

PENNSYLVANIA STATE LAW SUMMARY

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A. CAUSES OF ACTION

In Pennsylvania, claims against transportation companies are commonly brought under the following theories of liability:

1. Negligence

To maintain an action in negligence, a plaintiff must establish that the defendant (1) owed a duty of care to the plaintiff, (2) that the defendant failed to perform the duty of care, (3) the failure was the proximate cause of the plaintiff's damages, and (4) the plaintiff sustained an actual loss or injury.

The operation of vehicles in Pennsylvania is governed by the Motor Vehicle Code, 75 Pa.C.S.A. § 3101 *et seq.* Violation of a statute is *negligence per se*. However, a plaintiff cannot recover unless the negligence is the proximate cause of the injury. The plaintiff bears the burden of establishing causation.¹

2. Respondeat Superior

Pennsylvania follows the general rule that “a master is liable for the torts of his servant if the servant’s tortious conduct was within the scope of his employment.”² The determination of the precise nature of the relationship and the scope of employment is generally within the exclusive province of the jury.³

To be considered within the scope of employment, conduct must meet the following criteria: (1) it must be of the kind the actor was employed to perform; (2) it must occur substantially within the authorized time and space limits; and (3) it must be actuated, at least in part, by a purpose to serve the master.⁴ It is not necessary that the acts be specifically authorized by the master to be within the scope of employment; it is sufficient if they are clearly incidental to the master’s business.⁵

In certain circumstances, liability under the doctrine of *respondeat superior* may extend to intentional or criminal acts committed by the employee. However, if an act is done for personal reasons, or in an outrageous manner, it is not done within the scope of employment.⁶ Negligence of the employee will not be imputed to the employer when it is established that the employee embarked upon an independent journey, abandoned the employer’s purpose, or substantially departed from the instructed duties.⁷

3. Negligent Hiring, Retention, Supervision

Pennsylvania recognizes claims for negligent hiring, retention and supervision when an employer has failed to exercise reasonable care in the selection or training of its employees. To maintain such an action, plaintiff must establish all elements of negligence, including causation.

An employer may be negligent for the failure to exercise reasonable care in determining an employee's propensity for violence in an employment situation where the violence would harm a third person.⁸ In these situations, plaintiff must establish that the employer breached a duty to protect others against a risk of harm. When the plaintiff has no special relationship with the employer (i.e., as in the case of a stranger), the duty owed may be inferred from the general duty imposed on all persons not to place others at risk through their actions. The scope of this duty is limited to those risks that are reasonably foreseeable by the actor in the circumstances of the case.⁹

4. Negligent Entrustment

Pennsylvania has adopted the definition of "negligent entrustment" set forth in §308 of the RESTATEMENT (Second) of Torts:

it is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.

Under a theory of negligent entrustment, the entrustor's liability is not dependent on, or imputed from, the trustee's actual liability for damages, but is a separate cause of action. The negligent entrustment theory of liability requires an initial finding that the trustee was causally negligent before the negligence case against the entrustor may proceed.¹⁰ In addition, 75 Pa.C.S.A. § 1574 prohibits motor vehicle owners from "authorizing or permitting an automobile owned by him or under his control to be operated by any person without a valid driver's license." In order to violate the statute, however, it must be shown that the owner knew or had reason to know that the individual who was authorized to operate the vehicle did not have a valid driver's license.¹¹

5. Wrongful Death and Survival Actions

Where death is caused by negligence, both a wrongful death action and a survival action may be brought. An action under Pennsylvania’s Wrongful Death Act is for the benefit of certain relatives enumerated in Pa.C.S.A. § 8301(b) and is limited to the spouse, children and parents of the decedent. The recoverable damages include reasonable medical and funeral expenses, as well as pecuniary losses (the portion of the decedent’s earnings the beneficiaries would have received had the decedent lived).

In contrast, proceeds of a survival action brought under 42 Pa.C.S.A. § 8302 belong to the decedent’s estate and are disbursed to heirs accordingly. The estate may recover only those damages to which the decedent would have been entitled had he or she lived, such as medical bills, damages for conscious pain and suffering, and probable lifetime earnings (less probable lifetime costs of maintenance, discounted to their present value). However, where the decedent is killed instantly, or where the decedent is not conscious between the time of injury and the time of death, there can be no recovery for pain and suffering.¹²

In order to avoid duplication of damages for loss of future earning power, survival action damages must be reduced by any amounts recoverable under the Wrongful Death Act.¹³

B. STATUTES OF LIMITATION

Pursuant to 42 Pa. C.S.A. §5524, the following actions must be brought within:

- Negligence (personal injury /wrongful death /property damage): 2 years
- Breach of contract: 4 years
- Other claims, including contribution (unless contractual): 6 years

A cause of action accrues when the final significant event essential to a claim occurs or the right to institute and maintain a suit arises. In personal injury actions, the cause of action accrues when the injury is actually inflicted or when the damage resulting there from is sustained and capable of ascertainment.

Pursuant to 42 Pa. C.S.A. §5533, when the plaintiff is an unemancipated minor at the time the cause of action accrues, the statute of limitations begins to run after the plaintiff turns 18 years of age.

C. DAMAGES

1. Damages Generally

A plaintiff in a negligence case may claim damages for bodily injuries, medical expenses (subject to the “collateral source” rule, see section G1. below), lost wages, loss of earning capacity, pain and suffering, and property damage. The spouse of an injured plaintiff may make a claim for loss of consortium, and Pennsylvania recognizes common law marriage. The statewide Rules of Civil Procedure also provide for delay damages (see section I., below).

2. Pain and Suffering

The Supreme Court of Pennsylvania has held that pain is compensable, and “there are injuries to which human experience teaches there is accompanying pain. Examples of obvious injuries included “the broken bone, the stretched muscle, twist of the skeletal system, injury to a nerve, organ or other function, and all the consequences of any injury traceable among medical science and common experience as sources of pain and suffering.” The Court also explained that “pain may be subjective, and if believed, is compensable,” and although a jury may not altogether disregard evidence of subjective pain, it is “not obliged to believe that every injury causes pain or the pain alleged.”¹⁴

3. Loss of Earning Capacity

A plaintiff in a negligence case may claim both actual wage loss and the loss of future earning capacity as elements of damage. Proof of the loss of future earning capacity usually includes the testimony of vocational and economic experts, whose opinions may be subject to the *Frye* test (in the state courts) or the *Daubert* test (for federal courts sitting in Pennsylvania). See section G5. below.

Under Pennsylvania’s Financial Responsibility Law, lost income is not assumed merely because there has been a loss of earning capacity. Rather, plaintiff must show real, actual loss of income which would have been earned “but for” the injuries received in the accident.¹⁵

4. Wrongful Death and Survival Actions

These two actions are designed to compensate two different categories of claimants: damages for wrongful death are intended to compensate the decedent's spouse, children or parents for pecuniary losses they sustained as a result of the death, including the present value of the services the deceased would have rendered to the family; whereas damages in a survival action are intended to compensate the decedent (through the legal "person" of the estate). See section A5. above. These actions are cumulative and are not to overlap or result in duplication of damages.¹⁶

5. Punitive Damages

The Pennsylvania courts have stated that the purpose of punitive damages is to "punish outrageous and egregious conduct done in a reckless disregard of another's rights."¹⁷ A court may award punitive damages only if an actor's conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference to the rights of others. This conduct has been defined as "reckless disregard of the safety of another" if the act or omission is done "knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent."¹⁸ A punitive damage award requires the necessary element of mental state (i.e., evidence that the person realized and appreciated the risk, and acted in conscious disregard or indifference to it.¹⁹ Punitive damages are not supported by ordinary negligence such as inadvertence, mistake and errors of judgment.

A jury is required to weigh the following factors before arriving at an appropriate punitive damage award: (1) the character of the act; (2) the nature and extent of the harm; and (3) the wealth of the defendant.²⁰

Pennsylvania courts have held that it is against public policy to provide insurance coverage for punitive damage awards. However, in circumstances where the punitive award was based on vicarious liability (i.e., where an employer is assessed punitive damages for the misconduct of its employee), insurance coverage has been allowed.²¹

Some lower courts had previously determined that cell phone use (and accompanying distraction) may be grounds for a punitive damages claim.²² As of March 8, 2012, Pennsylvania enforces a prohibition on "using an interactive wireless communications device to send, read or write a text-based communication while the vehicle is in motion." 75 Pa.C.S.A. §3316 (a summary offense).

6. Negligent and Intentional Infliction of Emotional Distress

In order to recover for negligent infliction of emotional distress in Pennsylvania, a plaintiff must establish, in addition to the usual requirements for negligence, that: (1) he or she was near the scene of an accident or negligent act; (2) shock or distress resulted from a direct emotional impact caused by the sensory or contemporaneous observance of the accident, as opposed to learning of the accident from others after its occurrence; and (3) he or she is closely related to the injured victim.²³ It is not necessary that the alleged distress be accompanied by physical injury or physical impact.²⁴ Manifestation of physical injury is necessary to sustain a claim for negligent infliction of emotional distress, but medical evidence is not necessarily required. (For example, continued nausea or headaches, or "repeated hysterical attacks" are compensable injuries.)²⁵

In contrast, to prevail on a claim for intentional infliction of emotional distress, plaintiff must prove that the defendant, by extreme and outrageous conduct, intentionally or recklessly caused severe emotional distress.²⁶ Generally, the case must be one where "the recitation of facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'" A plaintiff must also establish physical injury or harm, and the existence of the alleged emotional the existence of the alleged emotional distress by "competent medical evidence."²⁷

D. INSURANCE AND SUBROGATION

1. Minimum Requirements

Pennsylvania's Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. § 1701 *et seq.*, requires the owners of motor vehicles registered in Pennsylvania to purchase and maintain the following minimum amount of insurance coverage:

Liability:	\$15,000 per individual / \$30,000 per incident
Property Damage:	\$5,000
UM/UIM:	optional, but signed waiver required
First Party (medical) Benefits:	\$5,000 (formerly referred to as Personal Injury Protection, or PIP)

Under §1714 of the statute, an operator or passenger of a motorcycle cannot recover first party benefits.²⁸

2. Tort Options

Pennsylvania utilizes a tort option system. Pennsylvania insureds who choose “limited tort” coverage (as opposed to “full tort”) may seek recovery for all medical and other out-of-pocket compensation for injuries caused by other drivers, but not for pain and suffering or other non-economic losses, unless the injuries sustained meet the definition of “serious injury” Although it is statutorily defined as “a personal injury resulting in death, serious impairment of body function or permanent serious disfigurement,” the determination of “serious injury“ is left to the jury in most cases.

A plaintiff will not be bound by his or her “limited tort“ selection if: (a) the plaintiff is involved in an accident with a vehicle which is not registered in the Commonwealth of Pennsylvania; or (b) the plaintiff is an occupant of a vehicle which is not private passenger vehicle. In these instances, the plaintiff will be considered to have elected the “full tort” option.

A plaintiff who registers a motor vehicle within the Commonwealth of Pennsylvania, but fails to maintain the required insurance coverage, will be bound as if he or she selected "limited tort" and, therefore, will be unable to recover for pain and suffering or other non-economic damages unless the injuries meet the statutory definition of "serious."

3. Subrogation, Medical Expenses

Under 75 Pa.C.S.A. § 1720, in actions arising out of the maintenance or use of a motor vehicle, there is no right of subrogation or reimbursement from a claimant’s tort recovery for the amount of any medical expenses paid, or payable, by a First Party Benefit (PIP) carrier, or “any program, group contract or other arrangement for the payment of benefits.”

Statutory exceptions to this rule exist for workers’ compensation benefits and benefits paid under plans created by ERISA (Employee Retirement Income Security Act). Thus, a workers’ compensation carrier or an ERISA plan may properly assert a lien for expenses paid, and plaintiff will be permitted to plead and prove these expenses at trial. Other common exceptions include expenses paid by Medicare, for which federal law creates an automatic lien on the plaintiff’s recovery, as well as the right to bring an action against the tortfeasor.²⁹ As of 2006, the Pennsylvania Supreme Court has held that HMOs are also exempt from the anti-subrogation provisions of Pennsylvania’s Motor Vehicle Financial Responsibility laws.³⁰

4. Subrogation, Property Damage

Under Pennsylvania law, claims for property damage paid by an insurance carrier may be subrogated. There is no statutory requirement that such claims be submitted to arbitration, although insurance companies may enter into enforceable agreements to arbitrate claims among themselves.

5. Bad Faith Actions

In an action arising under an insurance policy, a plaintiff may recover under a claim of bad faith by showing that the defendant did not have a reasonable basis for denying benefits under the policy, and the defendant knew or recklessly disregarded its lack of reasonable basis in denying the claim. “Bad faith” must be proven by clear and convincing evidence.³¹

Moreover, 42 Pa.C.S.A. § 8371 allows a court to take the following actions against an insurer upon a finding of “bad faith:” award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%; award punitive damages against the insurer; and assess court costs and attorney fees against the insurer.

E. LIABILITY

1. Comparative Negligence

Under Pennsylvania’s comparative negligence statute, 42 Pa.C.S.A. § 7102(a), damages are recoverable by a plaintiff only when the plaintiff’s percentage of fault for an accident is less than the total percentage of fault of all defendants. In other words, a plaintiff may only recover damages caused by an accident if found to be less than 51% at fault for the accident. Furthermore, any damages recoverable by a plaintiff are reduced by his or her percentage of fault, if any.

2. Joint and Several Liability

As of June 28, 2011, Pennsylvania follows the Fair Share Act (Senate Bill 1131), which modified joint and several liability law so that each responsible defendant only has to pay their share as long as the jury finds them less than 60 percent at fault. If a defendant is found 60 percent or more at fault, they can be made to pay 100 percent of the damages if the other defendants are without sufficient funds.

For actions which accrued before June 28, 2011, Pennsylvania applied "pure" joint and several liability, which permitted a plaintiff to obtain a full amount of a judgment against any defendant, regardless of the percentage of fault of that defendant. Therefore, if more than one defendant is liable for plaintiff's damages, one of the defendants may be required to pay the full amount of the judgment if the other defendant(s) are insolvent, lack sufficient insurance coverage or are not able to pay their portion of the damages for any other reason. This was sometimes referred to as the "1-percent rule" because a defendant who is found to be only 1 percent liable may be obligated to pay its co-defendants' share(s) as well. If such a defendant has paid the plaintiff more than its proportionate share of the total liability, that defendant is entitled to recover contribution from the other defendants who have paid less than their proportionate share.

3. Assured Clear Distance Rule

Pennsylvania's "assured clear distance ahead" rule is codified in the Vehicle Code at 75 Pa.C.S.A. § 3361, and requires that no person shall drive any vehicle at a speed greater than will permit him to bring his vehicle to a stop within the assured clear distance ahead. This rule has been held to require a motorist to be capable of stopping within the distance that he or she can clearly see. Therefore, it requires that such control be maintained as will enable a driver to stop and avoid obstructions that fall within his or her vision.³²

Pennsylvania law allows an inference to be drawn, in cases of a rear-end collision, that the "driver of the offending vehicle either was not sufficiently vigilant or failed to have his vehicle under such control that he could bring it to a stop within assured clear distance ahead."³³

4. Affirmative Defenses

Pennsylvania Rule of Civil Procedure 1030 permits Affirmative Defenses, such as assumption of the risk, comparative negligence and the statute of limitations, to be raised in a responding pleading under the caption "New Matter." In Pennsylvania, it is difficult to establish an assumption of the risk defense. The defendant must show that the plaintiff was subjectively aware of facts which created a danger and must have appreciated the danger itself and the nature, character and extent which made it unreasonable. Although some lower courts have advocated the abolition of the assumption of the risk defense since Pennsylvania has adopted a comparative negligence statute, recent appellate court decisions indicate that it is still a viable defense in appropriate situations.

5. Sudden Emergency Doctrine

Pennsylvania recognizes the “sudden emergency” doctrine, which provides a defense in a negligence action where a driver of a motor vehicle suddenly and unexpectedly finds himself or herself confronted with a perilous situation that permits no opportunity to assess the danger and respond appropriately.³⁴ Situations which may constitute a “sudden emergency” include “a dust cloud, a moving object, a sudden blocking of the road, the sudden swerving of another vehicle, blinding lights and a dense patch of fog.”³⁵

6. Snow or Ice on Vehicles

In 2006, Pennsylvania codified a motorist's duty to remove ice and snow from vehicles in the Vehicle Code at 75 Pa.C.S. §3720: “When snow or ice is dislodged or falls from a moving vehicle and strikes another vehicle or pedestrian causing death or serious bodily injury . . . the operator of the vehicle from which the snow or ice is dislodged or falls shall be subject to a fine of not less than \$200 nor more than \$1,000 for each offense.” As noted earlier, violation of a motor vehicle statute (as determined by the civil jury) in Pennsylvania is considered negligence *per se*.

F. RULES OF DISCOVERY

Discovery rules in Pennsylvania vary greatly depending on whether the case is in the state court system (the county Courts of Common Pleas), or in the federal court system (U.S. District Courts for the Eastern, Middle and Western Districts of Pennsylvania).

1. Materials Prepared “In Anticipation of Litigation”

Discovery in Pennsylvania state courts is very liberal. Pennsylvania Rules of Civil Procedure 4001 through 4025, for example, do not recognize any privilege to withhold documents prepared “in anticipation of litigation.” In general, a party may obtain discovery of anything that is relevant to the litigation, or appears reasonably calculated to lead to admissible evidence, “even though prepared in anticipation of litigation or trial by or for another party of by or for that other party’s representative, including his or her attorney, consultant, surety, indemnitor, insurer or agent.”³⁶

Exceptions to the state court rules for discoverable materials include the “mental impressions, conclusions, opinions, memoranda, notes or summaries, legal research or legal theories” of a party’s attorney, as well as the “mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics” of a party’s representative (other than an attorney).

In contrast, the Federal Rules of Civil Procedure provide that materials are immune from discovery if they were “prepared in anticipation of litigation.”³⁷ The privilege may be overcome only “upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party’s case and the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.” Even when the requisite showing is made, federal courts are obligated to protect against disclosure of the “mental impressions, conclusions, opinions, or legal theories” of a party’s attorney or other representative concerning the litigation.³⁸

2. Statements of a Party

Statements of a party, whether in written or oral form, are generally treated as a separate category of discoverable material. Under the state court rules, such statements must be produced in discovery unless they are covered by the attorney-client privilege, or contain the “mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics” of a party’s representative. Statements of an insured and witnesses obtained by insurance companies will generally be discoverable in the state courts.

Under the federal rules, statements may be withheld if they were “prepared in anticipation of litigation” within the parameters of F.R.C.P. 26(b)(3). However, a party is entitled to production of any statements concerning the action or its subject matter previously made by that party.

G. RULES OF EVIDENCE

Pennsylvania's Rules of Evidence were first codified in 1998, and follow the general numbering scheme of the Federal Rules of Evidence. However, there are a few differences, including the fact that Pennsylvania courts recognize far fewer exceptions to the hearsay rule.

1. Collateral Source Rule

Pennsylvania has adopted the “collateral source” rule, which prohibits the introduction of evidence that a plaintiff has received compensation on account of the same injury from a source other than the defendant, such as social security disability benefits or other insurance payments.³⁹ Under 75 Pa. C.S.A. § 1722, in any action for damages against a tortfeasor arising out of the maintenance or use of a motor vehicle, a person who is eligible to receive PIP benefits or benefits program, group contract or other arrangement for payment, is precluded from recovering the amount of benefits paid, or payable.

2. Non-Use of Seat Belt

Although 75 Pa.C.S.A. § 4581 of the Motor Vehicle Code requires all drivers, front seat occupants and children under the age of 8 to be secured in the vehicle by an appropriate restraint system (i.e., age-appropriate child seat for children under age 4, and a booster seat with seat belt for children under ages 4 to 8), subsection (e) of the statute states that any violation may not be used as evidence in a civil action and is not to be considered comparative negligence.

Pennsylvania Law requires that any person who operates or rides a motorcycle must wear protective headgear unless he or she is **21 years of age or older and has been licensed to operate a motorcycle for not less than two full calendar years OR has completed a motorcycle safety course approved by PennDOT or the Motorcycle Safety Foundation**. All individuals operating a motorcycle on a learner's permit **must** wear a helmet regardless of age.

3. Admissibility of Traffic Citations and Criminal Pleas

For summary cases (such as traffic violations or careless driving), 75 Pa. C.S.A. § 1211 prohibits the introduction of guilty pleas, pleas of *nolo contendere* (“no contest”), or payment of fines, in subsequent civil actions.⁴⁰ For serious, non-summary matters which carry the possibility of incarceration (such as assault by vehicle, fleeing or attempting to elude a police officer, or reckless driving), a criminal conviction collaterally estops a defendant from denying his acts in a subsequent civil trial.⁴¹

4. Spoliation of Evidence

The United States Court of Appeals for the Third Circuit established the *Schmid* test, which was subsequently adopted by the Pennsylvania Supreme Court, to determine the proper penalty (if any) for a party's spoliation of evidence⁴²:

- (a) the degree of fault of the party who altered or destroyed evidence;
- (b) the degree of prejudice suffered by the opposing party, and
- (c) the availability of a lesser sanction that will protect the opposing party's rights and deter future similar conduct.

In some cases, the penalty has been summary judgment in favor of the opposing party. “Lesser sanctions” include an instruction to the jury permitting them to make a negative inference as to what the evidence would show had it not been improperly destroyed or discarded.

5. Expert Opinions

Pennsylvania state courts continue to utilize the *Frye* test as the leading evidentiary rule of law.⁴³ In order for scientific evidence to be admissible, it must “gained general acceptance in the relevant scientific community.” In most cases, the court will examine: (1) whether the methodology employed in the performance studies on which the expert’s testimony is based is generally accepted, and (2) whether the causal connection between the alleged injury and the conduct at issue has been generally accepted.⁴⁴

In the federal courts, the *Frye* test of “general acceptance” has been replaced by the *Daubert* “reliability” test. In the *Daubert* case, the U. S. Supreme Court ruled that a “reliable” expert opinion is “based upon the methods and procedure of science,” rather than on “subjective belief or unsupported speculation.”⁴⁵ A subsequent opinion in *Kumho Tire* extended this test to non-scientific experts, such as vocational rehabilitation and economic experts.⁴⁶

I. OTHER CONSIDERATIONS

1. Offers of Judgment

The Pennsylvania Rules of Civil Procedure do not provide for an offer of judgment. In federal court, an offer of judgment pursuant to Federal Rule of Civil Procedure 68 may be extended at any time more than 10 days before trial. If the offer is not accepted, and the judgment at trial is not more favorable than the offer, plaintiff must pay the defendant’s costs which were incurred after making of the offer.

2. Delay Damages

Upon request of the plaintiff within 10 days of a favorable verdict, decision or final award, Pennsylvania Rule of Civil Procedure 238 requires a defendant to pay mandatory “delay damages” (which are added to the amount of the award). Delay damages are calculated at the prime rate, plus one percent (not compounded) for the period of time between the filing of the action and the first written offer from the defendant.⁴⁷ The rate of delay damages in 2011 was 4.25%.

Rule 238 provides that any time period during which the plaintiff caused delay of the trial can be excluded from the calculation of delay damages. A defendant may also limit the time period upon which delay damages are based by making a written settlement offer which explicitly states that it will remain in effect for at least 90 days or until commencement of trial, whichever ever occurs first. If the defendant’s offer meets these requirements and it is not accepted, delay damages may not be assessed for any time period after the written offer, provided that the plaintiff ultimately recovered less than 125% of the offer.

Although delay damages apply to personal injury, death and property damage actions, they are not available for loss of consortium awards.⁴⁸

3. Post Judgment Interest

In addition to Rule 238 “delay damages,” Pennsylvania law requires a defendant to pay post-judgment interest on any award from the date of verdict or judgment, until it is paid. 42 Pa.C.S.A. § 8101. In 2011, the applicable legal rate of interest in Pennsylvania was 6%.

I. ALTERNATIVE DISPUTE RESOLUTION (ADR)

Under the Pennsylvania Rules of Civil Procedure, each Court of Common Pleas may determine under its local rules whether actions are submitted to compulsory arbitration, the kinds of cases to be arbitrated, and the jurisdictional amount for arbitration (which varies by county, but generally falls between \$20,000 and \$50,000). The compulsory arbitration hearing is held before a board consisting of three attorneys and, generally, the Pennsylvania Rules of Evidence will apply. Bill for damages incurred, medical records and expert reports will be accepted into evidence, provided that the opposing party is given at least 20 days notice of the intention to submit them at the hearing. The board of arbitrators is required to issue an award at the termination of the hearing, and any party may demand a trial *de novo* within 30 days of entry of the award.⁴⁹

ENDNOTES

1. Cabiroy v. Scipione, 767 A.2d 1078 (Pa. Super. 2001); Congini v. Portersville Valve Co., 470 A.2d 515 (Pa. 1983); Kaplan v. Philadelphia Transp. Co., 171 A.2d 166 (Pa. 1961).
2. Johnson v. Glenn Sand and Gravel, 453 A.2d 1048 (Pa. Super. 1982); Chuy v. Philadelphia Eagles Football Club, 595 F.2d 1265 (3rd Cir. 1979); Mauk v. Wright, 367 F. Supp. 961 (M.D.Pa., 1973); Smalich v. Westfall, 269 A.2d 476 (Pa. 1970); Ferrell v. Martin, 419 A.2d 152 (Pa. Super. 1980).
3. Norton v. Railway Express Agency, Inc., 412 F.2d 112 (3d Cir. 1969); Mauk v. Wright, 367 F. Supp. 961 (M.D.Pa. 1973); Anzenberger v. Nickols, 198 A.2d 309 (Pa. 1964); Schneider v. Albert Einstein Medical Center, 390 A.2d 1271 (Pa. Super. 1978).
4. Shuman Estate v. Weber, 419 A.2d 169 (Pa. Super. 1982); Kemerer v. United States, 330 F. Supp. 731 (W.D.Pa. 1971), aff'd, 474 F.2d 1338 (3d Cir. 1973); Winward v. Rhodewalt, 198 A.2d 623 (Pa. Super. 1964); RESTATEMENT (Second) Agency § 228, Comment a (1957).
5. Shuman Estate v. Weber, 419 A.2d 169 (Pa. Super. 1982); Fullard v. Urban Redevelopment Authority, 293 A.2d 118 (Pa. Super. 1972); Kelly v. Yount, 7 A.2d 582 (Pa. Super. 1939), aff'd, 12 A.2d 579 (Pa. 1940).

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6. Brezenski v. World Truck Transfer, Inc., 755 A.2d 36 (Pa. Super. 2000); RESTATEMENT (Second) of Agency § 228 (1958).
7. Shuman Estate v. Weber, 419 A.2d 169 (Pa. Super. 1982); Kirker v. W.M. McIntosh Co., 39 A.2d 846 (Pa. Super 1944).
8. Brezenski v. World Truck Transfer, Inc., 755 A.2d 36 (Pa. Super. 2000); Dempsey v. Walso Bureau, Inc., 246 A.2d 418 (Pa. 1968).
9. Brezenski v. World Truck Transfer, Inc., 755 A.2d 36 (Pa. Super. 2000); Zanine v. Gallagher, 497 A.2d 1332 (Pa. Super. 1985).
10. Christiansen v. Silfies, 667 A.2d 396 (Pa. Super. 1995); RESTATEMENT (Second) of Torts § 308.
11. Burkholder v. Genway Corp., 637 A.2d 650 (Pa. Super. 1994); In re Moyer, 359 Pa. 536, 59 A.2d 927 (1948).
12. Heffner v. Allstate Ins. Co., 401 A.2d 1160 (Pa. Super. 1979), aff'd, 421 A.2d 629 (Pa.); Nye v. Com., Dept. of Transp., 480 A.2d 318 (Pa. Super. 1984).
13. McClinton v. White, 444 A.2d 85 (Pa. 1981), vacating 427 A.2d 218 (Pa. Super.).
14. Boggavarapu v. Ponist, 542 A.2d 516 (Pa. 1988); Spangler v. Helm's New York-Pittsburgh Motor Exp., 153 A.2d 490 (Pa. 1959).
15. Persik v. Nationwide Ins. Co., 554 A.2d 930 (Pa. Super. 1989).
16. Kiser v. Schulte, 648 A.2d 1 (Pa. 1994); Tulewicz v. S.E. Pa. Transp. Auth., 606 A.2d 427, 431 (Pa. 1992); Pezulli v. D'Ambrosia, 26 A.2d 659 (Pa. 1942).
17. Hall v. Jackson, 788 A.2d 390 (Pa. Super. 2001); Johnson v. Hyundai Motor America, 698 A.2d 631 (Pa. Super. 1997).
18. Hall v. Jackson, 788 A.2d 390 (Pa. Super. 2001); McDaniel v. Merck, Sharp & Dohme, 533 A.2d 436, 447 (Pa. Super. 1987).
19. Burke v. Maassen, 904 F.2d 178 (3rd Cir. 1990); Martin v. Johns-Manville Corp., 494 A.2d 1088 (Pa. 1985) (quoting RESTATEMENT (Second) of Torts § 908(2)); Feld v. Merriam, 485 A.2d 742 (Pa. 1984).
20. Kirkbride v. Lisbon Contractors, Inc., 555 A.2d 800 (Pa. 1989); RESTATEMENT (Second) of Torts § 908(2).
21. Butterfield v. Giuntoli, 670 A.2d 646 (Pa. Super. Ct. 1995), *appeal denied.*, 683 A.2d 875 (Pa. 1996).
22. Lineham v. Jaludi, No. 1865-2008-Civil (Pike Co. Jan.14, 2010); Pennington v. King, 2009 WL 415718, 2009 U.S. Dist. LEXIS 12779 (E.D. Pa. 2009) (Pratter, J.).

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23. Smith v. School Dist. of Philadelphia, 112 F. Supp. 2d 417, 428 (E.D. Pa. 2000) (citing Sinn v. Burd, 486 Pa. 146, 170-71, 404 A.2d 672, 685 (1979); Frempong-Atuahene v. Redevelopment Auth. of Phila., No. 98-0285, 1999 WL 167726, *7 (E.D. Pa. March 25, 1999)).
24. Pennsylvania recognizes the right to recovery in the absence of physical injury or impact when the individual inflicted with emotional distress was in the “zone of danger” of injury or impact, Niederman v. Brodsky, 261 A.2d 84 (Pa. 1970), or under the “bystander rule,” wherein the emotional impact upon the individual is “unquestionably as traumatic as would have been the case if the [individual] had also been within the zone of danger,” Sinn v. Burd, 404 A.2d 672 (Pa. 1979).
25. Redland Soccer Club, Inc. v. Department of the Army of the United States, 55 F.3d 827, 848 (3d Cir. 1995); Sonlin v. Abington Memorial Hospital, 2000 Pa. Super. 44, 748 A.2d 213, 217 (Pa. Super. 2000); Armstrong v. Paoli Memorial Hospital, 430 Pa. Super. 36, 44-45, 633 A.2d 605, 609 (Pa. Super. 1993).
26. Motheral v. Burkhardt, 583 A.2d 1180 (Pa. Super. 1990); RESTATEMENT (Second) of Torts, § 46 (1965).
27. Wilder v. United States, Civ. A. No. 00-6201, 2002 WL 31496349, (E.D. Pa. November 6, 2002) (citing Atamian v. Assadzadeh, Civ. A. No. 00-3182, 2002 WL 538977, 2002 U.S. Dist. LEXIS 6269 (E.D. Pa. April 9, 2002) (quoting Hunger v. Grand Cent. Sanitation, 447 Pa. Super. 575, 670 A.2d 173, 177 (1996) and Restatement (Second) of Torts, § 46)).
28. Green v. K&K Ins. Co., 566 A.2d 622 (Pa. Super. 1989).
29. 42 U.S.C. § 1395y(b)(2).
30. Wirth v. Aetna U.S. Healthcare, 904 A.2d 858 (Pa. 2009).
31. Terletsky v. Prudential Property & Casualty Ins. Co., 649 A.2d 680 (Pa. Super. 1994).
32. Lockhart v. List, 665 A.2d 1176 (Pa. 1995); Anderson v. Moore, 650 A.2d 1090 (Pa. Super. 1994).
33. Mano v. Madden, 738 A.2d 493 (Pa. Super. 1999); Cianci v. Burwell, 445 A.2d 809 (Pa. Super. 1982).
34. Mano v. Madden, 738 A.2d 493 (Pa. Super. 1999); Elder v. Orluck, 483 A.2d 474 (Pa. Super. 1984), affirmed, 515 A.2d 517 (Pa. 1986).
35. Levey v. DeNardo, 725 A.2d 733 (Pa. 1999); Dickens v. Barnhart, 711 A.2d 513 (Pa. Super. 1998);
36. Pa. R.C.P. 4003.1 and 4003.3.
37. See also, Hickman v. Taylor, 329 U.S. 495 (1947); Holmes v. Pension Plan, 213 F.3d 124 (3d Cir. 2000).
38. F.R.C.P. 26(b)(3).
39. Hileman v. Pittsburgh & Lake Erie R. Co., 685 A.2d 994 (Pa. 1996).
40. Loughner v. Schmelzer, 218 A.2d 768 (Pa. 1966).

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41. Folino v. Young, 568 A.2d 171 (Pa. 1990); In re Kravitz Estate, 211 A.2d 443 (Pa. 1965); Hurt v. Stirone, 206 A.2d 624 (Pa.), cert. denied, 381 U.S. 925, 85 S.Ct. 1561, 14 L.Ed.2d 684 (1965).
42. Schmid v. Milwaukee Electric Tool Corp., 13 F.3d 76 (3d Cir. 1994); Schroeder v. Com. Dept. Of Transp., 551 Pa. 243, 710 a.2d 23 (1998).
43. Frye v. United States, 293 F. 1013 (D.C. Cir. 1923); Commonwealth v. Topa, 369 A.2d 1277 (1977).
44. Blum v. Merrell Dow Pharmaceuticals, 705 A.2d 1314 (Pa. Super. 1997); aff'd in part, Blum v. Merrell Dow Pharmaceuticals, 764 A.2d 1 (Pa. 2000).
45. Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). The 8 factors for reliability to be explored include: (1) whether a method consists of a testable hypothesis; (2) whether the method has been subject to peer review; (3) the known or potential rate of error; (4) the existence and maintenance of standards controlling the technique's operation; (5) whether the method is generally accepted; (6) the relationship of the technique to methods which have been established to be reliable; (7) the qualifications of the expert witnesses testifying based on the methodology; and (8) the non-judicial uses to which the method has been put.
46. Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137 (1999).
47. Pennsylvania Rule of Civil Procedure 238.
48. Anchorstar v. Mack Trucks, Inc., 620 A.2d 1120 (Pa. 1993).
49. Pennsylvania Rules of Civil Procedure 1301 et seq.; 42 Pa.C.S.A. §7361.