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## Pennsylvania Legal Update

Summer 2011

### “Horseplay” and Workers’ Compensation

Two similar cases show the fine line between work and “horseplay” and the consequences to injured workers of crossing that line. A furniture deliveryman who suffered serious brain injuries won workers’ compensation wage and medical benefits, but a college janitor who broke both ankles did not fare as well and was denied all benefits. Both men were injured in what Pennsylvania’s workers’ compensation courts call “horseplay,” wherein workers briefly engage in frivolous behavior at work. However, one worker took the fun too far for the court’s toleration.

After finishing the delivery of furniture to a private home, the deliveryman returned to the moving van with his supervisor. He placed his clipboard in the van and then, on a sudden impulse, ran across the driveway and jumped up to grab the rim of a basketball hoop. Because the hoop was wet from rain, his hands slipped and he fell backward and hit his head on the driveway surface, sustaining serious and permanent head injuries.

The janitor completed a morning of dormitory cleaning at a state college and walked across the campus to eat lunch at a campus-run restaurant. On the way, he impulsively jumped down a flight of 12 stairs,

later admitting that he had been thinking for several weeks about whether he could successfully jump down the whole flight of stairs.

#### Scope of Employment

Initially, both employers denied workers’ compensation coverage to their employees, claiming that the men’s actions were outside of the

scope of their employment, rendering the injuries noncompensable. After filing formal claims and appealing, the furniture deliveryman was successful in recovering benefits, but the college janitor was not.

Generally, workers are entitled to wage and medical benefits only

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### Mental Health Records in Court

A Pennsylvania woman who, following an automobile accident, sued another driver for negligence found herself faced with a difficult choice. During the discovery phase of the lawsuit, a time when both sides exchange information and documents about the case, the woman objected to sharing all of her medical records. She released most of her medical records but claimed that one of her gynecological visits and one hospital emergency room visit were private and irrelevant. She asked that they be protected from discovery and disclosure.

After reviewing the records privately without disclosing them to

the lawyers in the case, the trial judge agreed with the woman in regard to the gynecology record but found that the emergency room visit, a mental health event, was discoverable. The woman appealed.

The appellate court first held that the question was immediately appealable, prior to trial. Most lawsuits cannot be appealed before trial; in rare instances, though, pre-trial appeals on narrow issues are permitted. The appellate court found that public policy strongly favors the privacy of mental health

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### Residences and School Districts

As parents gear up for back-to-school shopping and organizing, it is worthwhile to brush up on Pennsylvania laws that control where children are entitled to attend school.

The Pennsylvania School Code provides that school-age children are entitled to attend the public school where their parents or physical guardians “reside.” Pennsylvania judges have interpreted the School Code to require actual physical residence. Just owning a

home in a school district does not mean that your children can go to school there; you have to actually live in the home to have the right to send your children to school in that district. If you rent a home and consistently use it as your primary residence, your children are automatically entitled to attend school in that district.

*When school districts challenge a child’s entitlement to attend, the courts review the facts closely.*

When school districts challenge a child’s entitlement to attend, the courts review the facts closely. In one case, in order to meet the needs of their disabled child, a Pennsylvania family rented an apartment near a private school that the disabled child attended. The mother and her children lived in the apartment; they moved their possessions there and received their mail there.

public education in the district.

In a similar case, another well-meaning mother did not fare as well. After remarrying following the death of the father of her children, the mother moved into her new husband’s home. The children did not do well in the new school district, and the mother found the school at fault. She returned to the

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### Riverbank Ownership

A Pennsylvania business recently lost its claim to four acres of land along the Delaware River in Philadelphia, due to laws that date back to 1810.

The dispute had its beginning in a dredge-and-fill project dating back to 1960. In order to shore up several piers supporting the Betsy Ross Bridge in Philadelphia, government agencies dredged and filled the riverbank. When the project was finished, four acres of additional land were exposed in a location where previously the soil had been completely submerged below the low-water line. The business owned 10 acres that became directly connected to the additional 4 acres.

The business sued in 2010 to confirm that it now owned the entire area on the riverbank, a total of 14 acres. It acknowledged that Pennsylvania law does give the Commonwealth control of riverbeds but it claimed that the law should be changed. Arguing that modern methods of river engineering put riverside landowners at more risk, the business asked the appeals court to modernize Pennsylvania’s river laws. The business also noted that riverbank owners are always at jeopardy of losing large portions of their land to natural river changes and that they are most deserving of a chance to reap the benefits of any enlargement of their land.

The Pennsylvania appeals court rejected the arguments of the business, noting simply that Pennsylvania laws going back to 1810 are clear and that the Commonwealth owns man-made additions to the riverbanks “in trust” for all of the residents. The court did acknowledge that if an owner’s rights of access to the river are imperiled by newly created riverbanks, those rights will be protected by the courts.

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## Medical Malpractice Claim Allowed After 36 Years

A Pennsylvania woman successfully sued her doctors and her hospital more than 36 years after receiving questionable medical care.

The woman gave birth to her first child in 1965 and suffered serious circulation problems within hours of delivery. Her treatment included "cutdown" procedures on both arms. The cutdown procedures were minor surgical procedures in which small cuts were made in the woman's arms to permit "dissection" of a vein and the insertion of a tube to administer medication and hydration.

For 36 years after the birth of her child, the woman suffered from respiratory problems, shortness of breath, and pain. Over the course of those years, she was hospitalized 16 times for treatment associated with her chronic respiratory problems and pain. In 2000, an echocardiogram showed irregularities in her heart. Further diagnostic testing disclosed that she had a 12- to 18-inch tube imbedded in her heart, entwined through several chambers. The tube was so integrated into her heart muscle that it could not be surgically removed.

The woman sued the doctors who were involved in the 1965 cutdown procedures and the hospital where they were performed, claiming that the hospital had failed to establish clear and safe procedures and that the doctors had failed to ensure that all the tubes they had inserted were removed from her body before they discharged her

from their care.

On appeal, the woman won her right to take the case to a jury. The doctors and the hospital claimed that the woman's many hospitalizations since 1965 were possible sources of the tube. However, the woman's expert witness doctors all testified that none of her post-1965 hospitalizations likely involved the use of a tube as lengthy as the one in her heart. The woman's experts also noted that the condition of the tube and the extent to which it was embedded in her heart clearly indicated

that it had been inside her body for a long period of time. Finally, the experts noted that her chronic health problems after the birth of her child were consistent with the tube's presence in her body.

Most people discover medical errors very quickly. But in the rare cases where the effects of poor medical care are not identified for years, claimants still have the right to be heard, as long as they seek judicial relief promptly once they have discovered the medical malpractice.

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## School Districts

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apartment where she had lived with the deceased father, staying there with the children several nights each week. Some mornings, she left the apartment with the children, returned to the family home for breakfast and showers, and drove them back to school in the apartment's school district.

When the school challenged her entitlement to enroll the children, the court found that she was not actually residing in the apartment's school district, because she and the children did not regularly sleep there.

School district residence disputes usually start when district ad-

ministrators become concerned about a child's residence status. Increasingly, the cases involve children living with grandparents or other relatives. The School Code states that when an adult is raising a child and "supporting the child gratis as if it were his [or her] own," the child is entitled to attend school where that adult lives. No proof of written guardianship or adoption is necessary. But the adult can be required to sign a sworn statement that he or she is a resident of the district, that he or she is supporting the child gratis, that he or she will assume all personal obligations for the child relative to school requirements, and that he or she intends to so keep and support the child continuously and not merely through the school term.

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## Horseplay

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for injuries sustained "in the course and scope of employment." Small, temporary departures from work to administer to personal comforts or convenience do not break the course of employment. Nor do "intervals of leisure" operate to take an employee outside of the course of his or her employment, as long as the intervals remain "inconsequential and innocent."

Recognizing that all productive employees take short breaks, Pennsylvania's workers' compensation laws do not strictly scrutinize an employee's conduct at the precise time of an injury. Instead, where an employee is at the workplace or, when traveling, the employee is substantially engaged in the employer's business, the employee is deemed to be working. Traveling employees are given more leeway than are employees who work at a stationary work site, because traveling employees need to find food and bathrooms and the nature of their work engages them in varied activities.

As to the furniture deliveryman, the court awarded him wage and medical benefits, finding it significant that the injured man's supervisor testified that he was not troubled or offended by the man's brief attention to the basketball hoop. The court also stressed that the deliveryman's conduct was not reckless or inherently dangerous since basketball is an ordinary pastime.

As to the college janitor, the court denied all benefits for several reasons. First, because the janitor was on a lunch break and completely unrestricted during the break, the court found that his ac-

tivities were "wholly foreign to his employment." Additionally, the court noted that "the premeditated, deliberate, extreme, and inherently high-risk nature" of his jumping down an entire flight of stairs was sufficient to remove him from the course and scope of his employment even if he had not been on a lunch break. The court noted that a coworker testified that several weeks before the incident, the janitor had told her that he thought he could jump down the flight of stairs. She testified that she had replied that "the point was not whether he could make the jump, but where he would land."

Employers are understandably frustrated when an employee re-

ceives benefits for an injury incurred on a break or while engaged in horseplay. Conversely, employees expect employers to accept the fact that everyone takes mini-breaks during the workday to refresh and renew concentration and energy. The nature and length of a departure from duties will ultimately make a huge difference in whether an injury is compensable or not.

Employers who want to increase their protection against injury claims from horseplay can issue clear written directives banning horseplay; where such a rule exists and is clearly communicated to employees, it can serve as a defense against horseplay injuries.

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## Mental Health Records

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records and noted that pretrial appeals are sometimes necessary to protect that privacy.

But the court went on to require the disclosure of the mental health record. Acknowledging that the privacy of mental health records is essential to maintaining public confidence in mental health treatment, the court stated that the woman had put her own mental health at issue by claiming that the accident had caused her anxiety and an inability to enjoy life normally or to engage in daily functions. The court also noted that the trial judge had given the woman the option of dropping her claims about her anxiety and adjustment

problems, but that she had refused. Because the woman had made her mental health an issue in the case, she had to produce the mental health record or suffer a dismissal of her case.

The appellate court cautioned that claims for humiliation, mental anguish, pain, and shock do not open the door to the discovery of mental health records. Only claims that clearly assert mental health suffering caused by the accident or incident will trigger the obligation to disclose mental health records and, in deciding disclosure issues, the courts will always honor privacy as much as possible. Records of involuntary mental health commitments will be given more privacy than will records of voluntary outpatient treatment.

*Resolution of legal issues depends upon many factors, including variations of facts and interpretations of Pennsylvania law. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.*

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## What's Happening at Leventry, Haschak & Rodkey, LLC

Since the Business Development division at our law firm began earlier this year, we have been exploring ways to better serve our clients. In this issue and following issues, we will detail some aspect of the relationship our law firm has with its clients.

One of the more important practices our law firm believes in is prompt, courteous telephone responses by our reception personnel. That is, answering the telephone within the second or third ring. We understand the urgency our clients feel about their respective matters—not only our long-standing clients but also those who are fairly new to our firm and those potential clients requiring legal services. It is in this way we convey the client is important to us, and we are interested in resolving the individual client's situation. Understandably, when a client calls, and the particular attorney or other professional of our office is not available, we strive to return such communications punctually.

For those who come to our office for consultations, we know your time is valuable; that is why our clients are taken to a conference room to meet with their particular attorney within five (5) minutes of their arrival and completion of any

forms. When meeting with an attorney, the client can be assured the attorneys of our firm will treat them respectfully, courteously and give them his or her undivided attention.

For those times in which our clients are waiting to be placed in a conference room, we recently installed a monitor in our waiting room displaying material about our firm and our attorneys. During the brief wait, clients are informed about the different services we provide. In addition, we have copies of our seasonal newsletter containing articles of various legal issues in our lobby. These articles are not dry editorials and reports but informative pieces attuned to the general public. Also of particular benefit are updated pamphlets containing information regarding such issues as estates and real estate. These pamphlets are written by our attorneys.

These are only a few of the items we at Leventry, Haschak & Rodkey, LLC are working on to improve and to better our relationships with our clients. If you have any suggestions, please do not hesitate to contact us and tell us how we may better serve you. Thank you.

## Leventry, Haschak & Rodkey, LLC to Sponsor Blood Drive

In conjunction with Alleghenies United Cerebral Palsy, 1<sup>st</sup> Summit Bank and Greater Johnstown Christian Fellowship, Leventry, Haschak & Rodkey, LLC will be sponsoring a blood drive through the American Red Cross on August 24, 2011 from 1:00 p.m. to 7:00 p.m. Blood collections will take place at the community room at Alleghenies United Cerebral Palsy, located at 119 Jari Drive, Johnstown, Pennsylvania 15904. Although the blood drive will be open to the public, and walk-ins will be accepted, we will be scheduling donation times as well. Anyone who calls ahead to schedule will be able to donate before walk-ins. To schedule a time to donate, contact the law offices of Leventry, Haschak & Rodkey, LLC at (814) 266-1799 and ask to speak to Deanna.

Our goal is forty-five (45) units, though we hope to exceed that amount.

Prizes will also be given to the first 100 donors, so plan to sign up early!

Again, if anyone is interested in giving blood on August 24, 2011, please call our office. Thank you for your support of this very important cause.