STRAIGHT FROM THE HORSE'S MOUTH:
CERTIFICATION OF QUESTIONS OF LAW IN PENNSYLVANIA

Honorable Ronald D. Castille
Chief Justice of Pennsylvania

In January of 1999, the Pennsylvania Supreme Court began accepting petitions requesting certification of questions of law from the federal courts on a trial basis. In January of 2000, the Court made the certification process permanent.

I. Standards and Procedure

A. Standards, the Court's IOPs

The standards and procedures for certification are addressed in Section 10 of the Court's Internal Operating Procedures. (Adopted 10/28/98; eff. 1/12/99; rev.1/12/2000). See 210 Pa.Code §63.10.

Under §10.A., the Court will accept certification petitions from The U.S. Supreme Court or any U.S. Court of Appeals. See also Order dated 1/12/2000 at 30 Pa.B. 519.

Under §10.B., acceptance of certification is discretionary. Certification is accepted (as in granting allocatur) "only where there are special and important reasons therefor," including, but not limited to:

> 1. The question of law is one of first impression and is of such substantial public importance as to require prompt and definitive resolution by the Court;
>
> 2. The question of law is one with respect to which there are conflicting decisions in other courts; or
>
> 3. The question of law concerns an unsettled issue of the constitutionality, construction, or application of a statute of this Commonwealth.

§ 10.B.1-3.

Under §10.B.4, certification "shall not be accepted unless all facts material to the question of law to be determined are undisputed, and the question of law is one that the petitioning court has not previously decided." Under §10.B.5, whether to accept or refuse certification is decided without hearing oral argument.

B. Procedure

1. The Court's IOPs

Under § 10.C., the Supreme Court Prothonotary refers each certification petition to the Chief Justice. The Chief Justice prepares a memorandum for the Court setting forth the positions of the parties and a recommendation. The Court strives to decide every certification petition within 60 days. A vote of the majority of those participating is required to implement the proposed disposition.

Upon acceptance of certification, the Prothonotary issues an order accepting certification, which specifies the questions of law for which certification was accepted, and whether the case is to be submitted on briefs or argued. If oral argument is granted, the Prothonotary lists the matter for argument.

Under §10.D., a vote of the majority of the Court is required to grant reconsideration.

Under the Court's 1/12/2000 Order, the following Rules regarding certification of questions of Pennsylvania law are set forth:

> (1) A federal court may file a certification petition either *sua sponte* or on the motion of a party.
>
> (2) A certification petition is to include:
>
> > a. a brief statement of the nature and stage of the proceedings in the petitioning court;
> >
> > b. a brief statement of the material facts of the case;
> >
> > c. a statement of the questions(s) of Pennsylvania law to be determined;
> >
> > d. a statement of the particular reasons why certification should be accepted;
> >
> > e. a recommendation as to which party should be designated appellant and appellee in subsequent pleadings filed with the Court;
> >
> > f. any papers filed by the parties regarding certification, *i.e.*, a motion for certification, a response thereto, a stipulation of facts, etc.

2. The Prothonotary's Process

The U.S. Supreme Court or a U.S. Court of Appeals files a petition for certification of question of law and an order certifying a question with the Court's Prothonotary. The Prothonotary enters the matter on the Court's Miscellaneous Docket and refers the petition to the Chief Justice for a recommended disposition. No other filings are received regarding certification. Interested parties have asked to participate as *amicus curiae* at this point in the process; the Court has rejected all such requests. While Section 10 does not address the propriety of amicus briefs favoring or opposing certification, the policy reflected in Pa.R.A.P. 531, which specifically excludes the filing of amicus briefs in the context of pending petitions for allowance of appeal, has been applied by the Court in this area.

If the Court decides to grant the petition, the Prothonotary transfers the matter from the Miscellaneous Docket to the Appeal Docket. As a matter of comity, no filing fee is charged. The Prothonotary designates the appellant and the appellee in the federal action as the appellant and the appellee before this Court and issues an order granting the petition and directing the parties to brief/argue the certified questions.

The U.S. Supreme Court or U.S. Court of Appeals is notified of the appeal's progress for informational purposes. At this point, interested parties may file amicus briefs. The matter proceeds as does any other appeal.

II. Statistics[1]

From 1999 until the present, 15 petitions for certification have been submitted: One petition from the U.S. Supreme Ct.; one petition from the U.S. Court of Appeals for the District of Columbia Circuit; one petition from the U.S. Court of Appeals for the Second Circuit; 12 petitions from the U.S. Court of Appeals for the Third Circuit.

The petitions from the U.S Supreme Court, the D.C. Circuit, and the Second Circuit were accepted. Ten petitions from the Third Circuit were accepted; two were declined. Of the ten accepted petitions from the Third Circuit, four presented certified questions involving the Motor Vehicle Financial Responsibility Law ("MVFRL"), 75 Pa.C.S. §1701 *et seq.*

[1] The statistics and list of cases included in this synopsis may be incomplete. Some certification cases that arose before the Court's current database was instituted may not be included.

Ten PA Supreme Court opinions addressing certified questions of law have issued: one addressing the question from the U.S. Supreme Court, one addressing the question from the D.C. Circuit, and eight addressing questions from the Third Circuit.

One certified question from the Third Circuit was discontinued prior to briefing. The one certified question accepted from the Second Circuit was discontinued after briefing and argument, but before decision. One certified question from the Third Circuit, submitted on briefs, is pending.

III. Certification of Questions of Law Cases

1. Fiore v. White, 757 A.2d 842 (Pa. 2000).

Petitioning Court. U.S. Supreme Court, petition for certification set forth in Fiore v. White, 528 U.S. 23 (1999).

Question Asked.

> Does the interpretation of 35 P.S. §6018.401(a), set forth in Comm. v Scarpone, 634 A.2d 1109 (Pa. 1993), state the correct interpretation of the law of Pennsylvania at the date William Fiore's conviction became final?

Reasons for Petition. An answer to the question would help determine the proper state-law predicate for determination of the federal constitutional question raised by Fiore, *i.e.*, whether Fiore's conviction violated his due process rights because his conduct, at the time it occurred, was not criminal under §6018.40.

Disposition of Petition. Petition granted, 12/20/1999. Case submitted, 10/12/1999.

Resolution of Certified Question. Opinion issued on 8/21/2000 (Newman, J.).
Certified question answered in the affirmative. Scarpone did not announce a new rule of law, but merely clarified the plain language of §6018.401(a).

2. City of Philadelphia v. Consolidated Rail Corp., 29 M.D. 1999, 747 A.2d 352 (Pa. 2000).

Petitioning Court. D.C. Circuit.

Question Asked.

Upon completion in 1929 of the re-building of the 41st Street bridge in the City of Philadelphia ("City"), was the bridge owned by the City or the Pennsylvania Railroad Company (PRR)?

Disposition of Petition. Petition Granted. Case submitted, 7/27/1999

Resolution of Certified Question. Opinion issued on 2/24/2000 (Flaherty, CJ.).
As a general matter, where a railroad company has constructed at its own expense a bridge over its tracks at a street crossing, and the bridge is to constitute part of a public highway and be maintained by the municipality, title to the bridge rests in the municipality. As it was undisputed that the City owns the public street that is supported by the 41st Street bridge, upon completion in 1929 of the reconstruction of that bridge, the bridge became part of the City's street. Further, the City's ownership was not negated by the fact that the PRR and the City agreed that the PRR would maintain the bridge. Under the parties' agreement, title did not shift from the City to the PRR.

3. Coady v. Vaughn, 212 MD 1999, 770 A.2d 287 (Pa. 2001).

Petitioning Court. Third Circuit.

Question Asked.

Whether a person who has been denied parole may obtain review from a Pennsylvania state court of a claim that the denial of parole violated the *ex post facto* clause of the U.S. Constitution and if so, what is the proper method for review?

Disposition of Petition. Petition granted, 12/13/1999. Case submitted, 3/14/2000.

Resolution of Certified Question. Opinion issued on 3/22/2001 (Flaherty, CJ.).
Mandamus will not lie where the subject of the challenge is the Parole Board's discretionary action. Absent a change in the statutes governing parole, denial of parole would generally constitute a discretionary matter. But, where actions of the Parole Board are taken pursuant to changed statutory requirements, mandamus remains viable as a means for examining whether statutory requirements have been altered in a manner that violates the *ex post facto* clause. Such action could be brought in the Commonwealth Court's original jurisdiction.

4. Jacobs v. CNG Transmission Corp., 108 W.D. 1999, 772 A.2d 445 (Pa. 2001).

Petitioning Court. Third Circuit.

Questions Asked.

1. Whether a finding that the contract between the parties is ambiguous is a prerequisite to applying the doctrine of severability set forth in Heilwood Fuel Co. v. Manor Real Estate Co., 175 A.2d 880 (Pa. 1961)?

2. Whether Pennsylvania jurisprudence recognizes an implied covenant to develop and produce oil or natural gas that imposes upon the lessee the obligation to attempt to produce oil and gas from the leased property?

Disposition of Petition. Petition granted. Case submitted, 2/9/2000.

Resolution of Certified Question. Opinion issued on 5/29/2001 (Castille, J.).

Certified Question 1. There is no bright line rule requiring that a court first find that the intent of the parties is unclear as to entirety/severability before it may look to factors such as the conduct of the parties and the character of the consideration to determine whether an agreement is entire or severable. The intent of the parties may be apparent from the explicit language of the contract or it may be obvious from a construction of the agreement, including the nature of the consideration. Thus, absent express language that a contract is entire, a court may look to the contract as a whole, including the character of the consideration, to determine the intent of the parties as to severability and may also consider the circumstances surrounding the execution of the contract, the conduct of the parties, and any other factor pertinent to ascertaining the parties' intent. The court need not make a specific predicate finding of ambiguity before undertaking the inquiry -- indeed, if the contract were clear as to the parties' intent, severability likely would not be a contested issue.

Certified Question 2. Settled Pennsylvania law recognizes an implied covenant to develop underground resources, but also recognizes that the specific agreement of the parties may preclude the application of the doctrine. Such an implied covenant appropriately exists where the only compensation to the landowner contemplated in the lease is royalty payments resulting from the extraction of that underground resource. Where, however, the parties have expressly agreed that the landowner shall be compensated if the lessee does not actively extract the resource, then the lessee has no implied obligation to engage in extraction activities. Thus, so long as the lessee continues to pay the landowner for the opportunity to develop and produce oil or gas, the lessee need not actually drill wells. At the point where that compensation ceases due to the expiration of the term of the lease, or pursuant to the terms of the lease itself, the lessee then has an affirmative obligation either to develop and produce the oil or gas orto terminate the landowner's contractual obligations.

5. Rupert v. Liberty Mutual, 101 WM 2000, 781 A.2d 132 (Pa. 2001).

Petitioning Court. Third Circuit.

Question Asked.

> Does the requirement in the MVFRL, 75 Pa.C.S. §1738(e), that a valid stacking waiver "must be signed by the first named insured" mean that a valid waiver must be signed by the current first named insured on a policy, thus imposing a continuing obligation on insurers to acquire a new stacking waiver if the first named insured on a policy changes, or does §1738(e) merely require that a valid waiver only must be signed by the first named insured at the time the waiver is signed?

Reasons for Petition. The Third Circuit's uncertainty over the state of Pennsylvania law.

Disposition of Petition. Petition granted. Case submitted, 3/8/2001.

Resolution of Certified Question. Opinions issued on10/4/2001. The Court was evenly divided, 3-3.
Opinion by J. Zappala, joined by CJ Justice Flaherty and J. Castille, would hold that the validity of a waiver of stacking uninsured motorists' coverage is determined at the inception of the policy. Opinion by J. Cappy, joined by JJ. Newman and Saylor, would hold that §1738(a) requires that a valid stacking rejection form must be signed by the current first named insured. J. Nigro, DNP.

Subsequently, in Rupert v. Liberty Mut. Ins. Co., 291 F.3d 243 (3d Cir. 2002), the Third Circuit predicted that this Court will ultimately adopt the Zappala view.

6. Prudential Property and Casualty Ins. Co. v. Colbert, 111 WM 2003, 813 A.2d 747 (Pa. 2002).

Petitioning Court. Third Circuit.

Questions Asked.

> 1. Whether the definition of "insured" in the automobile insurance policy of Prudential Property and Casualty Insurance Company impermissibly narrows and conflicts with the statutory definition of "insured" as contained in Section 1702 of the MVFRL, 75 Pa.C.S. §1702?

2. Whether the "other household vehicle" exclusion contained in the Prudential policy is void as against the public policy of the MVFRL?

Disposition of Petition. Petition granted. Case submitted, 4/19/2001.

Resolution of Certified Questions. Opinion issued on 12/31/2002 (Zappala, CJ.).

Certified Question 1. The restrictive definition of "insured" within the Prudential policy impermissibly narrows and conflicts with the plain language of the MVFRL. While the MVFRL defines the term "insured" as including, *inter alia,* named insureds and any resident relatives of named insureds, the Prudential policy definition of "insured" narrows that broad classification by deeming resident relatives to be "insured" only when they are using a vehicle specifically insured under the policy. Nothing in the MVFRL permits a diminishment of the MVFRL's definition of "insured" and coverage of a lesser scope than the MVFRL requires.

Certified Question 2. The "other household vehicle" exclusion, as applied, is consistent with the underlying public policy of the MVFRL. Under the facts, voiding the "other household vehicle exclusion" would force Prudential to underwrite unknown risks that the insureds neither disclosed nor paid to insure. Double coverage would be received gratis. Voiding the "other household vehicle" exclusion would empower insureds to collect UIM benefits multiplied by the number of insurance policies on which they could qualify as an insured, even though they only paid for UIM coverage on one policy. Insureds would receive benefits far in excess of the amount of coverage for which they paid, even if the insureds never disclose any of the other household vehicles to the insurers. Consequently, insurers would be forced to increase the cost of insurance, which is precisely what the public policy behind the MVFRL strives to prevent.

7. Witco Corp. v. Herzog Brothers Trucking, Inc., 20 WM 2003, 863 A.2d 443 (Pa. 2004).

Petitioning Court. Third Circuit.

Questions Asked.

1. Whether a drawee bank obtains "possession" of any property, as defined by Pa.R.C.P. 3101, of a customer who physically provides the drawee bank's teller with cash and checks, in exchange for the issuance of a bank cashier's check, when those funds are never deposited into the customer's account at the drawee bank?

2. Whether a garnishee bank, which receives "possession" of the property of a judgment debtor after being served with a writ of execution, has a duty under Pa.R.C.P. 3111(c) "restraining [it] from paying any debt" to that judgment debtor in exchange for that property, even if that "debt" arises during a transaction with a brief duration akin to that of a sales transaction?

3. Whether the public policy underlying Pennsylvania garnishment law requires a garnishee bank, on notice of a judgment order against a depositor by Writ of Execution and whose accounts are thereby held, to refrain from engaging in transactions with that judgment debtor which permit the judgment debtor to avoid the garnishment of its assets, and thereby the debtor's obligation to pay its judgment creditor, to the financial benefit of the garnishee bank?

Reasons for Petition. The case raises significant issues of PA law and public policy for which there is no controlling decision by the PA Supreme Court and the answer to these issues will be determinative of the pending litigation.

Disposition of Petition. Petition granted, 1/4/2004. Case argued, 5/11/2004.

Resolution of Certified Questions. Opinion issued on 12/21/2004 (Castille, J.).
Certified Question 1: Construing Pa.R.C.P. 3101(b) and applying the common sense definition of "possession," the drawee bank was in possession of funds a customer used for the purchase of cashiers checks when the customer handed the funds over to bank tellers, even though the customer did not formally deposit the funds into its bank account.

Certified Question 2. The duty imposed by Pa.R.C.P. 3111(c) on a garnishee bank that receives property of a judgment debtor to restrain itself from paying any debt to or on account or of the judgment debtor or delivering property that may be attached is not negated by a transaction that is brief in duration.

Certified Question 3. The public policy of PA prohibits a garnishee bank with notice of a judgment order from engaging in transactions with the judgment debtor that it knows or should know will facilitate the judgment debtor in attempts to avoid the lawful garnishment of assets.

8. TICO Ins. Co. v. Turpin, 219 EM 2002.

Petitioning Court. Third Circuit.

Questions Asked.

1. Whether an insurer's automobile policy excepting from underinsured motorist coverage "vehicles with fewer than four wheels" violates the MVFRL. That is, although 75 Pa.C.S. §1731(a) mandates that no motor vehicle liability policy shall be issued "unless uninsured and underinsured motorist coverages are offered," may an insurer craft exceptions to the UIM coverage it offers?

2. Whether an insurer's automobile policy excepting from underinsured motorist coverage "vehicles with fewer than four wheels" violates Pennsylvania public policy in the case where a motorcyclist claimant carries insufficient insurance under his own policy?

Reasons for Petition. The certified questions are of first impression.

Disposition of Petition. Petition granted, 1/24/2004.

Resolution of Certified Question. Case discontinued, 3/1/2004.

9. Kendrick v. District Attorney of Philadelphia County, 27 EM 2004, 916 A.2d 529 (Pa. 2007).

Petitioning Court. Third Circuit.

Question Asked.

Did the opinion in Commonwealth v. Besch, 674 A.2d 655 (Pa. 1996), establish a new rule of law that cannot be applied retroactively to cases on collateral review?

Reasons for Petition. The certified question concerns an unsettled issue as to the proper application of a PA Supreme Court opinion construing the PA Corrupt Organizations Act ("PA.C.O.A.").

Disposition of Petition. Petition granted, 3/19/2004. Case argued, 4/11/2005.

Resolution of Certified Question. Opinion issued on 2/20/2007 (Castille, J.) (upon reassignment).
Certified question answered in the negative. This Court's decision in Besch, holding that the PA.C.O.A was intended to criminalize only conduct involving otherwise legitimate business enterprises, and not wholly illegitimate business enterprises, such as drug cartels, did not announce a new rule of law. Besch was this Court's first pronouncement on the substance of a statutory provision, which became a part of the legislation from the date of its enactment.

10. Wirth v. Aetna U.S. Healthcare, 72 EM 2005, 904 A.2d 858 (Pa. 2006).

Petitioning Court: Third Circuit.

Question Asked.

> Is an HMO exempt, by virtue of Pennsylvania's HMO Act, 40 Pa.C.S. §1560(a), from complying with the anti-subrogation provision found in Section 1720 of the MVFRL?

Reasons for Petition. The question of law presented is unsettled, of first impression, and of substantial public importance so as to require prompt and definitive resolution.

Disposition of Petition. Petition granted, 7/8/2005. Case argued, 10/17/2005.

Resolution of Certified Question. Opinion issued on 8/22/2006 (Newman, J.).
Certified question answered in the affirmative. Section 1560 of the HMO Act states that HMOs are not subject to any insurance laws "unless such law specifically and in exact terms applies to such [HMOs]". Section 1720 of the MVFRL, which precludes rights of subrogation, does not "specifically and in exact terms" state that its anti-subrogation provision applies to HMOs. Therefore, Section 1720 does not apply to HMOs.

11. Salley v. Option Mortgage Corp., 149 EM 2005, 925 A.2d 115 (Pa. 2007).

Petitioning Court. Third Circuit.

Question Asked.

> Whether the arbitration agreement under consideration in this case, which exempts from binding arbitration certain creditor remedies, while requiring the submission of other claims to arbitration, is unconscionable under Pennsylvania law, as suggested by Lytle v. CitiFinancial Serv. Inc., 810 A.2d 643 (Pa. Super. 2002), and is therefore unenforceable?

Reasons for Petition. Due to a conflict between the Third Circuit's opinion in Harris v. Green Tree Fin. Corp., 183 F.3d 173 (3d Cir. 1999) (predicting that the PA Supreme Court would not find such a clause unconscionable), and the Superior Court's decision in Lytle v. CitiFinancial Serv. Inc., 810 A.2d 643 (Pa. Super. 2002) (holding that such a clause is presumptively unconscionable), the Third Circuit was unable to confidently predict PA law on the issue.

Disposition of Petition. Petition granted, Dec. of 2005. Case argued, 9/13/2006.

Resolution: Opinion issued on 5/31/2007 (Saylor, J.).
There is no presumption of unconscionability associated with an arbitration agreement merely on the basis that the agreement reserves judicial remedies associated with foreclosure. Although the determination of whether an agreement is unconscionable or not is ultimately a question of law, the necessary inquiry is often fact sensitive. Where there are factual disputes that go not only to the arbitration agreement but also to the underlying merits of the parties' larger dispute, those disputes should first be resolved by an arbitrator.

12. Relational Investors LLC v. Sovereign Bancorp, Inc., 177 MM 2006.

Petitioning Court. Second Circuit.

Questions Asked.

(1) Would the application of 15 Pa.C.S. §1726(a)(1), as amended by 2006 Pa. Laws 6, to shareholder meetings of Pennsylvania corporations occurring subsequent to the effective date of the amendment constitute a retroactive application of §1726(a)(1), within the meaning of 15 Pa.C.S. §1106(b)(1), as to shareholders who acquired their shares prior to the effective date of the amendment and who seek to remove directors by shareholder vote?

(2) Did the Pennsylvania legislature have the authority under Article 10, §3 of the Pennsylvania Constitution to alter the procedures for removing corporate directors at future shareholder meetings, despite the expectations of shareholders who had acquired their shares prior to the effective date of the amendment?

3) Under the version of 15 Pa.C.S. §1726(a)(1) in effect prior to the February 10, 2006 amendment:

a) May directors of a corporation with a board of directors that has been classified in accordance with the last sentence of §1726(a)(1) be removed without any showing of cause where the corporation's articles of incorporation do not mention the standard for removal of directors by shareholder vote?; and

b) In construing the legal effect of the articles of incorporation of corporations formed prior to the 1989 enactment of the Pennsylvania Business Corporation Law, should repealed provisions of Pennsylvania corporate legislation be incorporated by reference to the articles?

Disposition of Petition. Petition granted, March of 2007. Appeal argued, 3/4/2008

Resolution of Certified Questions. Joint Application of the parties to discontinue certification case due to mootness. Case discontinued, 3/20/2009.

13. Kirleis v. Dickie, McCamey & Chilcote, P.C., 50 WM 2008.

Petitioning Court. Third Circuit.

Question Asked.

Whether a corporate shareholder/director may be compelled to arbitrate her claims against the corporation based upon a provision in the corporation's bylaws requiring that all disputes be resolved via arbitration where the shareholder/director accepted benefits provided under the bylaws, but was never given a copy of the bylaws; never informed that the bylaws included an arbitration provision; never signed any agreement into which the bylaws were incorporated; and never otherwise explicitly agreed to arbitrate?

Reasons for Petition. Review of Pennsylvania law reveals a tension between corporate law principles that generally impute to members of the corporation knowledge and acceptance of corporate bylaws, see Morris v. Metalline Land Co., 30 A. 240 (Pa. 1894), and arbitration contract principles that generally require explicit agreement, see Emmaus Mun. Auth. v. Eltz, 204 A.2d 926 (Pa. 1964) and Quiles v. Financial Exchange Co., 879 A.2d 281 (Pa. Super. 2005).

Disposition of Petition. Petition denied, 10/17/2008.
Per Curiam Order explains that the passage from Morris relied upon by the Third Circuit is *obiter dicta*. Morris did not address the issue of whether a shareholder is bound by

bylaws even when that shareholder has no actual knowledge of the bylaws. Furthermore, Morris' comment in *dicta* was not transformed into a holding via a subsequent decision relying on that *dicta*. Morris has been cited by Pennsylvania courts in only a handful of cases; none cited Morris for the proposition that shareholders are presumed to know the contents of the bylaws. Accordingly, there is no tension between Morris and the arbitration law principle found in Emmaus and Quiles.

14. Official Committee of Unsecured Creditors of Allegheny Health, Education and Research Foundation v. PriceWaterhouseCoopers, LLP., 49 WM 2008.

Petitioning Court. Third Circuit.

Questions Asked.

1. What is the proper test under Pennsylvania law for determining whether an agent's fraud should be imputed to the principal when it is an allegedly non-innocent third-party that seeks to invoke the law of imputation in order to shield itself from liability?

2. Does the doctrine of *in pari delicto* prevent a corporation from recovering against its accountants for breach of contract, professional negligence, or aiding and abetting a breach of fiduciary duty, if those accountants conspired with officers of the corporation to misstate the corporation's finances to the corporation's ultimate detriment?

Reasons for Petition. This Court's case law is not clear on the issue of imputation under the circumstances presented by this case. This case has an added dimension never addressed; namely, the party invoking the imputation is an alleged co-conspirator with the agents that harmed the corporation. The Third Circuit questions whether Pennsylvania would impute the conduct of the officials to the corporation under such circumstances. The answer to this question involves a policy call and this Court is in a better position to make such a judgment.

Disposition of Petition. Petition granted, 8/25/2008. Case submitted, 11/10/2008.

Resolution of Certified Questions: Decision pending.

15. Berrier v. Simplicity Manufacturing, Inc., 13 EM 2008.

Petitioning Court. Third Circuit.

Question Asked.

Whether under Pennsylvania law a plaintiff-minor child may pursue a strict liability claim for injuries caused by a riding lawnmower where that child is neither an intended user nor a consumer of the mower. See Pennsylvania Dept. of General Services v. United States Mineral Products Co., 898 A.2d 590 (Pa. 2006); Phillips v. Cricket Lighters, 841 A.2d 1000 (Pa. 2003); Riley v. Warren Manufacturing, 688 A.2d 221 (Pa. Super. Ct. 1997)?

Reasons for Petition. There appears to be a disagreement among the Justices on the Phillips Court as to what test should be properly applied to a Pennsylvania strict liability claim.

Disposition of Petition. Petition denied, 10/17/08. Concurring statement (Saylor, J. joined by Castille, CJ.) (noting that the federal courts are not without guidance as to current law, since this Court has sent a clear signal that the intended-use doctrine is to be construed narrowly pending a decision on the foundational matters in Pennsylvania Dept. of General Services v. United States Mineral Products Co., 898 A.2d 590 (Pa. 2008)).

CERTIFICATION OF LAW CASES
1999-PRESENT

Petitioning Court	*Dispostion*	*Certified Question*	*CASE CAPTION*	*Resolution/Cert. Q*
1. US Supreme	GRANTED	New rule of law	Fiore v. White	Opinion, 8/21/2000
2. D.C. Circuit	GRANTED	Bridge ownership	City of Philadelphia v. Consolidated Rail Corp.	Opinion, 7/27/1999
3. Third Circuit	GRANTED	Parole/ex post facto	Coady v. Vaughn	Opinion, 3/22/2001
4. Third Circuit	GRANTED	Oil and gas leases	Jacobs v. CNG Transmission Corp.	Opinion, 5/29/2001
5. Third Circuit	GRANTED	MVFRL	Rupert v. Liberty Mutual Ins. Co.	Opinion, 10/4/2001
6. Third Circuit	GRANTED	MVFRL	Prudential Property & Casualty Ins. Co, v. Colbert	Opinion, 12/31/2002
7. Third Circuit	GRANTED	Garnishment	Witco Corp. v. Herzog Brothers Trucking, Inc.	Opinion, 12/21/2004
8. Third Circuit	GRANTED	MVFRL	TICO Ins. Co. v. Turpin	Discontinued
9. Third Circuit	GRANTED	New rule of law	Kendrick v. DA of Philadelphia	Opinion, 2/20/2007
10. Third Circuit	GRANTED	MVFRL/HMO Act	Wirth v. Aetna US Healthcare	Opinion, 8/22/2006
11. Third Circuit	GRANTED	Unconscionablity	Smalley v. Option One Mortgage Corp	Opinion, 5/31/2007
12. Second Circuit	GRANTED	Corporate governance	Relational Investors LLC v. Sovereign Bancorp, Inc.	Discontinued
13. Third Circuit	DENIED	Knowledge of Bylaws	Kirleis v. Dickie McCamey	
14. Third Circuit	GRANTED	Agency	Official Committee of Unsecured Creditors v. PriceWaterhouse	Pending
15. Third Circuit	DENIED	Strict liability	Berrier v. Simplicity Manufacturing	
Some Pre-PACMS petitions may not be included on this grid				