PENNSYLVANIA
STATE PROFILE

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TABLE OF CONTENTS

PAGE

AUTOMOBILE INSURANCE COVERAGE:

Automobile Insurance in Pennsylvania is governed by the Motor Vehicle Financial Responsibility Law ("MVFRL").[1] The required coverages and minimum limits are statutorily set:

1. Bodily Injury Liability = $15,000 for one person in one accident or $30,000 for two or more persons in one accident;[2]
2. Property Damage Liability = $5,000 for one accident;[3] and
3. First Party Benefits = $5,000 for medical benefits.[4]

Optional first party benefits include:

1. Medical Benefits: coverage for all reasonable and necessary medical treatment and rehabilitative service, with limits up to at least $100,000;
2. Extraordinary Medical Benefits - reasonable and necessary medical treatment and rehabilitative services which exceed $100,000, the coverage limits of which must be from at least $100,000 to $1,100,000;
3. Income Loss Benefits - includes 80% of actual loss of gross income. $2,500 per month to a maximum benefit of at least $50,000 must be made available;
4. Accidental Death - the available death benefit paid to the insured's personal representative, up to at least $25,000; and
5. Funeral Benefits - $2,500.[5]

Options for higher limits exist, as well as Uninsured Motorist ("UM") / Underinsured Motorist ("UIM") Coverage. Pennsylvania has not adopted a guest statute.

AVAILABILITY OF COVERAGE:

UM/UIM coverage is optional.[6] However, the insurer must notify the insured that he may reject uninsured and underinsured motorist coverage by signing a written rejection form, or may

[1] 75 Pa.C.S. §§ 1701 *et seq*.
[2] 75 Pa.C.S. § 1702 (definition of "Financial responsibility").
[3] 75 Pa.C.S. § 1702 (definition of "Financial responsibility").
[4] 75 Pa.C.S. § 1711(a).
[5] 75 Pa.C.S. § 1715.
[6] 75 Pa.C.S. § 1731.

elect coverage at reduced limits. The statute provides that rejection of UM/UIM coverage must be on a separate sheet. A rejection form that does not comply with this mandate is void, although the Supreme Court has ruled in contradiction to this requirement before.[7] The Supreme Court has articulated this position in holding that the "separate forms" requirements apply only to outright waivers or rejections of UM/UIM coverage, and not to elections of lower coverage limits.[8]

BAD FAITH:

The court may award interest, court costs, attorney fees and punitive damages against an insurer in a bad faith cause of action.[9] However, the Employee Retirement Income Security Act (ERISA) expressly preempts a plaintiff's bad faith claim under the statute, where ERISA applies.[10] Pennsylvania also acknowledges common law bad faith.[11] An insurer "may be liable for the entire amount of a judgment secured by a third party against the insured, regardless of any limitation in the policy, if the insurer's handling of the claim . . . was done in such a manner as to evidence bad faith on the part of the insurer in the discharge of its contractual duty."[12] The Superior Court emphasized that

> a decision not to settle must be a thoroughly honest, intelligent and objective one. It must be a realistic one when tested by the necessarily assumed expertise of the company. . . This expertise must be applied, in a given case, to a consideration of all the factors bearing upon the advisability of a settlement for the protection of the insured. [Good faith] includes consideration of the anticipated range of a verdict, should it be adverse; the strengths and weaknesses of all of the evidence to be presented on either side so far as known; the history of the particular geographic area in cases of similar nature; and the relative appearance, persuasiveness, and likely appeal of the claimant, the insured, and the witnesses at trial.[13]

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[7] *Winslow-Quattlebaum v. Md. Ins. Grp.*, 752 A.2d 878 (Pa. 2000).
[8] *Lewis v. Erie Ins. Exch.*, 793 A.2d 143 (Pa. 2002).
[9] 42 Pa.C.S. § 8371.
[10] *See Haase v. Metro. Life Ins. Co.*, 198 F. Supp. 3d 412, 424 (E.D. Pa. 2016).
[11] *Cowden v. Aetna Cas. & Sur. Co.*, 134 A.2d 223 (Pa. 1957).
[12] *Id.* at 227.
[13] *Shearer v. Reed*, 428 A.2d 635, 638 (Pa. Super. 1981) (internal citations omitted).

CAPS ON RECOVERY:

In Pennsylvania there are no caps on recovery, except for workmen's compensation cases and cases against governmental entities. For damages arising from the same cause of action or transaction or occurrence, or series thereof, in cases against state governmental entities, the statutory caps are $250,000 in favor of any plaintiff or $1,000,000 in the aggregate.[14] For cases against local government agencies, the cap is $500,000 in the aggregate.[15]

The Worker's Compensation Act sets compensation for partial disability at 66 2/3% of the difference between pre-injury wages and post-injury earning power. Compensation is available throughout the period during which the employee's earning capacity is affected but for not more than five hundred weeks.[16] Thus, partial disability benefits are capped at approximately 9.5 years.

CO-EMPLOYEE SUITS:

A co-employee shall not be liable to anyone at common law or otherwise on "account of disability or death for any act or omission occurring while [the co-employee] was in the same employ as the person disabled or killed, **except** for intentional wrong."[17] Pennsylvania workers' compensation insurance policies are divided into two parts, Part A (coverage under the Act) and Part B (employer liability coverage).

COLLATERAL SOURCE RULE:

Where a claimant receives compensation for his injuries from a collateral source that is wholly independent of the tortfeasor, such as disability or health insurance, the compensation or payment cannot be deducted from the damages that the claimant collects from the tortfeasor.

[14] 42 Pa.C.S. § 8528(b).
[15] 42 Pa.C.S. § 8553.
[16] 77 P.S. § 512.
[17] 77 P.S. § 72 (emphasis added).

The MVFRL creates an exception applicable to motor vehicle tort actions and UM/UIM proceedings. Pennsylvania statute bars the recovery of benefits "paid or payable" under motor vehicle first party benefits coverage.[18] However, the Supreme Court of Pennsylvania has ruled that the MVFRL prohibition on subrogation is inapplicable to first party benefits paid by a health maintenance organization ("HMO").[19] Similarly, benefits paid under an Employee Retirement Income Security Act ("ERISA") plan are recoverable.[20]

COMPARATIVE NEGLIGENCE:

Pennsylvania is a modified comparative negligence state. If the plaintiff's negligence constitutes more than 50% of the total negligence of all the parties, his action will be completely barred. If the plaintiff is found 50% or less negligent in bringing about his own injury, his recovery will be diminished in proportion to his percentage of negligence.[21]

The negligence of a driver cannot be imputed to his claimant passenger and the passenger is presumed to have exercised due care, unless it can be shown the guest shared in the driver's negligence. A child under seven years of age cannot be found contributorily negligent. Children between seven and fourteen years of age are presumed non-negligent, but the presumption is rebuttable.

CONTINGENT FEE REGULATION:

Contingent fees are a form of arrangement between an attorney and client whereby the attorney agrees to represent the client and to be paid for his or her services based upon a percentage of the amount recovered.

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[18] 75 Pa.C.S. § 1722.
[19] *Wirth v. Aetna U.S. Healthcare*, 904 A.2d 858 (Pa. 2006).
[20] Carlson v. Bubash, 639 A.2d 458 (Pa. Super. 1994).
[21] 42 Pa.C.S. § 7102(a).

Contingent fee regulations are set forth in the Rules of Professional Conduct[22] and allow attorneys to charge a reasonable contingent fee in civil matters. Agreements must be in writing and must specify the method of determining the fee.[23] Contingent fee arrangements are prohibited when representing criminal defendants or in handling domestic matters where the fee is made contingent on the amount of alimony or support awarded.[24]

DEATH OF PLAINTIFF:

Pennsylvania has created a statutory dead man's rule; subject to certain exceptions, "where any party to a thing or contract in action is dead", surviving parties to the "thing or contract", and persons whose interest is adverse to decedent's right, shall not be competent witnesses to any matter occurring before decedent's death.[25]

DEATH OF A TORTFEASOR:

In Pennsylvania, if a tortfeasor dies before an action for damages is filed against that decedent, the plaintiff must name a personal representative for that decedent tortfeasor; otherwise an action filed against a deceased tortfeasor is a nullity. The death of the tortfeasor does not shorten the statute of limitations otherwise applicable to a claim against the decedent, and it does not stop the running of the statute of limitations. A claim that would have been barred within one year after the tortfeasor's death, however, is not barred until the expiration of one year after the tortfeasor's death.[26]

DRAM SHOP:

A liquor licensee may be held liable for injuries proximately resulting from his unlawful sale of alcoholic beverages to a visibly intoxicated person or a minor. This liability extends not

[22] Pa. R.P.C. 1.8(i)(2).
[23] Pa. R.P.C. 1.5(c).
[24] Pa. R.P.C. 1.5(d).
[25] 42 Pa.C.S. § 5930.
[26] 20 Pa.C.S. § 3383.

only to third persons but also to injuries sustained by the consumer himself, if the consumer was served while in a visible state of intoxication, or was a minor.[27] In determining when a consumer is "visibly intoxicated" the tavern owner may rely on physical appearances rather than medical diagnoses. A violation of the Dram Shop statute is deemed negligence *per se*, and the defendant will be held liable if the violation is the proximate cause of the injuries.[28]

A breach of this statutory duty to refrain from serving alcohol to visibly intoxicated persons does not, by itself, prove defendant's liability under the Dram Shop Act; civil liability will not be imposed upon a tavern keeper unless the injuries to the claimant were proximately caused by the patron's intoxication.[29] When liability is premised on the sale of alcoholic beverages to a sober minor, the plaintiff must prove that the sale of the alcoholic beverage to the minor was the proximate cause of the subsequent injuries. No liability will be found where a liquor licensee acts in good faith in carding a minor.[30] The licensee is not required to determine the quality of the identification (i.e. to detect a forgery), but is required only to check the identification cards and a duty to act as a reasonable licensee would.[31]

A social host will not be liable if he is an adult serving another adult.[32] Nor will the court find liability where a minor host serves another minor.[33] However, an adult will be found negligent *per se* for serving a minor.[34]

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[27] 47 P.S. §4-493; §4-497; *see also Matthews v. Konieczny*, 527 A.2d 508 (Pa. 1987); *McGaha v. Matter*, 528 A.2d 988, 990 (Pa. Super. 1987).
[28] *See Fandozzi v. Kelly Hotel, Inc.*, 711 A.2d 524 (Pa. Super. 1998), *appeal denied* 735 A.2d 1269 (Pa. 1999); *Johnson v. Harris*, 615 A.2d 771 (Pa. Super. 1992).
[29] *Miller v. Brass Rail Tavern*, 702 A.2d 1072 (Pa. Super. 1997).
[30] *Skoritowski v. Pa. State Police, Bureau of Liquor Control Enforcement*, 742 A.2d 704 (Pa. Commw. 1999).
[31] *Pennsylvania State Police v. S&B Restaurant, Inc*., 52 A.3d 513 (Pa. Commw. 2012).
[32] *Klein v. Raysinger*, 470 A.2d 507 (Pa. 1983).
[33] *Kapres v. Heller*, 640 A.2d 888 (Pa. 1994); *See also Piazza v. Young*, 403 F. Supp. 3d 421 (M.D. Pa. 2019) (explaining that *Kapres* noted that minors are exempt from liability under the "social host doctrine" but may be found liable under alternative theories of liability, where applicable, such as in a fraternity hazing case).
[34] *Congini v. Portersville Valve Co.*, 470 A.2d 515 (Pa. 1983).

DUAL CAPACITY DOCTRINE:

Under certain circumstances, an employer may be liable for injury to an employee caused by a product manufactured by the employer in addition to the employer's liability under the Workers' Compensation Act. The Pennsylvania Supreme Court has used two distinct analyses when determining whether an employer who ordinarily is shielded from tort liability by the Act may also be liable to its employees under the dual capacity doctrine. In its early analysis, the court looked to whether the employer owed a distinct duty to the public arising from manufacturing a product, and whether the employee, was a member of the public to which the employer/manufacturer owed such a duty.[35] The approach involved the recognition of a new and distinct relationship between the employee and the employer.

The second analysis emphasizes whether the employee was injured by a product manufactured by the employer while acting in the course and scope of his/her employment.[36] If the injury occurs "while the employee is actually engaged in the performance of her job, the [dual capacity] doctrine does not apply" even though the employer's product caused the injury.[37]

EVIDENCE AND DISCOVERY:

Evidence: The Pennsylvania Rules of Evidence substantially reflect the Federal Rules of Evidence. When considering expert evidence, Pennsylvania is one of only a minority of states that applies the *Frye* standard.[38] This standard asks a court to determine whether the method by which that evidence was obtained was generally accepted by experts in the particular field in which it belongs.[39]

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[35] *Tatrai v. Presbyterian Univ. Hosp*., 439 A.2d 1162 (Pa. 1982).
[36] *See e.g. Heath v. Church's Fried Chicken, Inc.*, 546 A.2d 1120 (Pa. 1988); *Callender v. Goodyear Tire & Rubber Co.*, 564 A.2d 180 (Pa. Super. 1989).
[37] *Callender*, 564 A.2d at 180 (quoting *Heath*, 546 A.2d at 1121).
[38] Pa.R.E. 702; *Commonwealth v. Walker*, 92 A.3d 766, 780 (Pa. 2014); *Grady v. Frito-Lay, Inc*., 839 A.2d 1038, 1044 (Pa. 2003).
[39] *See Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

Discovery: Pennsylvania Rules of Civil Procedure regarding discovery are also standard.

EXCLUSION FROM FIRST PARTY BENEFITS:

Benefits are excluded from any insured when: the insured intentionally injures himself or another or attempting to injure himself or another; while committing a felony; and while seeking to elude lawful apprehension or arrest by a law enforcement official. A person who knowingly converts a motor vehicle is ineligible to receive first party benefits from any source other than a policy of insurance under which he is insured for injuries arising from use of a converted vehicle, and insurers may exclude persons from benefits through named driver exclusions.[40]

FORUM SHOPPING:

Whenever possible, plaintiffs' counsel file suit in Allegheny, Dauphin, and Philadelphia Counties, as they are particularly pro-plaintiff. Removal to federal court on the basis of diversity of citizenship should be evaluated in all such venues by defendants.

FRIVOLOUS SUIT PENALTIES:

Rule 1023.1 requires that "every pleading, written motion, and other paper directed to the court [] be signed by at least one attorney of record in the attorney's individual name" or by the pro se litigant himself.[41] Signature acts to certify that the attorney or pro se litigant conducted an "inquiry reasonable under the circumstances" and to the best of that attorney or party's knowledge, information or belief:

> (1) it [the filing at issue] is not being presented for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law;

[40] 75 Pa.C.S. § 1718.
[41] Pa.R.C.P. 1023.1.

> (3) the factual allegations have evidentiary support, or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual allegations are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.[42]

Thus, there is an affirmative obligation on the part of the filing party to conduct a "reasonable" pre-filing inquiry to ensure that the filing has a basis in law and fact. A claim or defense is not frivolous under the new Rule if it is based on a plausible view of the law, but needs further evidentiary support that can only be obtained through discovery. However, the claim or defense will be considered frivolous if, after such discovery, insufficient evidentiary support is obtained and the claim or defense is not abandoned. Sanctions for a violation of Rule 1023.1 are limited "to that which [are] sufficient to deter repetition of such conduct or comparable conduct by others similarly situated."[43] The court is authorized to impose attorneys' fees and reasonable costs, if warranted, and sanctions may also be imposed jointly upon the firm who employs the person who signed and filed the offensive document.

GOVERNMENTAL IMMUNITY:

Pursuant to statute, governmental entities are immune from tort liability, except in certain enumerated circumstances.[44] In an action against a Commonwealth party, damages arising from the same cause of action, transaction, occurrence shall not exceed $250,000 in favor of any plaintiff or $1,000,000 in the aggregate.[45] Damages shall be recoverable only for

1. Past and future loss of earnings and earning capacity;
2. Pain and suffering;
3. Medical and dental expenses;
4. Loss of consortium; and

[42] Pa.R.C.P. 1023.1(c).
[43] Pa.R.C.P. 1023.4.
[44] 42 Pa.C.S. §§ 8501-8502 (regarding general entities); §§ 8521-8528 (regarding the Commonwealth); §§ 8541-8564 (regarding local agencies including cities and counties).
[45] 42 Pa.C.S. § 8528(b).

5. Property losses, except in claims relating to potholes and other dangerous conditions.

In an action against a local governmental unit, where the cause of action arises from the same transaction or occurrence, damages shall not exceed $500,000 in the aggregate.[46]

Written notice of the intention to file civil actions against any governmental unit (Commonwealth or local agency) must be given to that unit within 6 months of the date of injury.[47]

Exceptions for **commonwealth** agencies:

1. Vehicle liability;
2. Medical/professional liability;
3. Care, custody, control of personal property;
4. Commonwealth real estate, highways and sidewalks;
5. Potholes and other dangerous conditions;
6. Care, custody and control of animals;
7. Liquor store sales;
8. National guard activities; and
9. Toxoids and vaccines.[48]

Exceptions for **local** agencies:

1. Vehicle Liability;
2. Care, custody, control of personal property;
3. Real property;
4. Trees, traffic controls and street lighting;
5. Utility service facilities;
6. Streets;
7. Sidewalks; and
8. Care, custody and control of animals.[49]

INELIGIBLE CLAIMANTS:

An owner of a currently registered motor vehicle who does not have financial responsibility or motor vehicle insurance, and an operator or occupant of a vehicle not intended for highway use are not entitled to recover first party benefits.[50] In 2005, the Pennsylvania Supreme Court clarified

[46] 42 Pa.C.S. § 8553(b).
[47] 42 Pa.C.S. § 5522(a).
[48] 42 Pa.C.S. § 8522(b).
[49] 42 Pa.C.S. § 8542(b).
[50] 75 Pa.C.S. § 1714.

its interpretation of Section 1714, holding that the first party benefits prohibition applies to any case in which the owner of a registered uninsured motor vehicle is injured in an automobile accident, regardless of whether he or she is the driver or a passenger, and regardless of whether he or she is injured while traveling in another owner's insured vehicle.[51] However, Section 1714 does not prevent the owner of a registered uninsured motor vehicle from seeking recovery on the basis of uninsured or underinsured motorist coverage.[52]

INTEREST:

In tort cases in which plaintiff seeks money damages for bodily injury or property damage, delay damages (prejudgment interest) are permitted.[53] If defendant made a written settlement offer that remained in effect for 90 days or until trial began, and plaintiff's verdict was 125% or more of the offer, then the court may award delay damages for the time following the written offer up to the date of judgment.[54]

Delay damages are calculated from the date one year after original process is first served in the action, up to the date of the award, verdict or decision. Periods of time attributable to plaintiff's conduct causing delay of the trial are also excluded. Delay damages are awarded at a rate of prime plus 1% per annum.[55]

The post judgment interest rate is imposed at the legal rate (currently six percent per annum) on the amount of the judgment including prejudgment interest, from the date of the judgment until it is paid.[56]

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[51] *Swords v. Harleysville Ins. Cos.*, 883 A.2d 562 (Pa. 2005).
[52] *Id.*
[53] Pa.R.C.P. 238.
[54] Pa.R.C.P. 238.
[55] Pa.R.C.P. 238.
[56] Pa.R.C.P. 238.

INTOXICATION:

Pennsylvania reduced the legal limit for intoxication from .10% to .08% effective February 1, 2006. The legal limit for intoxication is a blood alcohol level of 0.08.[57] The server of alcohol can be held liable to a third party if it serves alcohol to a visibly intoxicated person and the third person's injuries are proximately caused by the intoxicated person's intoxicated state.[58]

It is possible to present evidence that a person was impaired due to consumption of alcohol or drugs even if the blood alcohol is less than .08%.[59] Medical evidence, expert testimony from a toxicologist, and, in particular, physical evidence, such as observations of the individual by witnesses, would be necessary to establish that a person was impaired even though the blood alcohol level was less than .08%. [60]

INTRAFAMILY SUITS:

Lawsuits between children and parents are permitted and insurable. The doctrine of parental immunity is not recognized in Pennsylvania.[61] Interspousal lawsuits are allowed and insurable as well. The doctrine of interspousal immunity has been abrogated in Pennsylvania.[62]

JOINT AND SEVERAL LIABILITY:

For causes of action accruing before June 28, 2011, Pennsylvania applied joint and several liability, meaning each joint tortfeasor was responsible for the entire loss to the plaintiff, regardless of the comparative fault allocated to each defendant. [63] Therefore, a plaintiff could enforce the entire amount of a judgment against any one defendant.

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[57] 75 Pa.C.S. § 3802(a).
[58] 47 P.S. § 4-497.
[59] 75 Pa.C.S. § 3802(a)(1).
[60] *Commonwealth. v. Segida*, 985 A.2d 871, 880 (Pa. 2009).
[61] *Falco v. Pados*, 282 A.2d 351 (Pa. 1971).
[62] *Hack v. Hack*, 433 A.2d 859 (Pa. 1981).
[63] 42 Pa.C.S. § 7102(b).

On June 28, 2011, Pennsylvania Governor Thomas Corbett signed The Fair Share Act into law.[64] Pursuant to the Fair Share Act, "each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of that defendant's liability to the amount of liability attributed to all defendants and other persons to whom liability is apportioned[.]"[65] This Act eliminated Pennsylvania's previous application of joint liability, instead apportioning several liability according to fault.[66] When apportioning liability, any defendant or other person who has entered into a release with the plaintiff with respect to the action and who is not a party shall be transmitted to the trier of fact upon appropriate requests and proofs by any party.[67]

However, joint liability is still applicable for five express situations: (1) where the Defendant is 60% or more at fault; (2) intentional misrepresentation; (3) intentional torts; (4) the release or threatened release of a hazardous substance; or (5) serving alcohol to a visibly intoxicated patron.[68] These jointly liable defendants are still entitled to recover contribution from defendants who have paid less than their proportionate share.[69]

The applicability of the Fair Share Act in certain situations has recently been called into question by the Pennsylvania Superior Court in *Spencer v. Johnson*.[70] There the court held that the Fair Share Act did not apply since there was no allegation or finding of comparative fault against plaintiff.[71] It remains unclear if the simple allegation of a plaintiff's comparative negligence is sufficient, or if the jury must ultimately find Plaintiff at least 1% negligent. But a defendant should

[64] 42 Pa.C.S. § 7102(a.1).
[65] 42 Pa.C.S. § 7102(a.1)(1).
[66] *Rost v. Ford Motor Co*., 151 A.3d 1032, 1044 (Pa. 2016).
[67] 42 Pa.C.S. § 7102(a.2).
[68] 42 Pa.C.S. § 7102(a.1)(3).
[69] 42 Pa.C.S. § 7102(a.1)(4).
[70] 249 A.3d 529 (Pa. Super. 2021), reargument denied (May 24, 2021).
[71] *Id.* at 559 ("The Fair Share Act concerns matters where a plaintiff's own negligence may have or has contributed to the incident.").

consider at least raising these allegations, where appropriate, in order to preserve the potential benefits of the Fair Share Act.

With regard to the application of strict liability in asbestos cases under the Fair Share Act, the Pennsylvania Supreme Court has specifically held that per capita apportionment (rather than a percentage at-fault basis) remains the proper approach.[72] However, an argument can be made that numerous portions of that opinion appear to limit that holding to the nuances of asbestos litigation.

LATE NOTICE:

In Pennsylvania, prejudice is required in order to claim late notice.[73] However, the Pennsylvania Supreme Court interpreted the police notification requirement in the definition of "uninsured motor vehicle" in 75 Pa.C.S. § 1702 to state that where an insured fails to notify the police of an accident with an unidentified vehicle, the insurer need not show prejudice in order to deny the claim for uninsured motorist benefits on the grounds of lack of notice.[74] Late notice may not relieve an insurer of its duty to defend. It is the insurer's burden to prove that it was prejudiced by the insured's late notice.

MEDICAL MALPRACTICE:

Every health care provider practicing medicine or providing health care services in Pennsylvania is required to insure his professional liability in the amount required by statute.[75] The Medical Care Availability and Reduction of Error Fund ("MCARE Fund") is a contingency fund for the purpose of paying all awards against a health care provider entitled to participate in the fund as a consequence of any claim for professional liability brought against such health care provider, to the extent such health care provider's share of liability exceeds its basic coverage insurance in

[72] *Roverano v. John Crane, Inc*., 226 A.3d 526, 527 (Pa. 2020).
[73] *Brakeman v. Potomac Ins. Co*., 371 A.2d 193 (Pa. 1977).
[74] *State Farm Mut. Auto. Ins. Co. v. Foster*, 889 A.2d 78 (Pa. 2005).
[75] 40 P.S. § 1303.711.

effect at the time of the occurrence. The statutory limit of liability of the fund is $1 million.[76] An annual surcharge is levied on all health care providers entitled to participate in the fund. The fund is only available to health care providers who conduct more than 50% of their health care business or practice in Pennsylvania.[77]

In any action based upon an allegation that a licensed professional deviated from an acceptable professional standard, the attorney for the plaintiff, or the plaintiff if not represented, shall file with the complaint, or within sixty (60) days after the filing of the complaint, a certificate of merit signed by the attorney or party.[78] The Certificate of Merit must provide that either:

1. An appropriate licensed professional has supplied a written statement that there exists a reasonable probability that the care, skill, or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm, or

2. The claim that the defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom the defendant is responsible deviated from an acceptable professional standard, or

3. Expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim.[79] Procedurally, the Prothonotary, upon Praecipe of the defendant, shall enter a judgment of non pros against the plaintiff for failure to file a certificate of merit within the required time, provided there is no pending, timely filed motion seeking to extend the time to file the certificate.[80]

Rule 237.1,[81] which provides for a ten-day written notice to be mailed prior to entry of non pros, does not apply to the filing of a Praecipe for non pros for failure to file a certificate of merit.[82]

NO FAULT:

The Pennsylvania no fault statute was repealed in 1984,[83] and was replaced by the

[76] § 1303.712(c).
[77] § 1303.712(c)(1).
[78] Pa.R.C.P. 1042.3. *et seq.*
[79] Pa.R.C.P. 1042.3.
[80] Pa.R.C.P. 1042.6; *see also Warner v. Univ. of Pa. Health Sys.*, 874 A.2d 644 (Pa. Super. 2005).
[81] Pa.R.C.P. 237.1.
[82] *Moore v. Luchsinger*, 862 A.2d 631 (Pa. Super. 2004).
[83] Feb. 12, 1984, P.L. 26, No. 11 § 8(a), eff. Oct. 1, 1984.

MVFRL.[84] Now drivers can choose between a no-fault system policy and a policy based on traditional tort liability law. Insurance companies pay according to the party's degree of fault under a fault based police, and under a no fault policy, the driver's insurance company must cover medical bills, rehabilitation costs, and lost wages up to the amount spent. However, the injured person cannot sue the other driver for pain and suffering, emotional distress and inconvenience.[85]

NON SUI JURIS:

The concept of *non sui juris*, or lacking legal capacity to act for oneself, is applicable up until the age of 18, regardless of the minor's physique, mentality, education, experience or accomplishments.[86] The legislature and judiciary consistently view minors as a protected class. However, *non sui juris* status cannot be challenged and submitted to the jury for consideration.

OWNER LIABLE IF NOT IN VEHICLE:

The Family Purpose Doctrine is not recognized in Pennsylvania. The Family Purpose Doctrine is a rule of law that a vehicle's registered owner is liable to anyone injured when the auto is driven by a member of the family, with or without permission, for injuries or damages caused by a family member's negligent driving.[87] The owner is not liable unless he knows of the operator's incompetency, giving rise to liability for negligent entrustment.[88] The owner may be held liable if the driver was operating the vehicle in the course and scope of the owner's employment.[89]

PERIODIC PAYMENTS:

Periodic payments of judgments or settlements are allowed in Pennsylvania. If payments under the structured settlement agreement are not timely made, the claimant may have an action for

[84] *See e.g. Tannenbaum v. Nationwide Ins. Co.*, 992 A.2d 859 (Pa. 2010).
[85] 75 Pa.C.S. § 1705 (a)(1)(A).
[86] 23 Pa.C.S. § 5101.
[87] *Piquet v. Wazelle*, 288 Pa. 463, 467, 136 A. 787, 788 (1927).
[88] *Phillips v. Lock*, 86 A.3d 906, 913 (Pa. Super. 2014); *Ferry v. Fisher*, 709 A.2d 399, 403 (Pa. Super. 1998).
[89] *Lambert v. Polen*, 30 A.2d 115, 115 (Pa. 1943).

breach of contract.

PERMISSIVE USE:

> The MVFRL provides in relevant part:
>
> Any owner of a motor vehicle for which the existence of financial responsibility is a requirement for its legal operation shall not operate the motor vehicle or permit it to be operated upon a highway of this Commonwealth without the financial responsibility required by this chapter.[90]

The MVFRL does not provide that all permissive users of a vehicle must be insured under the owner's policy. There is case law for the proposition that Section 1786(f) implies that such coverage must be afforded.[91] However, the Supreme Court of Pennsylvania recently rejected this interpretation of the MVFRL.[92]

"Under an omnibus clause of an automobile insurance policy which designates as insured any person using the insured vehicle with the permission of the owner, the permission necessary to elevate the user to the status of an additional insured may be express or implied. . . . Implied permission may arise from the relationship of the parties or by virtue of a course of conduct in which the parties have mutually acquiesced."[93] When the driver's deviation from the insured's permission to use the automobile is "slight and inconsequential," coverage to an omnibus insured will be extended; however, when the deviation is substantial, coverage will not be extended.[94]

With respect to whether a third party's actions are covered under another's insurance policy, the Pennsylvania Supreme Court has stated that "the operator must be shown to have obtained possession of the car lawfully and with permission, express or implied, of the named

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[90] 75 Pa.C.S. § 1786(f).
[91] *See Progressive N. Ins. Co. v. Universal Underwriters Ins. Co*., 898 A.2d 1116, 1119 (Pa. Super. 2006) (stating that although "the MVFRL continues not to include specific language directing that all permissive users of a vehicle be insured under the owner's insurance . . . we find that . . . § 1786 implicitly direct[s] such coverage be provided.").
[92] *See Safe Auto Ins. Co. v. Oriental-Guillermo*, 214 A.3d 1257, 1265 (Pa. 2019).
[93] *Fed. Kemper Ins. Co. v. Neary*, 530 A.2d 929, 931 (Pa. Super. 1987).
[94] *Gen. Acc. Ins. Co. of Am. v. Margerum*, 544 A.2d 512, 513 (Pa. Super. 1988) (interpreting a business automobile policy).

[insured]; if there is a complete lack of permission to use the car for any purpose, the operator is clearly not within the coverage of the policy."[95] To trigger implied consent coverage for third-party accidents, the necessary permission can be implied from the parties' relationship or through the course of conduct to which they have mutually acquiesced.

"A "named driver exclusion" in an automobile policy excludes coverage in a situation where coverage under the policy would otherwise be extended."[96] This exclusion is permitted in Pennsylvania, and is designed to lower insurance premiums and allow insurance companies to lower their risks.[97] "Nonpermissive use" exclusions for uninsured motorist ("UM") benefits in an automobile insurance policy have been upheld by Pennsylvania courts and found not to be against public policy.[98]

PRIORITY OF RECOVERY:

For first party benefits, the following order of priorities applies:

> (1) For a named insured, the policy on which he is the named insured.
> (2) For an insured, the policy covering the insured.
> (3) For the occupants of an insured motor vehicle, the policy on that motor vehicle.
> (4) For a person who is not the occupant of a motor vehicle, the policy on any motor vehicle involved in the accident. For the purpose of this paragraph, a parked and unoccupied motor vehicle is not a motor vehicle involved in an accident unless it was parked so as to cause unreasonable risk of injury.[99]

For UM/UIM coverage where multiple policies apply, payment shall be made in the following order of priority:

> (1) A policy covering the motor vehicle occupied by the injured person at the time of the accident.
> (2) A policy covering a motor vehicle not involved in the accident with respect to which the injured person is an insured.[100]

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[95] *Adamski v. Miller*, 681 A.2d 171, 174 (Pa. 1996) (internal citation omitted).
[96] *Byoung Suk An v. Victoria Fire & Cas. Co.*, 113 A.3d 1283, 1288 (Pa. Super. 2015).
[97] 75 Pa.C.S. § 1718(c); *see also Donegal Mut. Ins. Co. v. Fackler*, 835 A.2d 712 (Pa. Super. 2003).
[98] *Nationwide Mut. Ins. Co. v. Cummings*, 652 A.2d 1338 (Pa. Super. 1994).
[99] 75 Pa.C.S. § 1713(a).
[100] 75 Pa.C.S. § 1733.

For first party benefits and UM/UIM coverage, if more than one insurer exists at the same level of priority and there is no insurer at a higher level of priority, then the insurer against whom a claim is asserted first must process and pay the claim to its limits, and seek contribution pro rata from the other responsible carrier(s).

PUNITIVE DAMAGES:

Punitive damages are not against public policy. It is against public policy for an insurance company to insure against punitive damages. However, it is not against public policy for an insurance company to insure the operator of a downhill skiing area against punitive damages other than those punitive damages arising from an intentional tort committed by such operator.[101] Punitive damages are insurable if vicariously, not directly, imposed.[102]

Punitive damages may be awarded only after it has been determined that actual damages have been suffered, even if compensatory damages were not awarded.[103] Punitive damages are imposed to punish wrongdoers and to deter similar conduct in the future.[104] Under Pennsylvania law, punitive damages may be awarded only after consideration of the act which gives rise to the suit itself, together with all circumstances including the motive of the wrongdoer, and the relations between the parties.[105] Punitive damages are based upon "outrageous" conduct, which may be intentional, willful, wanton or reckless conduct.[106] A showing of negligence, or even gross negligence, is insufficient for an award of punitive damages.[107]

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[101] 40 P.S. § 2051.
[102] *Butterfield v. Giuntoli*, 670 A.2d 646 (Pa. Super. 1995).
[103] *Kirkbride v. Lisbon Contractors, Inc*., 555 A.2d 800, 802 (Pa. 1989).
[104] *Hutchison v. Luddy*, 870 A.2d 766, 770 (Pa. 2005) (citing *Kirkbride v. Lisbon Contractors, Inc*., 555 A.2d 800, 802 (Pa. 1989)).
[105] *Martin v. Johns-Manville Corp*., 494 A.2d 1088 (Pa. 1985), *revd. on other grounds by Martin v. Owens-Corning Fiberglas Corp*., 528 A.2d 947 (Pa. 1987) (reversing the decision to submit the issue of apportionment to the jury).
[106] *Phillips v. Cricket Lighters*, 883 A.2d 439, 445 (Pa. 2005) (citing *SHV Coal, Inc. v. Cont'l Grain Co*., 587 A.2d 702 (Pa. 1991).
[107] *Id*. at 705.

Although punitive damages need not bear any particular proportion to the amount of compensatory damages, the size of a punitive damages award must be reasonably related to the State's interest in punishing and deterring the particular behavior of the defendant and not the product of arbitrariness or unfettered discretion.[108] Furthermore, a reasonable relationship must exist between the amount of the punitive damage award and the character of the act, the nature and extent of the harm suffered by the plaintiff, and the wealth of the defendant.[109] Finally, following the United States Supreme Court's decisions in *State Farm Mutual Automobile Insurance Company v. Campbell*,[110] and *BMW of North America v. Gore*,[111] the Pennsylvania Superior Court has held that, when reviewing an award of punitive damages in a particular case, courts must view that award in light of those awarded in other comparable cases.[112] The Supreme Court of Pennsylvania has found that there is no *per se* prohibition against imposing punitive damages against an estate. The question of whether punitive damages are appropriate in a particular case should be resolved by the trier of fact considering the nature of the acts committed.[113]

REVIEW OF MEDICAL BILLS:

All healthcare providers' bills must be forwarded directly to the insurer, not to the insured, for collection. Two separate evaluations should be made of all bills received by the carrier. First, an injured person or the healthcare provider providing medical treatment to that person (to whom plaintiff's right to benefits is generally assigned) may not receive first party benefits in excess of 110% of the prevailing charge at the 75 percentile of that rate pertaining to the service involved applicable under the Medicare program for comparable services. If applicable, the measure against

[108] *Pestco, Inc. v. Associated Prods.*, 880 A.2d 700 (Pa. Super. 2005).
[109] *Hollock v. Erie Ins. Exch.*, 842 A.2d 409 (Pa. Super. 2004), *appeal granted* 586 Pa. 262 (2005), *appeal dismissed* 903 A.2d 1185 (Pa. 2006).
[110] *State Farm Mut. Auto. Ins. Co.*, 538 U.S. 408 (2003).
[111] *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996).
[112] *Pestco*, 880 A.2d at 700.
[113] *G.J.D. v. Johnson*, 713 A.2d 1127 (Pa. 1998).

which recoverable benefits are made may be 110% of the applicable fee schedule, the recommended fee or the inflation index charge; or 110% of the diagnostic-related groups ("D.R.G.") payment.[114] Therefore, all bills should be independently audited with respect to the amount charged.

Second, all insurers covered by the MVFRL are required to contract with a peer review organization ("PRO") for the purpose of evaluating treatment and healthcare services provided to a claimant.[115] PRO evaluations are for the purpose of confirming services as reasonable and medically necessary. If an insurer intends to challenge the reasonableness and medical necessity of treatment reflected in a claimant's bill, it must submit its challenge to its PRO within 90 days of receipt of the provider's bill. If an insurer challenges a bill within 30 days of receipt, it need not pay the healthcare provider until a determination has been made by the PRO. Otherwise, it is required to pay the bill, pending the outcome of the peer review. If the PRO determines a bill is reasonable and medically necessary, the insurer must pay the bill plus 12% interest per annum on any balance it withheld after the 30 days. If the PRO determines certain treatment was not reasonable or medically necessary, and the carrier has paid the bill, the provider must reimburse the carrier for any benefits paid plus 12% interest per annum thereon. If an insurer fails to submit a bill to a PRO and refuses payment for that and future bills, the healthcare provider and/or insured may challenge the insurer's refusal in Court. If the Court determines medical treatment was necessary and reasonable, the insurer will be required to pay the outstanding amount plus 12% interest, as well as the costs of the challenge and all attorneys' fees. Conduct considered to be wanton shall be subject to a payment of treble damages.[116]

[114] 75 Pa.C.S. § 1797(a).
[115] 75 Pa.C.S. § 1797(b).
[116] 75 Pa.C.S. § 1797(b).

SEAT BELT DEFENSE:

The seat belt defense is not allowed in automobile or products liability cases. Any occupant of the front seat of motor vehicle must use some form of passenger restraint system.[117] Regardless of their position in the vehicle, children under the age of four must use some form of passenger restraint system,[118] and children between the ages of four and eight must be fastened in a seatbelt and booster seat.[119] Evidence of the failure to use a safety belt system is prohibited in civil actions.[120] Failure to use a child passenger restraint system or safety seat belt system is not considered to be contributory negligence.

STACKING:

Stacking of Bodily Injury and Property Damage Coverages is not permitted.[121] First Party Benefits also "shall not be increased by stacking the limits of coverage of: (1) multiple motor vehicles covered under the same policy of insurance; or (2) multiple motor vehicle policies covering the individual for the same loss."[122] However, UM/UIM coverage may be stacked.[123] The statute provides:

> When more than one vehicle is insured under one or more policies providing uninsured or underinsured motorist coverage, the stated limit for uninsured or underinsured coverage shall apply separately to each vehicle so insured. The limits of coverages available under this subchapter for an insured shall be the sum of the limits for each motor vehicle as to which the injured person is an insured.
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> [A] named insured may waive coverage providing stacking of uninsured or underinsured coverages in which case the limits of coverage available under the policy for an insured shall be the stated limits for the motor vehicle as to which the injured person is an insured.[124]

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[117] 75 Pa.C.S. § 4581.
[118] 75 Pa.C.S. § 4581(a)(1), quoted by *P.K. v. M.K.*, 136 A.3d 1028 (Pa. Super. 2016) (unpublished).
[119] 75 Pa.C.S. § 4581(a)(1.1).
[120] 75 Pa.C.S. § 4581(e); *see also Amadou v. Sarver*, 168 A.3d 291 (Pa. Super. 2017).
[121] 75 Pa.C.S. § 1717.
[122] 75 Pa.C.S. § 1717.
[123] 75 Pa.C.S. § 1738.
[124] 75 Pa.C.S. § 1738(a)-(b).

The necessary form to be signed is provided in Section 1738.[125]

STATUTE OF LIMITATIONS

Bodily Injury: Two years from the date of the accident or two years from date the claimant knew or should have known that he had a cause of action for damages.[126]

Property Damage: Two years from the date of the accident or two years from date the claimant knew or should have known that he had a cause of action for damages.[127]

Wrongful Death: Two years from the decedent's death, if underlying claim viable at the time of death.[128]

UM/UIM: Four years.[129]

First Party Benefits: Four years from the date of the accident if benefits have not been paid or four years from last payment if benefits have been paid.[130] For minors an action for benefits shall be commenced within four years from the date on which the injured minor attains 18 years of age.[131]

Libel & Slander: One year.[132]

Oral Contract: Four years.[133]

Written Contract: Four, five, or six years, depending on the type of contract.[134]

Under Seal: Notwithstanding Section 5525(7) (relating to four year limitation), an action

[125] 75 Pa.C.S. § 1738(d).
[126] 42 Pa.C.S. § 5524, quoted by *Morrison Informatics, Inc. v. Members 1st Fed. Credit Union*, 139 A.3d 1241, 1248 (Pa. 2016).
[127] 42 Pa.C.S. § 5524.
[128] 42 Pa.C.S. § 5524; *Moyer v. Rubright*, 651 A.2d 1139 (Pa. Super. 1994).
[129] 42 Pa.C.S. § 5525(a)(8).
[130] 75 Pa.C.S. § 1721.
[131] 75 Pa.C.S. § 1721(b).
[132] 42 Pa.C.S. § 5523(1).
[133] 42 Pa.C.S. § 5525.
[134] 42 Pa.C.S. §§ 5525-5527.

upon an instrument in writing under seal must be commenced within 20 years.[135]

Not Under Seal: Four years.[136]

Declaratory Judgment Action: Four years from the time the insurance company has a sufficient factual basis to present the averments in its complaint for declaratory judgment that the insurance policy at issue does not provide coverage.[137] This sufficient factual basis could occur "upon the review of the complaint, the completion of discovery, the ultimate resolution of the underlying lawsuit, or any other event which would provide actual notice[.]"[138]

Medical Malpractice: Two years from the date of the injury or, under the "discovery rule," two years from the time the injury's existence is known or discovered or becomes knowable or discoverable by the exercise of reasonable diligence.[139]

Statute of Repose: A civil action against any person lawfully performing or furnishing the design, planning, supervision or observation of, construction or construction of any improvement to real property must be commenced within twelve years after completion of such improvements.[140]

STRICT LIABILITY:

Pennsylvania does recognize strict liability.[141] It does not allow defenses of contributory negligence,[142] compliance with standards,[143] or state of the art.[144] Available defenses do include

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[135] 42 Pa.C.S. § 5529(b).
[136] 42 Pa.C.S. § 5525.
[137] *Selective Way Ins. Co. v. Hosp. Grp. Servs., Inc*., 119 A.3d 1035, 1048 (Pa. Super. 2015).
[138] *Id.* at n. 1.
[139] 42 Pa.C.S. § 5524.
[140] 42 Pa.C.S. § 5536.
[141] *Webb v. Zern*, 220 A.2d 853 (Pa. 1966).
[142] *Kimco Dev. Corp. v. Michael D's Carpet Outlets*, 637 A.2d 603 (Pa. 1993).
[143] *Lewis v. Coffing Hoist Div., Duff-Norton Co*., 528 A.2d 590 (Pa. 1987).
[144] *Id.* (holding that evidence of industry standards relating to design and evidence of the design's widespread use in industry are inadmissible in a strict products liability action).

misuse,[145] alterations,[146] and assumption of the risk.[147] The Sealed Container Doctrine is recognized in Pennsylvania as well. Strict liability does not mean absolute liability and does not make the manufacturer an insurer of his product's safety.[148] Under strict liability, the attention is focused upon the product and not upon the actions of the manufacturer; the plaintiff must prove that the product was defective either in design or manufacture.

In 2014, the Pennsylvania Supreme Court granted allowance of appeal to address whether it "should replace the strict liability analysis of Section 402A of the Second Restatement with the analysis of the Third Restatement."[149] The Court declined to adopt the Third Restatement's formulation—characterizing it as requiring evidence of a "reasonable alternative design", and observing that such an approach "limits the applicability of the cause of action to certain products as to which that sort of evidence is available."[150] After noting that "Pennsylvania remains a Second Restatement jurisdiction," the Court held that "the cause of action in strict products liability requires proof, in the alternative, either of the ordinary consumer's expectations or of the risk-utility of a product."[151]

SUBROGATION:

Pennsylvania allows subrogation for collision, UM, UIM, and Workers' Compensation if the accident occurred after the effective date of the 1993 amendments to Workers' Compensation Act. Subrogation is not allowed for medical benefits generally,[152] but it is for HMOs.[153] Nor is

[145] *Pa. Dep't of Gen. Servs. v. U.S. Mineral Prods. Co.*, 898 A.2d 590 (Pa. 2006).
[146] *Dambacher v. Mallis*, 485 A.2d 408, 437 n. 4 (Pa. Super. 1984), quoted by *Weiner v. Am. Honda Motor Co., Inc.*, 718 A.2d 305, 308 (Pa. Super. 1998).
[147] *Robinson v. B. F. Goodrich Tire Co*., 664 A.2d 616 (Pa. Super. 1995); *Kupetz v. Deere & Co*., 644 A.2d 1213 (Pa. Super. 1994); *Remy v. Michael D's Carpet Outlets*, 571 A.2d 446 (Pa. Super. 1990).
[148] *Davis v. Berwind Corp*., 690 A.2d 186 (Pa. 1997).
[149] *Tincher v. Omega Flex, Inc*., 104 A.3d 328, 343 (Pa. 2014).
[150] *Id.* at 395.
[151] *Id.* at 401.
[152] 75 Pa.C.S. § 1720.
[153] *Wirth v. Aetna U.S. Healthcare*, 904 A.2d 858 (Pa. 2006).

there subrogation of uninsured motorist property damage ("UMPD").

THIRD-PARTY SUITS

Under current Pennsylvania law, a defendant cannot recover common law indemnity if it has been actively negligent.[154] Conversely, when a person, who without active fault on his own part, has been compelled by reason of some legal obligation to pay damages occasioned by negligence of another, that person may recover from the person who is primarily liable.[155]

Contribution among joint tortfeasors is recognized in Pennsylvania.[156] A negligent employer is entitled to the benefit of the Workers' Compensation Act, and may plead the Act as a bar to any recovery by an insured employee or claim for contribution, unless liability for damages, contribution or indemnity is expressly provided for in a written contract entered into by the party alleged to be liable prior to the date of the occurrence which gave rise to the action.[157]

TORT OPTIONS:

The MVFRL permits an insured to choose one of two options regarding his ability to sue for non-economic damages (pain and suffering, inconvenience). An insured can elect either a limited tort option or a full tort option. Under current law, the election of the limited tort option imposes similar limits on UM/UIM coverage.[158] With the election of the limited tort option, a motorist's ability to seek noneconomic damages from the uninsured motorist provisions of his own automobile insurance policy is limited to instances where he suffers a "serious injury."[159]

Limited Tort Option:

An insured may seek recovery for all medical and other out of pocket expenses, but not for

[154] *Sirianni v. Nugent Bros., Inc.*, 506 A.2d 868 (Pa. 1986).
[155] *Id.*
[156] 42 Pa.C.S. § 8324.
[157] 77 P.S. § 481.
[158] 75 Pa.C.S. § 1705.
[159] *Rump v. Aetna Cas. & Sur. Co.*, 710 A.2d 1093 (Pa. 1998).

pain and suffering and other non-economic damages unless injuries are deemed "serious injury," "serious impairment of a bodily function," or circumstances that come within one of four other statutory exceptions (person at fault was DUI, was operating MV registered in another state, intended to cause injury, or was uninsured). An owner of a currently registered private passenger motor vehicle who lacks financial responsibility, i.e., has no insurance, is deemed to have chosen the limited tort option if he brings suit as a result of an accident. An individual otherwise bound by the limited tort option retains full tort rights, including the right to sue for non-economic damages, if injured while an occupant of a motor vehicle other than a private passenger motor vehicle. Therefore, as an example, a bus passenger may recover economic as well as non-economic damages.

Full Tort Option:

An insured has an unrestricted right to seek compensation for injuries caused by other drivers, including pain and suffering and other non-economic damages. Failure to choose an option results in full tort coverage by default.

WRONGFUL DEATH & SURVIVAL ACTIONS:

Under Pennsylvania law, damages for tortiously caused death can be sought under two separate provisions: The Wrongful Death Act,[160] and the Survival Act.[161] Each of these claims for damages is pursued in separate counts of a plaintiff's complaint.

Wrongful Death:

In wrongful death actions, damages are recoverable by certain survivors of the decedent. The purpose of the Wrongful Death Statute is to compensate the decedent's survivors for the pecuniary losses they have sustained because of the decedent's death including the value of the

[160] 42 Pa.C.S. § 8301.
[161] 42 Pa.C.S. § 8302.

services the victim would have rendered to his or her family if he or she had lived. A wrongful death action does not compensate the victim; rather, it compensates the survivors for damages that they have sustained because of the decedent's death. These include:

1. Administrator's expenses (hospital, medical, funeral, burial, etc…),
2. Support (monetary support the decedent would have provided during their lifetime),
3. Services (decedent's probable earnings and services that would have gone to children, spouse or parents), and
4. Guidance and tutelage to children (provides that a child is entitled to compensation for the value of decedent's guidance and tutelage they have been deprived of by his death).

Survival Actions:

In survival actions, damages are recoverable by the Estate of the Decedent. A survival action compensates the decedent's estate for various categories of damage sustained by the decedent. The estate is substituted for the decedent, and its recovery is based on the rights of action that decedent possessed at the time of his death. In a survival action, the personal representative of the decedent can recover the same damages (e.g., pain and suffering) as those the decedent could have recovered if he had survived. Current loss includes the loss of decedent's earnings from date of accident until death. Future loss includes the loss of decedent's net earnings during life expectancy from date of accident. Decedent's earnings are reduced by the cost of maintenance and earnings that would have been contributed to the family during decedent's life expectancy. Future Benefit loss includes the loss of expected retirement and social security income for decedent's life expectancy from the date of the accident.