

CASES IN WHICH JUDGE PANELLA AUTHORED THE OPINION OF THE SUPERIOR COURT:

Walker v. Drexel University, 971 A.2d 521, 2009 Pa. Super. 80 (Pa. Super. 2009)

The Superior Court, in ruling on an appeal of the trial court's denial of judgment notwithstanding the verdict, ruled in favor of a delivery truck driver who tripped on a raised loading dock bumper and sustained injuries, by finding 1) that the bumper on the loading dock created an unreasonably dangerous condition was for the jury; 2) the appellee truck driver was a business invitee and not required to be on alert to discover defects which were not obvious; 3) the appellant university failed to exercise reasonable care to protect the appellee driver from injury; and 4) the evidence was sufficient to support finding that height of the elevated bumper was the proximate cause of the driver's tripping and injuring his knee.

Tayar v. Camelback Ski Corp. Inc., 957 A.2d 281, 2008 Pa. Super. 204 (Pa. Super. 2008)

The Superior Court, in ruling on an appeal of summary judgment granted in favor of a snow tubing facility, held that the language on the reverse side of a ski lift ticket did not release a facility or employee from liability, as an exculpatory clause in the release form did not preclude an action based on recklessness against the snow tubing facility's employee or against the facility for reckless acts of its employee and there was evidence to establish a prima facie case of reckless conduct by the employee.

Rose v. Annabi, 934 A.2d 743, 2007 Pa. Super. 308 (Pa. Super. 2007)

The Superior Court considered whether the trial court erred in omitting a defendant from a verdict slip in a medical malpractice action when there was no qualified witness to testify to the standard of care of the omitted defendant and thus, insufficient evidence to include him on the verdict sheet. Specifically, there was no evidence that a gastroenterologist's standard of care was substantially similar to a colorectal surgeon's standard. The Court held that in the absence of a qualified witness to testify to the standard of care, there was insufficient evidence to include the defendant on the verdict sheet.

Morris v. DiPaolo, 930 A.2d 500, 2007 Pa. Super. 186 (Pa. Super. 2007)

The Superior Court heard an appeal to determine whether the elements of a claim of wrongful use of civil proceedings had been met. The Court reviewed the evidence and

found that appellee, as counsel for a discharged police officer, had presented issues of material fact as to whether there was probable cause for the police officer to file a lawsuit for civil rights violations following his firing and discharge from his job. The Court found that a triable issue existed as to whether the officer's attorney brought the federal action with an improper purpose and vacated and remanded the trial court's decision.

Love-Diggs v. Tirath, 911 A.2d 539, 2006 Pa. Super. 315 (Pa. Super. 2006)

The Superior Court considered whether an insurer of a taxi company was required to provide first party coverage to a passenger in one of the taxis when the vehicle was not listed on the insurance policy for the taxi company. The taxi passenger presented a claim against the Assigned Claims Plan for first party benefits. The Plan joined the insurer for the taxi company asserting that the auto policy for the taxi covered the accident at issue. The taxi's insurer argued that the policy only applied to listed vehicles and because the taxi involved in the accident was not on the policy, the policy was inapplicable. The Superior Court reviewed a similar issue presented in *Insurance Coverage Requirements for Motor Carriers* authored by the Pennsylvania Public Utility Commission in its declaration in *Petition of Thomas Redfield*, where the Commission found that coverage was available to claimants regardless of whether a vehicle was listed on the insurance policy, and concluded that the insurer for the taxi company was required to provide first party coverage to the passenger of the taxi.

Nationwide v. Schneider, 906 A.2d 586, 2006 Pa. Super. 219 (Pa. Super. 2006)

The Superior Court contemplated issues surrounding the recovery of secondary UIM coverage after an insured recovered benefits from a primary UIM carrier. The Court found that 1) an insured was not required to exhaust the UIM benefits of a primary insurer prior to recovering UIM benefits from a secondary insurer, 2) an insured was not precluded from recovering secondary UIM benefits after the insured failed to obtain a consent to settle from the secondary UIM insurer, 3) an insured's failure to notify a secondary insurer with timely notice of a claim after settling with a primary UIM insurer did not prevent him from receiving UIM benefits from a secondary insurer, 4) a secondary UIM insurer was entitled to receive a credit against its UIM limits equal to maximum UIM coverage available from the primary UIM carrier and 5) a release agreement between an insured and a primary UIM carrier did not preclude an insured from seeking UIM benefits from a secondary insurer.

Harvey v. Chamberlin, Ltd., 901 A.2d 523, 2006 Pa. Super. 130 (Pa. Super. 2006)

The Superior Court considered an appeal from a non-suit granted under the “hills and ridges” doctrine after the plaintiff testified that she slipped and fell on black ice. The “hills and ridges” doctrine protects an owner or occupier of land from liability for slippery conditions resulting from ice and snow where the owner has not permitted the ice and snow to unreasonably accumulate in ridges or elevations. Conflicting evidence was presented at the trial court with regard to sufficiency of the salting and upon motion for non-suit, the trial court ruled that a finding of liability was precluded by the hills and ridges doctrine. The Superior Court found that granting of the non-suit was improper because there was conflicting evidence at the trial court with regard to whether there had been sufficient salting of the road and sidewalk. The black ice which caused the plaintiff to slip and fall while walking after a snowfall and subsequent snow plowing of the roads, was not the result of an entirely natural accumulation, and therefore, the plaintiff’s negligence action was not precluded under the “hills and ridges” doctrine, as the condition of the land was influenced by human intervention when it was plowed.

Glassmere Fuel Service, Inc. v. Clear, 900 A.2d 398, 2006 Pa. Super. 113 (Pa. Super. 2006)

The Superior Court considered whether the doctrine of necessary implication applied to a conversion agreement to require gas station owner to obtain financing to pay for equipment supplied by wholesaler, given that the written conversion agreement did not include an express obligation to obtain financing and the agreement contained specific terms for payment permitting the wholesaler to place a lien for the value of the equipment on the station property, and the wholesaler made no allegations of fraud, accident, or mistake in omitting a financing provision. The Superior Court found that the doctrine of necessary implication was not applicable to add a financing obligation to a conversion agreement when the written conversion agreement contained an integration clause and did not include an express obligation to obtain financing.

Deynzer v. Columbia Gas of Pennsylvania, Inc., 875 A.2d 298, 2005 Pa. Super. 122 (Pa. Super. 2005)

The Superior Court considered whether denial of injunctive relief was proper against a successor landowner who sued an oil and gas production leaseholder to require it to provide free gas service to their property when there was no privity of contract or privity of estate between the successor landowner and leaseholder. The gas company had an arrangement with the prior landowner to provide free gas in exchange for a leasehold of the gas lines on the property, however a parcel of the property was sold

and the gas company then asserted that it had no duty to thereafter provide free gas to the subsequent landowner. The Superior Court found that the injunction, ordering a leaseholder to a predecessor landowner to provide free gas to a successor landowner, was improper because there was no privity of estate or privity of contract between the successor landowner and the leaseholder, as the privity of estate and privity of contract did not transfer to the successor landowner.

Citizens Bank of Pennsylvania v. Myers, 872 A.2d 827, 2005 Pa. Super. 113 (Pa. Super. 2005)

The Superior Court considered whether the trial court should have granted a preliminary injunction allowing Citizens Bank to freeze a bank account after an employee was discovered to have been pilfering funds from customer's accounts. The Superior Court also considered whether the trial court should have granted a preliminary injunction when the case was filed at law. The Superior Court held that the trial court evidence suggested that a preliminary injunction to freeze the bank account was necessary to prevent irreparable harm that could not be compensated by damages. The Superior Court also held that joinder of an action at law with an action at equity is permissible to afford complete relief and where damages are sought for injuries that are subject to equitable relief.

Penhurst Medical Group v. Mikhail, 854 A.2d 536, 2004 Pa. Super. 254 (Pa. Super. 2004)

The Superior Court considered whether an interlocutory appeal from a default judgment was proper when the default judgment did not address damages because the prayer was not a 'sum certain' but instead sought damages 'in excess of \$50,000.00.' The Superior Court quashed the appeal finding that the default judgment was not a final judgment because damages had not been entered.

Blaine v. York Financial Corporation, 847 A.2d 727, 2004 Pa. Super. 110 (Pa. Super. 2004)

The Superior Court considered whether a complaint can be amended after the statute of limitations has passed when the defendant has actively misrepresented the identity of the correct defendant. In this personal injury action, all correspondence from the insurer to the plaintiffs, prior to litigation, identified the insured as York Financial Corporation, thus the plaintiffs had no reason to believe the defendant was an entity other than York Financial corporation. The Superior Court concluded that the insurer had ulterior motives and actively deceived the plaintiffs and reversed the lower court ruling to allow the plaintiffs to amend the complaint.

In re Contempt of Attorney Christopher P. Cullen, 849 A.2d 1207, 2004 Pa. Super. 102 (Pa. Super. 2004)

The Superior Court considered whether the trial court had sufficient evidence to hold an attorney in civil contempt after his refusal to appear in court at the Judge's request on a particular day and time. To be punished for civil contempt, a party must have violated a court order that was definite, clear and specific, leaving no doubt or uncertainty in the mind of the contemnor of the prohibited conduct. The Superior Court agreed with the trial court's finding that the attorney was in contempt, upon review of the facts in evidence that the attorney first agreed during a telephone call to appear in court on the set date and time. Thereafter, the attorney sent a letter to the trial court Judge advising that he would not appear in court, to which the trial court Judge replied by advising the attorney that he would be held in contempt if he failed to appear. The Superior Court agreed that the trial Judge's order was definite, clear and specific, meeting the requirements to uphold a contempt punishment.