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# TRANSPORTATION LAW UPDATE



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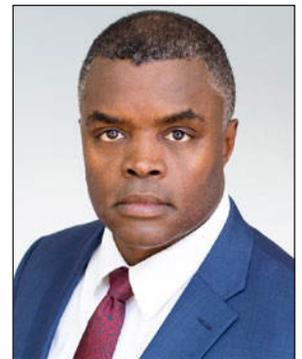
## For Pennsylvania Public Safety Employees Injured in a Motor Vehicle: No Subrogation for Benefits Paid Under the Pennsylvania Heart and Lung Act

Rawle & Henderson LLP recently handled a suit in which knowledge of the interplay of the Pennsylvania Motor Vehicle Financial Responsibility Act, Pennsylvania Heart and Lung Act and Pennsylvania's Workers' Compensation Act proved invaluable to understanding and calculating the recoverable economic damages.

Our client, a tractor-trailer driver, collided with a police vehicle. The police officer who was driving the vehicle sustained injuries to his neck which, after conservative treatment failed, required surgery. He also claimed that the injuries and resulting limitations, both before and after the surgery, prevented him from working as a police officer. Due to the length and nature of the treatment, the combination of medical expenses and economic damages grew to a significant figure.

Eventually, the officer filed a third-party suit against our client seeking compensation for his economic and non-economic damages. In the course of discovery, we learned that, immediately after the accident, the officer had notified his employer of the injury and sought coverage under Pennsylvania's Heart and Lung Act ("HLA").<sup>1</sup>

Through the HLA, the officer received substantial benefits during his post-accident treatment. Under the HLA, a Pennsylvania police officer or other specified public safety employee who is injured while on-duty can receive far more extensive benefits than workers' compensation provides. The goal of the HLA is to protect public employees serving in essential, high-risk professions such as police work, firefighting, or other jobs involving



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public safety. If the specified public employees are injured or temporarily disabled in the course of performing their duties, the HLA guarantees that the employees receive their full salary and continue to receive employee benefits and full compensation for medical expenses and treatment until such time as the employees either return to duty or their disability becomes permanent.<sup>2</sup> The Act provides this coverage as incentive to attract qualified people and to serve the “best interest of the municipality.”<sup>3</sup>

In contrast, under the Workers’ Compensation Act, an employee who sustains an injury which causes a total loss of earning power for a period of time is entitled to receive benefits amounting to 66 2/3% of his or her average weekly wage.<sup>4</sup> If a public safety employee collects both workers’ compensation disability compensation and Heart and Lung benefits, the employee’s workers’ compensation benefits must be turned over to the public employer.

However, the officer’s receipt of HLA benefits would substantially reduce his recoverable damages in the suit against our client. Pennsylvania Courts have determined that HLA benefits, unlike Workers’ Compensation Act benefits, are not subject to subrogation in motor vehicle accident cases falling under the application of the Pennsylvania Motor Vehicle Financial Responsibility Act<sup>5</sup> (the “MVFRL”).

In *Oliver v. City of Pittsburgh*, a 2011 decision based on statutory construction, the Pennsylvania Supreme Court precluded the City of Pittsburgh from using subrogation to obtain reimbursement of HLA benefits that it paid to a police officer who was injured in a motor vehicle while in the course of duty.<sup>6</sup> In *Oliver*, the officer sued a third party tortfeasor and eventually settled the case against the third party. Her employer, the City, sought reimbursement of HLA benefits through subrogation.

The statutes at issue were the Pennsylvania Motor Vehicle Financial Responsibility Act<sup>7</sup> (the “MVFRL”) and its application to the Workers’ Compensation Act and the HLA. The Court noted that, in 1993, Pennsylvania passed P.L. 190, No. 44, §25(b)<sup>8</sup> (“Act 44”) which “reinstated an employer’s right of subrogation with respect to workers’ compensation benefits in actions arising out of motor vehicle accidents . . .” The Court also noted that the amendments “made no mention of the HLA.”<sup>9</sup> Therefore the Court reviewed the MVFRL to determine whether “Section 25(b) of Act 44 affords the City a right of subrogation against Appellant’s tort recovery for the benefits it paid under the HLA.”<sup>10</sup>

Based on the “unambiguous” language of the statute, the Supreme Court of Pennsylvania decided that while “Section 25(b) repealed § 1720 of the MVFRL ‘insofar as it related to workers’ compensation payments or other benefits under the Pennsylvania Workers’ Compensation Act,’ . . . By its plain terms, such provision does not impact any anti-subrogation mandates pertaining to HLA benefits.”<sup>11</sup> Therefore, the HLA benefits were not subrogable.

In 2014, the Commonwealth Court addressed whether a self-insured employer who paid HLA benefits in lieu of Workers Compensation Benefits can deem 66 2/3% of the HLA benefits to represent Workers’ Compensation benefits, and thereby seek recovery of that amount through subrogation. The Court rejected this concept, stating:

In its original version, the Motor Vehicle Financial Responsibility Law made employers, not motor vehicle insurers, responsible for the payment of medical bills and lost wages on behalf of a person injured in a motor vehicle accident that occurred in the course of employment. With Act 44, the legislature shifted the responsibility

for these costs from the employer (or its workers' compensation insurer), to the tortfeasor, (or its insurer). However, Act 44 did not shift responsibility for Heart and Lung benefits, which remain with the employer.<sup>12</sup>

Consequently, the MVFRL continues to preclude recovering the amount of benefits paid under the HLA from the responsible tortfeasors. 75 Pa.C.S. § 1722.<sup>13</sup>

Like the police officer in our case, public safety employees in Pennsylvania who are injured in motor vehicle accidents are likely to seek the substantial benefits offered by the Heart and Lung Act. Understandably, the prospect of receiving their full salary, continuation of employee

benefits and full compensation for medical expenses and treatment is a substantial benefit that few people, given the option, would forego.

However, if that employee brings a third-party claim or suit based on a motor vehicle accident, the defendant should be aware that those benefits are *not* recoverable as damages in the third-party claim because the claimant/plaintiff will not have lost the wages or incurred the medical expenses paid by the HLA. Consequently, depending on the alleged injury, treatment and lost time from work, this reduction in damages can be significant to the value of the case. Therefore, in any case involving an on-the-job injury, this potential limitation on damages should be fully explored.

<sup>1</sup> 53 P.S. §§637-638

<sup>2</sup> See, 53 P.S. §§637-638, also, *City of Erie v. Workers' Comp. Appeal Bd. (Annunziata)*, 575 Pa. 594, 602-603, 838 A.2d 598, 603, and, *Oliver v. City of Pittsburgh*, 608 Pa. 386, 11 A.3d 960.

<sup>3</sup> *Erie, supra*, (citing, *Kurtz v. Erie*, 389 Pa. 557, 133 A.2d 172 at 177 (quoting, *Iben v. Borough of Monaca*, 158 Pa. Super. 46, 43 A.2d 425, 427, 37 Mun. L. Rep. 76 (Pa. Super. 1945)). See also 63 Corpus Juris Secundum Municipal Corporations § 578 (citing *Iben* with approval)).

<sup>4</sup> *Erie, supra*, (citing, 77 P.S. § 511(1)).

<sup>5</sup> 75 Pa.C.S. §§1701-1799.7

<sup>6</sup> *Oliver v. City of Pittsburgh*, 608 Pa. 386, 11 A.3d 960, (2011)

<sup>7</sup> 75 Pa.C.S. §§1701-1799.7

<sup>8</sup> 77 Pa. Stat. Ann. § 671

<sup>9</sup> *Oliver v. City of Pittsburgh*, 608 Pa. 386, 389, 11 A.3d 960, 962, (2011)

<sup>10</sup> *Id.* at 964.

<sup>11</sup> *Id.* at 386, 11 A.3d 960, 966

<sup>12</sup> *Stermel v. Workers' Comp. Appeal Bd. (City of Phila.)*, 103 A.3d 876, 885, 2014 Pa. Commw. (Pa. Commw. Ct. 2014)

<sup>13</sup> *Id.*

**Nigel A. Greene** is a partner in our Philadelphia office. He focuses his practice on the defense of commercial motor vehicles, commercial and residential liability claims, municipal liability and complex litigation matters. In addition, he serves as an arbitrator in Philadelphia County. He is admitted to practice in the state courts of Pennsylvania, the U.S. District Court for the Eastern and Middle Districts of Pennsylvania and the U.S. Court of Appeals for the Third Circuit. Nigel received his J.D. from Georgetown University Law Center and his B.A. from the Virginia Polytechnic and State University. He served as an Assistant District Attorney in Philadelphia as a prosecutor in the Major Trials Unit where he successfully tried numerous cases, including jury trials, involving major felonies. Nigel currently serves as Vice-Chair of the ABA Tort Trial and Insurance Practice Section (TIPS) Commercial Transportation Litigation General Committee. He is a member of the American Bar Association and the Trucking Industry Defense Association.

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## 2016 TIDA ANNUAL SEMINAR



**Gary N. Stewart**

**Gary N. Stewart**, a partner in our Harrisburg office, will speak at the **Trucking Industry Defense Association (TIDA) Annual Seminar** being held in Baltimore, Maryland, from October 12 to 14, 2016. Gary will be a panelist for an October 13 session titled "*The Intersection of Criminal Law & Trucking: Send Lawyers, Guns & Money.*" The session will include a discussion of some of the complex issues that arise in serious and fatal trucking accidents where the truck driver faces criminal charges for his or her actions or conduct related to the accident. Gary and his co-presenters will investigate tactics for handling the initial on-scene response by the trucking company's attorney all the way through to the time when criminal charges are actually filed against the driver.

Gary N. Stewart is admitted to practice in Pennsylvania, New Jersey, Massachusetts, Connecticut, Vermont and Rhode Island, as well as before the U.S. District Courts for the Eastern, Middle and Western Districts of Pennsylvania, the District of New Jersey, the District of Massachusetts, the District of Rhode Island, the District of Connecticut and the U.S. Court of Appeals for the First and Third Circuits. He graduated *magna cum laude* from the Harrisburg campus of Widener University School of Law. Gary was the recipient of the James C. Crumlish Jr. Award for Excellence in Scholarship and Administrative Law. He received his undergraduate degree from the U.S. Merchant Marine Academy at Kings Point, New York, and holds U.S. Coast Guard professional licenses as Master of Oceans, Steam or Motor Vessels up to 1600 gross tons as well as Chief Officer, unlimited tonnage, all oceans. Gary served as the law clerk for the Honorable Rochelle Friedman, Commonwealth Court of Pennsylvania in Harrisburg. He has been selected by his peers as a Transportation/Maritime Pennsylvania Super Lawyer in 2016, 2012, 2011, 2010, 2009 and 2007. Gary is a member of the firm's Executive Committee.

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The **Commercial Motor Vehicle Section** publishes the *Transportation Law Update* as a service to its clients and the transportation industry. This newsletter provides timely articles on new trends in the law and the potential impact of these developments on litigation involving the transportation industry. Previous issues of the *Transportation Law Update* are available at [www.rawle.com](http://www.rawle.com). If you would like **hard copies** of previous issues, please email [info@rawle.com](mailto:info@rawle.com) with the specific issues that you would like to receive, and we will mail them out to you promptly.

**State Law Summaries** for **Pennsylvania, New York, New Jersey** and **Delaware**—which highlight laws that affect commercial motor vehicles operating in those jurisdictions—are also available on our website.