

## PENNSYLVANIA LEGAL UPDATE

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### RELEASES: BE CAREFUL WHAT YOU SIGN

Victims of automobile accidents are frequently expected to sign numerous documents in the days and months following the accident. Insurance companies often refuse to negotiate the terms of the documents. Before signing anything, accident victims need to read and to completely understand what they sign.

Recently, a Pennsylvania mother lost all of her claims against Ford Motor Company related to the death of her daughter. The daughter died when she was a passenger in a Ford Explorer that rolled over in a fairly minor traffic incident. Following her daughter's death, the mother sued the driver of the vehicle and promptly settled the case. The mother also promptly settled the daughter's insurance claims with the insurance company that provided the daughter's automobile insurance. In settling with the negligent driver and the daughter's insurance company, the mother signed standard "release" documents that released all claims in exchange for a money damages award.

The mother next turned to the litigation of claims against Ford Motor Company, alleging that the Ford Explorer was defectively designed because it was prone to rollovers. Ford successfully moved for dismissal of the case, relying on the releases that the mother signed when she settled with the driver and the daughter's insurance company.

The releases that the mother had signed released all claims against the driver and the insurance company as well as "all other persons, firms or corporations." The mother insisted that she never intended to release Ford when she signed the releases. Ford maintained that the releases were enforceable according to their plain terms, and that a release of all other persons, firms, or corporations barred any other lawsuits arising out of the accident.

Ford won a dismissal on appeal. The Pennsylvania appeals court noted that, while the intent of the parties who sign a release is important, the “primary source” of the parties’ intent is the language of the release itself. “Embodied in the ordinary meaning of the words of the document itself,” the intent of the parties cannot separately be determined from what either party later claims to have expected from the release. The appeals court noted that Pennsylvania law has long supported comprehensive releases and has for many years recognized that releases can release all liability, even as to individuals and entities who are not named and who did not contribute any money toward the settlement.

Consumers dealing directly with insurance agents rarely are successful in negotiating changes to the “standard” documents and releases that insurance agents produce for signature. Before signing any insurance documents or even endorsing an insurance check, you should consult with an attorney. You should understand all of the claims you have arising out of an accident before signing final settlement documents on any payments.

## WORKERS’ COMPENSATION UPDATE

Under the Pennsylvania Workers’ Compensation Act, qualified injured workers are entitled to insurance payments that are calculated based on their average weekly wage. The Pennsylvania courts recently struggled in two separate cases to identify the workers’ average weekly wages.

### Different Hourly Rates

In the first case, an injured welder had earned \$18 per hour on local jobs, \$27.54 per hour on jobs subject to prevailing wage regulations, and \$41.31 per hour on overtime work. After the welder suffered a hand fracture that left him unable to work, the employer submitted his wages to the insurance carrier at the \$18-per-hour rate, with a 40-hour workweek. The welder objected,

noting that he had taken the job with the understanding that he would work mostly on prevailing wage jobs and would also earn 8 to 10 hours of overtime per week.

Noting that the history of the welder's actual assignments was largely at prevailing wage jobs and that he regularly worked 48 to 50 hours most weeks, the workers' compensation judge calculated the welder's benefits based on the prevailing wage, with appropriate overtime.

#### Expense Reimbursement Payments

In the second case, the court addressed what weight is to be given to expense reimbursement payments regularly received by employees prior to their injury. The worker was a commercial pilot who died when the plane he was flying crashed. His surviving wife claimed that all of the pilot's compensation, including his food and lodging expense reimbursements, should be included in the calculation of the death benefit owed to her by the insurance company.

The Workers' Compensation Act defines the "average weekly wage" as including "board and lodging received from the employer." The transport company and its insurance carrier argued that the transport company never gave the pilot lodgings in lieu of pay and never advanced any monies for his upkeep. They argued that the Act's use of "board and lodging" differed from the circumstances where employees later are reimbursed for their expenses for meals and overnight hotel stays.

The court found that the Act does not place any limits on the timing of the payment by an employer of food and housing expenses. Whether the services are provided by the employer, advanced by the employer, or later reimbursed by the employer, the court found that regularly paid food and lodging expenses must be included in the calculation of workers' compensation benefits.

## ROADS LESS TRAVELED

Pennsylvania's little known Private Road Act was created in colonial times. The Act gives the owner of a landlocked property the right to put a private road across adjacent property owned by someone else. Based on the assumption that all landowners must have access to public roads, the Act recognizes that a public benefit flows from the guarantee that all parcels of land will have access to public roads. The Act was created, and amended several times, during the period when land grants in the Pennsylvania wilderness abutted each other with no public or private roads identified. In modern times, the Act is not frequently used, since title searches and a long history of land development protect real estate purchasers from the troublesome discovery that their land is landlocked.

Recently, however, a western Pennsylvania man found that a parcel of land he owned had no road access. He sued under the Private Road Act to secure access to the closest public road by constructing a private road through the land of a nearby homeowners association and part of one residential lot.

The man followed the procedure established in the Act—he petitioned the county court to appoint a board of examiners. Examiners are required by the Act to determine if the requested road is necessary and, if it is, to lay out the best ground for the road, considering the shortest distance and the minimalization of damage to the other landowner. The examiners are also charged with the duty of determining the loss in value to the landowner whose private property is “taken” for the establishment of the road.

Even though they were entitled to compensation for their losses, the homeowners association and the homeowner whose land was to be used for the road objected to the creation of the road. They challenged the constitutionality of the Act, claiming that no one's land should be taken without the owner's consent. They also raised objections that a taking of land should be limited to takings for public uses. Relying on the Pennsylvania Constitution, the homeowners association and the homeowner argued that the “taking” of their land for the benefit of one private landowner was unconstitutional.

Federal and state laws regulating the taking of private land are complex and often conflict. Both the United States Supreme Court and the Pennsylvania Supreme Court have recently approved the taking of “blighted” properties by local governments as part of redevelopment plans, even where the blighted property is then transferred to private owners.

In the recent case involving the Private Road Act, the Pennsylvania appeals court rejected the objections of the homeowners association and the homeowner, finding that the creation of a purely private road has an ultimate public benefit recognized by the Act.

#### CALCULATION OF PENSION PAYMENTS

Private and government employers sometimes offer retirement incentives to move highly compensated senior employees into retirement and off the payroll. Some retirement incentive plans are designed to help employers identify their staffing needs. By rewarding employees who commit to a retirement date, the employer can plan ahead for its upcoming staffing needs.

Recently, a Pennsylvania school district offered its teachers a \$10,000 bonus plus a 3.5% salary increase in the three years prior to their retirement. To qualify for the additional compensation, the teachers simply had to give notice of their retirement a full three years prior to their intended retirement date.

When the teachers retired, their monthly pension payments were calculated based on their salaries. But the pension plan administrator refused to include the \$10,000 payments or the 3.5% salary increases as part of their “salary” in calculating their monthly pension payments. The plan administrator decided that the \$10,000 payments and the salary increases were more like “severance pay” than regular pay and were thus not part of the regular salary used in the pension payment calculation.

The teachers sued the pension plan and lost, with the court upholding the plan administrator’s conclusions. Many pensions are calculated based on the final several years’

salary of the employee. But each plan differs—the definition of salary may or may not include bonuses, overtime, and other extra compensation.

All employees are entitled to a complete copy of their pension plan documents. All plans also offer a “summary plan description” that is a shorter and more readable version of the comprehensive plan document. Prior to retirement, it is wise for pensioners to work directly with their employers and plan administrators to understand the precise method of calculation of their expected monthly pension benefit.

## CHILD SUPPORT ORDERS

In rapidly changing economic times, parents who have child support orders need to know their rights and obligations. Pennsylvania’s system of child support collection and enforcement is centralized in Harrisburg. You can learn about the system and access your own child support account at *www.childsupport.state.pa.us*.

Child support orders are modified at the request of either party if the income of either party has changed substantially. Generally, the modification is retroactive to the date the modification request was filed in writing with the county domestic relations department. But recently, a Pennsylvania appellate court upheld a five-year retroactive modification of an order, finding that a father had failed to disclose substantial salary increases over that five-year period of time. The father’s monthly net income increased progressively from just over \$5,000 per month to over \$14,000 per month over the five-year period.

The Pennsylvania child support statute requires that all parties to support orders must promptly inform the local domestic relations office and the other party to the case of any “material” changes to his or her circumstances. Material changes in circumstances certainly include salary changes but also include changes in health insurance benefits, day-care expenses, and any other issues that affect the support order at issue.

The Pennsylvania child support statute also requires that a party who knows of a change in the other party's income must promptly move for a modification. But in the case of the father whose salary increased over five years, the court found that the mother did not know of his income changes and had not received any of the father's tax returns. The court disregarded the mother's failure to promptly request modification, simply because there was no evidence that the mother knew of the father's economic success.

Where a parent has any concrete reason to believe that the child support order should be changed, delaying moving for modification can be costly. Usually, the courts will not modify any child support orders retroactive to a date prior to the filing of the request for modification. But where a paying parent fails to meet his or her affirmative duty to disclose increased income to the local domestic relations office, grounds may exist for broad retroactive modification of a child support order.