

PENNSYLVANIA LEGAL UPDATE

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STOLEN CAR DATABASE

Shortly after purchasing a used car at a small dealership, a Pennsylvania man spent the night in jail when he was wrongfully accused of stealing the car. He sued various parties, including the dealership and the car's previous owner's insurance company, and won. But his victory was short-lived—the verdict was reversed on appeal. The details of this legal saga provide some useful information for Pennsylvania drivers.

The police arrested the man on the mistaken belief that he had stolen the car. The information in the National Crime Information Center (NCIC) database labeled the car as stolen. The man initially was unable to convince the police that he was the valid owner.

The NCIC is a national computer index of criminal justice information on fugitives, stolen property, and missing persons. It also includes histories of criminal convictions and can be used to determine if an individual has a prior criminal record. The NCIC is available to federal, state, and local law enforcement and other criminal justice agencies 24 hours a day, 365 days a year. Connecting through a patrol car laptop computer or by calling their headquarters, law enforcement officers can conduct a nationwide inquiry of the NCIC during a traffic stop to determine if a vehicle is stolen or if the driver is a person wanted by the law. The NCIC response is instantaneous.

In the case involving the wrongfully arrested Pennsylvania man, the arresting officers initially received outdated information from the NCIC, and it took over 24 hours before they learned the truth. During that time, they held the man under arrest. The car had been stolen four years before the man purchased it. The original owner's insurance company had paid fully for the loss, and the insurance company later became the legal owner of the car when it

unexpectedly was recovered by the police. The car was auctioned by the insurance company and eventually found its way to the dealership where the Pennsylvania man purchased it.

The man sued the dealership, the salesman, the tag service, his own insurance company, and the insurance company that had briefly held title to the car. He maintained that everyone with whom he had dealt in the transaction had a duty to ensure that the status of the car was corrected in the NCIC. All of the parties, with the exception of the previous owner's insurance company, settled the case before trial. The previous owner's insurance company insisted that it had done nothing wrong. A vehicle reported to the NCIC as stolen can be removed from stolen status only by the law enforcement agency that originated the report.

On appeal, the insurance company won. The Pennsylvania court sympathized with the arrested man but lamented that “not every wrong suffered is compensable” in court. Negligence liability must be based on a particular duty to the injured party. Negligence law does not assume that each of us has a broad duty to all of society. Because the man had no direct relationship with the insurance company, the company was found not liable.

Your car probably is *not* listed in the NCIC as stolen. But if you have purchased a used car, it may be wise to stop in to your local police department to check on the car's status in the NCIC. While you won't have the right to keep the car if it is stolen property, learning of its status now could spare you a night in jail. If you are about to purchase a used car, you should seriously consider asking your local police to run a check on it before you finalize your purchase.

And, if you ever are stopped by the police and told that NCIC information justifies your arrest, insist that a positive response from the NCIC is not probable cause for your arrest. The FBI website at www.fbi.gov includes the official NCIC policy brochure—it specifically requires that *before* taking any action on NCIC information a law enforcement officer must contact the agency that entered that information into the NCIC to verify whether the information still is accurate and up-to-date. Only after receiving such confirmation may a police officer make an arrest or take possession of stolen property.

JURY PRIVACY

Recently, a Pennsylvania court protected the privacy and anonymity of jurors despite vigorous efforts by television and newspaper reporters to secure information about the jurors.

The jurors were selected to serve on a homicide case that was the subject of extensive pretrial television and print news coverage. Jury selection was conducted in a courtroom open to the public, but all of the jurors were identified by their jury numbers only and not by their names. Toward the end of the trial, a newspaper and a television station filed a formal petition requesting access to the jurors' names and addresses. When the trial judge refused, the media petitioners appealed.

The news media position was simple and blunt—that constitutional principles of freedom of the press and public trials mandate the release of jurors' full names and addresses. The court's position was equally simple and clear—that the press had enjoyed unimpeded access to a public trial and that it was not entitled to invade the privacy of the jurors. Because the jurors' names and addresses were never made part of the public record at trial, the court found that the press had no right of access to that private information.

The value of a free press and public courts cannot be overstated, and a vigorous media willing to challenge the closure of court proceedings benefits all members of society. But particularly in serious criminal cases, where a trial judge has carefully protected the anonymity of jurors throughout the trial itself, Pennsylvania courts will not allow the public or the press access to the names and addresses of jurors.

PRODUCTS LIABILITY UPDATE

An individual who suffers personal injuries from a defective product is sometimes able to

recover damages from the product's manufacturer. When a consumer product is dangerously defective, the manufacturer can be held "strictly liable" for injuries caused by the product. In such cases, it is not considered relevant or important whether the manufacturer was careless or knew that the product might cause injuries. Instead, the law holds a manufacturer completely responsible for injuries if it puts a dangerously defective product into the stream of commerce.

HeartMate Pump

The HeartMate is a medical pump that assists the blood flow between the heart's ventricle and the aorta in patients with cardiac conditions. The pump is surgically implanted inside the user's body but is connected by a tube to an external console that contains a small air compressor that powers the pump. Patients using the HeartMate must be hospitalized or cared for in a nursing home or assisted living facility.

A Pennsylvania man died when the HeartMate pump implanted in his body failed due to a defective component that attached parts of the tubing serving the pump. His widow sued the pump manufacturer. The HeartMate manufacturer did not admit or deny that the pump was defectively designed or manufactured. Instead, it defended the lawsuit simply by claiming that federal law prohibits any state court suits concerning FDA-approved medical products.

The widow acknowledged that state lawsuits cannot impose additional safety requirements on products already approved by the FDA, but she insisted that she was entitled to sue because the manufacturer (1) had failed to properly warn consumers of the risks posed by the pump, and (2) had defectively designed the part of the pump that had failed, causing her husband's death.

A federal court in Pennsylvania sided with the manufacturer and threw out all of the widow's claims. In part, the court decided the case based on how the manufacturer had secured FDA approval. Some products are "cleared" by the FDA, while others are "approved" by the FDA. It is much easier for a manufacturer to get a product cleared. A product can be cleared if the manufacturer proves that it is substantially equivalent to a product already in use in the

market. A product is approved only after the manufacturer proves that the product is actually safe and effective. The court noted that in the previous year the FDA cleared 9,818 medical devices and approved only 54. The HeartMate manufacturer had completed the more rigorous process of securing FDA approval.

Federal law provides that state claims cannot be used to attack the safety or design of medical products authorized for sale by the FDA, especially those medical products that have withstood the more rigorous approval procedure. The court noted that the widow had not claimed that the manufacturer had failed to follow the FDA requirements or had deviated from any FDA specifications, statutes, or regulations. Instead, her claims that the pump was defectively designed flew in the face of the FDA's lengthy study and its determination that the pump was safe.

Federal law recognizes the tension between the need for consumer protection and the importance of encouraging the development and sale of innovative medical devices. Once a device has been approved by the FDA, federal law almost completely surrounds the manufacturer with an immunity to suit. This protection increases the responsibility of the FDA to engage in candid and thorough testing.

If you or a loved one is considering using a life-saving medical device, work closely with your health-care professionals to be sure that you understand all of the risks associated with the device. Don't be shy about making specific inquiries about the history of failures of the device. Before you suffer any injury or loss from a defective device that enjoys FDA approval, you must make an informed choice because you will be assuming all of the risks associated with the product. After the damage is done, you likely will have no opportunity to raise any products liability claims for the harm you have suffered.

OWNERSHIP OF JOINT ACCOUNTS

A Pennsylvania mother successfully prevented her adult daughter's creditor from seizing a brokerage account that the mother had established in the joint names of the mother, her daughter, and an adult son.

The mother opened the account as a "convenience" account. The law labels bank and brokerage accounts as convenience accounts when a depositor names a friend or family member as a joint owner of an account for the convenience of having the friend or family member be able to withdraw funds or otherwise assist the depositor in performing banking operations.

Convenience accounts also give the depositor an advantage in estate planning. Established joint accounts generally are not subject to probate or estate taxes. A family member or a friend who holds joint title with survivorship rights to an account simply becomes the sole surviving owner after the death of the depositor. Sometimes referred to by the courts as "a poor man's will," the jointly titled bank account is a tool often used by a person of modest means to pass his or her money to family members following the depositor's death.

The mother made all of the deposits to the brokerage account and, from the outset, she told her account advisor that she intended to control the money herself. Her main purpose in making her son and daughter co-owners was to empower them to draw funds for her use if she should become incapacitated. All of the interest earned on the account was always reported on the mother's tax returns, and she kept all of the account records.

The daughter was employed as a bookkeeper and was arrested after she embezzled substantial money from her employer. Convicted of theft and forgery, she was ordered by the court to pay \$300,000 in restitution to her employer. To assist her daughter, the mother issued a check to the employer for \$60,000 as partial payment of the restitution obligation. The employer noticed that the account on which the check was drawn was a joint account and promptly went to court to seize the daughter's share of the account to pay off the balance of the restitution owed. The Pennsylvania Supreme Court protected the mother's right to keep all of the money.

The Pennsylvania Multiple Party Account Act is a law that defines the interests of joint

owners in financial accounts. During the lifetimes of the owners, if a dispute arises as to ownership, each named owner has an interest in the account in proportion to his or her deposits into the account. Thus, where one person has made all or substantially all of the deposits to a jointly titled account, that depositor has the right to control all of the money in the account.

The Act does provide that where there is clear and convincing proof that the depositor actually intended to make a gift to the other joint owners, the other owners are the true owners entitled to the money in the account. Where joint owners are children under the age of 18, the Pennsylvania Uniform Gifts to Minors Act controls ownership issues. Minors' accounts belong to the minors, not to the adult who is named as custodian.

The creditor argued that the Act applies only to bank accounts and not to brokerage accounts. The Pennsylvania Supreme Court disagreed, finding that just about any financial account with any financial institution is covered by the Act's protections.

While establishing joint accounts can be a very wise component in estate planning, not all joint accounts will help your heirs avoid probate. Be sure to consult with an attorney experienced in estate planning before using joint accounts as part of your estate plan. If you have a convenience account now or intend to establish one, you must keep control of the account records, report all of the interest income on your own tax return, and control the deposits into the account if you expect to win a dispute over the ownership of the account. Keep in mind that disputes about ownership do not arise just among owners—often, they are started by the creditors of one of the joint owners.

DANGER: CONSTRUCTION ZONE!

Hundreds of motorists die in construction and maintenance zones annually. Most crashes are rear-end collisions. A few tips can make construction zones safer for everyone:

- Follow the posted speed limit.

- Focus on the road, not the construction.
- Keep three seconds of distance between you and the vehicle in front of you.
- Stay calm and pay attention.
- Give yourself extra time to arrive at your destination.