We are a full-service Civil Litigation Defense firm serving Western/Central Pennsylvania and West Virginia

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WALSH BARNES, P.C.

2100 Corporate Drive Suite 300 ● Wexford, PA 15090

Telephone: 412-258-2255 ● Fax: 412-263-5632 ● www.walshlegal.net

Walsh Barnes, P.C. represents insurance carriers, their insureds, and corporations in actions encompassing the entire civil litigation spectrum. We provide defense of wrongful death and personal injury claims in addition to property losses resulting from:

- Automobile and Tractor Trailer Accidents
- Catastrophic Fire Losses
- Construction Accidents
- Employment Practices Liability
- Executive Liability
- Insurance Coverage
- Premises Liability
- Product Liability
- Professional Liability

In This Issue:

The Pennsylvania Superior Court Enforces UM/UIM Stacking Waiver Against Wife Signed by Husband

In *Golik v. Erie Insurance Exchange*, 300 A.3d 514 (Pa. 2023), the Pennsylvania Superior Court addressed the issue of whether the Motor Vehicle Financial Responsibility Law ("MVFRL") requires an insurer to provide a spouse with separate notice and opportunity to elect or waive stacked coverage after being added to a personal auto policy as a named insured when determining whether the first named insured (and her husband) effectively waived stacked coverage for UM/UIM after she was added to the policy.

Mr. Golik purchased the insurance policy in 1992, insuring himself and a single vehicle, and he executed a stacking waiver. The Goliks were married in 2000 and Mrs. Golik and her vehicle were added to the policy in 2001; a new stacking waiver was not executed at that time. In 2004, the Goliks received stacking waivers in the mail from the insurance agency that only listed Mr. Golik, which he signed. Mrs. Golik testified that she was not aware that these stacking waivers were received in the mail or that Mr. Golik signed them. The insurance policy was renewed annually without any changes that necessitated the execution of new stacking waivers and without any requests by the Goliks for stacked coverage.

In 2019, Mrs. Golik was injured in a motor vehicle accident and made a UM claim to Erie, demanding stacked coverage. Erie took the position that the UM coverage was not stacked and offered the full UM limit, which Mrs. Golik rejected.

The trial court ruled that Mrs. Golik was entitled to stacked coverage, and this decision was vacated and remanded by the Superior Court.

The issue addressed by the Superior Court was whether, under Section 1738 of the MVFRL, only the signature of the first named insured is needed to execute a valid waiver of stacked UM coverage, and the court held that the plain language of the statute only requires notice to the first named insured.

Furthermore, the Superior Court noted the Goliks continued to pay reduced premiums for unstacked UM/UIM coverage for more than 20 year and it was immaterial that Mr. Golik testified that he did not understand the waiver given that he signed the stacking waiver in 1998 and again in 2004 without asking for any explanation or assistance. The court further concluded that Mrs. Golik had constructive knowledge of the stacking waiver and, therefore, was bound by the signature of Mr. Golik, the first named insured.

Pennsylvania Supreme Court Holds That an Organization Hosting a Party That is Not a Liquor Licensee Cannot be Held Liable for Injuries Caused by a Guest Who Became Intoxicated at the Event

In *Klar v. Dairy Farmers of America, Inc.*, 300 A.3d 361 (Pa. 2023), the Pennsylvania Supreme Court addressed the issue whether an organization that hosted an event at which alcohol was provided, but was not a liquor licensee, could be held liable for injuries caused by a guest who became intoxicated at the event.

In August 2014, Dairy Farmers of America, Inc. ("DFA") sponsored a golf outing for its employees. The attending employees were required to provide a monetary contribution to offset costs and expenses associated with the event (i.e., green fees, food, and alcohol). Roger Williams, an employee, made the contribution and attended the outing. Mr. Williams drank beyond the point of visible intoxication. After he left the outing, he drove his vehicle across the center lane and struck a motorcycle operated by Mr. Klar. Mr. Williams' blood alcohol concentration was approximately 0.23%, nearly three times the legal limit to drive.

DFA filed a Motion for Judgment on the Pleadings which the trial court granted. That decision was affirmed by the Superior Court and again by the Supreme Court.

The Supreme Court analyzed the language of the Dram Shop Act and in particular the language of 47 P.S. §4-4093(1) which states:

> **It shall be unlawful--**
> **(1) Furnishing Liquor or Malt or Brewed Beverages to Certain Persons.** For any licensee or the board, or any employe, servant or agent of such licensee or of the board, or any other person, to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given, to any person visibly intoxicated, or to any minor".

Mr. Klar argued that the "or any other person" language encompassed non-licensed entities such as DFA, which the court rejected. Based upon an analysis of the totality of the language used in the Act, the Court concluded the phrase "or any other person" only applied to the persons or things of the same general kind or class as those specifically mentioned immediately proceeding that phrase ("licensee", "board", or an "employee, servant or agent" of a licensee or the board), which did not include non-licensees.

The court also rejected Klar's argument that DFA assumed "licensee" status by collecting funds from employees to pay for the golf outing, relying upon the decision in *Manning v. Andy*, 310 A.2d 75 (Pa. 1973), which refused to interpret the language of the Dram Shop Act so broadly, especially given that the Complaint did not allege that DFA collected money from its employees to profit from the sale of alcohol. While acknowledging that a non-licensee can assume "licensee" status by engaging in the unlawful commercial or quasi-commercial sale of alcohol, "[t]he mere pooling of money for a collective purchase of alcohol for shared consumption, absent any indicia of commercial sale or profit-seeking, does not rise to the level that implicates the Dram Shop Act."

The Pennsylvania Supreme Court Holds "Negligent Investigation" is not a Basis for Civil Liability of an Employer

Our December 2022 newsletter analyzed a Superior Court decision that carved out another exception to employer immunity where the employer did not aggressively investigate a work-related dog bite and allegedly prevented the injured worker from pursuing a third-party claim. The Supreme Court has reversed, holding that where the injury contemplated for a third-party suit is inextricably intertwined with the workplace injury, the employer is immune from civil suit. *Franczyk v. Home Depot, Inc.*, 292 A.3d 852 (Pa. 2023).

The claimant was bitten by a dog at the employer's retail premises. The employer spoke with the dog's owner at the time but did not record the name of the owner or a witness. The claimant received workers' compensation benefits for the injury to her elbow, but contended she was unable to pursue her third-party claim against the dog's owner because of the employer's improper/negligent investigation. The Supreme Court held an exception for negligent investigation was irreconcilable with the Act's design, purpose, and plain language.

Communicating with One's Employer About Health Issues and Work Restrictions Does Not Necessarily Constitute Notice of a Work Injury Under the Workers' Compensation Act

If an employee does not notify the employer of his work injury within 120 days of occurrence of the injury, the employee is not entitled to workers' compensation benefits pursuant to Section 311 of Workers' Compensation Act, 77 P.S. §631.

In *Hershey Co. v. Woodhouse*, 300 A.3d 529 (Pa.Cmwlth. 2023), the employee had preexisting diabetic neuropathy. He developed a foot ulcer after one month of work and was off work for a period while this healed. He communicated with the employer about his medical care during this time, including his need to wear a protective boot. The employee returned to work after his physician released him to wear regular shoes. Shortly after returning, the employee passed out at work and was taken by ambulance to the hospital. He again communicated with his employer and advised he had foot surgery. He again returned to work, this time for one month, and was then off work again for a below the knee amputation of his right leg, after which he did not return to work. Over a year later, he filed a claim petition contending the amputation was related to his work. The judge awarded specific loss benefits.

The Commonwealth Court reversed the award of benefits, holding that, until filing his claim petition, the employee had not advised the employer of a relationship between his foot injury/surgeries and his employment.

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Partner Contact Information

Paul J. Walsh III
412-263-5237
pwalsh@walshlegal.net

Adam M. Barnes
412-261-3268
abarnes@walshlegal.net

Susan A. Kostkas
412-261-3389
skostkas@walshlegal.net

Robert Grimm
412-261-3288
rgrimm@walshlegal.net

Edward A. Yurcon
412-263-5218
eyurcon@walshlegal.net

Communicating with One's Employer About Health Issues and Work Restrictions Does Not Necessarily Constitute Notice of a Work Injury Under the Workers' Compensation Act *(Continued from previous page)*

The employee contended he had provided a series of communications about his injury, a recognized method of giving notice. It was undisputed that the employee kept in touch with the employer about his medical treatment. However, the employee never communicated to the employer that the foot surgery was work-related or that he suspected a work-related injury. Thus, the employee failed to give notice within the requisite 120 days and was not entitled to benefits. Of note, the court specifically rejected the judge's factual finding that the employee had given proper notice, determining the finding was not supported by substantial evidence.

Results

Paul Walsh successfully tendered the defense and indemnification of clients in two separate slip and fall cases filed in Allegheny County. He also obtained summary judgment on behalf of a contractor in a multi-party construction site injury case filed in Washington County based on an independent contractor defense.

Adam Barnes presented oral argument before the West Virginia Supreme Court of Appeals in response to a challenge to the granting of summary judgment on behalf of a client in a case filed in Marshall County, West Virginia, involving a slope failure on residential property; the Supreme Court of Appeals affirmed summary judgment. He also obtained summary judgment on behalf of a product distributor in four asbestos lawsuits filed in Allegheny County.

Susan Kostkas successfully secured the voluntary dismissal of a client in Allegheny County in a case where the plaintiff was injured by a fallen tree limb.

Quinn McCall obtained a defense verdict in an arbitration hearing for a claim of food poisoning filed against a pizza shop filed in Allegheny County.