 2000, No. 2102 (Sheppard, J.) (November 17, 2000 - 14 pages)

*FRAUD/GIST OF THE ACTION - Gist of Action Doctrine Does Not Apply to Preclude Fraud Claim Where Complaint Alleges that Nursing Home Manager Misrepresented Uncollectible Debts as Accounts Receivable to Dupe Plaintiff into Continuing to Pay Excessive Monthly Management Fee*

Greater Philadelphia Health Services II Corp. v. Complete Care Services, L.P., June 2000, No. 2387 (Herron, J.) (November 20, 2000 - 7 pages)

*FRAUD/GIST OF THE ACTION - Gist of Action Doctrine Does Not Apply to Preclude Fraud Claim Where Complaint Alleges that After Executing Letter of Intent, Shareholders Misrepresented the Value of the Portfolio to Induce Plaintiff to Maintain Contractual Relations*

First Republic Bank v. Brand, August 2000, No. 147 (Herron, J.) (December 19, 2000 - 15 pages)

*FRAUD/GIST OF THE ACTION - Gist of Action Doctrine Precludes Fraud*

*Claim Where Claim Essentially Arises from Breach of Contract - Fraudulent Misrepresentation Claim Insufficiently Pled and Breach of Contract May Not Be Elevated to Fraudulent Misrepresentation Claim By Mere Bald Allegation that Defendant Never Intended to Perform His End of the Bargain at Time of Entering into the Contract.*

Duane Morris v. Nand Todi, October 2001, No. 1980 (Cohen, J.)  
(September 3, 2002 - 10 pages)

*FRAUD/NEGLIGENT MISREPRESENTATION - Fraud Must be Averred with Particularity - Tort of Intentional Non-disclosure has the Same Elements as Intentional Misrepresentation Except that the Party Intentionally Conceals a Material Fact - Demurrer Sustained Where Plaintiff Fails to Allege that Misrepresentation was Material - Demurrer Sustained to Negligent Misrepresentation Claim Where Defendants Did Not Owe a Duty and there was no Material Misrepresentation*

Caplen v. Richard W. Burick and The City of Philadelphia, Trustee Acting By the Board of Directors of City Trusts, Girard Estate, February 2000, No. 3144 (Sheppard, J.)(August 4, 2000)

*FRAUD/PROMISSORY - Under Pennsylvania and Delaware Law, A Claim That Defendant Committed Fraud by Promising to Pay Plaintiff Sales Commissions With No Intent to Pay Would Be Viable If Plaintiff Could Show That Promisor Did Not Intend to Perform That Promise At The Time He Made It - Here Plaintiff Failed to Present Any Evidence That Promisor Had No Intention to Perform At The Time He made Promise So Summary Judgment Is Granted*

Textile Biocides, Inc. v. Avecia, Inc. January 2000, No.

1519, (Herron, J.) (July 26, 2001 - 46 pages)

*FRAUD/REPURCHASE ACCOUNT - Corporation Sets Forth Valid Claim for Fraud Against Bank for Its Failure to Disclose Allegedly Inadequate Fraud Prevention Measures Relating to Plaintiff's Repurchase Account*

IRPC Inc. V. Hudson United Bancorp. February 2001, No. 474  
(Sheppard, J.) (January 18, 2002 - 15 pages)

*FRAUD/SPECIFICITY - Fraud Claim Is Legally Sufficient When the Dates and Times of Misrepresentation Are Given - Allegations Allow an Inference of Intent Which May be Pled Generally*

Mogilyansky v. Sych, June 2000, No. 3709 (Herron, J.)  
(February 4, 2002 - 7 pages)

*FRAUDULENT CONVEYANCE - Plaintiffs' Claim for Fraudulent Conveyance Is Legally Insufficient Where the Transferred Asset Is Not the Property of the Debtor But Is the Property of the Alleged Creditors*

Phillips v. Selig, July 2000, No. 1550 (Sheppard, J.)  
(September 19, 2001 - 20 pages)

*FRAUDULENT MISREPRESENTATION - Shareholder Claim of Reliance on Defendants' Misrepresentations as to the Value of Stock Purchased by Defendant Does Not Serve as the Basis for Fraud Claim Because Statements of Value Are But a Part of the Trade Talk and Customary Bargaining - Where Shareholder Status Entitles Shareholder to Examine Corporate Records, a Purchaser's Representations as to Share Value are Outweighed by Opportunity to Make Independent Evaluation*

Martinez v. Russo, March 2000, No. 1943 (Herron, J.) (August 8, 2000 - 9 pages)

## G

*GIST OF ACTION - Where Complaint Alleges Improper Conduct That Does Not Arise From the Contract at Issue, Gist of Action Doctrine Does Not Apply - Allegation that Defendant Attempted to Induce Plaintiff's Customers Not to Place Orders with Plaintiff's Customers Was Distinct from Underlying Contract at Issue So That Gist of Action Does Not Apply*

Advanced Surgical Services, Inc. v. Innovasive Devices, Inc.,  
August 2000, No. 1637 (Herron, J.)(January 12, 2001 - 7 pages)

*GIST OF ACTION - Where Parties Entered Into Contract to Broadcast Plaintiff's Cooking Show for 52 Weeks, Allegation of Improper Conduct in Producing Advertisements and Broadcasting Show Are Independent of the Contract and Do Not Fall Within Gist of the Action Doctrine*

Amico v. Radius Communications, January 2000, No. 1793  
(Herron, J.)(January 9, 2001)

*GIST OF ACTION - Fraud Claims by Physicians Against Insurer Premised on Provider Agreement Are Precluded by Gist of Action Doctrine Because Plaintiffs Fail to Allege Any Misrepresentation Independent of the Provider Agreement*

Gregg v. IBC, December 2000, No. 3482 (Sheppard, J.)  
(June 14, 2001 - 20 pages)

*GIST OF ACTION - Negligence Claim Is Barred by Gist of the Action Doctrine Where the Duties That Are Alleged to Have Been Breached Arise Solely From the Various Contracts Rather Than From a Socially Imposed Duty*

Herman Goldner Company, Inc. v. Cimco Lewis Industries,



Inc. March 2001, No. 3501 (Herron, J.) (September 25, 2001 -7 pages)

Honeywell International, Inc. V. Archdiocese of Philadelphia, May 2001, No. 2219 (Herron, J.) (October 24, 2001 - 7 pages)

*GIST OF ACTION - Where Contract for the Replacement of Windows Created the Duties That Defendant Allegedly Breached, Negligence Claim Based on This Contract is Dismissed Under Gist of the Action Doctrine - Gist of the Action Doctrine Also Bars Fraud Claim That is Premised on Wrongs Committed Under the Contract*

Flynn v. Peerless Door & Glass, Inc., November 2001, No. 830(Sheppard, J.) (May 15, 2002 - 7 pages)

*GOOD FAITH/CONTRACT/UCC - Preliminary Objections to Bad Faith Affirmative Defense Are Overruled Because a Party Responding to UCC Breach of Contract Claim May Assert as an Affirmative Defense That the Claimant Failed to Act in Good Faith*

York Paper v. Bartash Printing, Inc., August 2001, No. 3111(Herron, J.) (February 6, 2002 - 3 pages)

*GOOD FAITH/DUTY - Every Contract Imposes a Duty of Good Faith and Fair Dealing in Its Performance and Enforcement - Implied Duty of Good Faith May Also Arise From the Doctrine of Necessary Implication - Implied Duty of Good Faith Cannot Displace the Express Terms of a Contract Nor Can the Duty Be Implied as to Any Matter Specifically Covered by the Written Agreement - Duty of Good Faith May Not Be Imposed on the Basis of a Special Relationship Where the Contract Provides That Its Parties are "Independent Entities" - Where Complaint Sets Forth a Claim for Express Breach of Provider Agreement by, Inter Alia, Denying Reimbursement for Medically Necessary Treatment, the Court Sustains the Demurrer to the Providers' Good Faith Claim*

Pennsylvania Chiropractic Association v. Independence Blue Cross, August 2000, No. 2705 (Herron, J.) (July 16, 2001 -36 pages)

*GOOD FAITH/FAIR DEALING - The Implied Duty of Good Faith Arises Under the Law of Contracts - This Implied Duty of Good Faith Cannot Act to Displace the Express Terms of the Contract Nor Can It Be Implied as to Any Matter Covered by the Written Agreement*

*Middletown Carpentry v. C. Arena, June 2001, No. 2698  
(Sheppard, J.) (November 27, 2001 - 12 pages)*

*GOODS AND SERVICES INSTALLMENT SALES ACT - Agreement Falls Within the Goods and Services Installment Sales Act ("GSISA") Where It Provides for the Renting of Property With Installment Payments and the Eventual Ownership of the Property - The Provisions of the GSISA and the Rental Purchase and Agreement Act Are Mutually Exclusive - If An Agreement Falls Within the GSISA, It Must Include Specified Information Which Defendant Concedes Is Missing So That Summary Judgment Is Entered for Plaintiff*

*Anoushian v. Rent-Rite, Inc., November 2001, No. 2679  
(Herron, J.) (May 10, 2002 - 12 pages)*

*GUARANTEE/DISCHARGE - Summary Judgment May Not be Granted Where There Are Material Issues of Fact Concerning Whether Guarantee's Disposal of Creditor's Property Was Commercially Reasonable*

*Academy Industries, Inc. V. PNC, N.A. et al, May 2000,  
No. 2383 (Sheppard, J.) (May 20, 2002 - 34 pages)*

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*HEALTHCARE - Material Issues of Fact As to When the Condition of a Patient Seeking Emergency Medical Treatment Has Stabilized Preclude Granting Summary Judgment on Hospital's Request for a Declaratory Judgment as to (1) Whether Hospital or Health Maintenance Organization Must Obtain Informed consent Before Transfers to Another Hospital and (2) Whether HMO Must Pay Hospital for Medically Necessary Services Whether the Services Are Rendered Before or After Stabilization*

Temple University v. Americhoice, January 2001, No. 2283  
(Herron, J.) (September 17, 2001 - 11 pages)

*HOME RULE CHARTER - City Council Did Not Violate the Home Rule Charter When It Approved the Team Sublease Terms and Conditions But Did Not Consider the Actual Team Leases as Part of the Ordinances Because the Council Properly Approved the Substance of the Team Subleases and the Final Subleases Did Not Deviate Materially From Those Conditions*

Consumers Education & Protective Association v. City of Philadelphia, January 2001, No. 2470 (Sheppard, J.)  
(April 30, 2001 - 20 pages)

*HOME RULE CHARTER - Manufacturer of Fiber Optic Equipment Lacks Standing to Bring Suit Against the City Under Home Rule Charter Where It Fails to Allege Either That It Is a Taxpayer or That It Does Business in Philadelphia*

International Fiber Systems, Inc. v. City of Philadelphia  
October 2001, No. 968 (Sheppard, J.) (June 27, 2002 -  
17 pages)

## I

*IMMUNITY/GOVERNMENTAL/POLITICAL SUBDIVISION TORT CLAIMS ACT - City is Immune Under Political Subdivision tort Claim Act to Claim for Tortious Interference of Contract Between Manufacturer of Fiber Optics Equipment and Subcontractor*

International Fiber Systems, Inc. v. City of Philadelphia  
October 2001, No. 968 (Sheppard, J.) (June 27, 2002 -  
17 pages)

*IMMUNITY/LEGISLATIVE/GOVERNMENTAL - City Councilman's Motion For Judgment on the Pleadings Based on Claim of Absolute Legislative and Governmental Immunity Is Denied Where There Are Allegations That He Interfered With the Approval of the City and/or Paid for the Assignment of a Sublease Between Plaintiffs*

*DeSimone Inc. v. City of Philadelphia*, November 2001, No. 207 (Herron, J.) (May 7, 2002 - 21 pages)

*IMPLIED CONTRACT: Court Upheld Jury Verdict in Favor of Plaintiff Finding a Contract Existed Between the Plaintiff and Defendant Based on the Defendant's Conduct and Communications to the Plaintiff.*

*Advanced Surgical Services, Inc. And Robert Morris v. Innovasive Devices, inc. Mitek Products, et al*, August 2000, No. 1637 (Dinubile, J.) (September 6, 2002, 10 pages)

*INDEMNIFICATION - Indemnification May Derive From Contract or Equitable Principles*

*Penn Mutual Life Insurance Co. v. Ajax Management Corp.* May 2001, No. 3661 (Herron, J.) (November 16, 2001 - 6 pages)

*INDISPENSABLE PARTY - School District Is Not Indispensable Party Where Complaint Alleges Breach of Contract Claim Involving Sale of Coupons to It*

*Levin et al. v. Schiffman and Just Kidstuff*, July 2000, No. 4442 (Sheppard, J.) (February 1, 2001 - 26 pages)

*INDISPENSABLE PARTY - School District is Not Indispensable Party Where Complaint Alleges Breach of Contract Claim Involving Sale of Coupons to It*

*Polydyne, Inc. v. City of Philadelphia*, February 2001,

No. 3678 (McInerney, J.) (August 1, 2001 - 39 pages)

*INDISPENSABLE PARTY - Where Subcontractor Brought Declaratory Judgement Action Against Insurer Concerning Coverage for an Underlying Construction Dispute Complaint Was Dismissed for Failure to Join the Indispensable Parties That Included the Named Insured, Other Interested Insurers and the Claimants in the Underlying Action*

University Mechanical & Engineering Contractors, Inc. v. Insurance Company of North America, November 2000, No. 1554 (Sheppard, J.) (May 1, 2002 - 27 Pages)

*INDISPENSABLE PARTY - Where Complaint Alleges That Competitive Bidding Requirements Pursuant to the Home Rule Charter Should Apply to a Development Lease, the Parties to That Lease Should Be Joined as Indispensable Parties Because Their Interests Would Be Affected By a Ruling on This Issue - Contractors and Subcontractors Are Not Indispensable Parties Where Complaint Does Not Set Forth Allegations That Would Affect Their Interests*

International Fiber Systems, Inc. v. City of Philadelphia October 2001, No. 968 (Sheppard, J.) (June 27, 2002 - 17 pages)

*INDISPENSABLE PARTY - Preliminary Objections Asserting Failure to Join Indispensable Party Are Overruled Where Complaint Does Not Present Allegations That Would Affect the Interests of the Alleged Indispensable Party*

Tremco, Inc. v. Pennsylvania Manufacturers' Insurance Company, June 2000, No. 388 (Sheppard, J.) (June 27, 2002 16 pages)

*INJUNCTION/PERMANENT - Company That Manufactures Polymers for Use in Solid Waste Water Treatment Was Not Entitled to Permanent Injunction Because It Failed to Show That the City's Award of the*

*Bid Constituted a Manifest Abuse of Discretion or an Arbitrary Execution of the City's Duties or Functions - The City's Witnesses Presented Credible Evidence That They Acted With Discretion and Good Faith in the Conduct of the Official Polymer Trials, in Drawing Up Bid Specifications and in Adhering to Those Specifications When Awarding the Bid to Cytec - The Mere Suggestion of Fraud or Favoritism or a Possible Conflict of Interest is Insufficient to Void an Otherwise Valid Bid Award - The Evidence Showed That All the Bids Were Analyzed on a Common Standard - The Evidence Showed That Bid Specifications Were Not Changed or Altered After the Bids Were Opened to Give a Competitive Advantage to Cytec Over all Other Bidders*

Polydyne, Inc. v. City of Philadelphia, February 2001,  
No. 3678 (McInerney, J.) (August 1, 2001 - 39 pages)

*INJUNCTION, PRELIMINARY - Criteria - Relief May Not be Granted if One Element is Lacking - Plaintiff's Right to Relief is Not Clear Where None of the Writings or Evidence Spells Out Any Obligation for Defendants to Make Payments - Plaintiff Failed to Establish that Harm Cannot be Remedied by Monetary Damages - "No Monetary Damages" Exception Inapplicable*

Fennell, Fennell Media Consulting and Kazu Ito v. Van Cleef and Van Cleef and Co., May 2000, No. 2754 (Herron, J.)(May 31, 2000 - 5 pages)

*INJUNCTION, PRELIMINARY - Preliminary Injunction Issued to Require Former Owner of Business to Return Computer to Purchaser of Business and its Assets - Clear Right to Relief Existed Where Plaintiff Demonstrated that Computer Was Purchased as a Business Asset and Defendant Removed it Without Consent - Irreparable and Immediate Harm Shown Where Information on Computer Could be Used to Disrupt Plaintiff's Business and Integrity of its Systems*

Fidelity Burglar & Fire Alarm Co., Inc. v. Defazio, June 2000,  
No. 3060 (Herron, J.)(August 4, 2000 - 7 pages)

*INJUNCTION, PRELIMINARY - A Claim for Tortious Interference With*

*Contract Would Support an Injunction*

Hydrair, Inc. V. National Environmental Balancing Bureau,  
February 2000, No. 2846 (Herron, J.) (April 23, 2001 -  
19 pages)

*INSURANCE/ACTUAL CASH VALUE POLICY - In the Absence of Policy  
Language to the Contrary, Pennsylvania Law Generally Prohibits an  
Insurer from Deducting Depreciation When Compensating an Insured  
for Partial Loss Building Repairs under an Actual Cash Value Policy*

Peltz v. Nationwide Mutual Insurance Co., January 2001, No.  
127 (Herron, J.) (August 13, 2001 - 27 pages)

*INSURANCE/CONTRACT - Breach of Policy by Insurer - Preliminary  
Injunction Granted in Part - Irreparable Harm Shown Where Failure  
to Process Claims Will Force Plaintiff Out of Business - Reasonable  
Expectations of Insured Apply to Valuable Papers Claims Based on  
Representations of Insurer's Agent and Additional Premiums Paid*

TJS Brokerage & Co., Inc. v. Hartford Casualty Insurance Co.  
and Peterman Co., December 1999, No. 2755 (Herron, J.) (April  
24, 2000 - 44 pages)

*INSURANCE/CONTRACT/BREACH - Preliminary Objections Sustained Where  
Insured Fails to Set Forth Claim for Breach of Policy Where She  
Alleges That Insurer Gave Her the Option to Select Method of  
Payments Through an Account That Differed From the Default  
Selection of Benefit Payments Made By Her Decedent Husband/Insured*

Peisach v. Continental Assurance Co., June 2001, No. 3663  
(Herron, J.) (January 8, 2002 - 6 pages)

*INSURANCE/CONTRACT/PARTIES - Where Plaintiff Is Neither Named  
Insured in the Declarations Page Nor An Additional Named Insured*

*Under the Policy, Summary Judgment Is Granted in Favor of the Insurer on Breach of Contract Claim - Plaintiff Is Not a Third-Party Beneficiary Where Parties to Contract at Issue Did Not Intend Coverage for the Plaintiff*

Tremco, Inc. v. Pennsylvania Manufacturers' Insurance Co.  
June 2000, No. 388 (Sheppard, J.) (June 27, 2002 - 16 pages)

*INSURANCE/DUTY TO DEFEND - In a Declaratory Judgment Action, Insurer Has No Duty to Defend Tavern in Claim by Patron Who Was Injured in an Assault and Battery by Another Patron Where the Policy Contains an Explicit Exclusion for Claims Arising Out of Any Assault and Battery and the Facts Alleged in the Complaint Arise From the Assault and Battery*

Lexington Insurance Co. V. Tunney's Hollywood Tavern, Inc.  
(June 2001, No. 3213 (Herron, J.) (January 14, 2002 - 10 pages)

*INSURANCE/EXCESS POLICY - A Primary Insurer May Have a Direct Duty to Notify an Excess Insurer When Its Policy is Implicated by a Pending Claim Because the Primary Insurer Has Unique Access Both to Information Concerning the Claim and to Expertise in Evaluating the Risks the Claim Poses to the Excess Policy - Under the Primary Insurer Subrogation Theory, a Primary Insurer Would Assume the Insured's Obligation According to the Terms of the Excess Policy to Notify the Excess Insurer That Its Policy Might Be Implicated in a Pending Claim*

United States Fire Insurance Co. V. American Fire Insurance Co., February 2000, No. 3986 (Sheppard, J.) (April 6, 2001 - 21 pages)

*INSURANCE/FIDUCIARY DUTY - Insured May Assert Claim for Breach of Fiduciary Duty Distinct From the Good Faith Duties Imposed by Statute - Insurer May Voluntarily Assume Contractual Fiduciary Duties Where It Undertakes to Assist and Advise the Insured in Processing Claims Or Where It Asserts Rights Under the Policy to Handle Claims Against the Insured - There Is No Private Cause of Action for Violation of the Unfair Insurance Practices Act - A Private Action Under the Unfair Trade Practices and Consumer*



*Protection Law May Not Be Based On a Commercial Insurance Policy - Request for Punitive Damages May Not Stand As a Separate Count*

Rader v. Travelers Indemnity Co., March Term 2000, No. 1199 (Herron, J.) (September 25, 2000)

*INSURANCE/FRAUD - For Insurer to Succeed on its Defense That the Insured Made a Fraudulent Claim Under the Insurance Contract, Insurer Must Prove by a Preponderance of Evidence That (1) Insured Made a False Statement, (2) Insured Made the False Statement Knowingly and in Bad Faith, and (3) the Subject Matter was Material to the Insurance Transaction - A False Statement is Material if it Concerns a Subject Relevant and Germane to the Insurer's Investigation as it was Then Proceeding or if a Reasonable Insurance Company, in Determining its Course of Action, Would Attach Significance to the Fact Misrepresented*

TJS Brokerage & Co., Inc. v. Hartford Casualty Insurance Co. And Peterman Co., December 1999, No. 2755 (Herron, J.)  
(August 14, 2001 - 11 pages)

*INSURANCE/FRAUD - Insured's Concealment of its Knowledge of the Whereabouts of the Person Who Vandalized the Covered Property Would Void the Insurance Policy*

TJS Brokerage & Co., Inc. v. Hartford Casualty Insurance Co. And Peterman Co., December 1999, No. 2755 (Herron, J.)  
(August 14, 2001 - 11 pages)

*INSURANCE/FRAUD - It is Unsettled in Pennsylvania Whether an Insured's False Statements After Commencement of an Insurance Coverage Action Void the Policy Under a Policy's False Swearing Provision*

TJS Brokerage & Co., Inc. v. Hartford Casualty Insurance Co. And Peterman Co., December 1999, No. 2755 (Herron, J.)  
(August 14, 2001 - 11 pages)

*INSURANCE/INTERPRETATION OF POLICY - The Interpretation of an Insurance Policy Is a Question of Law - Where the Policy Excludes Assault and Battery Resulting from "act or Omission In Connection*

*With Prevention or Suppression of an Assault or Battery," It Excludes Claims of Negligent Hiring and Supervision to the Same Extent as a Policy with Distinct Expressed Exclusion of "Negligent Hiring and Supervision" Clause.*

M&M High Inc. v. Essex Insurance Co., July 2001, No. 0997  
(Cohen, J.) (November 18, 2002 - 9 pages)

*INSURANCE/LIQUIDATED DAMAGES - Where Negligence of Subcontractor's Employee In Bridge Construction Project Caused Delay and Attendant Economic Loss to Subcontractor, This Loss Was Covered by the Subcontractor's Insurance Policy for Property Damage - The Term "Property Damage" Includes "Liquidated Damage" - Liquidated Damages in This Case Flow From the Accident or Sound in Tort and Thus Are Not Excluded From the Policy Because of Any Contractual Foundation - Exclusion Based on Subcontractor's Failure to Perform Contract Does Not Apply Where Liquidated Damages Arose From Subcontractor's Negligence or Accident*

Mattiola Construction Corp. V. Commercial Union Ins. Co.,  
April 2001, No. 1215 (Herron, J.) (March 9, 2002 - 12 pages)

*INSURANCE/NOTIFICATION/EXCESS AND PRIMARY INSURERS - Under Both the General Standards of Insurance Practice and the Guiding Principles for Primary and Excess Insurance Companies, A Primary Insurer May Have a Direct Duty to Notify an Excess Insurer When Its Policy Is Implicated by a Pending Claim - Parties' Agreement to Assign Excess Insurer Notification Duty to Insured Superseded Any Notification Duty of the Primary Insurer - Where the Excess Insurer Fails to Show Prejudice Due to Delayed Notice of Claim, It Is Not Entitled to Reject Coverage as a Matter of Law - The Primary Insurer Subrogation Theory May Be Invoked by an Excess Insurer as a Defense to a Primary Insurer's Equitable Subrogation Claim, But May Not Be Used to Assert a Claim Offensively - Where the Plaintiff Did Not Argue That the Primary Insurance Policy Was Exhausted There Could Be No Finding That*

*the Excess Insurance Policy Was Triggered or That the Excess Insurer Had Any Coverage Obligation*

United States Fire Insurance Co., v. American National Insurance Company, February 2000, No. 3986 (Sheppard, J.)  
(July 8, 2002 - 15 pages)

*INSURANCE/PREMIUM REBATES OR INDUCEMENTS - Under Pennsylvania Law, Insurance Agents and Companies Are Prohibited From Offering or Granting Premium Rebates, Special Advantages or Other Inducements to a Prospective Client to Secure an Insurance Contract Where Such Offers Are Not Incorporated Within the Policies - "Insurance Program Guarantee" to Sell a Full Program of Various Types of Liability Insurance at the Same Premium for a 6 Year Period Constitutes an Inducement That Was Not Incorporated Within the Insurance Policy So That Summary Judgment is Granted As to That Claim*

The Brickman Group, Ltd. v. CGU Insurance Co., July 2000, No. 909 (Herron, J.) (March 26, 2002 - 9 pages)

*INSURANCE/TERRORISM - Allegations Support the Claim That Defendant Bank Breached the Covenant of Good Faith Implied in Its Agreement With Plaintiff When it Used the Term "Other Insurance" to Require the Purchase of Terrorism Insurance Where Plaintiff Alleges That Such Insurance is Either Unavailable or Prohibitively Expensive*

Philadelphia Plaza - Phase II v. Bank of America National Trust and Savings Association, May 2002, No. 3745  
(Herron, J.) (June 21, 2002 - 15 pages)

*INSURANCE/TITLE POLICY - Insured under Title Policy Alleged the Requisite Actual Loss By Asserting that the Insured Area in Dispute was Worth Less Encumbered by an Easement and Insured had Incurred Costs in Attempting to Clear Title - The Term "Actual Loss" has been Liberally Construed under both Pennsylvania and Florida Law - Policy Language does not Require this Insured to*

*Exercise Option as a Prerequisite to Asserting a Claim - Insurer is Required to Provide Coverage Where Insured Prosecutes Actions to Secure Title*

Terra Equities, Inc. v. First American Title Insurance Co.,

March 2000, No. 1960 (Sheppard, J.)(August 2, 2000 - 17 pages)

**INTERFERENCE WITH EXISTING CONTRACTUAL RELATIONS/AT-WILL EMPLOYEE -**  
*Under Pennsylvania law, "an action for intentional interference with the performance of a contract in the employment context applies only to interference with a prospective employment relationship, whether at-will or not, not a presently existing at-will employment relationship.*

ZA Consulting, LLC v. Andrew Wittman, April 2001, No. 03941  
(Cohen, J.)(December 11, 2002 - 8 pages)

**INTERPLEADER -** *For purposes of interpleader, an "adverse claimant" is not merely one who makes a claim against the defendant, rather it is one whose claim is inconsistent with (or adverse to) the claim made against the defendant by the plaintiff in a specific action.*

Holmes School LP, et. al. v. The Delta Organization, Inc.,  
June Term, 2002, No. 03512 (Cohen, J.)(November 19, 2002 - 4 pages)

**IRREPARABLE HARM -** *Loss of Office Space by Commercial Tenant Is Irreparable Harm Because the Office Space Is a Unique Asset - Here Dislocation Caused By Landlord Has Caused Disruption to the Tenants' Business, the Loss of an Employee and a Threat of Unascertainable Profit Losses*

Elfman v. Berman, February 2001, No. 2080 (Herron, J.)  
(October 2, 2001 - 9 pages)

## J

**JOINDER/ADDITIONAL DEFENDANT -** *Original Defendant May Join Additional Defendant as a matter of Course Within 60 days After the*

*Court Rules on Defendant's Preliminary Objections That, if Sustained, Would Require the Termination of the Action or the Filing of an Amended Complaint*

DeStefano & Assoc., Inc. V. Cohen et al, June 2000, No. 2775  
(Herron, J.) (June 25, 2001 - 5 pages)

JOINDER/ADDITIONAL DEFENDANT - Where a Defendant Joins an Additional Defendant, the Liability Must Be Premised on the Same Cause of Action Alleged by the Plaintiff in His Complaint - Where Plaintiff's Business Was Destroyed by Fire and He Brought Action Against His Landlord and Insurer for Breach of Fiduciary Duty and Bad Faith, the Landlord's Cross Claims Against the Insurer Are Dismissed Because the Alleged Liabilities Invoke Separate and Distinct Causes of Action - The Liability Asserted Against the Landlord for Failure to Replace and Repair the

*Building Arise From the Lease While the Claims Against the Insurer Arise From the Policy*

Rader v. Travelers Indemnity Co., March 2000, No. 1199  
(Herron, J.) (January 17, 2002 - 8 pages)

JOINDER/ADDITIONAL DEFENDANT - Additional Defendant May be Joined by Original Defendant in a Class Action Where the Additional Defendant's Alleged Liability is Related to the Original Claim Plaintiff Set Forth Against the Original Defendant Based on the Quality of the Non-OEM Parts Used in Repairing Plaintiff's Vehicle - Joinder Complaint is Valid Where Additional Defendant Could be Solely Liable, Liable Through Indemnification or Jointly and Severally Liable

Greiner v. Erie Insurance Exchange, February 2000, No. 3053  
(Herron, J.) (June 26, 2001 - 19 pages)

JOINDER/ADDITIONAL DEFENDANT - Defendant's Motion to for Leave to Join Additional Defendant for Indemnity and Contribution Purposes Is Denied Where the Proposed Defendant Manufacturer Cannot Be Liable for Remaining Breach of Contract Claims since Manufacturer Is Not a Party to the Contract to Repair Plaintiff's Truck,

*Negligence Claim Was Dismissed, and Defendant Does Not Assert Cross-claim Against Manufacturer Regarding a Transaction or Occurrence upon Which Plaintiff's Cause of Action Is Based.*

Ashburner Concrete and Masonry Supply, Inc. v. O'Connor Truck Sales, Inc., December 2000, No. 489 (Herron, J.)(August 10, 2001 - 10 pages)

*JOINDER/ADDITIONAL DEFENDANT - Joinder Complaint Is Dismissed As Untimely Where It Was Filed More Than 60 days After Preliminary Objections Were Overruled - The Time Period For Filing a Joinder Complaint Is Not Extended By the Filing of Motions For Reconsideration*

Thermacon Enviro Systems, Inc. V. GMH Associates, Inc.  
March 2001, No. 4369 (Herron, J.) (March 21, 2002 - 5 pages)

*JOINDER/CAUSES OF ACTION - Plaintiff's Failure to Separate Causes Of Action Where Identical Claims Involve Distinct Properties and Different Dollar Amount For Damages Does Not Warrant Dismissal for Misjoinder Where Underlying Relevant Facts And Applicable Law Are the Same.*

IndyMac Bank v. Bey, August 2001, No. 3200 (Sheppard, J.)  
(September 12, 2002 - 10 pages)

*JUDGMENT NOTWITHSTANDING THE VERDICT - Plaintiff Transportation Broker Met Its Burden of Proof Under Defendant's Insurance Contract That Vandalism to Its Business Caused the Business Income Loss Suffered by Plaintiff - President of Plaintiff Company Testified As to All Property Damaged by the Vandalism and How the Damage Affected the Day-to-Day Operations of His Business - Plaintiff Offered Sufficient Evidence for a Jury to Reasonably Infer That It Suffered a "Necessary Suspension" of its Business Operations - Where There Was No Reasonable Basis for the Damages the Jury Awarded for the Phone Switch, a JNOV Must Be Granted in Defendant's Favor*

TJS Brokerage & Co., Inc. v. Hartford Casualty Insurance Co.  
December 1999, No. 2755 (Herron, J.) (April 22, 2002 -

19 pages)

*JUDGMENT NOTWITHSTANDING THE VERDICT - Plaintiff Pharmaceutical Company Was Not Entitled to JNOV On Defamation and Commercial Disparagement Claims Where Evidence Was Not Such That No Two Reasonable Minds Could Find Otherwise And Entry of a JNOV is Not An Appropriate Sanction to Remedy Defendant's Misconduct Despite The Egregious Nature of His Conduct*

Hemispherx Biopharma, Inc. v. Asensio, et al., July 2000, No. 3970 (Sheppard, J.) (October 22, 2002 - 39 pages)

*JUDGMENT ON THE PLEADINGS - Surety's Motion for Judgment on the Pleadings is Granted Because as a Matter of Law Exculpatory Clauses in Indemnity Agreement Absolve it From Liability For Any Conduct Short of Deliberate and Willful Malfeasance - Indemnity Agreement Authorized Surety to Take Control of the Construction Work and Contract Proceeds Where Plaintiff/General Contractor Was in Default of its Construction Contract or Failed to Pay Sub-contractors*

San Lucas Construction Co., Inc., v. St. Paul Mercury Insurance Co., February 2000, No. 2190 (Sheppard, J.) (March 14, 2001, 17 pages)

*JUDGMENT ON PLEADINGS - Defendant's Motion for Judgment on Pleadings Is Granted Where Negligence and Gross Negligence Count Is Barred by the Economic Loss Doctrine since Gravamen of Action Involves Alleged Failure to Properly Repair and Service a Cement Truck and Is Redressable under Contract Principles.*

Ashburner Concrete and Masonry Supply, Inc. v. O'Connor Truck Sales, Inc., December 2000, No. 489 (Herron, J.) (August 10, 2001 - 10 pages)

*JURISDICTION, IN PERSONAM - Where Guaranty Contains a Clause Selecting Pennsylvania as the Forum for Disputes, the Parties have Agreed in Advance to Confer Personal Jurisdiction on a Pennsylvania Court - In Forum Selection Clause Cases, the Only Issue is the*

*Enforceability and Effect of the Clause and Not Whether the Non-moving Party Can Demonstrate that the Defendant's Contacts with the Forum State Are Sufficient to Exercise In Personam Jurisdiction - Under Pennsylvania Law, Forum Selection Clause is Enforceable Unless the Parties did not Freely Agree to the Clause or the Enforcement of the Clause Would be Unreasonable - Contract Principles Apply to Guaranty Contracts and under those Principles the Parties Intended to Consent to the Jurisdiction of a Pennsylvania Court - A Source of Jurisdiction Beyond the Forum Selection is Unnecessary*

*First Union Commercial Corporation v. Medical Management Services, LLC, et al.*, February 2000, No. 3673 (Herron, J.)(July 26, 2000 - 10 pages)

*JURISDICTION, IN PERSONAM - Where Preliminary Objections Asserting Lack of In Personam Jurisdiction Raise Factual Issues, a Court Must Order Additional Discovery Through Interrogatories, Depositions or Evidentiary Hearing - When Objecting to Personal Jurisdiction, the Objecting Party Bears the Initial Burden of Proof - To Exercise Jurisdiction Over a Non-Resident, the Commonwealth's Long Arm Statute Must Authorize Jurisdiction and Constitutional Principles of Due Process Must Be Satisfied - Under the U.S. Constitution, a Court May Exercise Either Specific or General Jurisdiction*

*Miltenberg & Samton, Inc. v. Assicurazioni Generali*, January Term 2000, No. 3633 (Herron, J.)(October 11, 2000 - 20 pages)

*Greiner v. Erie Insurance Exchange*, February 2000, No. 3053 (Herron, J.) (June 26, 2001 - 19 pages)

*JURISDICTION, IN PERSONAM - Defendants Waived Any Objection to Venue or In Personam Jurisdiction by Failing to Raise these Defenses in a Timely Fashion in Federal Court Prior to the Transfer of the Case to State Court*



Hemispherx Biopharma, Inc. v. Asensio, July 2000, No. 3970  
(Sheppard, J.)(February 14, 2001 - 29 pages)

*JURISDICTION / IN PERSONAM - Placing Phone Calls From Florida to Pennsylvania, Sending Correspondence From Florida to Pennsylvania, and Remitting Royalty Payments to a Pennsylvania Address Alone is Neither Sufficient Evidence of Minimum Contacts with Pennsylvania Nor Sufficient Evidence Showing That Florida Franchisee Purposefully Availed Itself of the Privilege of Acting Within Pennsylvania*

Bain's Deli Corporation v. C&L Foods, et al, October 2001,  
No. 294 (Sheppard, J.) (September 11, 2002 - 7 pages)

*JURISDICTION, IN PERSONAM/INTEREST - Pennsylvania Court Lacked Personal Jurisdiction Over North Carolina Resident Where Contact With This Forum Was Premised on Passive Internet Postings of Negative Information Concerning the Corporate Plaintiff on the Yahoo Bulletin Board - Under the "Effects Test", Pennsylvania Court Had Jurisdiction Over North Carolina Resident Who Not Only Posted Internet Messages on the Yahoo Bulletin Board But Also Sent a Single E-Mail to Plaintiff's Independent Auditors in Pennsylvania Accusing Plaintiff of "Fraudulent Accounting Practices" and "Borderline Criminal Activity"*

American Business Financial Services, Inc. v. First Union National Bank, et al, January 2001, No. 4955 (Herron, J.)  
(March 5, 2002 - 16 Pages)

*JURISDICTION/IN PERSONAM/SUFFICIENT CONTACTS - Plaintiff Failed to Show that Defendant Had Sufficient Minimum Contacts with Pennsylvania Where Plaintiff Merely Established that the Parties Had a Contract, Plaintiff Was Headquartered in Pennsylvania, and Defendant Had a Website Accessible To, But Not Interactive With, Pennsylvania Residents.*

Alti v. Dallas European, April 2002, No. 2843 (Cohen, J.)  
(September 30, 2002 - 5 pages).

*JURISDICTION, ORPHANS' COURT - Preliminary Objections Alleging that Orphans' Court Had Exclusive Jurisdiction over Breach of Contract Claim Involving Conversion of Common Trust Funds by Trustee Sustained - Trial Division Has Jurisdiction over Breach of Contract Claim Against Trustee*

Parsky v. First Union Corporation, February 2000, No. 771  
(Herron, J.)(June 29, 2000 - 2 Pages)

*JURISDICTION, PRIMARY - Where Class Action Complaint Alleges Breach of Insurance Policy and Violation of the UTPCPL, Primary Jurisdiction Doctrine Does Not Require Transfer to the Pennsylvania Insurance Department Because PID Does Not Have Power to Decide Whether Insurance Company Breached Contract, Violated the UTPCPL or Acted in Bad Faith - Pennsylvania Courts Have Recognized the Doctrine of Primary Jurisdiction Under Which a Court Will Refrain from Exercising Subject Matter Jurisdiction Until an Agency Created to Consider a Particular Class of Claims Has Ruled On the Matter - Primary Jurisdiction Doctrine Is Distinct From Doctrine of Exhaustion of Administrative Remedies*

Greiner v. Erie Ins. Exchange, February 2000, No. 3053  
(Herron, J.)(November 13, 2000 - 17 pages)

*JURISDICTION, SUBJECT MATTER - Purchaser May Not Sustain an Individual or Class Action Against Vendor for Refund of Overcharged Sales Tax - Failure to Exhaust Administrative Remedies Presents a Jurisdictional Challenge that May Be Raised at any time; Where There Is an Adequate Remedy for Overcharged Sales Tax, Court Must Dismiss Class Action for Lack of Subject Matter Jurisdiction; Tax Code Provides a Remedy for Refund of Sales Tax*

Heaven v. Rite Aid Corporation, January 2000, No. 596 (Herron, J.)(October 27, 2000 - 10 pages)

*JURY DEMAND - Pennsylvania Rule of Civil Procedure 1007.1 Does Not Explicitly Bar a Trial Court From Allowing Untimely Jury Demand - Prejudice Is Not a Factor in Determining Whether to Grant Demand*

Harmon Ltd. v. CMC Equipment Rental, Inc., January 2000, No. 2023 (Herron, J.)(December 14, 2000)

*JURY DEMAND - Demand For Jury Trial Will Be Stricken Where Complaint Asserts Both Equitable and Legal Claims - Pennsylvania Constitution Does Not Afford a Right to a Jury Trial in Equity Action*

Liss v. Liss, June 2001, No. 2063 (Herron, J.)  
(March 22, 2002 - 31 pages)

*JURY/EXPARTE CONTACT WITH JUDGE/EXTRANEIOUS CONSIDERATIONS - Where New Trial Is Sought Due to a Jury's Consideration of Extraneous Matters or Ex Parte Contact Between Judge and Juror, Movant Has Burden of Showing a Reasonable Likelihood of Prejudice - Juror's Reading of A Civil Action Which Portrays Expert Witness Who Testified at Her Trial Is Not Sufficient Grounds For Finding a Reasonable Likelihood of Prejudice - Plaintiff Is Not Entitled to Additional Discovery As To Extraneous Influences Because a Juror May Not Testify as to the Actual Effect of Such Matters on Their Verdict*

Rohm & Haas Co. v. Continental Casualty Co. November 1991,  
No. 3449 (Herron, J.) (February 26, 2002 - 17 pages)

*JURY TRIAL - Pennsylvania's Unfair Trade Practices and Consumer Protection Law Does Not Include A Right to Demand a Trial By Jury -Under Recent Pennsylvania Precedent, Plaintiff Asserting Bad Faith Claim May Not Demand Jury Trial -Plaintiff Is Not Entitled to Jury Trial on her Claims for Declaratory Judgment and Injunctive Relief*

Greiner v. Erie Ins. Exchange, February 2000, No. 3053  
(Herron, J.)(November 13, 2000 -17 pages)

Commonwealth of Pennsylvania v. BASF Corporation, April 2000, No. 3127 (Herron, J.) (March 15, 2001 - 34 pages)(UTPCPL Does Not Include a Right to Demand Jury Trial)

*JURY TRIAL/WAIVER - Under Pennsylvania Law, the Right to Trial by Jury May be Waived by Express Agreement - Waiver of Jury Trial is Valid When the Waiver Is Conspicuous, the Party Opposing the Waiver Had Business Experience Necessary to Understand It, There Is No Disparity in Bargaining Relationship and Opposing Party Had Opportunity for Negotiation*

Academy Industries, Inc. v. PNC Bank, N.A., May 2000, No. 2383  
and PNC Bank, N.A. v. Academy Industries, Inc., July 2000, No.  
634 (Sheppard, J.)(January 30, 2001 - 6 pages)

Mesne Properties, Inc. V. Penn Mutual Life Insurance Co.,  
July 2000, No. 1483 (Waiver of Jury Trial Provision in Loan  
Agreement Is Enforceable Under Pennsylvania Law But Only As  
To Parties to That Agreement) (Herron, J.) (April 6, 2001 -  
14 pages)

JURY TRIAL WAIVER - Under New York Law, a Broadly Worded Jury  
Waiver Provision May Be Invoked by a Nonparty to the Contract

EGW Partners v. Prudential Insurance Co., March 2001,  
No. 336 (Sheppard, J.) (December 20, 2001 - 3 pages)

## L

*LACHES - Doctrine of Laches Does Not Apply Where Action Relating to  
Sheriff's Sale of Property Was Filed Nine Months After the Sale  
Occurred and Defendants Suffered No Prejudice Due to the Delay*

Linda Marucci v. Southwark Realty Co., November 2001, No.  
391(Herron, J.) (May 15, 2002 - 13 pages)

*LANDLORD & TENANT/COVENANT OF QUIET ENJOYMENT - Landlord Breached  
Covenant of Quiet Enjoyment and Constructively Evicted Tenants by  
Changing Lock of Building, Failing to Provide Essential Services,  
Willfully Neglecting Building, Violating City Code to the Extent  
That City Shut Down Building, and Failing to Remove the Violations*

Elfman v. Berman et al., February 2001, No. 2080  
(Herron, J.)(May 8, 2001 - 19 pages)

Elfman v. Berman et al., February 2001, No. 2080  
(Herron, J.) (August 30, 2001 - 28 pages)

*LEASE - Covenant in Lease For the Performance of Some Duty Runs  
With the Land an Passes to Transferee*

Elfman v. Berman, February 2001, No. 2080 (Herron, J.)  
(June 21, 2001 - 4 pages)

*LETTER OF CREDIT - Withdrawal of the Attempted Draw on Standby  
Letter of Credit by Bank, Which Acted as Confirming Bank and Co-  
Beneficiary, Mooted Buyer's Breach of Warranty Claims against Bank  
- Allegations Did Not Support Any Claim Against Bank Other Than One  
Based on the Letter of Intent*

Sorbee International Ltd. v. PNC Bank, N.A., et al., May 2001,  
No. 806 (Herron, J.) (July 16, 2002 - 9 pages)

*LIQUIDATED DAMAGES - The Validity of a Particular Liquidated  
Damages Provision Is a Question of Law - A Valid Liquidated Damages  
Provision Is a Reasonable Estimate of Damages That Are Difficult to  
Assess - Liquidated Damages Provision Is Stricken As Unreasonable  
Where They Are a Penalty*

ZA Consulting, LLC v. Wittman, April 2001, No. 3941  
(Herron, J.) (January 9, 2002 - 8 pages)

## M

*MALPRACTICE/ATTORNEY - Settlement Agreement Does Not Preclude  
Malpractice Action Against Attorneys Where Former Client Alleges  
That Attorneys Failed to Protect Their Client's Legal Rights, They  
Failed to Provide Material Facts and They Failed to Disclose  
Conflicts of Interest*

Red Bell Brewing Company v. Buchanan Ingersoll, P.C.,  
May 2000, No. 1994 (Sheppard, J.) (March 13, 2001 -  
16 pages)

*MEDICAID FRAUD ABUSE AND CONTROL ACT - Commonwealth Stated Cause of  
Action Under Pennsylvania's Medicaid Fraud Abuse and Control Act,*

*62 P.S. §§ 1401 et seq., by Alleging That Defendants Directly and Indirectly Exposed It to Claims for Payment for Synthroid Rather Than Less Expensive Bioequivalents*

Commonwealth of Pennsylvania v. BASF Corporation, April 2000, No. 3127 (Herron, J.) (March 15, 2001 - 34 pages)

*MEDICAL MONITORING - Pennsylvania Law Recognizes a Common Law Cause of Action For Medical Monitoring Premised on Negligence But Not a Claim For Medical Monitoring Premised on Strict Liability*

Cull v. Cabot Corp., December 2000, No. 657 (Sheppard, J.) (May 3, 2001 - 9 pages)

*MERCHANTABILITY/IMPLIED WARRANTY - Where Plaintiffs in Class Action Allege Damages Generally But Fail to Allege That They Personally Suffered Damages Due to Defendant's Breach of Warranty, Demurrer is Sustained*

Grant v. Bridgestone Firestone, Inc., September 2000, No. 3668 (Herron, J.) (June 12, 2001 - 10 pages)

*MERCHANTABILITY/IMPLIED WARRANTY - Where Plaintiff Has Not Alleged That the Supposed Defect in Defendant's Tires Has Actually Manifested Itself, Preliminary Objections Are Sustained - Under Pennsylvania Law, A Breach of Implied Merchantability Claim May Be Maintained Only Where Plaintiff Alleges That Harm Was Caused by Defendant's Product*

Grant et al v. Bridgestone Firestone, September 2000, No. 3668 (Herron, J.) (January 10, 2002 - 13 pages)

*MERGER - Merger Should Not Be Declared Void ab initio Merely Because Defendants Violated Statutory Notice Requirements that Were Intended to Protect the Interests of the Plaintiff Shareholders - Allowing Defendants to Use Their Own Errors Against the Plaintiff Shareholders Would Be Inequitable in This Case of First Impression Under Pennsylvania Law - Delaware Precedent is More Nuanced than*

*Defendants Suggest - Massachusetts Precedent is Ultimately More Persuasive on this Issue - The Interests of Third Parties Would Be Jeopardized by Uncertainty if Mergers Were Rendered Void Whenever Shareholder Statutory Notice Requirements Were Violated - Impracticability of Voiding the Merger is a Relevant Consideration*

First Union National Bank et al. v. Quality Carriers, April Term 2000, No. 2634 (Sheppard, J)(October 10, 2000 - 49 pages)

MISREPRESENTATION - Defendant's Statement That It Would Pay Plaintiff on Time Does Not Constitute a Misrepresentation Absent an Allegation That Defendant Knew That This Statement Was False or Material or That Defendant Intended the Plaintiff to Act Upon the Statement

Thermacon Enviro Systems, Inc. V. GMH Associates, March 2001, No. 4369 (Herron, J.) (July 18, 2001 - 12 pages)

MISREPRESENTATION/INTENTIONAL - Under New York Law, a Claim for Intentional Misrepresentation May Arise From a Defendant's Failure to Speak Where There is a Special Relationship Between the Parties - Under Pennsylvania Law, a Claim for Intentional Misrepresentation May Arise From a Defendant's Failure to Speak Where the Defendant Owes the Plaintiff a Duty of Disclosure - Like Pennsylvania, New York Focuses on the Type of Duty Breached to Determine Whether an Action Arises in Contract or Tort

EGW Partners, L.P. v. Prudential Insurance, March 2001, No. 336 (Sheppard, J.) (June 22, 2001 - 17 pages)

MISREPRESENTATION/INTENTIONAL/NEGLIGENT - Summary Judgment on Misrepresentation Claim is Granted Where Plaintiff Failed to Demonstrate Any Representation Took Place With Regard to the Market for Coverage for Sexual Misconduct Liability.

Methodist Home for Children, et al. v. Biddle & Company, Inc.,

April 2001, No. 3510 (Sheppard, J.) (October 9, 2002 - 10 pages)

*MISREPRESENTATION/INTENTIONAL/NEGLIGENT/INDEPENDENT DUTY - Allegation of an Independent Duty to Disclose is Not Necessary For a Claim For Intentional Misrepresentation or Intentional Concealment - Claims Based on Negligent Misrepresentation and Concealment Require That Plaintiff Demonstrate That Defendant Owed an Independent Duty*

DeStefano & Associates v. Roy S. Cohen et al., June 2000  
No. 2775 (Herron, J.) (April 9, 2001 - 10 pages)

*MISREPRESENTATION/NEGLIGENT - Under New York Law, a Claim for Negligent Misrepresentation Requires the Existence of a Special Relationship Between Plaintiff and Defendant, While Pennsylvania Law Requires Only That the Defendant Owe the Plaintiff a Duty*

EGW Partners, L.P. v. Prudential Insurance, March 2001,  
No. 336 (Sheppard, J.) (June 22, 2001 - 17 pages)

*MORTGAGE/CLAIM FOR STATUTORY FINE - When Mortgagee Fails to Mark a Mortgage Satisfied as Set Forth in 21 Pa.C.S. §681, an Aggrieved Party May Bring a Claim for Statutory Fine Pursuant to 21 Pa.C.S. §682 - Where Complaint Lacks Specific Allegations Necessary for Defendant to Prepare a Defense, an Amended Complaint Must be Filed*

Mesne Properties, Inc. v. Penn Mutual Life Insurance Co., July 2000, No. 1483 (Herron, J.) (November 29, 2000 - 7 pages)

Mesne Properties, Inc. V. Penn Mutual Life Insurance Co., July 2000, No. 1483 (Where Complaint Alleges That a Party Incurred Expenses Due to Failure to Mark Mortgage Satisfied That Party has a Capacity to Sue Even if it is Not the Mortgagor) (Herron, J.) (April 6, 2001 - 14 pages)

*MUNICIPAL LEASES/STADIUMS/CONSTITUTIONAL DEBT RESTRICTION -*



*City's Obligation Under Stadium Prime Lease Does Not Violate the Debt Restriction Provision of the Pennsylvania Constitution Because the City's Lease Obligations Are Not Debts as Defined by the Pennsylvania Constitution - A Governmental Rental Obligation Under a Long Term Lease Agreement With a Public Authority Is Not a "Debt" if (1) the Obligation is Specifically Limited to the Government's Available Current Revenues and (2) the Authority and Its Bondholders Cannot Circumvent This Limitation by Subjecting the City's Assets to Sale or Execution on Default*

Consumers Education and Protective Association v. City of Philadelphia, January 2001, No. 2470 (Sheppard, J.)  
(April 30, 2001 - 20 pages)

## N

*NEGLIGENCE - Summary Judgment on Negligence Claim is Denied Where Issue of Fact Exists As to Whether Broker Acted Negligently in Failing to Obtain Higher Limits of Sexual Misconduct Liability Insurance Coverage in The Marketplace*

Methodist Home for Children, et al. v. Biddle & Company, Inc., April 2001, No. 3510 (Sheppard, J.) (October 9, 2002 - 10 pages)

*NEGLIGENCE/REAL ESTATE LICENSING AND REGISTRATION ACT - Negligence Claim Based on Defendant's Failure to Mark a Mortgage Satisfied Cannot Be Maintained by Third Party Because RELTA Was Not Intended to Benefit Third Parties With Whom a Person Benefitting From a Broker's Services May Interact - Negligence Claim Based on Section 324 A of the Restatement (2d) Torts Is Not Viable Where Plaintiff*

*Does Not Allege Physical Harm*

*Penn Mutual Life Insurance Co. v. Ajax Management Corp.*  
May 2001, No. 3661 (Herron, J.) (November 16, 2001 - 6  
pages)

*NEW TRIAL - Where New Trial Is Sought Due to a Jury's Consideration of Extraneous Matters or Ex Parte Conduct Between Judge and Juror, Movant Has Burden of Showing a Reasonable Likelihood of Prejudice - Juror's Reading of A Civil Action Which Portrays Expert Witness Who Testified at Her Trial Is Not Sufficient Grounds For Finding a Reasonable Likelihood of Prejudice - Plaintiff Is Not Entitled to Additional Discovery As to Extraneous Influences Because a Juror May Not Testify as to the Actual Effect of Such Matters on Their Verdict*

*Rohm & Haas Co. v. Continental Casualty Co.*, November 1991,  
No. 3449 (Herron, J.) (February 26, 2002 - 17 pages)

*NEW TRIAL - Defendant Did Not Meet the Severe Burden of Showing a Reasonable Likelihood of Prejudice Requiring a New Trial Based on Statements By Plaintiff That Defendant Insurer Had Been Ordered by the Court in a Prior Injunction Proceeding to Pay Plaintiff's Claims*

*TJS Brokerage & Co., Inc. v. Hartford Casualty Ins. Co.*  
December 1999, No. 2755 (Herron, J.) (April 22, 2002 - 19  
pages)

*NEW TRIAL - New Trial Warranted Based Primarily on Defendant's Prejudicial Misconduct During Trial Including His Disregard for This Court's Authority, Basic Courtroom Etiquette, Repeated Violations of Orders In Limine and Disrespect Shown to This court and Opposing Counsel in the Presence of the Jury*

*Hemispherx Biopharma, Inc. v. Asensio, etal.*, July 2000, No.  
3970 (Sheppard, J.) (October 22, 2002 - 39 pages)

*NOERR-PENNINGTON IMMUNITY - Where Preliminary Objections Asserting Noerr-Pennington Immunity Raise Issues of Fact, They Will Be Denied*

Phillips v. Selig, July 2000, No. 1550 (Sheppard, J.)  
(September 19, 2001 - 20 pages)

*NONCOMPETITION PROVISION/BREACH - Where Complaint Asserting Breach of Contract or Noncompetition Provision Fails to Allege That Nursing Director Competed With the Plaintiff Which Provided Staffing and Consulting Services, the Claim for Breach of Contract is Insufficient*

ZA Consulting LLC v. Wittman, April 2001, No. 3941  
(Herron, J.)(August 28, 2001 - 8 pages)

*NON-COMPETITION PROVISION/BREACH - The provision of staff to perform medical and nursing services is not the same as actually providing such services and therefore, employee of staffing company who left to accept employment with client/nursing home did not violate Non-Competition Agreement as a matter of law.*

ZA Consulting, LLC v. Andrew Wittman, April 2001, No. 03941  
(Cohen, J.)(December 11, 2002 - 8 pages)

*NONSUIT - Nonsuit Was Properly Entered Where Landlord Failed to Establish the Necessary Elements of His Cause of Action to Recover Additional Rents*

Sandrow v. Red Bandana Co., July 2000, No. 3933  
(Herron, J.) (May 23, 2002 - 16 pages)

*NONSUIT - Nonsuit was Properly Entered in a Bad Faith Insurance Action Where Plaintiff Failed to Establish the Necessary Elements of its Claim - Plaintiff Failed to Offer Evidence That the Defendant Insurer Lacked a Reasonable Basis for Denying Benefits*

TJS Brokerage & Co., Inc. v. Hartford Casualty Insurance Co.,

December 1999, No. 2755 (Herron, J.) (July 26, 2002-12 pages)

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*PARENS PATRIAE - Commonwealth Has Standing as Parens Patriae to Bring Restitution Claims Only on Behalf of Citizens Who Opted Out or Where Not Included in Multi-District Class Action Settlement - Commonwealth Can Bring Request in Its Own Right for Injunctive Relief, Civil Penalties and Restitution*

Commonwealth of Pennsylvania v. BASF Corporation, April 2000, No. 3127 (Herron, J.) (March 15, 2001 - 34 pages)

*PAROL EVIDENCE - Under Delaware Law, Parol Evidence Is Admissible If a Writing Is Not Integrated, Is Ambiguous or Where There Is An Allegation of Fraud*

Textile Biocides, Inc. v. Avecia, Inc. January 2000, No. 1519, (Herron, J.) (July 26, 2001 - 46 pages)

*PAROL EVIDENCE - Although Plaintiff's Fraud Claim Might Withstand Preliminary Objections, Representations That Were Made Prior to or Contemporaneous With the Contract Would be Barred by the Parol Evidence Rule at Trial*

Amico v. Radius Communications, January 2000, No. 1793 (Herron, J.) (October 29, 2001 - 15 pages)

*PAROL EVIDENCE - Under Colorado Law, Integration Clauses Are Enforceable and Extrinsic or Parol Evidence Offered to Prove the Existence of Prior or Contemporaneous Agreements Is Inadmissible - An Exception to the Parol Evidence Rule Based on Claims For Fraudulent Misrepresentation or Negligent Misrepresentation in the Inducement of a Contract Applies Only in Limited Circumstances When Tort Claims Are Not Specifically Prohibited by the Terms of an Agreement*

Branca v. Conley, February 2001, No. 2277 (Herron, J.) (October 30, 2001 - 11 pages)

*PAROL EVIDENCE - Parol Evidence Bars Extrinsic Evidence to Prove Fraud in the Inducement When the Prior Oral Representation Relates to a Subject Specifically Dealt With in the Contract*

Babiarz v. Bell Atlantic - Pennsylvania, August 2000, No. 1863(Herron, J.) (November 20, 2001 - 11 pages)

*PAROL EVIDENCE - Where Lease at Issue Clearly Precludes Tenant From Using Parking Lot For Its Exclusive Use, It Is Not Necessary to Consider Whether the Tenant's Alleged Concessions as to Its Intended Use of the Lot Are Precluded by Parol Evidence Rule*

Pobad Associates v. Albert Einstein Healthcare Network, June 2001, No. 2885 (Herron, J.) (February 4, 2002 - 8 pages)

*PAROL EVIDENCE RULE/FRAUD IN THE EXECUTION - Plaintiff Pleads Fraud in the Execution Where Plaintiff Alleges that Document Was Altered to Add Terms After Plaintiff Signed It - Parol Evidence Is Admissible to Contradict the Terms of the Agreement Where Fraud in the Execution Is Alleged.*

Marguerita Downes v. Morgan Stanley, September 2001, No. 2985 (Herron, J.) (September 23, 2002 - 22 pages)

*PARTNERSHIP AGREEMENT - Summary Judgment on Breach of Contract Claim is Granted Where Active Partners Retroactively Modified Retirement Benefits Pursuant to a General Amendment Provision in their Partnership Agreement to the Detriment of Retired Partners Who Had Completed the Requisite Years of Service and Received Retirement Compensation Under the Agreement*

Abbott v. Schnader Harrison Segal & Lewis LLP, June 2000, No. 1825 (Herron, J.)(February 28, 2001 - 26 pages)

*PARTNERSHIP/DISSOLUTION - Complaint Alleges Dissolution of Law Partnership By the Express Will of the Partners When It States That the Firm Assets Were Transferred to a Different Law Firm That Thereafter Engaged the Partners*

Poeta v. Jaffe, November 2000, No. 1357 (Sheppard, J.)  
(October 2, 2001 - 10 pages)

*PARTNERSHIP/MERGER - Where Partnership Agreement Requires Consent of the General Partner and a Two-Thirds Interest of the Limited and General Partners For Any Merger, a Merger Without the Consent of Two-Thirds of the Partnership Interests Would Be Illegal - The Bona Fide Purchaser Exception Set Forth in the Partnership Agreement Applies Only to Transfers and Leases of Assets and Not to Mergers and Consolidations - Elimination of the Supermajority Voting Provision in a Limited Partnership Agreement Requires Approval of a Supermajority of the Partners - Corporate General Partner Breached His Fiduciary Duty to Limited Partners When He Failed to Inform Them of Their Right to Vote on a Merger*

Wurtzel v. Park Towne Place Apartments, June 2001, No. 3511  
(Herron, J.) (September 11, 2001 - 20 pages)

*PENDENCY OF PRIOR ACTION - Under Pennsylvania Law, the Question of Pending Prior Action Is Purely a Question of Law Determinable from an Inspection of the Pleadings - Generally an Action Underway Outside the Commonwealth is Not Considered a Pending Action Unless It Reaches Judgment and Thereby Comes Within the Full Faith and Credit Clause of the United States Constitution*

Miltenberg & Samton, Inc. v. Assicurazioni Generali, S.p.A.,  
January 2000, No. 3633 (Herron, J.)(October 11, 2000 - 20  
pages)

*PENDENCY OF PRIOR ACTION - To Sustain a Preliminary Objection Based on Pending Prior Action, Objecting Party Must Demonstrate that the Parties, the Rights Asserted and the Relief Sought Are the Same - This Test Is Strictly Applied - Objections Based On Pendency of Prior Action Are Denied Where Plaintiff and Defendant in Philadelphia Action Have No Connection to Bucks County Action and*

*When Claims Asserted Against Philadelphia Defendant Are Not Present  
in Bucks County Action*

Polin Associates, et al. v. Cigna a/k/a Insurance Company of  
North America, March 2000, No. 2447 (Herron, J.)(November 3,  
2000 - 5 pages)

*PENDENCY OF PRIOR ACTION - Objections Based on Pendency of Prior  
Action Are Moot Where Appeal to Third Circuit and Action in Foreign  
State Have Been Stayed*

Hemispherx Biopharma, Inc. v. Manuel Arsenio, July 2000, No.  
3970 (Sheppard, J.)(February 14, 2001 - 29 pages)

*PENDENCY OF PRIOR ACTION - Preliminary Objections Based on Prior  
Pending Action Overruled Where Actions do Not Involve the Same  
Parties and the Claims do Not Arise From the Same Contract*

Waterware Corporation v. Ametek et al, June 2000, No. 3703  
(Herron, J.) (April 17, 2001 - 15 pages)

*PENDENCY OF PRIOR ACTION - Pendency of Prior In Personam Action in  
a Foreign Court Is Not a Defense in a Subsequent Action in  
Pennsylvania - The Question of a Pending Prior Action Is Purely a  
Question of Law Determinable From an Inspection of the Pleadings -  
A Stay May Be Issued Where the Litigation of Two Suits Would Create  
a Duplication of Efforts and a Waste of Judicial Resources*

American Risk Associates, Ltd. v. Employers Reinsurance  
Corp. January 2001, No. 3373 (Herron, J.) (September 14,  
2001 - 4 pages)

*PENNSYLVANIA INSURANCE GUARANTY ASSOCIATION ACT (PIGA) - The  
Provisions of PIGA Become Applicable Upon an Order of Liquidation  
With a Finding That an Insurer is Insolvent After the Effective  
Date of the Act - Where Plaintiff's Insurer PIC Was Declared  
Insolvent and Ordered Into Liquidation on January 21, 1998 Which is  
After the Effective Date of the Act, Then the Amended Statute  
Applies So That Any Amount Payable on a Claim May be Reduced by the*

*Amount of Any Recovery Under Other Insurance*

Gallman v. Pennsylvania Property and Casualty Insurance Guaranty Association, April 2000, No. 2267 (Herron, J.)  
(June 26, 2001 - 9 pages)

*PENNSYLVANIA PUBLIC WORKS BOND PAYMENT ACT - The Pennsylvania Public Bonds Payment Act Does Not Apply to SEPTA*

JHE Incorporated v. SEPTA, November 2001, No. 1790  
(Sheppard, J.) (May 17, 2002 - 21 pages)

*PETITION TO INTERVENE - To Determine Whether a Party is Indispensable to an Action Involves Consideration of Whether the Absent Parties Have a Right or Interest Related to the Claim, and if so, What the Nature of That Right or Interest is, Whether That Right or Interest is Essential to the Merits of the Issue, and Whether Justice Can be Afforded Without Violating the Due Process Rights of Absent Parties - A Petition to Intervene Must Include a Copy of the Pleading Which the Petitioner Will File if Permitted to Intervene or, Must Adopt Certain Pleadings or Parts of Pleadings Already Filed in the Action - A Petition to Intervene May be Denied Where the Petitioner's "Legally Enforceable Interest" Amounts to an Interest Based Purely on Financial Gain - A Petition to Intervene May be Denied Where the Petitioner's Interests are Already Adequately Represented and Intervention Would Unduly Delay Trial.*

Eastern America Transport & Warehousing, Inc. v. Evans Conger Broussard & McCrea Inc., July Term 2001, No. 2187 (Herron, J.)  
(July 31, 2002 - 8 pages)

*PLEADING/ALTERNATIVE CAUSES OF ACTION - Complaint Fails to Conform to Pa.R.C.P. 1020(a) Where There Are No Separate Counts For the Misrepresentation and Negligent Misrepresentation Claims Because Such Claims Are Distinct Causes of Action.*

Methodist Home for Children, et al. v. Biddle & Company, Inc., April 2001, No. 3510 (Sheppard, J.) (October 9, 2002 - 10 pages)



PLEADING/AMENDED COMPLAINT/ASSERTING DIRECT CLAIM AGAINST FORMER ADDITIONAL DEFENDANT - Objection by Former Additional Defendant That Plaintiff Could Not Amend Complaint to Assert a Direct Claim Against It Is Without Merit - An Amended Complaint Takes the Place of the Original Complaint

V-Tech Services Inc. v. Murray Motors, et al, February 2000, No. 1291 (Herron, J.) (October 11, 2001 - 8 pages)

PLEADING/COUNT - Pennsylvania Is a Fact-Pleading Jurisdiction - While a Complaint Must Include the Facts Upon Which a Claim Is Based, It Does Not Have to Identify the Legal Theory Underlying the Claim as a Heading to a Count - Where Complaint Sets Forth Facts for Breach of Contract Implied in Fact, the Caption Heading Does Not Have to Label Such Claim Explicitly

Advanced Surgical Services v. Innovative Devices, Inc. August, 2000, No. 1637 (Herron, J.) (December 4, 2001 - 6 pages)

PLEADING/GENERAL DENIAL/ ADMISSION - Where Preliminary Objections Stated That Individual Was Not an Agent Authorized to Accept Service of Process and Response Does Not Specifically Deny This Factual Averment or Assert Lack of Knowledge But Instead Claims That the Objection Avers Information Outside the Complaint That is Not Cognizable as a Preliminary Objection, the Respondent Must be Deemed to Admit That Individual Was Not Authorized to Accept Process

Hydrair, Inc. v. National Environmental Balancing Bureau, February 2000, No. 2846 (Herron.J.) (April 23, 2001 - 19 pages)

PLEADING/GENERAL DENIAL/ADMISSION - Since Pa.R.C.P. 1019(c) Requires That a Denial of the Performance, Occurrence of Satisfaction of Conditions Precedent be Made "Specifically and With Particularity," Failure to Make This Denial With Specificity Shall Have the Effect of an Admission - Where PHA Merely Stated That Contractor Breached Contract by Failing to Comply With it, This Denial Lacked the Requisite Specificity and Thus Constitutes an Admission That the Contractor Fully Performed - Answer Containing

*Admission May Not be Amended Where it Would Prejudice the Plaintiff Who Conducted Discovery and Prepared for Trial Based, in Part, on Defendant's Admission*

James J. Gory Mechanical Contracting, Inc. v. Philadelphia Housing Authority, February 2000, No. 453 (Herron, J.)  
(July 11, 2001 - 29 pages)

*PREEMPTION/NATIONAL LABOR RELATIONS ACT - NLRA Does Not Preempt State Claim by Lawyer Against Defendants For Interfering With Their Client Umpires By Causing Them to Switch Unions Because These Claims Fall Within the Two Exceptions to the Garmon Preemption Doctrine - Where the Controversy Is Not Identical to That Which Could Be Presented Before the NLRA, It Is Not Preempted - Where Plaintiffs Are Neither An Employer Nor a Union, They are Not Parties to a Collective Bargaining Agreement and They Are Not Subject to NLRA Protection, Their Claim Is Not Identical to Any Claim Before the NLRA*

Phillips v. Selig, July 2000, No. 1550 (Sheppard, J.)  
(September 19, 2001 - 20 pages)

*PRELIMINARY INJUNCTION - Former employee/sales representative is enjoined for a period of six months from soliciting, contacting, or engaging in business relations with fourteen businesses that he maintained relationships with while employed by petitioner*

Olympic Paper Co. v. Dubin Paper Co. and Brian Reddy, October 2000, No. 4384 (Sheppard, J.)(December 29, 2000 - 23 pages)

*PRELIMINARY INJUNCTION - Where Landlord Breached Covenants in Lease to Provide Heat, Elevator Service, Water and Cleaning Services, Plaintiffs Established the Clear Right to Relief Necessary for a Preliminary Injunction - Where Landlord's Breach of Lease Created Conditions That Made It Impossible For Plaintiff/Dentist to Treat His Patients, Plaintiff Demonstrated Immediate and Irreparable Harm*

Elfman v. Berman et al. February 2001, No. 2080 (Herron, J.)  
(May 8, 2001 - 19 pages)

*PRELIMINARY INJUNCTION - Limited Partner Who Is Deprived of His Right to Vote on the Merger of the Limited Partnership Suffers Irreparable Harm That Cannot Be Compensated With Money - An Injunction Barring the Defendant From Buying Other Limited Partners' Shares and From Undertaking the Merger Will Preserve the Status Quo and Is Reasonably Suited to Abate the Defendant's Wrongs*

Wurtzel v. Park Towne Place Apartments, June 2001, No. 3511  
(Herron, J.) (September 11, 2001 - 20 pages)

*PRELIMINARY INJUNCTION - Plaintiff Taxi Cab Company's Motion for Preliminary Injunction To Prevent Defendant Taxi Company From Using a Particular Telephone Number Is Denied For Failure to Show a Clear Right to Relief Since It Is Unclear Whether the Right to the Telephone Number Had Been Transferred to the Plaintiffs - Plaintiffs Also Failed to Show Irreparable Harm That Could Not Be Compensated by Damages*

Hamden and Northeast Taxi Coach, Inc. V. Alwalidi and Northeast Coach, Inc., April 2001, No. 4437 (Herron, J.)  
(November 2, 2001 - 6 pages)

*PRELIMINARY INJUNCTION - Fifty Percent Shareholder's Attempted Purchase of Other Shareholder's Shares in Air Freight Corporation Deemed Void Where Shareholder's Offer Did Not Follow Buy/Sell Provision's Requirements By Adding Contingencies Outside the Parameters of the Buy/Sell Provision - Shareholder's Offer to Purchase Shares Is Void Under Ordinary Contract Principles of Offer and Acceptance Because Other Shareholder Rejected It - Evidence of Relationship With Competing Company Deemed Insufficient to Show Breach of Fiduciary Duty of Plaintiff to Preclude His Seeking Equitable Relief - Plaintiff Precluded From Divulging Financial or Other Confidential Information Received in Exercising His Rights Under Buy/Sell Provision*

Wyatt v. Phillips, January 2002, No. 4165 (Dinubile, J.)  
(August 27, 2002 - 10 pages)

*PRELIMINARY INJUNCTION/COVENANT OF QUIET ENJOYMENT - Where Tenant Showed That Landlord Turned Off Water in Building so That City Would Shut Down Building and Force Tenants Out, the Tenant Was Entitled to a Preliminary Injunction Ordering the Landlord to Restore the Water and Remedy Other Violations of the City Code Such That City Would Reopen Building - The Defendant Limited Partnership Is Chargeable With the Knowledge and Misrepresentations of Its Agents - Nonparties May Not Knowingly Help a Person Violate an Injunction - Plaintiff Seeking Injunction Is Entitled to Counsel Fees and Costs as a Sanction Where Defendant's Conduct Is Dilatory, Obdurate, Vexatious, Arbitrary and in Bad Faith in Defying Injunction Order, Failing to Begin Repairs in Good Faith and Obtaining Reconsideration of That Order Based on False Affidavits*

Elfman v. Berman et al, February 2001, No. 2080 (Herron, J.)  
(August 30, 2001 - 28 pages)

*PRELIMINARY INJUNCTION/IMPOSITION OF FINES - Fines May Be Awarded to Abate Wrongs Suffered by Tenant Who Obtained a Preliminary Injunction Against Landlord Because a Court of Equity Has Broad Powers to Fashion Relief According to the Equities of a Case - Court of Equity May Impose Fines to Assure Compliance With Injunction Order*

Elfman v. Berman, February 2001, No. 2080 (Herron, J.)  
(October 2, 2001 - 9 pages)

*PRELIMINARY INJUNCTION/NONPARTIES - Nonparties May Not Knowingly Help a Person Violate an Injunction*

Elfman v. Berman et al, February 2001, No. 2080 (Herron, J.)  
(August 30, 2001 - 28 pages)

*PRELIMINARY OBJECTIONS: CLASS ACTION - Preliminary Objections as to the Class Definition Should be Deferred until the Certification*

*Stage - Breach of Written Warranty Claim Under UTPCPL Cannot be Sustained Where There is No Compliance with Pa.R.C.P. 4019(h) - Claim for Fraud Under the UTPCPL Cannot be Sustained Absent Allegations of Knowledge and Scierter - Under Pennsylvania Law, Plaintiff May Represent a National Class*

Green v. Saturn, January 2000, No. 685 (Herron, J.)(June 2, 2000 - 5 pages)

*PRELIMINARY OBJECTIONS - Plaintiff Bank's Complaint Set Forth Claim for Fraudulent Misrepresentation Based on Defendant's Knowing Withdrawal of Funds from Bank Account without Entitlement - "Gist of the Action" Doctrine Inapplicable where Fraud Claim is Distinct from Breach of Contract Claim - Plaintiff Bank set forth Claim for Breach of Contract Premised on Bank Account and Contract of Deposit - Objections to Defective Verification and Failure to Attach Writing Dismissed as Moot When Subsequently Supplied by Praeipce*

Mellon Bank, N.A., v. Maris Equipment Co., March 2000, No. 2039 (Herron, J.)(July 26, 2000 -13 Pages)

*PRELIMINARY OBJECTIONS - Preliminary Objections Sustained Where Count does not Set Forth Claim with Sufficient Specificity and Contains More than One Claim - Claim for Tortious Interference with Contract is Legally Insufficient Absent Allegation of Contractual Relationship between the Plaintiff and a Third Person -Claim for Defamation is Set Forth with the Requisite Specificity as to EAB, Roaten and PEBA but not as to NEBB - Conspiracy Claim is Insufficient in Failing to Allege Direct or Circumstantial Evidence of a Combination and Intent - Preliminary Objections based on Statute of Limitations Overruled Because this Defense May Only be Presented in a Responsive Pleading as New Matter*

Hydrair, Inc. v. National Environmental Balancing Bureau, et al., February 2000, No. 2846 (Herron, J.)(July 27,2000 - 9 Pages)

*PRELIMINARY OBJECTIONS - Under Revised Philadelphia Rule 1028(c)(2) Providing that an Answer Need Not be Filed to Preliminary Objections Raising an Issue under Pa.R.C.P. 1028(a)(2)(3) or (4), a Court may not Grant as Uncontested Objections Asserting Lack of Specificity - Allegations of Fraud were set Forth with the Specificity Required by Pa.R.C.P. 1019(b) - Preliminary Objections*

*Asserting Failure to Attach Writings Overruled as Irrelevant*

Brokerage Concepts, Inc. v. J.W.S. Delavau Co., February 1999, No. 1114 & J.W.S. Delavau Co., Inc., January 2000, No. 413 (Herron, J.)(July 13, 2000 - 3 pages)

*PRELIMINARY OBJECTIONS - Preliminary Objections to Claim of Equitable Subrogation Sustained Where Complaint Fails to Allege that Entire Debt Has been Satisfied - Plaintiff May File Amended Complaint Within 20 Days*

Resource Properties XLIV, Inc. v. Growth Properties, Ltd., March 2000, No. 3750 (Herron, J.)( July 24, 2000 - 2 pages)

*PRELIMINARY OBJECTIONS - Objection for Failure to Aver Time, Place and Items of Special Damages Sustained Where Complaint Does Not Aver When Payment is Due Nor What Comprises the Overall Sum of \$93,000 in Damages - Attachment of Invoices to Answer to Objections Is Not Sufficient to Correct Defective Complaint*

St. Hill and Associates, P.C. v. Capital Asset Research Corp., Ltd., May 2000, No. 5035 (Herron, J.)(September 7, 2000 - 6 pages)

*PRELIMINARY OBJECTIONS - Preliminary Objections Should Not Be Summarily Sustained Merely Because Unopposed - Where Objections Raise Issues of Fact, Court Is Obligated to Require the Submission of Additional Evidence Through Depositions and Interrogatories - Complaint Must Be Amended Under Pa.R.C.P. 1020(a) Where It Presents More than One Cause of Action in a Count -*

Acme Markets, Inc. v. Dunkirk, et al., February 2000, No. 1559 (Herron, J.)(September 18, 2000 - 34 pages)

*PRELIMINARY OBJECTIONS - Although Contract Provides that Liquidator Shall Be Selected by Arbitration, It Does Not Require That Disputes Concerning Allocation of Partnership Funds Must Be Submitted to Arbitration - Agreements to Arbitrate Must Strictly Construed and*

*Confined to the Clear Intent of the Parties - There is Concurrent Jurisdiction of Law and Equity in Actions by Partners Against Co-Partners in Connection with Partnership Matters - Claim of Prior Pending Action Is Dismissed Where Defendant Fails to Attach Requisite Documents Because Question of Prior Pending Action is Question of Law Determinable From the Pleadings*

Cohen v. McLafferty, July 2000, No. 923 (Herron, J.)(September 29, 2000 - 12 pages)

*PRELIMINARY OBJECTIONS - After Analysis of the Elements of Claims for Breach of Contract, Promissory Estoppel, Fraudulent Misrepresentation, Negligent Misrepresentation, Fraudulent Conveyance, Conspiracy as well as the Allegations in the Amended Complaint, Demurrers Asserting Failure to Allege Actual, Compensable Damage and/or Causation Are Overruled - Under Pennsylvania law, Claim for Unjust Enrichment Does Not Require Allegation of Loss by the Plaintiff or Causation - Demurrer to Claim for Contractual Compensation Adjustments is Overruled Because Plaintiff Adequately Alleged Damage - Objections Seeking More Specific Pleading of Claims for Fraudulent Conveyance and Conspiracy Are Sustained Because the Allegations Are Insufficient to Allow the Defendants to Prepare a Defense*

Graduate Cardiology Consultants, P.C., v. Vivra, February 2000, No. 2827 (Herron, J.)(October 20, 2000 - 15 pages)

*PRELIMINARY OBJECTIONS - Allegation that Defendants Were "Otherwise Negligent Under the Circumstances" Is Stricken As Insufficiently Specific*

Treco v. Wolf Investments Corp., March 2000, No. 1765 (Herron, J.)(February 15, 2001 - 9 pages)

*PRELIMINARY OBJECTIONS - When Reviewing Preliminary Objections Challenging the Legal Sufficiency of a Complaint, a Court May Rely on Documents Forming in Part the Foundation of the Suit Even When They Are Not Attached to the Complaint*

Red Bell Brewing Co. v. Buchanan Ingersoll, P.C., May 2000, No. 1994 (Sheppard, J.) (March 13, 2001 - 16 pages)

*PRELIMINARY OBJECTIONS - Plaintiff Subsequently Attached Documents Relating to Its Breach of Contract Claims Six Days After the Filing of Its Amended Complaint; Objection based on Pa.R.C.P. 1019(i) for Failure to Attach Writing is Overruled Since Procedural Rules Are Not Meant to Defeat Valid Substantive Claims Where Late Attachment is De Minimis; Claim for Permanent Placement Fee is Not Premature Based on Pa.R.C.P. 1019(c) Where Plaintiff Alleges It Had Fulfilled All of Its Obligations Under the Agreement*

SolomonEdwardsGroup, LLC v. Voicenet, et al., June 2000, No. 1822 (Sheppard, J.)(March 29, 2001 - 10 pages)

*PRELIMINARY OBJECTIONS/DOCUMENTS - Documents Attached to Preliminary Objections But Not Attached to Complaint May Be Considered in Ruling on Preliminary Objections If the Documents Form a Part of the Basis of the Suit*

Abrams v. Toyota Motor Credit Corp. - April 2001, No. 503 (Herron, J.) (December 5, 2001 - 23 pages)

*PRELIMINARY OBJECTIONS / EXISTENCE OF AGREEMENT FOR ALTERNATIVE DISPUTE RESOLUTION - Where it is undisputed that the parties possess a valid agreement to arbitrate in their Shareholders' Agreement, the pertinent inquiry becomes whether the dispute falls within the scope of such agreement.*

Odyssey Capital, L.P., et. al. v. Reddi, et. al., June 2002, No. 02893 (Cohen, J.)(November 14, 2002 - 7 pages)

*PRELIMINARY OBJECTIONS/PRAECIPE TO OVERRULE - Pursuant to Philadelphia Civil Rule \*1028(B), A Party May File a Precipe to Strike Preliminary Objections Where the Objector Failed to File a Motion to Determine Preliminary Objections Within 30 Days of Filing the Preliminary Objections with the Prothonotary*

Mogilyansky v. Svetlana Sych, June 2000, No. 3709 (Herron, J.)(January 4, 2001 - 3 pages)



*PRELIMINARY OBJECTIONS/RULE 1019 - Preliminary Objections Sustained Where Plaintiff Failed to Allege Whether Contract Was Oral or Written and Plaintiff Failed to Attach Contract Establishing Privity with Defendant*

Precision Towers, Inc. v. Nat-Com, Inc. and Value Structures, Inc., April 2002, No. 2143 (Cohen, J.) (September 23, 2002 - 9 pages)

*PRELIMINARY OBJECTIONS/TIMELINESS/VAGUENESS - Defendant Set forth Just Cause For the Six Day Delay in Filing Motion to Determine Preliminary Objections Where the Motion Package Had Been Returned by the Prothonotary For Failure to Attach Copy of Attested Preliminary Objections and Defendant Promptly Refiled Completed Motion Package - Vague Allegations That Defendant/Architect Was Responsible for 47 Construction Change Orders Must be Amended For Greater Specificity to Enable Defendant to Prepare a Defense*

Philadelphia HGI Associates, L.P. v. Cope Linder Associates, October 2000, No. 2981 (Herron, J.) (April 6, 2001 - 5 pages)

*PRELIMINARY OBJECTIONS/WAIVER - Where Defendant Fails to Brief Preliminary Objections, They Are Waived - Alternatively, Where Defendant Raises Objections Only In Its Memorandum and Not in Its Preliminary Objections, the Objections Are Waived*

ZA Consulting LLC v. Wittman, April 2001, No. 3941 (Herron, J.) (August 28, 2001 - 8 pages)

*PRELIMINARY OBJECTIONS/WAIVER - Plaintiff Waived Its Objections to Defendants' Filing of Preliminary Objections Despite Letter Agreement That Defendant Would File an Answer Where Plaintiff Failed to File Preliminary Objections to the Preliminary Objections - By Filing a Response to the Preliminary Objections, Plaintiff Waived Its Objections to Defendants' Procedural Defects*

4701 Concord LLC v. Fidelity National Title Insurance Co. Of New York, April 2001, No. 1481 (Herron, J.) (August 28,

2001 - 11 pages)

*PRINCIPAL & AGENT - A Limited Partnership is Chargeable With the Knowledge and Misrepresentations of its Agent Who Submitted False Affidavit to Court*

Elfman v. Berman et al, February 2001, No. 2080 (Herron, J.)  
(August 30, 2001 - 28 pages)

*PRIVACY/INVASION/SECLUSION - Corporations Have No Right to Personal Privacy and Cannot Bring a Claim for Intrusion on Seclusion*

Academy Industries, Inc. v. PNC, N.A. et al, May 2000,  
No. 2383 (Sheppard, J.) (May 20, 2002 - 34 pages)

*PRIVILEGE/JUDICIAL - Defamation Claim Cannot Be Maintained Based on the Faxing of a Complaint to the Legal Intelligencer Because the Statements in the Complaint As Well As the Activity of Faxing Them Fall Within the Scope of Judicial Privilege*

Bocchetto v. Gibson, April 2000, No. 3722 (Sheppard, J.)  
(March 13, 2002 - 19 pages)

*PROCESS, SERVICE - Service of Process on an Individual Defendant Outside Pennsylvania Was Invalid Under Long Arm Statute Where it Was Mailed to Corporate Address and Return Receipt Was Signed by Someone Other Than the Defendant Who Was Not Defendant's Agent - Under the Long Arm Statute, the Defendant or His Agent Had to Sign the Return Receipt - Service by Mail at Defendant's Usual Place of Business Is Improper Because Rules Require Hand Service of Process at a Usual Place of Business - Lack of Proper Service Deprives Court of Personal Jurisdiction*

Hydrair, Inc. v. National Environmental Balancing Bureau,

February 2000, No. 2846 (Herron, J.) (April 23, 2001 - 19 pages)

*PROCESS, SERVICE/HAGUE CONVENTION - Under Hague Convention, Parties Are Permitted to Send Judicial Documents by Postal Channels Directly to Persons Abroad Unless State of Destination Objects - Service of a Complaint on Foreign Corporation Is Valid So Long as Service Complies With the Long Arm Statute - Service Is Proper Even if Document Is Not Translated into the Official Language of the State of Destination*

Miltenberg & Samton, Inc. v. Assicurazioni Generali, S.p.A., January 2000, No. 3633 (Herron, J.)(October 11, 2000 - 20 pages)

*PROCESS, SERVICE/WAIVER - By Appearing and Participating in the Merits of a Preliminary Injunction Hearing Without Objecting to Defective Service, Defendants Waived That Objection and Recognized the Court's Jurisdiction*

Elfman v. Berman et al., February 2001, No. 2080 (Herron, J.)(May 8, 2001 - 19 pages)

*PROMISSORY ESTOPPEL - Promissory Estoppel Claim based on Statements of Landlord's Agent is Legally Insufficient Because Tenant has yet to Suffer Any Damage from the Agent's Statements - Where Tenant Vacated Space in Reliance on Statements of Landlord's Agent, He Suffered No Detriment and Was Not Charged Rent on Vacated Space - Speculation of Future Harm that Might Occur Should Landlord Succeed in his Action to Recover Rent Does Not Suffice for Promissory Estoppel Claim*

Holl & Associates, P.C. v. 1515 Market Street Associates, May 2000, No. 1964 (Herron, J.)(August 10, 2000 - 7 pages)

*PROMISSORY ESTOPPEL - Complaint Sets Forth Viable Promissory Estoppel Claim Where It Alleges That Defendant Corporation and Its Subsidiaries Promised that Plaintiff Would Be the Manager of Certain Facilities and Plaintiff Helped Procure the Requisite Financing in Reliance On These Promises*

Hospicomm, Inc. v. International Senior Development, LLC,  
August 2000, No. 2195 (Herron, J.)(January 9, 2001 - 14 pages)

PROMISSORY ESTOPPEL - Complaint Sets Forth Viable Claim For Promissory Estoppel as to Alleged Promises to Repay Plaintiff's Capital Contribution But Not as to Alleged Promise to Complete Buyout Where Attached Exhibit/Letter of Intent Contained Conditional Language Concerning the Buyout

Liss v. Liss, June 2001, No. 2063 (Herron, J.)  
(March 22, 2002 - 31 pages)

PROMISSORY ESTOPPEL - Plaintiff May Set Forth Separate Claims for Breach of Contract and Promissory Estoppel

JHE Incorporated v. SEPTA, November 2001, No. 1790  
(Sheppard, J.) (May 17, 2002 - 21 pages)

PROMISSORY ESTOPPEL/STATUTE OF FRAUDS - Pennsylvania's Statute of Frauds Does Not Necessarily Preclude an Action Based on Estoppel - Even if the Statute of Frauds Were Applicable, the Corporate Veil May Be Pierced Based on Allegations That Corporation That Made Promises Upon Which Plaintiffs Relied Was an Alter Ego of the Individual Defendants Who Controlled the Corporation

Fineman & Bach, P.C. v. Wilfran Agricultural Industries, Inc. March 2001, No. 2121 (Herron, J.) (July 30, 2001 - 7 pages)

PUBLIC UTILITY - Class Action Complaint Against Telephone Company Dismissed Under the Filed Tariff Doctrine - Allegation That Telephone Company on its Website Misleadingly Suggested That Nonpublished Telephone Number Service Includes Omission of Telephone Number From Bills Sent to Owners of Toll-Free Numbers Would Impermissibly Expand the Tariff's Definition of Nonpublished Telephone Service - Filed Tariff Doctrine Precludes Claims Based on Rates Approved by the Pennsylvania PUC Where Plaintiffs Essentially Seek Expansion of Rights Set Forth in a PUC Tariff

Knipmeyer v. Bell Atlantic, et al, August 2000, No. 308  
(Sheppard, J.) (May 22, 2001 - 8 pages)

*PUNITIVE DAMAGES - Request for Punitive Damages Cannot be Set Forth as Separate Count or Independent Cause of Action - Punitive Damages Claim is Legally Insufficient where Complaint Lacks Allegations Concerning Defendant's Motive or Reckless Actions - Where Claim at best is for Restitution based on Mutual Mistake, Punitive Damages are not available for Defendant's Mere Mistake*

Holl & Associates, P.C. v. 1515 Market Street Associates, May 2000, No. 1964 (Herron, J.)(August 10, 2000 - 7 pages)

*PUNITIVE DAMAGES - Pennsylvania Statutory Law Allows Court to Assess Punitive Damages Against Insurer That Has Acted in Bad Faith Toward Insured - Where Text of Count Entitled Punitive Damages Alleges Bad Faith, That Count Must Be Treated as Bad Faith Claim - When Faced with a Conflict Between the Allegations of a Count and its Title, Pennsylvania Courts Consider the Allegations, Not the Title*

Miltenberg & Samton, Inc. v. Assicurazioni Generali, S.p.A., January Term 2000, No. 3633 (Herron, J.)(October 11, 2000 - 20 pages)

*PUNITIVE DAMAGES - While Punitive Damages Are Not Recoverable for Breach of Contract Claim, They Are Permitted for Intentional Interference with Contract and Fraud Claims*

Amico v. Radius Communication, January 2000, No. 1793 (Herron, J.)(January 9, 2001 - 8 pages)

Waterware Corporation v. Ametek et al, June 2000, No. 3703 (Herron, J.) (April 17, 2001 - 15 pages) (Punitive damages may be asserted for intentional misrepresentation but plaintiff will ultimately have to prove defendant's reckless conduct)

*PUNITIVE DAMAGES - Punitive Damages Are Not Available for Breach of Contract Claims*

The Brickman Group, Ltd v. CGU Insurance Co., July 2000, No.

909 (Herron, J.)(January 8, 2001 - 22 pages)

Gregg v. IBC, December 2000, No. 3482 (Sheppard, J.)  
(June 14, 2001 - 20 pages)

*PUNITIVE DAMAGES - Pennsylvania Permits Punitive Damages Where the Defendant's Conduct was Malicious, Wanton, Reckless, Willful or Oppressive - New York Permits Punitive Damages in Fraud Actions Where a Defendant's Acts Constitute Willful, Wanton, and Reckless Conduct Even if There is no Harm Aimed at the General Public*

EGW Partners, L.P. v. Prudential Insurance, March 2001,  
No. 336 (Sheppard, J.) (June 22, 2001 - 17 pages)

*PUNITIVE DAMAGES - Though Punitive Damages May Not Be Recovered For Mere Breach of Contract, They May Be Asserted With Valid Claims for Tortious Interference With Contract And/Or Civil Conspiracy - Motion to Strike Demand for Punitive Damages Denied.*

SolomonEdwardsGroup, LLC v. Voicenet, et al., June 2000, No. 1822 (Sheppard, J.)(March 29, 2001 - 10 pages)

*PUNITIVE DAMAGES - Punitive Damages May Not be Recovered for Either Breach of Duty of Good Faith or Breach of Contract*

Pennsylvania Chiropractic Association v. Independence Blue Cross, August 2000, No. 2705 (Herron, J.) (July 16, 2001 - 36 pages)

## Q

*QUANTUM MERUIT/PROMISSORY ESTOPPEL - Provider of Day-Treatment Program to Philadelphia School Students Is Entitled to Recover for Services Actually Rendered to Students Even Where the Number of Students Exceed Those Specified in the Provider's Contract with the School District Based on Theories of Quantum Meruit and Promissory Estoppel Due to the Parties' Course of Dealing and*

*Promises by the School District - 20 P.S. Section 337(c)  
Authorizes Payment For the Educational Services Provided by  
Plaintiff Even If the Number of Students Served Exceeded the  
Specific Limit Set Forth in the Contract - Doctrine of Equitable  
Estoppel May Be Asserted Against the Commonwealth and Its  
Political Subdivisions Even When Doing so Would Violate a Statute  
or Ordinance*

Visionquest v. The School District of Philadelphia,  
June 2000, No. 2096 (Sheppard, J.) (April 11, 2002-25  
pages)

*QUIET TITLE - Out-Of-Possession Plaintiff May Maintain Action to  
Quiet Title under Rule 1061Where Plaintiff Has No Present Right  
of Possession and Wishes to Reinstate First-Priority Mortgage.*

IndyMac Bank v. Bey, August 2001, No. 3200 (Sheppard, J.)  
(September 12, 2002 - 10 pages)

## R

*REAL ESTATE LICENSING AND REGISTRATION ACT - Broker's Complaint  
Seeking Commission Is Dismissed Because Under the Newly Amended  
Real Estate Licensing and Registration Act (RELA), A Broker  
Agreement Must Be In Writing or Include a Written Memorandum of  
the Agreement's Terms*

Roddy, Inc. v. Thackray Crane Rental, Inc., May 2001, No.  
1566 (Sheppard, J.) (September 20, 2001 - 10 pages)

*REAL ESTATE LICENSING AND REGISTRATION ACT - A Negligence Claim  
Based on the RELA and Defendant's Failure to Mark a Mortgage  
Satisfied Cannot Be Maintained Where It Is Asserted by a Third  
Party Because the RELA Was Not Intended to Protect Third Parties  
With Whom a Person Benefitting From a Broker's Services May  
Interact*

Penn Mutual Life Insurance Co. v. Ajax Management Corp.  
May 2001, No. 3661 (Herron, J.) (November 16, 2001 - 6  
pages)

REAL ESTATE SETTLEMENT PROCEDURES ACT ("RESPA") - RESPA Does Not  
Provide For a Private Cause of Action for Violation of Its "Good  
Faith Estimates" Provisions

Koch v. First Union Corp., et al, May 2001, No. 549  
(Herron, J.) (January 10, 2002 - 26 pages)

REAL PARTY IN INTEREST - Where It Is Unclear Under the Contract  
Exactly Who Is Bound, There Are Material Issues of Fact That  
Preclude Granting Summary Judgment

Amico v. Radius Communications, January 2000, No. 1793  
(Herron, J.) (October 29, 2001 - 15 pages)

RECALL - Court Lacks Authority to Order Recall of Allegedly  
Defective Tires

Grant v. Bridgestone Firestone, Inc., September 2000, No.  
3668 (Herron, J.) (June 12, 2001 - 10 pages)

RECALL - Court Lacks Authority to Order Installation of Park Lock  
Brakes in Minivans Since This Is Effectively Ordering a Recall

Solarz v. Daimler Chrysler Corp., April 2001, No. 2033  
(Herron, J.) (March 13, 2002 - 26 pages)

RECONSIDERATION - Statute Limiting Time for Reconsideration of  
Orders to 30 Days applies Only to Final, Appealable Orders -  
Motion for Reconsideration Is Denied Where Movant Presents No New  
Issues of Law or Fact

Pennsylvania Chiropractic Association v. Independence  
BlueCross, August 2000, No. 2705 (Herron, J.) (September 14,  
2001 - 6 pages)



*RECONSIDERATION - A Court May Reconsider An Interlocutory Order Beyond the 30 Day Limit For Reconsidering Final Orders*

The Brickman Group, Ltd. v. CGU Insurance Co., July 2000,  
No. 909 (Herron, J.) (March 26, 2002 - 9 pages)

*RELEASE - Release Provision in Settlement Agreement is Strictly Construed and Does Not Apply to Claim for Statutory Fine For Failure to Mark Mortgage Satisfied Where That Action Had Not Accrued at the Time the Settlement Agreement Was Signed*

Mesne Properties, Inc. V. Penn Mutual Life Insurance Co.  
July 2000, No. 1483 (Herron, J.) (April 6, 2001 - 14  
pages)

*RELEASE - Where a Provision in a Loan Document States That There Are no Claims for Set-Offs, Counterclaims, Deductions or Charges But Does Not Include the Key Word "Release", the Provision Is Not a Release From Liability for Certain Claims in Plaintiff's Complaint*

Academy Industries, Inc. V. PNC, N.A. et al, May 2000,  
No. 2383 (Sheppard, J.) (May 20, 2002 - 34 pages)

*RELEASE - Letter Agreement Constituted a Release of Any Additional Rental Obligations by Tenant to Landlord Based on the Ordinary Meaning of the Words of the Agreement, the Intent of the Parties and the Conditions Surrounding the Execution of the Agreement*

Sandrow v. Red Bandana, July 2000, No. 3933 (Herron, J.)  
(May 23, 2002 - 16 pages)

*RELEASE/SETTLEMENT - Where Release in Settlement Agreement*

*Released Defendant Limited Partnership From "All" Actions of "Any" Kind, the Clear and Unambiguous Language of the Release and Principles of Colorado Law Preclude Plaintiff's Argument That the Release Can Be Avoided Because It Was Induced by Fraud - Under Colorado Law, Integration Clauses Allow Contracting Parties to Limit Future Contractual Disputes to Issues Relating to the Express Provisions of the Contract - Parol Evidence May Not Be Used to Provide Proof of the Existence of a Prior or Contemporaneous Agreement - Where Settlement Agreement Released Defendant From All Claims, Known and Unknown, the Fraud Exception to the Parol Evidence Rule Is Inapplicable Due to the Broad Nature of the Release*

Branca v. Conley, February 2001, No. 227 (Herron, J.)  
(October 30, 2001 - 11 pages)

*RELEASE/SETTLEMENT - Enforcement of Settlements is Governed by Principles of Contract Law - Where Both Parties Agree That a Settlement Has been Reached to Their Lawsuit, the Terms Are Defined in Defense Counsel's Letter - A Release Must Be Interpreted Narrowly and According to the Ordinary Meaning of the Language to Cover Only Those Matters Within the Parties' Contemplation - In This Case, the Release/Settlement Applies Only to Claims Set Forth in Plaintiff's Complaint and Not Against Any Future Claims*

Medline Industries Inc. v. Beckett Healthcare Inc.,  
September 2000, No. 295 (Herron, J.) (November 15, 2001  
7 pages)

*RELEASE/SUMMARY JUDGMENT - A Release Should be Construed Narrowly and in Light of the Circumstances at the Time of its Execution According to the Ordinary Meaning of its Language - Where Release Executed in 1991 Did Not Indicate That it Would Apply to Future Default, it Could Not be Invoked as a Basis for Summary Judgment Regarding a Default That Occurred in 1994*

Resource Properties XLIV v. PAID, November 1999, No. 1265  
and March 2000, No. 3750 (Sheppard, J.) (June 5, 2001 -  
13 pages)

*RELEASE/SUMMARY JUDGMENT - Release Agreement Does Not Extend to Nonparty Especially Where the Agreement Explicitly References Its Parties and Subject Matter and Nonparty Was in Separate Lawsuit With Its Own Release*

Greenfield v. Alderman, May 2000, No. 1555 (Herron, J.)  
(July 31, 2001 - 8 pages)

*REMEDIES/APPRAISAL RIGHTS - Shareholders' Remedies Are Not Limited to Appraisal Rights Set Forth in Subchapter D of BCL Chapter 15, 15 Pa.C.S. §§ 1571 et seq., Where They Were Not Notified of a Merger Due to Defendants' Actions - By Not Fulfilling Their Statutory Obligations, Defendants Effectively Precluded Plaintiffs From Exercising Any Appraisal Rights Available To Them - Limiting Plaintiffs to Appraisal Rights That The Defendants Made Unavailable Would Constitute Fundamental Unfairness*

First Union National Bank et al. v. Quality Carriers, April 2000, No. 2634 (Sheppard, J.)(October 10, 2000 - 49 pages)

*RESCISSION - Rescission of a Contract is Proper Where Plaintiff Has Suffered a Breach So Material or Sustained That It Affects the Very Essence of the Contract*

Babiarz v. Bell Atlantic - Pennsylvania, Inc. August, 2000, No. 1863 (Herron, J.) (July 10, 2001 - 38 pages)

*RESCISSION - Rescission of Signed, Executed Contract Is Precluded by Parol Evidence Rule Where Rescission Is Based on the Alleged Misrepresentation That Plaintiff Would Be Compensated Appropriately For His Idea*

Babiarz v. Bell Atlantic - Pennsylvania, August 2000, No. 1863 (Herron, J.) (November 20, 2001 - 11 pages)

*RESCISSION/RESTITUTION - Plaintiffs Have Set Forth Valid Claim for Rescission by Alleging Fraud - Restitution Is Not Inconsistent With Rescission - Restitution Can Be Based on Claim*

*For Unjust Enrichment*

Koch v. First Union Corp., et al, May 2001, No. 549  
(Herron, J.) (January 10, 2002 - 26 pages)

*RES JUDICATA - Where Joinder Complaint Was Dismissed for Failure to Respond to Preliminary Objections, the Order is Not a Final Judgment on the Merits for Purposes of Res Judicata or Collateral Estoppel*

Integrated Project Services v. HMS Interiors, Inc.  
March, 2001, No. 1789 (Herron, J.) (July 2, 2001 - 13 pages)

*RES JUDICATA/COLLATERAL ESTOPPEL - Doctrines of Res Judicata and Collateral Estoppel Do Not Bar Plaintiff Homeowner Association's Action Alleging Improper Notice of Writ of Execution and Sheriff Sale of Their Property Because the Issue of Notice Differs From the Issues in the Prior Litigation Focusing on Liability for Unpaid Taxes*

Linda Marucci v. Southwark Realty Co. November 2001, No. 391 (Herron, J.) (May 15, 2002 - 10 pages)

*RES JUDICATA/CONFESSION OF JUDGMENT - Tenant's Claims Against Landlord Are Barred by Res Judicata to the Extent That They Relate to Claims That Were Implicated in Defendant's Prior Confession of Judgment That Plaintiff Failed to Challenge With a Petition to Open or Strike*

Rader v. Travelers Indemnity Co., March 2000, No. 1199  
(Herron, J.) (October 25, 2001 - 8 pages)

*RESTITUTION - No Pennsylvania Case Has Adopted Restatement of Restitution §136 And It Cannot Serve as a Basis of Liability of an Employer to a Current Employee For Tortious Use of Trade*

*Secret When the Alleged Secret Was Voluntarily Disclosed to Employer*

Babiarz v. Bell Atlantic - Pennsylvania, Inc. August, 2000, No. 1863 (Herron, J.) (July 10, 2001 - 38 pages)

*RESTRICTIVE COVENANT - Restrictive covenant imposing a one-year restriction following termination from employment with a geographic scope of 150 miles is overly broad - Reasonableness of the duration and geographic scope of a restrictive covenant must be determined in light of the nature of the employer's interest sought to be protected - Geographic scope of restrictive covenant may be limited to extent reasonably necessary to protect employer's interest - Restrictive covenant is modified to enjoin former employee for a period of 6 months from soliciting prior customers with whom he had personally established good will for prior employer*

Olympic Paper Co. v. Dubin Paper Co. and Brian Reddy, October 2000, No. 4384 (Sheppard, J.) (December 29, 2000 - 23 pages)

*RESTRICTIVE COVENANT - Where Complaint Alleges That Plaintiff's Former Employer Left to Work For Direct Competitors in Violation of a Restrictive Covenant Preliminary Objections Are Overruled - There Is Conflicting Precedent As To Whether a Restrictive Covenant Should be Enforced Where Defendant/Former Employee Had Little or No Contact With Clients*

Omicron Systems, Inc. V. Weiner, August 2001, No. 669 (Herron, J.) (March 14, 2002 - 14 pages)

*RESTRICTIVE COVENANT - Restrictive Covenant Is Not Enforceable Where Employer Terminates Employee For Poor Performance*

Labor Ready, Inc. v. Trojan Labor and Sally Czeponis, December 2000, No. 3264 (Sheppard, J.) (January 25, 2001 - 14 pages)

*RESTRICTIVE COVENANT - Where Restrictive Covenant For Terminated*

*Employee Is Unreasonably Broad, It Is Modified to Reasonable Limitations of One Year From Termination and a 25 Mile Radius From City Hall - A Balancing of Equities Dictates That Former Employee Should Not Be Enjoined From Seeking Lighting Contracts With Persons Who Have Never Been Customers of the Former Employer*

Cooper v. Cerrelli, February 2002, No. 1260 (Sheppard, J.)(July 8, 2002 - 5 pages)

*RESTRICTIVE COVENANT/EMPLOYMENT CONTRACT - Non-Competition and Non-Solicitation Agreements are Enforceable to the Extent They Protect Customer Relationships that Defendant/Employee Established on behalf of her Employer - Restrictive Covenants that are Overbroad Are Modified to Prohibit Plaintiff from Dealing with Sixteen Law Firms that were Clients of her Employer - Employer Has no Legitimate Business Interest in Protecting the Identities of Clients and Hiring Contacts Known to Employee Because These are not Trade Secrets - Employer is Entitled to a Preliminary Injunction to Enforce the Modified Non-Competition and Non-Solicitation Agreements*

Robert Half of Pennsylvania, Inc. v. Shana Feight, April 2000, No. 1667 (Herron, J.)(June 29, 2000 - 35 pages)

*RESTRICTIVE COVENANT/EMPLOYMENT CONTRACT - Preliminary Injunction to Enforce Restrictive Covenant is Granted, in part, and Former Employees Are Enjoined from Competing with their Employer's Business with Two Customers as to Railcar Interiors and Uncoupling Rods for a Period of One Year - Since Plaintiff's Business Involves Railcar Interiors and Rail Coupling Rods, the Noncompetition Agreement Is Not Violated Where Defendants Work for Company Performing Other Kinds of Work - Restrictive Covenants Are Enforceable Only When Ancillary to Employment - When Parties Execute a Restrictive Covenant After the Commencement of Employment, It Is Not Ancillary Unless Support by New Consideration Such as a Raise or Change in Employment Status - Plaintiff Failed to Meet Its Burden of Showing the Existence of Trade Secrets or Specialized Training - Noncompetition and*

*Nonsolicitation Agreements Are Enforceable to Protect the Customer Goodwill that the Defendant Employees Established on the Company's Behalf - The Duration of a Covenant is Reasonable if Limited to the Time Necessary for Company to Find a Replacement Employee - A Two Year Covenant Is Unreasonable Where It Is Not Related to a Legitimate Business Interest in Finding an Effective Replacement Employee - Defendants Failed to Establish a Constructive Termination that Might Preclude Enforcement of the Restrictive Covenant*

United Products Corp. v. Transtech Manufacturing, August 2000, No. 4051 (Sheppard, J.)(November 9, 2000 - 40 Pages)

*RESTRICTIVE COVENANT/PHYSICIAN EMPLOYMENT CONTRACT - Corporate Name Change, Effect - Assignability of Restrictive Covenant - Breach of Contract, Criteria for Enjoining- Preliminary Injunction, Standards*

Philadelphia Ear, Nose & Throat Surgical Associates, P. C. v. Maurice Roth, M.D., January 2000, No. 2321 (Sheppard, J.)(March 13, 2000 - 22 pages)

*RETIREMENT BENEFITS/PARTNERSHIP AGREEMENT - Retirement Benefit Plans Are Analyzed Under Principles Applicable to Unilateral Contracts - Retirement Benefit Provision in Partnership Agreement May Be Analyzed Separately Because of Its Distinct Consideration - Under Pennsylvania Law, Retirement Payment Obligations Generally Vest Upon Completion of Performance - Pennsylvania Courts Have Not Addressed the Effect of a Reservation of a Right to Amend a Benefit Provision in a Partnership Agreement - Court Adopts Kemmerer Test Under Which Retirement Benefit Provision May Not Be Modified After Complete Performance by Retired Partners Unless Agreement Specifically Reserves the Right to Amend Where Performance Has Been Completed*

Abbott v. Schnader Harrison Segal & Lewis LLP, June 2000, No. 1825 (Herron, J.)(February 28, 2001 - 26 pages)

## S

*SANCTIONS - Attorney Fees May Not be Awarded For The Filing of "Bad Faith" Preliminary Objections Absent a Showing of Fraud, Dishonesty or Corruption as Bad Faith Conduct*

Cohen v. McLafferty, July 2000, No. 923 (Herron, J.)  
(June 15, 2001 - 9 pages)

*SANCTIONS - Plaintiff Who Obtained Injunction Ordering Repairs to Building Is Entitled to Counsel Fees and Costs as a Sanction Where Defendants' Conduct Was Dilatory, Obdurate, Vexatious, Arbitrary and in Bad Faith in Defying Injunction by Failing to Begin Repairs and in Obtaining Reconsideration of the Order Based on Affidavit Falsely Averring That Compliance With the Order Was Not Possible*

Elfman v. Berman et al, February 2001, No. 2080 (Herron, J.) (August 30, 2001 - 28 pages)

*SCANDALOUS OR IMPERTINENT ALLEGATIONS - Allegation That Defendant Insurer Violated the Rules of Professional Conduct When It Contacted Plaintiff Directly Rather Than Through His Counsel Will Not Be Stricken as Scandalous or Impertinent*

Legion Insurance Co. V. Doeff, May 2000, No. 3174  
(Sheppard, J.) (December 18, 2001 - 11 pages)

*SCANDALOUS OR IMPERTINENT ALLEGATIONS -Where Allegedly Scandalous and Impertinent Allegations in a Complaint Will Prejudice Defendant, They Must Be Stricken*

Trujillo v. State Farm Mutual Insurance Co., March, 2001  
No. 2047 (Herron, J.) (December 6, 2001 - 31 pages)

*SCANDALOUS OR IMPERTINENT ALLEGATIONS - Where Allegations Are*



*inappropriate and Immaterial to Proof of the Cause of Action They May Be Stricken*

JHE Incorporated v. SEPTA, November 2001, No. 1790  
(Sheppard, J.) (May 17, 2002 - 21 pages)

*SCANDALOUS OR IMPERTINENT ALLEGATIONS/PRELIMINARY OBJECTIONS - Where Preliminary Objections Fail to Claim Prejudice Due to Scandalous or Impertinent Allegations, the Allegations Will Not be Stricken*

Legion Insurance Co. V. Doeff, May 2000, No. 3174  
(Sheppard, J.) (June 6, 2001 - 19 pages)

*SECURITIES FRAUD/PENNSYLVANIA SECURITIES ACT OF 1972 - Complaint Does Not Set Forth Claim for Securities Fraud as to Repurchase Account Where it Fails to Allege Misrepresentations in Connection with the Securities Underlying the Repurchase Account*

IRPC, Inc. V. Hudson United Bancorp, February 2001, No. 474  
(Sheppard, J.) (January 18, 2002 - 15 pages)

*SHAREHOLDERS' DERIVATIVE CLAIM/STANDING - Defendants' Preliminary Objections That Shareholder Lacked Standing to Pursue Derivative Action Due to Failure to Make Demand on Corporation Is Overruled Based on the Corporation's Closely-Held Status and ALI Principle §7.01(d)*

Levin v. Schiffman and Just Kids, Inc., July 2000, No. 4442  
(Sheppard, J.) (February 1, 2001 - 26 pages)

*SHARES/POSSESSION - In Pennsylvania, An Action For Possession of Corporate Shares Is Not Limited to Actions Against Corporate Office Holders*

Mogilyansky v. Sych, June 2000, No. 3709 (Herron, J.)  
(April 30, 2001 - 8 pages)

*SOVEREIGN IMMUNITY - Board of Directors of City Trusts, Girard Estate is Not a Commonwealth Agency for Purposes of Sovereign*

*Immunity - None of Plaintiffs' Tort Claims Fall Under the Limited Waivers to Sovereign or Governmental Immunity - United States Supreme Court's Ruling that the Board was a Commonwealth Agency for Purposes of the Fourteenth Amendment is Not Dispositive as to Whether it is a Commonwealth Agency for Purposes of Sovereign Immunity - Legislative Intent Determines Whether Board Created by Statute is a Commonwealth Agency - Board is Not a Local Agency For Immunity Purposes Because it does not Exercise Governmental Functions - Home Rule Charter Explicitly Exempts the Board from a Relationship with the City*

Caplen et al. v. Richard Burick and The City of Philadelphia, Trustee Acting By the Board of Directors of City Trusts, Girard Estates, February 2000, No. 3144 (Sheppard, J.) (August 4, 2000)

*SOVEREIGN IMMUNITY - Doctrine of Sovereign Immunity Protects SEPTA Against Plaintiff Contractor's Claim for Fraudulent Misrepresentation and Punitive Damages*

JHE Incorporated v. SEPTA, November 2001, No. 1790 (Sheppard, J.) (May 17, 2002 - 21 pages)

*SPECIFICITY - To Satisfy Pennsylvania's Specificity Requirements, the Facts Alleged in a Complaint Must be Sufficiently Specific to Enable a Defendant to Present a Defense*

Gregg v. IBC, December 2000, No. 3482 (Sheppard, J.) (June 14, 2001 - 20 pages)

Corson v. IBC, December 2000, No. 2148 (Herron, J.) (June 15, 2001 - 10 pages)

Goldstein & Co. P.C. v. Goldstein CPA, January 2001, No. 3343 (Herron, J.) (June 14, 2001 - 12 pages)

*SPECIFICITY - Class Action Plaintiff's Claim For Breach of Express Warranty in Defendant's Marketing of Propulsid Were Sufficiently Specific*

Boyd v. Johnson & Johnson, January, 2001, No. 965 (Herron, J.) (January 22, 2002 - 7 pages)

*SPECIFICITY/DAMAGES - Allegations of "Other" Damages Are Insufficiently Specific and Must Be Stricken*

*JHE Incorporated v. SEPTA*, November 2001, No. 1790  
(Sheppard, J.) (May 17, 2002 - 21 pages)

*SPECIFICITY/FRAUD - Fraud Claim Is Legally Sufficient Where the Dates and Times of Misrepresentations Are Given - Allegations Allow an Inference of Intent Which May Be Plead Generally*

*Pobad Associates v. Albert Einstein Healthcare Network*,  
June 2001, No. 2885 (Herron, J.) (February 4, 2002 - 8  
pages)

*SPECIFICITY/SPECIAL DAMAGES - Requirement that Special Damages Must Be Specifically Stated Is Satisfied Where the Damages Sought for Breach of Contract Can Be Determined From the Complaint as a Whole*

*U.S. Claims, Inc. v. Ostroff, Villari & Kusturiss, P.C.*  
January 2001, No. 2025 (Herron, J.) (July 25, 2001 - 5  
pages)

*SPOILIATION DOCTRINE/PRECLUSION OF EVIDENCE - Spoliation Doctrine Does Not Apply to Preclude Defense Evidence in Case Where Defendant Did Not Provide Original Tapes of a Television Program "Cooking With Mama" Where Plaintiffs Fail to Show That Defendants' Failure to Produce the Tapes Prejudiced Plaintiffs*

*Amico v. Radius Communications*, January 2000, No. 1793  
(Herron, J.) (October 29, 2001 - 15 pages)

*STANDING/ASSOCIATION - The PCA and The SNJCS, As Associations Representing Chiropractors, Do Not Have Associational Standing to Sue for Injunctive Relief to Compel Defendants to Comply With the Provider Contracts Since the PCA and the SNJCS Are Not Parties to the Contracts and Resolving the Breach of Contract Claim Requires the Participation of the Individual Providers*

*Pennsylvania Chiropractic Association v. Independence Blue Cross*, August 2000, No. 2705 (Herron, J.) (July 16, 2001 - 36  
pages)

pages)

Pennsylvania Chiropractic Association v. Independende Blue Cross, August 2000, No. 2705 (Herron, J.) (September 14, 2001 - 6 pages) (Motion for Reconsideration)

STANDING/NONPROFIT CORPORATION/DERIVATIVE ACTION - Stockholders in Nonprofit Corporation Lack Standing to Bring a Direct Action for Injuries to the Corporation - Stockholders' Claims Should Be Brought as a Derivative Action

Linda Marucci v. Southwark Realty Co., November 2001, No 391 (Herron, J.) (May 15, 2002 - 13 pages)

STATUTE OF FRAUDS/SURETYSHIP/LEADING OBJECT EXCEPTION - Under the Leading Object Exception to the Suretyship Statute of Frauds, the Statute Would not Apply Where the Surety's Main Purpose is His Own Pecuniary Interest or Business Advantage.

Baron v. Pritzker, Omicron Consulting, Inc., August 2000, No. 1574 (Sheppard, J.) (March 6, 2001 - 27 pages)

STATUTE OF LIMITATIONS/BAD FAITH - The Six Year "Catch-All" Statute of Limitations Applies to Bad Faith Claims While the 4 Year Statute of Limitations Applies to Bar Plaintiff's Contract Claims - Where Plaintiff Fails to File Preliminary Objections to Preliminary Objections Asserting Statute of Limitation Defense, the Court May Consider the Merits

Trujillo v. State Farm Mutual Insurance Co., May 2001, No. 2047 (Herron, J.) (December 6, 2001 - 31 pages)

STATUTE OF LIMITATIONS/CONTRACTS - When a Contract Lacks a Fixed Date for Payment and Is Thus Deemed a Continuous Contract, the Statute of Limitations Does Not Begin Until Breach or Termination of the Contract

RRR Management Co., Inc., v. Basciano et al, January 2001, No. 4039 (Sheppard, J.) (March 4, 2002 - 21 pages)

STATUTE OF LIMITATIONS/DISCOVERY RULE/NEGLIGENCE - *Plaintiff Failed to Provide Sufficient Evidence to Invoke the Discovery Rule Where the Record Shows That Plaintiff Possessed the Requisite Degree of Knowledge in November 1989 Concerning the "Ponding" Problem With its Roof But It Failed to Exercise Due Diligence in Investigating the Source of the Problem Until 1996 - Plaintiff's Negligence Claim is Barred by the 6 Year Statute of Limitations - Discovery Rule in Pennsylvania Does Not Apply to Breach of Warranty or Breach of Contract Claims - Discovery Rule Does Apply to Contract Actions Alleging Latent Real Estate Construction Defects*

Assumption of the Blessed Virgin Mary Church of the Archdiocese of Philadelphia v. PFS Corporation and Neshaminy Electrical Contractors, February 2001, No. 1078 (Sheppard, J.) (June 18, 2002 - 16 pages)

STATUTE OF LIMITATIONS/DISCOVERY RULE/NEGLIGENCE - *The Statute of Limitations on a Professional Negligence Claim Does Not Begin to Run Until All the Elements of the Claim Have Occurred - The Discovery Rule and Its Diligence Requirement Is Relevant Only After Injury Has Materialized and Impacts Whether the Statute of Limitations Is Triggered Upon Injury or Upon Plaintiff's Discovery of Injury - Where Plaintiff Was Noticed of Insurance Policy's Potential Rejection of Claims but Before Actual Rejection Occurred, the Statute of Limitations Is Not Triggered Because There Has Been No Injury.*

M&M High Inc. v. Essex Insurance Co., July 2001, No. 0997 (Cohen, J.) (November 18, 2002 - 9 pages)

STATUTE OF LIMITATIONS/UNJUST ENRICHMENT - *Unjust Enrichment Claims Are Governed by a Four Year Statute of Limitations That Accrues on the Date When the Relationship Between the Parties Terminated - Where Movant Fails to Present Facts as to the Date of Termination of a Relationship, Summary Judgment Predicated on the Statute of Limitations May Not be Granted*

Resource Properties XLIV v. PAID, November 1999, No. 1265 and March 2000, No. 3750 (Sheppard, J.) (June 5, 2001 -

13 pages)

*STAY PENDING APPEAL - Motion for Stay Pending Appeal Denied Where Petitioner Fails to Make Strong Showing that it Will Prevail on the Merits - Preliminary Injunction May Not be Defeated Merely by Raising Unsupported Defense - Petitioner's Fraud Defense Was Not Viable Due to Scant Evidence - Under "Preponderance of the Evidence" Standard Petitioner Failed to Establish Fraud Defense*

TJS Brokerage & Co., Inc. v. Hartford Casualty Insurance Co. and Peterman Co., December 1999, No. 2755 (Herron, J.)(July 21, 2000 - 8 pages)

*SUBROGATION - Where Insurance Policy Provides That Insurer May Assert Rights of Those Who Have Rights to Recover Damages From Others If Insurer Has Tendered Payments, Summary Judgment May Not Be Granted Where There Is a Material Issue of Fact as to Whether Payments Were actually Tendered*

Fidelity & Guaranty Ins. Co. V. Growth Evolution, Inc. May 2000, No. 1772 (Herron, J.) (December 18, 2001 - 8 pages)

*SUBROGATION/EQUITABLE - Equitable Subrogation Claim May be Maintained Where Assignee Has Satisfied the Entire Debt by Paying the Purchase Price on Notes and has Succeeded to the Subrogation Rights on Those Notes*

Resource Properties XLIV v. PAID, November 1999, No. 1265 and March 2000, No. 3750 (Sheppard, J.) (June 5, 2001 - 13 pages)

*SUFFICIENCY OF PLEADINGS FOR FRAUD/UTPCPL CLAIMS - Element of Intent Must Be Alleged in Claims of Common Law Fraud, Fraudulent Misrepresentation, and UTPCPL Claims for Deceptive or Fraudulent Practices - Intent Element Pleading Required by Law Is State of Mind of the Defendant As To the Falsity of the Misrepresentation at the Time It Uttered Such Misrepresentation In Addition to Intent That Customers Rely on Misrepresentation - Where Defendant Does Not Object to Allegations of State of Mind of Defendant as*

*to the Misrepresentation at the Time It Was Made As Being Insufficiently Pled, It Waives Such Preliminary Objection.*

Oppenheimer v. York, March 2002, No. 4348 (Sheppard, J.)  
(October 25, 2002 - 15 pages)

*SUMMARY JUDGMENT - Summary Judgment May Not be Granted Where There are Material Issues of Fact Concerning Agent's Authority to Sign Disputed Copier Lease*

Copelco Capital, Inc. V. Point Breeze Performing Arts Center September 2000, No. 1269 (Herron, J.) (July 12, 2001 - 4 pages)

*SUMMARY JUDGMENT - Summary Judgment May Not Be Granted as to Corporation's Defamation Claim Based on Statements in a Series of Research Reports and/or Press Releases Concerning the Development of an Anti-viral Drug Because the Sixteen Statements at Issue Are Arguably Either Assertions of Fact or Opinions Which Can Reasonably Be Construed as Implying Undisclosed Facts That May Have a Derogatory Meaning*

Hemispherex Biopharma, Inc. v. Asensio, July 2000, No. 3970 (Sheppard, J.) (September 6, 2001 - 17 pages)

*SUMMARY JUDGMENT - Summary Judgment Is Denied in Declaratory Judgment Action Where Deposition Testimony Creates Genuine Issues of Material Fact Concerning Whether the Nuisance and the Incidents Alleged in the Insured's Complaint Occurred During the Policy Period*

Diamond State Insurance Co., v. NUFAB Corp., April 1000, No. 395 (Herron, J.) (October 7, 2001 - 4 pages)

*SUMMARY JUDGMENT - Disputed Issues of Fact Preclude Summary Judgment on Claim for Management Fees*

RRR Management Co., Inc., v. Basciano et al, January 2001, No. 4039 (Sheppard, J.) (March 4, 2002 - 21 pages)

*SUMMARY JUDGMENT - Summary Judgment is Granted When Plaintiff/Purchaser of an Electrical Contracting Company Fails to Present Facts in Addition to the Averrals in the Complaint for Claims of Fraud, Breach of Fiduciary Duty and Breach of Contract*

DeStefano & Associates v. Roy Cohen et al., June 2000,  
No. 2775 (Herron, J.) (May 23, 2002 - 11 pages)

*SUMMARY JUDGMENT/CONTRACT/INTENTIONAL INTERFERENCE - Where Plaintiff Has Not Completed Relevant Discovery and There Are Disputed Material Facts as to Actual Legal Damages and Defendants' Actions, Summary Judgment on the Attorney/Plaintiff's Intentional Interference With Contractual Relations Claim Cannot Be Granted*

Golomb & Honik, P.C. v. Aja], November 2000, No. 425  
(Herron, J.) (June 19, 2001 - 6 pages)

*SUMMARY JUDGMENT/DECLARATORY JUDGMENT - Material Issues of Fact as to When the Condition of a Patient Seeking Emergency Medical Treatment Has Stabilized Preclude Granting Summary Judgment on Hospital's Request for a Declaratory Judgment as to (1) Whether HMO Must Pay Hospital for Medically Necessary Services Whether the Services Are Rendered Before or After Stabilization*

Temple University v. Americhoice, January 2001, No. 2283  
(Herron, J.) (September 17, 2001 - 11 pages)

*SUMMARY JUDGMENT/FRAUD - Summary Judgment May Not Be Granted Where There Are Material Issues of Fact Concerning Fraud Claim Against Defendant Based on Representations About the EPA Registration of a Product for Public Health Claims*

Textile Biocides, Inc. v. Avecia, Inc., January 2000, No. 1519 (Herron, J.) (July 26, 2001 - 46 pages)



*SUMMARY JUDGMENT/INSURANCE POLICY - Summary Judgment May Not Be Granted Where There are Material Issues of Fact Concerning Whether Security Guard Company's Plant Protection Services - Namely, First Aid, Fire Fighting - Were Performed "in connection with security guard services" For Purposes of Extending Coverage - Summary Judgment May Not Be Granted Where There are Material Issues of Fact Concerning Whether Security Guard Company is "engaged in the business of providing" Medical Services For Purposes of Extending Coverage*

Patricia M. Egger Administratrix of the Estate of Charles Egger v. Gulf Insurance Company, et al., May 2001, No. 1908 (Sheppard, J.) (September 11, 2002 - 16 pages)

*SUMMARY JUDGMENT / MORTGAGE FORECLOSURE - In a Mortgage Foreclosure Action, Summary Judgment May be Granted Where the Mortgagors Admit That the Mortgage is in Default, That They Have Failed to Pay Interest on the Mortgage, and That the Recorded Mortgage is in a Specified Amount.*

Beal Bank v. PIDC Financing Corporation, August Term 2001, No. 02522 (Sheppard, J.) (September 9, 2002 - 17 pages)

*SUMMARY JUDGMENT/TORTIOUS INTERFERENCE/CONTRACT - Contractor's Claim for Tortious Interference With Contract Against Building Consultant to Surety is Dismissed Where Consultant Was Justified to Assist Surety by Apprising it of the Status of the Construction Project and Where the Contract at Issue Had Terminated Before Defendant Became Involved With the Project*

San Lucas Construction Co. v. St. Paul Mercury Insurance Co. February 2000, No. 2190 (Sheppard, J.) (October 11, 2001 -10 pages)

*SURETY - Surety's Motion for Judgment on the Pleadings is Granted*

*Because as a Matter of Law Exculpatory Clauses in Indemnity Agreement Absolve it from Liability for Any Conduct Short of Deliberate and Willful Malfeasance - Indemnity Agreement Authorized Surety to Take Control of the Construction Work and Contract Proceeds Where Plaintiff/General Contractor Was in Default of its Construction Contract or Failed to Pay Sub-contractors*

*San Lucas Construction Co., Inc. v. St. Paul Mercury Insurance Co., February 2000, No. 2190 (Sheppard, J.) (March 14, 2001 - 17 pages)*

*SURETY - Where Guaranty By Its Express Term Reveals That It Is a Surety and Not a Special Guaranty, An Assignee May Sue the Individual Guarantors Pursuant to it - A Special Guaranty, in Contrast, Is a Guaranty Available Only to the Particular Person to Whom It Is Offered*

*Harbour Hospital Services v. GEM Laundry, July 2000, No. 4830, & August 2000, No. 207 (Sheppard, J.) (July 18, 2001 - 27 pages)*

## **T**

*TENDER OFFER - Petition to Enjoin Tender Offer Is Denied Where Plaintiff Does Not Meet Burden of Proof That the Private Placement Memorandum Contained Materially False, Deceptive Disclosures or That the Offer Was Coercive*

*Wurtzel v. Park Towne Place Assoc. Ltd. Partnership, June 2001, No. 3511 (Herron, J.) (January 11, 2002)*

*TIMELINESS/POST-TRIAL MOTION - Motion For New Trial Based on Newly Discovered Evidence Is Dismissed as Untimely Where Plaintiff Failed to Raise This Issue Either With the Appellate Courts or the Trial Court During the Pendency of the Appeal*

Rohm & Haas co. v. Continental Casualty Co., November 1991, No. 3449 (Herron, J.) (February 26, 2002 - 17 pages)

*TORTIOUS INTERFERENCE/CONTRACT - Building Consultant for Surety Company Is Not Liable for Tortious Interference With Contract Where It Was Legally Justified to Assist Surety by Apprising It of the Status of Construction Project*

San Lucas Construction Co. v. St. Paul Mercury Insurance Co. February 2000, No. 2190 (Sheppard, J.) (October 11, 2001 -10 pages)

*TORTIOUS INTERFERENCE/CONTRACT - Contractor Sets Forth Viable Claim for Tortious Interference With Contractual Relations by Alleging That Subcontractor Falsely Misrepresented to Customers That the Contractor Over-billed For Services Performed*

Middletown Carpentry Inc. V. C. Arena & Co., Inc. June 2001, No. 2698 (Sheppard, J.) (November 21, 2001 - 12 pages)

*TORTIOUS INTERFERENCE/CONTRACTUAL RELATIONS - Plaintiff Lawyer Sets Forth Claim For Tortious Interference With Contractual Relations When He Alleges That Defendant Purposefully Acted to Harm Plaintiff's Relationship With a Client Union Through Fraudulent Misrepresentations About His Professional Competence That Caused Him Damage*

Phillips v. Selig, July 2000, No. 1550 (Sheppard, J.) (September 19, 2001 - 20 pages)

*TORTIOUS INTERFERENCE/CONTRACTUAL RELATIONS - Plaintiff Landlord Fails to Set Forth Claim for Tortious Interference With*

*Contractual Relations Where Complaint Against Defendant for Erecting a Fence on Adjacent Property Does Not Establish How Defendant Interfered With Plaintiff's Contractual Relationship With a Third Party*

Kali Dave, Ltd. v. CVS Corporation and Frank Facciolo, May, 2001, No. 819 (Herron, J.) (November 6, 2001 - 6 pages)

*TORTIOUS INTERFERENCE/CORPORATE OPPORTUNITY - Claim for Tortious Interference With Corporate Opportunity Is Stricken Where Complaint Fails to Allege the Defendants Took Purposeful Action Specifically Intended to Harm Plaintiffs' Business Relations With Prospective Third Parties*

Harbour Hospital Services v. GEM Laundry, July 2000, No. 4830, & August 2000, No. 207 (Sheppard, J.) (July 18, 2001 - 27 pages)

*TORTIOUS INTERFERENCE/PROSPECTIVE CONTRACTUAL RELATIONS - It is Not Necessary to Identify Specific Prospective Contracts to Set Forth a Claim for Tortious Interference With Prospective Relations Where Complaint Alleges That Defendant's Conduct Barred Plaintiff From Doing Business in its Territory - Punitive Damages May be Claimed for Tortious Interference With Contract*

Hydrair, Inc. v. National Environmental Balancing Bureau, February 2000, No. 2846 (Herron, J.) (April 23, 2001 - 19 pages)

*TRADE NAMES/UNFAIR COMPETITION - Plaintiff Failed to Establish Clear Right to Relief on Unfair Competition Common Law Claim Where No Proof of Was Presented that Confusion Was Likely Between Its Trade Name and Defendant's Trade Name - Likelihood of Confusion with Geographic Terms Is Determined by Whether That Term Has Acquired a Secondary Meaning*

Medical Resources Inc. v. Bruce Miller and Northeast Open MRI, Inc., November 2000, No. 2242 (Sheppard, J.) (January 29, 2001 - 14 pages)

*TRADE SECRETS/CUSTOMER & PRICE LISTS - Petitioner Failed to*

*Establish that Its Price and Customer Lists Are Particular or Unique to Its Business Or That It Invested Time, Effort or Resources in Developing These Lists As To Deserve Protection as a Trade Secret or Confidential Information*

Olympic Paper Co. v. Dubin Paper Co. & Brian Reddy,  
October 2000, No. 4384 (Sheppard, J.)(December 29, 2000  
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*TRADE SECRETS/NOTE PURCHASERS - Plaintiff's Allegations That Defendant Bank's Disclosure of Confidential Information to Prospective Note Purchasers Constitutes Misappropriation of Trade Secrets Do Not Present a Viable Claim Where the Relevant Agreement Allows the Disclosure of Such Information to Prospective Note Purchasers*

Philadelphia Plaza - Phase II v. Bank of America  
National  
Trust and Savings Association, May 2002, No. 332  
(Herron, J.) (May 30, 2002 - 15 pages)

*TRADE SECRETS/RAILCAR INTERIORS - Trade Secrets Must Be the Particular Secrets of the Complaining Employer, Not General Secrets of the Trade in Which He is Engaged - Trade Secrets Are Protected Under the Common Law of Trade Secrets - Confidentiality Agreements in Employment Contracts Do Not Create Or Broaden the Protection, but Are Evidence of the Confidential Nature of the Data Involved - Trade Secrets Are an Issue of Fact and the Plaintiff Has the Burden of Establishing Trade Secret Status - Plaintiff Failed to Establish that the Design of its Products Are Trade Secrets Where These Products Are in Public View and Susceptible to Reverse-Engineering - The Design of Plaintiff's Spare Parts Is Not a Trade Secret Because A Third Party, by definition, Initially Designed and Produced an Original of the Part that Requires Replacement - The Kitting Process Is Not a Trade Secret Where Plaintiff Presented No Evidence of Secret Procedures and Where the Kitting Process Is Known in the Transit and Automobile Industries - Customer Lists Are at the Periphery of Trade Secret Law and Are Not Entitled to Protection if the Customer Identities Would Be Generally Known to all Firms in the Same Business as the Employer - Identities of Railcar Parts*

*Suppliers Are Not Trade Secrets When Available through the Thomas Registry and Easily Obtainable in the Industry - Plaintiff Company Failed to Offer Concrete Evidence About Its Business that Might Constitute a Trade Secret Such as Profit Margins, Business Plans or Outstanding Bids*

United Products Corp. v. Transtech Manufacturing, Inc.,  
August 2000, No. 4051 (Sheppard, J.)(November 9, 2000 -  
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*TRADE SECRETS - Under Either Pennsylvania or Washington law, an Employer Is Entitled to Protect Its Trade Secrets - Employer Has Burden of Establishing Existence of Trade Secrets - Trade Secrets Must Be Particular Secrets Not Information Generally Known in the Industry or Ascertainable Through Proper Means - Employer Failed to Meet Burden of Proving that Worker Salaries, Invoicing Practices or Worker Identities Are Trade Secrets*

Labor Ready, Inc. v. Trojan Labor and Sally Czeponis,  
December 2000, No. 3264 (Sheppard, J.)(January 25, 2001  
-15 pages)

*TRADE SECRETS - Names of Key Referring Physicians on a Computer Designated Imaging Center Information System Are Not Trade Secrets in the Field of Diagnostic Imaging Centers that Provide Magnetic Resonance Imaging Absent Proof of Use of Specific Referring Physician Statistics or Insurance Information -*

Medical Resources v. Bruce Miller and Northeast Open  
MRI, November 2000, No. 2242 (Sheppard, J.)(January 29,  
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*TRADE SECRETS/INVENTION - Plaintiff Cannot Sustain Causes of Action For Misappropriation of Trade Secret or Invention Since He Alleges That He Voluntarily Disclosed His Idea for the Benefit of*

*His Employer/Defendant and He is Still an Employee of the Defendant*

Babiarz v. Bell Atlantic - Pennsylvania, Inc. August, 2000, No. 1863 (Herron, J.) (July 10, 2001 - 38 pages)

*TRANSFER FROM FEDERAL COURT - Transfer of Case from Federal Court Was Sufficiently Prompt and in Compliance with 42 Pa.C.S.A. § 5103 Where Plaintiff Filed Certified Copies of the Federal Docket But Not of the Pleadings Filed in Federal Court at the time of the Transfer but Subsequently Filed Copies of these Pleadings in State Court Less Than 3 Months After the Federal Dismissal*

Hemispherx Biopharma, Inc. v. Manuel Asensio, et al., July 2000, No. 3970 (Sheppard, J.) (February 14, 2001 - 29 pages)

## U

*UNCLAIMED PROPERTY LAW - Commonwealth Failed to State Cognizable Claim Under the Unclaimed Property Law, 72 P.S. §§ 1301.1 et seq. Because the Tangible Property That Is Claimed Must Be Inside the Commonwealth and Here Northern Illinois District Court Holds Jurisdiction Over the Relevant Funds*

Commonwealth of Pennsylvania v. BASF Corporation, April 2000, No. 3127 (Herron, J.) (March 15, 2001 - 34 pages)

*UNCLEAN HANDS - Allegation That Preliminary Injunction Requested by Tenants Should Not Be Issued Because of Their Unclean Hands in Installing a Kitchenette on the Premises Without a License to do so is Without Merit - To Show Unclean Hands, Defendant Must Show That Tenants Acted Unfairly or With Fraud, Deceit or Iniquity in the Matter In Which They Seek Relief*

Elfman v. Berman, February 2001, No. 2080 (Herron, J.)  
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*UNCLEAN HANDS - Defense of Unclean Hands Not Applicable Where Alleged Misconduct of Plaintiff or Its Assignor, Even If Proven to Rise to the Level of Fraud or Deceit, Do Not Relate Directly to the Debt Owed By Defendants - Alleged Misconduct Also Does Not Impact on Satisfaction of Assignor's Obligations to Owner*

for Resource Properties XLIV, Inc. v. Philadelphia Authority  
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al., March 2000, No. 3750 (Sheppard, J.) (August 2,  
2002 - 23 pages)

*UNFAIR TRADE PRACTICE & CONSUMER PROTECTION LAW - Complaint Set Forth Viable Claim Under UTPCPL by Alleging That Defendant/Drug Manufacturer Engaged in Deceptive Campaign of Suppressing Its Own Research That There Were Bioequivalent Drugs to its Product Synthroid*

Commonwealth of Pennsylvania v. BASF Corporation, April  
2000, No. 3127 (Herron, J.) (March 15, 2001 - 34 pages)

*UNFAIR TRADE PRACTICE & CONSUMER PROTECTION LAW - Plaintiffs' Allegations That Defendants Improperly Limited Coverage for Chiropractic Services by Allowing Non-qualified Personnel to Make Treatment Decisions, Relying of Improper Guidelines to Make Medical Necessity Determinations, Failing to Disclose Those Guidelines and Misrepresenting the Terms and Conditions of Their Health Care Plans Are Sufficient to Allege*



*Misfeasance and Make Out a Cause of Action Under the UTPCPL - Nonfeasance Alone is Not Sufficient to Set Forth a Claim Under the UTPCPL*

*Pennsylvania Chiropractic Association v. Independence Blue Cross*, August 2000, No. 2705 (Herron, J.) (July 16, 2001 - 36 pages)

UNFAIR TRADE PRACTICE & CONSUMER PROTECTION LAW - *Plaintiffs Have Set Forth All Elements of Fraud as Required by the Catch-All Provision of the UTPCPL by Pleading, Inter Alia, That Defendants Engaged in Fraudulent Conduct and Plaintiffs Detrimentally Relied on Defendant's Misrepresentations as to Closing Costs*

*Koch v. First Union Corp., et al*, May 2001, No. 549 (Herron, J.) (January 10, 2002 - 26 pages)

UNFAIR TRADE PRACTICE & CONSUMER PROTECTION LAW - *Allegation That Plaintiffs Sustained Out-of-Pocket Expenses in Replacing Defendants' Defective Tire Was an "Ascertainable Loss" Sufficient to Sustain a Claim Under the UTPCPL - Allegation That Defendants Actively and Intentionally Concealed the Defects of the Tires Allows Plaintiffs to Pursue UTPCPL Claim - Attorney Fees May Be Awarded For Successful UTPCPL Claim*

*Grant v. Bridgestone Firestone*, September 2000, No. 3668 (Herron, J.) (January 10, 2002 - 13 pages)

UNFAIR TRADE PRACTICE & CONSUMER PROTECTION LAW - *Class Action Claim for Breach of Express Warranty in the Marketing of Propulsid Is Legally Insufficient Where Complaint Fails to Allege That Plaintiff Ever Heard or Read Any of the Allegedly Defective Warranties*

*Boyd v. Johnson & Johnson*, January, 2001, No. 965 (Herron, J.) (January 22, 2002 - 7 pages)

UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT - *Under Pennsylvania Law a Manufacturer Has a Duty to Inform Ordinary Consumers of Allegedly Known Safety Defects in their Automobiles. The Presumption of Reliance Extends to an Ordinary Consumer, When a Defect is Material. The Economic Loss Doctrine Does Not Bar an Unfair Trade Practices and Consumer Protection Act ("UTPCPL") Claim for Deceptive Practices Where the Plaintiff's Only Remedy Lies in the UTPCPL. Federal Preemption Bars Use of the UTPCPL to Prosecute Fraudulent Statements Made to a Federal Agency.*

Shirley Zwiercan v. General Motors Corp., June 1999, No. 3235 (Cohen, J.)(September 11, 2002 - 16 pages)

UNFAIR TRADE PRACTICE & CONSUMER PROTECTION LAW/ASCERTAINABLE LOSS - *Plaintiff Sets Forth the Requisite "Ascertainable Loss" for a UTPCPL Claim By Alleging That She Must Incur Costs to Remedy the Defective Front Seats in Her Automobile Because They Fail to Provide Adequate Protection From the Impact of Rear-End Collisions*

Zwiercan v. General Motors, Inc., June 1999, No. 3235 (Herron, J.) (May 22, 2002 - 8 pages)

UNFAIR TRADE PRACTICE & CONSUMER LAW/CLASS CERTIFICATION - *Class Action by Homeowners Against Loan Broker Who Charged a Mortgage Broker Fee Cannot Be Certified Because Plaintiffs' Claims Do Not Present Predominating Common Questions of Fact and Law - A Private Class Action Plaintiff Asserting a Claim Under Section 9.2 of the UTPCPL Must Show A Causal Connection Between the Unlawful Practice and Plaintiffs' Loss - Providing That an Agency Relationship Existed Between the Class Members and Defendant Loan Brokers Raises Individual Factual Questions*

Floyd v. Clearfield, February 2001, No. 2276 (Herron, J.) (October 8, 2001 - 15 pages)

UNFAIR TRADE PRACTICE & CONSUMER PROTECTION LAW/CATCH-ALL PROVISION/CONSUMER LEASING ACT - *Plaintiff Who Alleges That the Early Termination Formula in Defendant's Standard Motor Vehicle Lease Was Unfair and Deceptive Fails to Set Forth Viable Claim Under the UTPCPL Because the Early Termination Formula Is Clearly Set Forth in the Lease and Cannot Be Construed as Deceptive - An Alleged Violation of the Federal Consumer Leasing Act Does Not Constitute a Per Se Violation of the UTPCPL Where Neither Statute Provides That a Violation of the CLA Is a Per Se Violation of the UTPCPL*

*Abrams v. Toyota Motor Credit Corp.* - April 2001, No. 503  
(Herron, J.) (December 5, 2001 - 23 pages)

UNFAIR TRADE PRACTICE & CONSUMER PROTECTION LAW/DAMAGES - *To Support a UTPCPL Claim, Plaintiff Must Allege Ascertainable Losses While a Claim For Breach of Warranty Requires Manifest Injury*

*Solarz v. Daimler Chrysler Corp.*, April 2001, No. 2033  
(Herron, J.) (March 13, 2002 - 26 pages)

UNFAIR TRADE PRACTICE & CONSUMER PROTECTION LAW/DECEPTIVE CONDUCT - *Because a Claim Under the Catch-All Provision of the UTPCPL as Amended in 1996 Can Be Premised on Fraudulent or Deceptive Conduct, Class Action Plaintiffs Do Not Have to Allege Each Element of Common Law Fraud If They Are Asserting Deceptive Conduct - Plaintiffs Must Still Show That They Were Damaged by Defendant's Deceptive Conduct - Plaintiffs Must Show Reliance If They Are Alleging Fraudulent Misrepresentation, Fraud, or False Advertising Under the UTPCPL*

*Weiler v. Smithkline Beecham Corp.*, March 2001, No. 2422  
(Herron, J.) (October 8, 2001 - 14 pages)

UNFAIR TRADE PRACTICE & CONSUMER PROTECTION LAW/FALSE ADVERTISING/WRITTEN WARRANTIES/INTERNET ADS/FRAUD - *Class Action Complaint Set Forth Valid Claim for False Advertising Under UTPCPL by Alleging That Defendant Falsely Advertised That Its Product Cold-Eeze Had Beneficial Health Effects Against Colds,*

*Pneumonia and Allergies and That There Was a Scientific Basis for Claiming These Benefits - These Allegations Would Support Inference That Ads Made a Difference in Some Consumer's Decision to Buy Cold-Eeze and Increased Both Demand and Price for the Product - Plaintiffs Do Not Have to Allege That They Personally Saw or Relied on the Advertisement - Television and Radio Ads Do Not Constitute Writings for the Purposes of a Breach of Written Warranty Claim Under the UTPCPL - Internet Ads Fall Within Definition of a Writing Under the UTPCPL as Words and Letters in a Visible Medium That Can be the Basis for a Claim of Breach of Written Warranty - Complaint Failed to Set Forth Claim of Fraud Under UTPCPL Because it Did Not Allege All Elements of Common Law Fraud, in Particular, Justifiable Reliance*

Tesauro v. The Quigley Corporation, August 2000, No. 1011, (Herron, J.) (April 9, 2001 - 12 pages)

*UNFAIR TRADE PRACTICES & CONSUMER PROTECTION LAW/PRIVATE ACTION - Where Plaintiffs in Class Action allege Damages Generally But Fail to Allege That They Personally Suffered Damages Due to Defendant's Violation of UTPCPL, Demurrer is Sustained*

Grant v. Bridgestone Firestone, September 2000, No. 3668 (Herron, J.) (June 12, 2001 - 10 pages)

*UNFAIR TRADE PRACTICE & CONSUMER PROTECTION LAW/SUMMARY JUDGEMENT/CLASS ACTION - Summary Judgment Is Entered Against Plaintiff Who Claimed That Defendant Breached the UTPCPL Where Plaintiff Fails to Show That She Suffered a Loss of Money or Property as a Result of Saturn's Representation That Her 1996 Saturn Had Been Treated With Scotchgard or Another Stain Resistant Chemical - Plaintiff's Failure to Present Evidence That the Scotchgard Representations Formed a Basis of the Bargain for Her 1996 Saturn Purchase Is Another Basis For Granting Summary Judgment to Preclude Her Claim*

Green v. Saturn Corp., January 2000, No. 685 (Herron, J.)  
(October 24, 2001 - 16 pages)

*UNIFORM COMMERCIAL CODE - Plaintiff Who Alleges That the Early*

*Termination Formula in Defendant's Standard Motor Vehicle Lease Constitutes a Provision for Liquidated Damages That is Unreasonable Does Not Set Forth a Viable Claim Under Section 2A-504 of the UCC Because This Section Only Applies Where the Lessor Withholds or Stops Delivery of the Leased Goods*

Abrams v. Toyota Credit Corp., April 2001, No. 503  
(Herron, J.) (December 5, 2001 - 23 pages)

*UNIFORM COMMERCIAL CODE - Corporation's Claims Against Bank For Failure to Alert It to Embezzlement by Plaintiff's Agent Were Not Legally Insufficient by Virtue of Being Displaced by the UCC Where Bank Does Not Challenge the Viability of the Claim Under the UCC But Objects Only to the Plaintiff's Failure to Identify the Particular UCC Provision at Issue*

IRPC, Inc., v. Hudson Bancorp., February 2001, No. 474,  
(Sheppard, J.) (January 18, 2002 - 15 pages)

*UNIFORM FIDUCIARIES ACT - While it is true that the UFA shields depositary banks from liability in certain instances, the UFA does not relieve a bank from liability unless the fiduciary actually has authority to endorse the instrument at issue, and the bank has no actual knowledge that the fiduciary is breaching his duty.*

Sine, et. al. v. PNC Bank, N.A., November Term, 2001 No. 03221 (Cohen, J.) (November 15, 2002 - 6 pages)

*UNIFORM FIDUCIARIES ACT - The UFA bars claims based upon negligence.*

Sine, et. al. v. PNC Bank, N.A., November Term, 2001 No. 03221 (Cohen, J.) (November 15, 2002 - 6 pages)

*UNILATERAL CONTRACTS - Retirement Benefit Plan in Partnership Agreement Should Be Analyzed Under Principles Applicable to Unilateral Contracts*

Abbott v. Schnader Harrison Segal & Lewis LLP, June 2000, No. 1825 (Herron, J.)(February 28, 2001 -26 pages)

*UNJUST ENRICHMENT - Valid Claim for Unjust Enrichment Is Set Forth Where Complaint Alleges that Plaintiff Conferred Benefits on Defendant by Providing Medical Equipment and Services and Defendant Retained These Benefits Without Payment*

Apria Healthcare Inc. v. Tenet HealthSystem, Inc., February 2000, No. 289 (Herron, J.)(February 12, 2001 - 10 pages)

Tesauro v. The Quigley Corporation, August 2000, No. 1011,(Herron, J.) (April 9, 2001 - 12 pages) (Complaint set forth claim for unjust enrichment by alleging that plaintiff bestowed the benefit of money on defendant for a product that was purported to be a health remedy but was not)

*UNJUST ENRICHMENT - Claim For Unjust Enrichment May Be Pled in the Alternative to a Breach of Contract Claim*

Commonwealth of Pennsylvania v. BASF Corporation, April 2000, No. 3127 (Herron, J.) (March 15, 2001 - 34 pages)

Babiarz v. Bell Atlantic - Pennsylvania, Inc. August, 2000, No. 1863 (Herron, J.) (July 10, 2001 - 38 pages)

*UNJUST ENRICHMENT - Claims for Unjust Enrichment and, in the Alternative, Breach of Contract May Be Set Forth in the Same Complaint - A Claim for Unjust Enrichment May Not Be Based on a Breach of a Written Contract - Claim of Unjust Enrichment Lacks Specificity Where it Fails to State When Written Contracts Were Not in Effect*

Corson v. IBC, December 2000, No. 2148 (Herron, J.)  
(June 15, 2001 - 10 pages)

Gregg v. IBC December 2000, No. 3482 (Sheppard, J.)  
(June 14, 2001 - 20 pages)

*UNJUST ENRICHMENT - Special Damages Such as Those for Unjust Enrichment Must Be Set Forth With Specificity - Request for Damages is Sufficiently Sufficient Where It is Alleged That Information Necessary to Compute Damages is in Exclusive Control of Defendant*

No. Goldstein & Co., P.C. v. Goldstein CPA, January 2001,  
3343 (Herron, J.) (June 14, 2001 - 12 pages)

*UNJUST ENRICHMENT - Claim For Unjust Enrichment Is Set Forth Where Complaint Alleges That Plaintiff Provided Defendant With Covers But Did Not Receive Payment for Them*

Thermacon Enviro Systems, Inc. V. GMH Associates, March 2001, No. 4369 (Herron, J.) (July 18, 2001 - 12 pages)

*UNJUST ENRICHMENT - Claim for Unjust Enrichment May Be Alleged as an Alternative to Breach of Contract - Claim of Unjust Enrichment Is Sufficiently Specific Where It Allows Defendant to Frame a Defense and Is Not a Subterfuge*

PDP Enterprises, Inc. v. Northwestern Human Services, Inc. January 2001, No. 509 (Herron, J.) (August 31, 2001

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10 pages)

*UNJUST ENRICHMENT - Claim for Unjust Enrichment Is Legally Insufficient Where Plaintiffs Fail to Allege That They Conferred a Benefit on the Defendant, the Defendant Appreciated the Benefit*

*and the Defendant Retained the Benefit Under Circumstances That Would Make It Inequitable for the Defendant to Retain It Without Payment*

Phillips v. Selig, July 2000, No. 1550 (Sheppard, J.)  
(September 19, 2001 - 20 pages)

UNJUST ENRICHMENT -Action For Unjust Enrichment Is Not Viable  
When the Claim Is Based on a Written Contract

No. Babiarz v. Bell Atlantic - Pennsylvania, August 2000,  
1863(Herron, J.) (November 20, 2001 - 11 pages)

503 Abrams v. Toyota Motor Credit Corp. - April 2001, No.  
(Herron, J.) (December 5, 2001 - 23 pages)

UNJUST ENRICHMENT/QUANTUM MERIUT - Claims For Unjust Enrichment  
and Quantum Meriut Are Viable Where Complaint Alleges That  
Defendants Benefitted From Plaintiff's Legal Services But Did Not  
Pay For Them

7 Fineman & Bach, P.C. v. Wilfran Agricultural Industries,  
Inc. March 2001, No. 2121 (Herron, J.) (July 30, 2001 -  
pages)

UNJUST ENRICHMENT/QUANTUM MERUIT - Archdiocese Set Forth Valid  
Claim for Unjust Enrichment When It Alleged That It Was Forced to  
Pay Another Contractor That Should Have Been Covered Under  
Contract With Defendant and Defendant Benefitted by the Money It  
Saved in Not Performing Under the Contract - While Causes of  
Action for Breach of Contract and Unjust Enrichment Can Be Set  
Forth in the Same Complaint, Plaintiffs Cannot Recover on a Claim  
for Unjust Enrichment if Such Claim is Based on Breach of a  
Written Contract



Honeywell International, Inc. V. Archdiocese of Philadelphia, May 2001, No. 2219 (Herron, J.) (October 24, 2001 - 7 pages)

UNTIMELY FILING - *Summary Judgment Motion Will Not Be Dismissed as Untimely Where Movant Gives Good Cause for the Delay and the Other Party Fails to Show Prejudice*

First Republic Bank v. Brand, August 2000, No. 147 (Herron, J.) (January 8, 2002 - 11 pages)

UNTIMELY FILING - *Where Preliminary Objections Are Filed 40 Days After Receipt of the Complaint, They Will Be Stricken as Untimely Where No Just Cause Is Given For the Delay*

Laser Eye Institute v. Schulman, August 2001, No. 435 (Herron, J.) (February 6, 2002 - 2 pages)

UTPCPL/JURY DEMAND - *The UTPCPL Does Not Include A Right to a Jury Trial.*

Oppenheimer v. York, March 2002, No. 4348 (Sheppard, J.) (October 25, 2002 - 15 pages)

## V

VENUE - *Where Complaint Alleges that Corporation "did substantial business in Philadelphia County," Preliminary Objections Asserting Improper Venue Under Pa.R.C.P. 2179(a)(2) Raise Issues of Fact as to Whether Corporation "Regularly Conducts Business in the County" -Under this Rule, Plaintiff Does Not Have to Show that the Corporation Is Regularly Conducting Business at the Time the Complaint Is Filed - Venue Might Be Predicated on Past Corporate Activity*

Acme Markets, Inc. v. Dunkirk et al., February 2000, No.

1559 (Herron, J.)(September 18, 2000 - 34 pages)

*VENUE - Where There Is an Issue of Fact as to Whether a Corporation Regularly Conducts Business in Philadelphia, Discovery Must be Ordered*

Mesne Properties, Inc. v. Penn Mutual Life Insurance Co.,

July 2000, No. 1483 (Herron, J.) (April 6, 2001 - 14 pages)

Thermacon Enviro Systems, Inc. V. GMH Associates, March 2001, No. 4369 (Herron, J.) (July 18, 2001 - 12 pages)

*VENUE - Venue is Proper Where a Corporation Regularly Conducts Business in Philadelphia - Under the Regularly Conducts Business Test of Rule 2179(a)(2), the Contacts Do Not Have to Be Related to the Cause of Action - Where a Corporation's Purpose Is to Own and Rent Real Estate, the Quantity of Its Contacts with Philadelphia Is Sufficient Where the Corporation Owns and Rents 25 Properties in the City From Which It Derives \$1 Million in Rent Per Year - Where Defendant Fails to Show That Plaintiff's Choice of Forum Is Vexatious, Oppressive or Inconvenient, Petition to Transfer Under Rule 1006(d)(1) Is Denied*

PDP Enterprises, Inc. v. Northwestern Human Services, Inc. January 2001, No. 509 (Herron, J.) (August 31, 2001

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10 pages)

*VENUE - Under Pa. R.C.P. 2103(b), An Action Against a Political Subdivision Located in Delaware County May Only Be Brought in Delaware County - Community College Falls Within Definition of Political Subdivision - Since Venue is Proper in Delaware County, The Action Will Be Transferred to That County Rather Than Be Dismissed*

Official Committee of Unsecured Creditors of Downingtown Industrial and Agricultural School v. Delaware County Community College, October 2001, No. 3513 (Herron, J.) (June 11, 2002 - 5 pages)

*VENUE - Venue is Improper Where Defendants Do Not Regularly Conduct Business in Philadelphia - None of the Defendants Have a Physical Presence in Philadelphia Since They Do Not Own Property, Operate a Branch or Maintain Assets in the County - Merely Advertising in a Local Newspaper Is Not Sufficient to Establish That Defendants Regularly Conduct Business in Philadelphia*

Medical Staffing Network, Inc. v. Keystone Care Corp.  
July 2001, No. 1641 (Herron, J.) (July 8, 2002 - 9

pages)

*VENUE - Venue is Proper Where the Breach of Contract Claim Asserting Failure to Pay for Services Rendered Arose in Philadelphia Because Payment, In the Absence of a Contrary Agreement, Would Be Due at Plaintiff's Principal Place of Business Which is Undisputed as Being in Philadelphia - Factual Assertions Made By Defendant Who Failed to Attach Notice to Plead to Objections Must Be Disregarded - Factual Averments Made By Respondent Will Also Be Disregarded Where Response Was Not Accompanied By Verification.*

Duane Morris v. Nand Todi, October 2001, No. 1980  
(Cohen, J.) (September 3, 2002 - 10 pages)

*VENUE - Venue Is Improper Where Defendants Did Not Regularly Conduct Business In Philadelphia Notwithstanding That Limited Pre-Incorporation Activities Did Take Place In Philadelphia and Original Articles of Incorporation Showed Philadelphia Address - Record Demonstrates That Corporation Moved and Conducted Its Business In Montgomery County - Mere Physical Presence of Individual Defendant Who Runs Separate and Distinct Business and Was Served In Philadelphia Is Not Sufficient to Find Venue in Philadelphia Proper*

Feltoon v. James A. Nolen, et al., March 2002, No. 4314  
(Sheppard, J.)(November 1, 2002 - 11 pages)

*VENUE/FORUM SELECTION CLAUSE - Forum Selection Clause in Subcontract is Not Applicable Where the Claims at Issue in the Law Suit Are Independent of That Subcontract - Application of the Forum Selection Clause Would Not be Reasonable Where Its*

*Enforcement Would Preclude Plaintiff From Suing Jointly and Severally Liable Defendants in the Same Forum*

Gary Lorenzon Contractors, Inc. V. Allstates Mechanical Ltd. December 2000, No. 1224(Sheppard, J.) (May 10, 2001- 9 pages)

*VENUE/FORUM SELECTION CLAUSE - Forum Selection Clause Is Enforced Where It Has Been Freely Agreed Upon by the Parties and Where it is Not Unreasonable at the Time of Litigation - In the Absence of Fraud, Failure to Read a Provision is Not an Excuse or Defense to a Forum Selection Clause - Maryland Is Not an Unreasonable Forum For This Case*

Nelson Medical Group v. Phoenix Health Corporation, December 2001, No. 3078 (Sheppard, J.) (May 28, 2002 - 6 pages)

*VENUE/FORUM SELECTION CLAUSE - Forum Selection Clause in Document Attached to the Contract is Not Applicable Where the Parties Did Not Freely Agree to the Clause - Court - Ordered Discovery Revealed That There Was No Meeting of the Minds as to Venue Despite the Forum Selection Clause Purporting to Be Part of the Contract that was Executed by Both Parties Where the Forum Selection Clause Was Not Separately Executed.*

Alti v. Dallas European, April 2002, No. 2843 (Cohen, J.)  
(September 30, 2002 - 5 pages).

*VENUE/IMPROPER - In an Action Against A Partnership, Venue Is Proper Under Rule 2130(a) Where the Quality of a Partnership's Actions in the Forum in Advertising and Meeting Clients in Philadelphia Is In Direct Furtherance of the Partnership's Purpose - The Quality Prong of Rule 2130(a) Is Satisfied Where 27% of the Defendant's Clients Are in Philadelphia and They Generate 33% of Its Total Billings*

Marvin Levey v. Cogen Sklar LLP, July 2001, No. 2725  
(Herron, J.) (April 11, 2002 - 8 pages)

*VENUE/IMPROPER/TESTAMENTARY TRUST - Under 20 Pa.C.S.A. Section 721, the Venue Over The Administration of Real and Personal Property Held In a Testamentary Trust Is Exclusively in the County Where the Situs of the Trust Is Located and Where the Will Was First Probated - Where Girard Trust Owns Property in Schuylkill County and the Cause of Action at Issue Relates to Coal Refuse Banks on the Property, Venue Is Proper in Philadelphia Under the Relevant Statute*

City of Philadelphia v. Mammoth Coal Co., May 2001, No. 2799 (Herron, J.) (April 11, 2002 - 7 pages)

*VENUE/UNJUST ENRICHMENT - Where Plaintiffs Allege That Defendant Corporation Was Unjustly Enriched by Their Purchase of Stock, Venue Under Pa. R.C.P. 2179(4) Is Proper Where the Transaction That Is The Basis of the Unjust Enrichment Claim Occurred - Venue Is Proper In the County in Which Defendants Were Unjustly Enriched or at the Principal Place of Business Where Monetary Benefits Were Realized - The Actual Sale of Stock in Philadelphia is Merely a "Part of the Transaction" for the Purposes of This Test*

Stein et al. V. Crown American Realty Trust, January 2001, No. 1016 (Sheppard, J.) (October 3, 2001 - 7 pages)

*VOLUNTARY PAYMENT RULE - Under the Voluntary Payment Rule, Where One Voluntarily and Without Fraud or Duress Pays Money to Another With Full Knowledge of the Facts, the Money Paid Cannot Be Recovered*

Abrams v. Toyota Motor Credit Corp. - April 2001, No. 503  
(Herron, J.) (December 5, 2001 - 23 pages)

## W

*WAGE PAYMENT AND COLLECTION LAW - Plaintiff Has a Viable Claim Under the WPCL Where Complaint Alleges That Defendant/Employer Offered 6,000 Stock Options Pursuant to an Offer of Employment But Then Failed to Grant 4,000 of Those Options*

Denny v. Primedica Argus Research Laboratories, April 2000,  
No. 3792 (Sheppard, J.) (May 2, 2001 - 9 pages)

*WAIVER/EQUITABLE ESTOPPEL - Where Facts Are Unclear in Management Fee Dispute As to Whether Plaintiff Waived Management Fees or Is Equitably Estopped, Summary Judgment May Not Be Granted*

Rohm & Haas Co. v. Continental Casualty Co., November 1991,  
No. 3449 (Sheppard, J.) (February 26, 2002 - 17 pages)

*WARRANTY/BREACH - Where Plaintiffs in Class Action Allege Damages Generally But Fail to Allege That They Personally Suffered Damages Due to Defendant's Breach of Warranty, Demurrer is Sustained*

Grant v. Bridgestone Firestone, Inc., September 2000, No. 3668 (Herron, J.) (June 12, 2001 - 10 pages)

*WARRANTY/BREACH - Claims for Breach of Warranty Are Not Limited to Claims Under the UCC or Involving Sales*

Stonhard v. Advanced Glassfiber Yarns, Inc. April 2001,  
No. 2427 (Herron, J.) (November 21, 2001 - 7 pages)

*WARRANTY/BREACH/NOTICE - Demurrer Asserting Lack of Notice Overruled Where the Filing of Complaint May Be Deemed Sufficient for Notice Requirement - Allegation that Requests for Reimbursement for Alleged Deficiencies is Also Sufficient for Notice*

Precision Towers, Inc. v. Nat-Com, Inc. and Value Structures, Inc., April 2002, No. 2143 (Cohen, J.) (September 23, 2002 - 9 pages)

*WARRANTY/EXPRESS - Class Action Claim For Breach of Express Warranty in the Marketing of Propulsid Is Legally Insufficient Where the Complaint Fails to Allege That Plaintiffs Ever Heard or Read Any of the Allegedly Defective Warranties*

Boyd v. Johnson & Johnson, January, 2001, No. 965  
(Herron, J.) (January 22, 2002 - 7 pages)

*WARRANTY/IMPLIED - Allegations of Implied Warranty of Fitness Not Adequately Pled Where Plaintiff's Alleged Particular Purpose Is Merely a Characteristic of How the Defendant's Product Performs in its Ordinary Purpose - Efficiency Is Not a Particular Purpose Of A Heating and Ventilating Unit.*

Oppenheimer v. York, March 2002, No. 4348 (Sheppard, J.)  
(October 25, 2002 - 15 pages)

*WARRANTY, IMPLIED/FITNESS FOR PARTICULAR PURPOSE/MERCHANTABILITY - To Maintain a Claim for Breach of Implied Warranty, Plaintiffs Must Allege Damages - Where Class Action Plaintiffs Fail to Allege That They Personally Suffered Damages Due to the Lack of a Park Lock Brake in Their MiniVan, Their Claim Is Dismissed - Filing Complaint Was Adequate Notice for Breach of Express and Implied Warranty Claims - Class Action Plaintiffs Fail to Set Forth Claim for Breach of implied Warranty of Fitness for Particular Purpose Because Providing "Safe and Reliable Family Transportation" Is Not a Particular Purpose of a MiniVan But Its Ordinary Purpose - Class Action Plaintiffs Set Forth a Viable Claim For Breach of Implied Warranty of Merchantability Where They Allege That a MiniVan Without Park Lock Brakes Was Not Fit for the Ordinary Purpose For Which Such Goods Are Sold Which Is Safe, Reliable Family Transportation - The Ordinary Purpose of a MiniVan Cannot Be Limited to Transportation Rather Than Reliable Family Transportation*

Solarz v.DaimlerChrysler, April 2001, No. 2033  
(Herron, J.) (March 13, 2002 - 26 pages)

WARRANTY, IMPLIED/FITNESS FOR PARTICULAR PURPOSE/MERCHANTABILITY - To Maintain a Claim For Breach of Implied Warranty, Plaintiffs Must Allege Damages - Where Class Action Plaintiffs Fail to Allege That They Personally Suffered Damages Due to the Lack of a Park Lock Brake on Their MiniVan, Their Claim Is Dismissed - Filing Complaint Was Adequate Notice for Breach of Express and Implied Warranty Claims - Class Action Plaintiffs Fail to Set Forth Claim for Breach of Implied Warranty of Fitness For Particular Purpose Because Providing "Safe and Reliable Family Transportation" Is Not a Particular Purpose of a MiniVan But Its Ordinary Purpose - Class Action Plaintiffs Set Forth a Viable Claim For Breach of Implied Warranty of Merchantability Where They Allege That a MiniVan Without Park Lock Brakes Was Not Fit for the Ordinary Purpose For Which Such Goods Are Sold Which Is Safe, Reliable Family Transportation - The Ordinary Purpose of a MiniVan Cannot Be Limited to Transportation Rather Than Reliable Family Transportation

Solarz v. Daimler Chrysler, April 2001, No. 2033  
(Herron, J.) (March 13, 2002 - 26 pages)

*WARRANTY/LETTER OF CREDIT - No Breach of Warranty Claim Pursuant to Pennsylvania's version of the U.C.C. is Supportable Where Confirming Bank Withdrew Its Draw on Standby Letter of Credit*

Sorbee International Ltd. v. PNC Bank, N.A., et al., May 2001, No. 806 (Herron, J.) (July 16, 2002 - 9 pages)

WARRANTY/MERCHANTABILITY/DEFECT - To Establish a Claim for Breach of Warranty of Merchantability, Plaintiff Must Establish a Manifestation of the Defect in the Product

Zwiercan v. General Motors, Inc., June 1999, No. 3235  
(Herron, J.) (May 22, 2002 - 8 pages)

*WARRANTY/MERCHANTABILITY/NOTICE - Filing of Complaint Constitutes Sufficient Notice of the Breach of the Implied Warranty of Merchantability as to Cold-Eeze Products - Action by FTC Against Defendant Also Served to Alert Defendant of Potential Problems With Its Product*



Tesauro v. Quigley, August 2000, No. 1011 (Herron, J.)  
(July 9, 2002 - 11 pages)

*WARRANTY/PLEADING RELIANCE - Where Plaintiff Alleges that Defendant Made False Statements About Its Products on Its WebSite and in User Manuals, the Court May Reasonably Infer Customer Reliance for Purposes of Overruling a Preliminary Objection on Grounds of Insufficiency of Pleadings of Elements of Breach of Express Warranty.*

Oppenheimer v. York, March 2002, No. 4348 (Sheppard, J.)  
(October 25, 2002 - 15 pages)

*WORK PRODUCT DOCTRINE - Documents Not Sufficiently Identified as Subject to Work Product Doctrine or Reflecting Mental Impressions or Litigation Strategy of Attorney of Record*

Gocial, et al. v. Independence Blue Cross and Keystone Health Plan East, Inc., December 2000, No. 2148 (Herron, J.)  
(September 4, 2002 - 9 pages)

*WORKERS COMPENSATION/IMMUNITY - Employer/Subcontractor is Not Immune From Suit by Employee Under Workers Compensation Act Where Employer Expressly Agrees in Written Contract to Indemnify Third Party for Third Party's Negligence*

Integrated Project Services v. HMS Interiors, Inc.  
March 2001, No. 1789 (Herron, J.) (July 2, 2001 - 13 pages)

*WRIT OF SEIZURE - Motion by Client for Issuance Writ of Seizure for Copies of File Retained by Law Firm Is Denied Because Law Firm May Retain Copy of File That Is Copied at Its Own Expense*

Quantitative Financial Strategies, Inc. v. Morgan Lewis & Bockius, LLP, December 2001, No. 3809 (Herron, J.)  
(March 12, 2002 - 22 pages)

*WRITING/ATTACHMENT - Under Pa. R.C.P., A Writing Must Be Attached to a Complaint Only Where It Forms The Basis of the Claim - Copy of Web Page Does Not Have to Be attached to Complaint Where It Serves Merely as Evidence of the Disputed Activity*

Omicron Systems, Inc. v. Weiner - August 2001, No. 669  
(Herron, J.) (March 14, 2002 - 14 pages)

*WRITING/FAILURE TO ATTACH - Preliminary Objection Asserting Failure to Attach Writing Will Be Overruled Where Complaint Alleges That Document Is in the Possession of the Defendant and Substantial Portions of Related Documents Were Attached*

Herman Goldner Company, Inc. v. Cimco Lewis Industries, Inc.

March 2001, No. 3501 (Herron, J.) (September 25, 2001 - 7 pages)