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eNotes – Summary of Significant Liability Defense Cases  
July 2006

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**RECENT DECISIONS**

Azar v. Ferrari, 2006 Pa. Commw. LEXIS 210

Decided: May 3, 2006

Commonwealth Court concluded that executive director and assistant executive director of an Intermediate Unit, were high public officials entitled to immunity from claims that they made defamatory statements about a former employee, at meetings with members and in correspondence to members, concerning the plaintiff's job performance and retirement.

**Background:** Plaintiff was an employee with the Carbon-Lehigh Intermediate Unit 21 for more than 20 years. Because of an allegedly poor working relationship with the new executive director and assistant executive director, plaintiff gave notice of his intent to retire. After his retirement, plaintiff formed a business providing management/information and computer support services for educational software to school districts, some of which were members of Intermediate Unit 21. Plaintiff claims that the defendants then made defamatory statements to school district representatives about his work for the Intermediate Unit and the state of his health, all of which were allegedly untrue. Defendants claimed that they were immune from suit under the doctrine of high public official immunity or official immunity under the Pennsylvania Political Subdivision Tort Claims Act. Plaintiff did not dispute the defendants' claim that they were high public officials. Instead, Plaintiff claimed that the statements at issue were not made in the course of their official duties and within the scope of their authority.

**Holding:** Under Pennsylvania law, high public officials are entitled to absolute privilege for statements made in their official capacity regardless of personal or political motives. Because the Pennsylvania Supreme Court has not yet provided a standard for determining when such actions are within the scope of a high public officials' duties, the Commonwealth Court addressed this issue stating that the two factors to consider are: "(1) the formality of the forum in which the alleged defamatory words were spoken, and (2) the relationship of the legitimate subject of governmental concern to the person seeking damages for the defamatory utterance." The Commonwealth Court reviewed the powers and duties of the executive director and assistant executive director of the Intermediate Unit and found that, because the allegedly defamatory statements were made at meetings of the Intermediate Unit's Advisory Council, in letters that were sent to the member school districts of the Intermediate Unit, and during the course of

other conversations with representatives of member school districts, the lower court's grant of summary judgment based upon the doctrine of high public official immunity was appropriate.

Interestingly, the Court permitted the use of affidavits concerning the duties and responsibilities of the defendants, as an exception to the Nanty-Glo rule, because there was no dispute of material facts regarding the duties of the executive director and assistant executive director.

Any questions regarding this case can be directed to Dave Schwalm at 717-255-7643 or dschwalm@tthlaw.com.

**Donegal Mutual Ins. Co. v. Raymond**  
2006 Pa. Super. 105 (2006)  
Decided: May 8, 2006

Superior Court affirms trial court decision that first party benefits and UIM claims were covered under Donegal's personal auto policy which defines an insured resident "family member" to include a "ward", an undefined term.

**Background:** Raymond sustained injuries as a passenger in a vehicle and submitted a first party benefits and an UIM claim under the personal auto policy of his "foster" parents (Deckers). Donegal denied coverage and Raymond sued. Raymond had been the foster child of the Deckers for many years, but was returned to his mother. Less than three months later, Raymond's mother was evicted from her home, and Raymond called the Deckers to ask if he could stay

with them. On that same day (September 28<sup>th</sup>), the Deckers called the foster agency to advise that Raymond would be staying with them. Later on September 28<sup>th</sup>, Raymond was a passenger in a vehicle when it was involved in an accident. He was treated at a hospital, released on September 30<sup>th</sup>, returned to the Deckers' house, and remained there for the next 9 months. The foster agency considered September 30<sup>th</sup> the date of the commencement of the Deckers' foster care, and the Deckers were reimbursed for expenses starting on that date. The trial court held that Raymond was a ward of the Deckers on September 28<sup>th</sup>, and found coverage.

**Holding:** The Superior Court affirms the trial court decision. An insured "family member" is defined in the Donegal policy as a "person . . . who is a resident of your household. This includes a ward or foster child." Donegal argued that the Deckers had not obtained a court order finding Raymond a ward or foster child. The foster agency protocol required either a voluntary consent by a parent or a court order. Citing public policy as set forth the section 1702 of the MVFRL, the court finds that this section requires Raymond to be insured when he is a minor residing in the household of the named insured and in their custody. The court also finds that, factually, Raymond was a "ward", an undefined term. Raymond had been under the protectorship of the Deckers for almost one year before the accident; the Deckers provided care and protection; and he was integrated into the Deckers' family ("your household").

Any questions regarding this case can be directed to Paul Walker at 717-441-7061 or pwalker@tthlaw.com.

**Ginny Jones, Executrix of the Estate of Shelly Jones, deceased, Ginny Jones in he own right, and Setter Chemical Corporation v. Harleysville Mutual Insurance Company,**  
2006 Pa. Super. 100 (May 2, 2006).

Superior Court ruled criminal proceeding against insured for arson and fraud, ending in acquittal, did not suspend contractual statute of limitations, where insurance company did not initiate criminal investigation. The Court further reaffirmed that the statute of limitations for a bad faith denial of coverage begins to run from the first denial.

**Background:** A fire occurred at plaintiffs' property on August 1, 1999, causing damage. Plaintiffs promptly notified Harleysville. In September of 1999, Harleysville informed the plaintiffs that it planned to conduct further investigation. Harleysville proceeded to request that plaintiffs forward documents and complete forms in connection with the claim.

In July of 2000, Harleysville issued a letter denying plaintiffs' claim, on the basis of arson, misrepresentation, fraud, failure to meet business owner policy conditions, and failure to cooperate in investigation of the claim. In August of 2000, the state police forwarded Harleysville an Arson Reporting Immunity Act Request, and Harleysville responded, forwarding documents from its investigation. In January of 2001, Plaintiff Ginny Jones was charged criminally, for arson and insurance fraud. After a criminal trial was

## FIRM NEWS

Congratulations!

**John J. McNally, III,**

(Harrisburg) was recently elected to a two-year term as Chairman of the Dauphin County Republican Committee.



**Paul R. Walker's** article "*What the General Practitioner Needs to Know About Pennsylvania Animal Law*" will be published in the July 2006 edition of PBA Quarterly.

conducted, Jones was acquitted in October of 2001. Plaintiffs notified Harleysville of the results of the criminal action, and resubmitted their claim for property loss. By letter dated March 25, 2002, Harleysville advised Jones it was conducting additional investigation and was ordering a copy of the criminal transcript. On July 29, 2002, Harleysville affirmed its previous decision denying the claim.

On November 6, 2002, plaintiffs filed suit against Harleysville, alleging breach of contract and bad faith. Defendant filed a Motion for Summary Judgment based, in part, on the policy's two-year statute of limitations. The trial court granted summary judgment on both counts, and plaintiffs appealed.

**Disposition:** On appeal, plaintiffs argued the statute of limitations was suspended on their breach of contract claim when criminal charges were brought against Jones, relying on Diamon v. Penn Mut. Fire Ins. Co., 372 A.2d 1218 (Pa. Super. 1977). Plaintiffs

argued that this was so, because Harleysville took some role in the filing of the criminal charges. In Diamon, the Superior Court held that a statute of limitations imposed under a policy was suspended where an insurance company instigated criminal charges against its insured. In that case, the plaintiffs' home and furniture were destroyed by a fire. The company rejected the plaintiffs' proof of loss, and a criminal complaint was filed the same day, charging plaintiffs with filing a false proof of loss for damage to furniture previously removed from the home. The plaintiff later uncovered the same furniture from the rubble, and the criminal charges were *nolle prossed*. The Superior Court distinguished the Diamon case on the basis that there was no evidence Harleysville had instigated the criminal charges against Jones. In Diamon, the insurance company contacted the police, whereas the police investigation of Jones was independent, and the police had contacted Harleysville for the information received.

The Court next addressed the plaintiffs' bad faith claim. The trial court had granted summary judgment as to plaintiffs' bad faith claim, because it determined Harleysville conducted a reasonable investigation and had a reasonable basis for denying the claim. The Superior Court affirmed the decision, but did so based on the passage of the statute of limitations. Although the trial court acknowledged that the statute of limitation for a bad faith denial of coverage begins to run from first denial, it reasoned that Harleysville had acted to throw the insured off guard by reopening its investigation after plaintiff was acquitted of the criminal charges. Thus, the court concluded that the statute of limitations for the bad faith claim began to run from the date of the second denial letter. The Superior Court disagreed, recognizing that two years had already passed from the first denial of coverage, before the criminal trial against plaintiff was even completed, or Harleysville reopened its investigation. Because the Court had already determined that the criminal proceeding did not extend the limitations period, it held the bad faith claim was also barred by the statute of limitations.

A petition for reargument was filed on May 10, 2006.

**Pa. Dept. of General Services v. United States Mineral Products Co.**  
2006 Pa. LEXIS 848 (2006)  
Decided May 25, 2006

Pennsylvania Supreme Court, in a strict liability action based on the emission of toxic chemicals when a building was destroyed by fire, held that the jury could not consider whether the fire was reasonably foreseeable by the manufacturer, because foreseeability is a negligence concept with no place in strict liability theory.

**Background:** In June 1994, following a fire that occurred on the sixth floor of the Commonwealth's Transportation and Safety Building, the presence of toxic substances known as PCBs (polychlorinated biphenyls) was detected in the air inside the building. In 1998, a decision was made to demolish the building, in part because of the presence of PCBs. The Commonwealth

agencies which occupied the building subsequently brought this action, asserting strict liability claims against the manufacturers and installers of the PCB-containing materials used in the building's construction. The case was tried solely on a strict liability theory. Following a jury trial, a verdict molded to approximately \$60 million was entered against one such manufacturer, Monsanto Company. Monsanto appealed on multiple grounds, including an assertion that the jury instructions given by the trial court were erroneous in that they permitted the jury to consider whether the fire was a reasonably foreseeable event against which the manufacturer should have guarded.

**Holding:** Agreeing with the appellant manufacturer, the Pennsylvania Supreme Court noted the established general rule that, in a strict liability action, a manufacturer can be held liable only for harm that resulted from an intended use of a product by an intended user. Accordingly, strict liability does not exist with respect to a non-intended use of a product, even where such non-intended use is foreseeable by the manufacturer. The Court emphasized that foreseeability issues "have no place" in strict liability theory, as foreseeability is a negligence-based concept. Because it was undisputed that incineration is not an intended use of building products, the Court held that, under a strict liability theory, damages were not available for the PCB contamination that resulted from the fire.

The Court further observed that, while the position that the strict liability concept of intended use should include all reasonably foreseeable uses and occurrences is "not unreasonable," it would be incongruous to expand the scope of manufacturers' liability by importing the concept of foreseeability into strict liability doctrine when manufacturers have been restricted from asserting the defense of comparative negligence in strict liability actions, based on the notion of maintaining the distinction between negligence and strict liability. The Court noted that the negligence theory remained available to plaintiffs in product liability claims grounded in negligence-based concepts.

Any questions regarding this case can be directed to Thomas P. McGinnis, Esquire at 412-697-7403 or [tmcginnis@tthlaw.com](mailto:tmcginnis@tthlaw.com) and Karin Romano Galbraith, Esquire at 412-697-7403 or [kgalbraith@tthlaw.com](mailto:kgalbraith@tthlaw.com).

**Bennett v. Mucci**  
2006 Pa. Super. 133  
June 6, 2006

Superior Court upholds application of limited tort to driver of a commercial vehicle that was insured as a private passenger vehicle.

**Background:** Plaintiff Michael Bennett was injured in a motor vehicle accident on August 13, 1999. He and his wife operated a business, Endura Floors. At the time of the accident, Michael was operating a van that he and his wife owned, but used solely for their business. However, even though the vehicle was used solely for business purposes, they insured the vehicle as a private passenger vehicle under a personal auto policy.

At trial, plaintiffs argued that they were entitled to full tort, on the basis that Michael was injured while an occupant of a motor vehicle other than a private passenger motor vehicle. The trial court ruled that the plaintiffs were bound by the limited tort alternative and instructed the jury that they could only return a verdict for economic damages, unless the injuries Michael Bennett sustained resulted in a substantial impairment of a bodily function. The jury did not find the injuries resulted in a substantial impairment of a bodily function and awarded the plaintiffs \$450.00 in economic damages.

**Disposition:** On appeal, the plaintiffs argued that the van Michael Bennett was driving was not a private passenger vehicle, and under the plain language of 75 Pa.C.S.A. §1705(d)(3), plaintiff was entitled to full tort. The Superior Court upheld the trial court's decision, finding that when an insured elects limited tort for a vehicle under a private passenger liability insurance policy, the insured can not later claim that same vehicle is not a private passenger vehicle. The plaintiffs intentionally insured the vehicle as a private passenger vehicle and received the benefits of lower insurance premiums for limited tort coverage. Therefore, to permit the plaintiff to recover full tort benefits would undercut the intent of the Motor Vehicle Financial Responsibility law.

**Comment:** While this is an important limited tort decision, the Superior Court limited its decision to situations in which the plaintiff was injured in the same vehicle for which he procured limited tort coverage. The Superior Court did not address the issue of whether

the plaintiffs would be entitled to full tort had the plaintiff been injured in a different vehicle.

Any questions regarding this case can be directed to Tom Brumbaugh at 717-441-7060 or tbrumbaugh@tthlaw.com.

**Piunti v. UCBR**

482 M.D. 2005

Commonwealth Court of Pennsylvania

Decided June 13, 2006

Plaintiff-attorneys have standing to bring the Petition for Review of the amendment to the Unemployment Compensation Law which allows non-attorneys to advocate in Unemployment Compensation Proceedings.

**Background:** On February 3, 2005, the Commonwealth Court held in Harkness v. UCBR, 867 A.2d 728 (2005), that corporate employers were not permitted to be represented in unemployment proceedings by non-attorney, non-employees, under the Unemployment Compensation Law. The Court held that representation by non-attorney, non-employees, at these proceedings would constitute the unauthorized practice of law

Subsequent to this decision, the Pennsylvania Legislature amended the Unemployment Compensation Law to specifically allow non-attorney, non-employees, to represent corporate employers in such proceedings.



The Fall 2006 Membership Meeting and Client Conference is scheduled for September 13-16, 2006 in San Diego, California. The theme of the fall conference is "*Smart Business Begins with Diversity.*"

**Stephen E. Geduldig** and **Todd B. Narvol** are scheduled participants in the Transportation Law presentations.

Visit [www.uslaw.org](http://www.uslaw.org) for more information.

Four attorneys filed an action to challenge the constitutionality of the Legislature's actions, contending that the amendment violated the Supreme Court's exclusive authority to regulate the practice of law as outlined in the Pennsylvania Constitution.

The Unemployment Compensation Board of Review filed Preliminary Objections to the Plaintiff-attorneys' Petition for Review, arguing that the Plaintiff-attorneys' did not have standing to challenge the constitutionality of the amendment to the Law, and further that they had failed to state a claim for declaratory and injunctive relief.

**Holding:** The Court held that the Plaintiff-attorneys have standing to bring the Petition for Review of the amendment, as they will be negatively impacted by the law in that they will be replaced by and in competition with the non-attorneys who are authorized to represent corporate employers under the amendment to the Law.

In addition, the Court held that the Plaintiff-attorneys had stated a cause of action for declaratory and injunctive relief because the Pennsylvania Constitution specifically confers on the Supreme Court exclusive jurisdiction over all matters related to the privilege of practicing law. The law, as amended, permits laypersons to "advocate" in unemployment proceedings, by engaging in cross-examination, argument, objections, and preservation of issues for appeal, all of which are the fundamental activities of the practice of law. The fact that the proceedings are before an administrative tribunal does not render these activities something less than the practice of law. As such, the Plaintiff-attorneys have appropriately stated a cause of action for declaratory and injunctive relief which survives the UCBR's Preliminary Objections.

**Analysis:** The Court has not yet decided the underlying question of whether the amendment to the Unemployment Compensation Law violates the Pennsylvania Constitutional. However, it suggests, with this decision, that it is leaning towards a finding that the amendment is unconstitutional.

Any questions regarding this case can be directed to Crystal Williamson at 717-237-7103 or cwilliamson@tthlaw.com.

**Ash v. Tyson Foods, Inc.**  
126 S. Ct. 1195  
Decided February 21, 2006

Seemingly benign terms, in the proper context, can in and of themselves be evidence of discriminatory animus on the part of the speaker.

**Background:** Plaintiff African Americans were superintendents at a poultry plant owned and operated by Tyson who applied for open shift manager positions. The positions were filled by two white individuals. Plaintiffs filed suit, alleging that they had been discriminated against on the basis of their race. Following a trial on the merits, the jury found in favor of the plaintiffs and awarded both compensatory and punitive damages. However, Tyson moved for judgment, as a matter of law, following the jury's verdict, which the District Court granted.

Plaintiffs appealed, arguing that the evidence presented revealed that the plant manager had referred to the plaintiffs as "boy", which proved discriminatory animus. The District Court and Court of Appeals had held that such a benign term, in and of itself, was insufficient to establish discriminatory animus, unless accompanied by a discriminatory modifier. Plaintiffs also appealed from the decision of the District and Appeals Courts, arguing, that their qualifications were superior to those of the individuals actually selected for the job, and, therefore, that this was sufficient evidence of pretext. The Courts had held that: "Pretext can be established through comparing qualifications only when 'the disparity in qualifications is so apparent as virtually to jump off the page and slap you in the face.'" The plaintiffs argued before the Supreme Court that this standard was inappropriate.

**Holding:** The U.S. Supreme Court held that the use of the term "boy" will not always be evidence of racial animus; however, "it does not follow that the term, standing alone, is always benign." The Court noted that the speaker's meaning may depend on other factors, including the "context, inflection, tone of voice, local custom, and historical usage," all of which could justify a finding that the otherwise benign term had a discriminatory meaning. To the extent that the District Court held that such a benign term must be accompanied by a racial or other discriminatory classifier, in order to evidence discriminatory animus, the decision of the District Court was overturned.

The Court also held that, where plaintiffs assert that their qualifications were greater than those of the individuals who were actually hired, the standard articulated by the District and Appeals Courts was unhelpful and imprecise, and, therefore, remanded the matter for further review on the issue of pretext. The Court declined to adopt a specific standard for examining pretext cases based on qualifications, but noted the following standards applied by other Courts, which would "better ensure that trial courts reach consistent results": (1) disparities in qualifications must be of such weight and significance that no reasonable person, in the exercise of impartial judgment, could have chosen the candidate selected over the plaintiff for the job in question; (2) qualifications evidence standing alone may establish pretext where the plaintiff's qualifications are clearly superior to those of the selected job applicant; or (3) a factfinder may infer pretext if a reasonable employer would have found the plaintiff to be significantly better qualified for the job.

Any questions regarding this case can be directed to Crystal Williamson at 717-237-7103 or [cwilliamson@tthlaw.com](mailto:cwilliamson@tthlaw.com).

**State Farm v. Kosick**  
2006 U.S. Dist. LEXIS 21090 (W.D. Pa.)  
Decided: April 10, 2006

U.S. District Court holds that insurance carrier has no obligation to pay uninsured motorist benefits after previously having paid underinsured benefits for the same accident from the same policies.

**Background:** Mark Kosick suffered extensive injuries in a single vehicle accident when the car in which he was a passenger swerved off the road and crashed. Alternative theories of liability were posited, one involving the liability of a phantom vehicle approaching from the opposite direction and the other involving the liability of the host vehicle operator. At the time, Kosick's parents had two auto policies with State Farm and, after claim was made, the limit of underinsured motorists benefits were paid under both policies.

After the UIM limits were tendered, Kosick sought damages for uninsured benefits from the same two policies. State Farm declined UM coverage and a declaratory judgment action ensued.

## SPEAKING EVENTS

Paul R. Walker will be speaking at the PBI Annual Animal Law Seminar in Philadelphia, Mechanicsburg and Pittsburgh on August 1, 23 and 30, 2006. He will be speaking on insurance and liability issues relating to dog breeds and dog bite claims.

Daniel L. Grill, Hugh P. O'Neill III and Gerryanne A. Cauler will be speaking at the PHCA Annual Convention on Monday, September 25, 2006. Their topic will be "Professional Licensing Issues in Long Term Care".

Evan Black was invited to lecture at Grand Rounds for Holy Spirit Hospital on May 18, 2006. He presented an EMTALA update at the Camp Hill, PA hospital.

Evan Black and Brooks R. Foland were guest faculty members at the Widener University School of Law's Intensive Trial Advocacy Program in May 2006.



**Holding:** U.S. District Judge Thomas Hardiman in a well reasoned opinion held that State Farm was not obligated to pay both UM and UIM benefits from the same policy for the same accident. His decision turned on the fact that the subject policies incorporated the limitation on recovery contained in Section 1731 of the Motor Vehicle Financial Responsibility Law which expressly precludes the payment of UIM benefits under the same policy for the same accident after UM benefits have been paid.

The Kosicks attempted to distinguish Section 1731 by pointing out that this statute only applies, by its terms, to preclude UIM payments after UM had been paid. They argued that the inverse was not true. Judge Hardiman dismissed this argument as seeking an absurd interpretation of the statute which would make the ability to double collect contingent only upon which benefit was sought first. Judgment for State Farm was entered.

Any questions regarding this case can be directed to Kevin McNamara at 717-237-7132 or [kmcnamara@tthlaw.com](mailto:kmcnamara@tthlaw.com).

## Progressive Northern Ins. Co. v. Universal Underwriters Ins. Co.

2006 Pa. Super. 101 (2006)

Decided: May 3, 2006

Superior Court affirms trial court decision that the 1990 amendments of the MVFRL require a permissive user of a auto dealership's vehicle be covered by the dealership's auto policy, when that policy extended to any user when "required by law to be an Insured".

**Background:** Permissive user (McNeely) of a dealership auto (apparently a loaner) was involved in an auto accident. McNeely was insured under his father's auto policy issued by Progressive as a resident relative. The Progressive policy's other insurance clause provided that the policy was excess coverage for a non-scheduled auto, such as the loaner. The dealership was insured by Universal Underwriters, which included as an insured any person required by law to be an insured, although its other insurance clause provided that the policy would be excess over other insurance. Relying on State Farm Mut. Auto Ins. v. Universal Underwriters, 549 Pa. 518, 701 A.2d 1330 (1997), Universal argued that McNeely was not covered under its policy. The trial court found that both the Progressive and Universal policies provided coverage, and that both were primary.

**Holding:** The Superior Court affirms the trial court decision. The Court finds that the 1990 amendments to the MVFRL materially change the prior provisions at issue in State Farm, as the 1990 amendments add section 1786(f) which the court held implicitly require an owner to provide financial responsibility when another operates the owner's vehicle with permission. The Court also affirms the trial court's decision that the other insurance clauses in the Progressive and Universal policies are mutually repugnant, and that both policies are thus co-primary.

Any questions regarding this case can be directed to Paul Walker at 717-441-7061 or [pwalker@tthlaw.com](mailto:pwalker@tthlaw.com).

The information contained in this update is intended for general information purposes only, and does not constitute legal advice or options on any specific facts or circumstances. No action should be taken without consultation with legal counsel.

If you have any questions or comments, or would like further information, please contact an attorney in the General Liability Practice Group at Thomas, Thomas & Hafer LLP. Visit us at [www.tthlaw.com](http://www.tthlaw.com) for more information on members of our General Liability Practice Group.

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### Charles W. Styers, Sr. Peggy S. Sterys and Eric L Styers v Bedford Grange Mutual Ins.,

2006 Pa Super. 118

May 23, 2006

The trial court erred when it dismissed breach of contract and bad faith claims against insurer at the preliminary objections stage, as the trial court improperly relied upon court records from criminal proceedings in concluding that the insurer properly denied the claim under the “criminal acts” exclusion.

**Background:** The Styers were holders of a homeowners’ policy issued by Bedford Grange Mutual Insurance Company. The Styers’ nineteen year old son, Eric (also an “insured”) was charged criminally after he damaged the Cedar Run Trout Hatchery, and caused the death of thousands of fish. Eric plead *nolo contendere* to the criminal charges and signed a statement acknowledging that he committed the elements of the crimes. He was sentenced to up to 23 months in prison.

The Styers submitted a claim to Bedford Grange, in excess of \$36,000, for losses sustained by the hatchery for which they were personally liable. The insurer denied their claim on the basis of the “criminal acts” exclusion. The denial prompted the Styers to file suit against Bedford Grange alleging breach of contract, bad faith insurance practices and unfair trade practices. The Styers made no reference to the criminal proceedings in their complaint, nor to the insurer’s denial of their claim on the basis of the “criminal acts” exclusion. The complaint conveniently ignored the fact of the criminal proceedings, alleging only that their claim had been denied without legal basis. Bedford Grange filed preliminary objections contending that the complaint failed to state a claim as a matter of law. The trial court sustained the preliminary objections and dismissed the complaint. In doing so, it relied on facts contained in the court record to find that the “criminal acts” exclusion applied. Taking judicial notice of those proceedings, it concluded that the Styers’ claims were without factual and/or legal basis.

**Holding:** The Superior Court reversed, holding that the trial court erred in taking judicial notice of the records of another case at the preliminary objections stage. The Superior Court acknowledged that the Styers may have engaged in “artful pleading” only to avoid a determination on the basis of the “criminal acts” exclusion, but the Court was more concerned by the trial court’s reliance on facts derived from the criminal court records which were wholly outside the facts alleged in the complaint. The Superior Court noted that the purpose of preliminary objections is not to challenge “the factual truthfulness” of a complaint. The Court further observed that any relevant facts from the criminal proceedings should have been raised in an answer with new matter/affirmative defenses.

Any questions regarding this case can be directed to Suzanne B. Merrick at 412-697-7403 or [smerrick@tthlaw.com](mailto:smerrick@tthlaw.com).