



[ABOUT US](#)
 [OUR FIRM](#)
 [PRACTICE](#)
 [ARTICLES](#)
 [CLIENTS](#)
 [CONTACT](#)

THE PASCHOS LAW UPDATE NEWSLETTER

ARCHIVES

2012

[July 2012](#)
[June 2012](#)
[May 2012](#)
[April 2012](#)
[March 2012](#)
[February 2012](#)
[January 2012](#)

2011

[December 2011](#)
[November 2011](#)
[October 2011](#)
[September 2011](#)
[August 2011](#)
[July 2011](#)
[June 2011](#)
[May 2011](#)
[April 2011](#)
[March 2011](#)
[February 2011](#)
[January 2011](#)

2010

[December 2010](#)
[November 2010](#)
[October 2010](#)
[September 2010](#)
[August 2010](#)
[July 2010](#)
[June 2010](#)
[May 2010](#)
[April 2010](#)
[March 2010](#)
[February 2010](#)
[January 2010](#)

August, 2012

I. EMPLOYMENT LAW

Statute of Limitations Bars EEOC Action Under Section 706(e)(1) of Title VII

In *EEOC v. United States Steel Corporation, et al.*, No. 10-CV-1284 (W.D. Pa. July 23, 2012), the Equal Employment Opportunity Commission (“EEOC”) initiated an Americans with Disabilities Act action on behalf of charging party, Abigail DeSimone (“DeSimone”) and all similarly situated employees of Defendant U.S. Steel (“U.S. Steel”) seeking to challenge U.S. Steel’s policy of subjecting its probationary employees to random breath alcohol tests.

Since at least January 2006, U.S. Steel had been conducting random drug and alcohol testing of its probationary employees, pursuant to the terms and conditions of the basic labor agreement between U.S. Steel and the employees’ union. The EEOC contended that U.S. Steel’s policy affected all probationary bargaining employees at its Clairton, Pennsylvania facility who were subject to the relevant basic labor agreement and all probationary bargaining unit employees at other facilities throughout the United States.

The EEOC sought relief for a class of unidentified aggrieved employees, setting forth claims under both Sections 706 and 707 that the subject testing process violated the Americans with Disabilities Act (“ADA”). The EEOC also alleged that U.S. Steel violated the ADA because it subjected probationary employees to such testing and discharged them when a positive test result occurred.

Plaintiff-Intervenor DeSimone, whom U.S. Steel hired on January 14, 2008, submitted to a breath alcohol test, which indicated the presence of alcohol on January 29, 2008. As a result, U.S. Steel terminated her employment on February 7, 2008, despite her protests that the test was a false positive engendered by her diabetic condition. Thereafter, DeSimone filed a charge of discrimination with the EEOC on June 6, 2008. Ms. DeSimone has since settled her individual case.

The EEOC filed its original Complaint on September 30, 2010, followed by an Amended Complaint on October 13, 2010. U.S. Steel filed a motion to dismiss the Amended Complaint. One of U.S. Steel’s challenges to the EEOC Amended Complaint was based on the statute of limitations. Whether the EEOC’s class claim should be dismissed, based on the statute of limitations under Section 706(e)(1) of Title VII was an issue of first impression for the court.

Defendant contended that the EEOC ignored the procedural safeguards set forth in §706, which provide that an administrative charge be filed within 300 days after the alleged unlawful employment practice occurred. Defendant contended that the 300-day limitation period applied to the EEOC’s charges because the plain language of §707 states that, “all pattern or practice actions shall be conducted in accordance with the procedures set forth in § 706[.]”

The court granted, in part, Defendant’s motion to dismiss, and held that the EEOC must adhere to §706’s 300-day limitations period relative to its §707 pattern or practice allegations. The court expressly rejected the EEOC’s attempt to avoid the limitations period on its claims that the Defendant violated the ADA when it applied a nationwide policy of requiring probationary employees to undergo random alcohol tests. The court barred the

EEOC from seeking relief for individuals who were subject to an alcohol breath test and/or termination for more than 300 days before the filing of the discrimination charge.

II. CONTRACT LAW

Pennsylvania Supreme Court Holds It Is Against Public Policy to Release Reckless Behavior In a Pre-Injury Exculpatory Clause

In *Tayar v. Camelback Ski Corp., Inc.*, --- A.3d ----, 2012 WL 2913750 (Pa. July 18, 2012), Appellee Barbara Lichtman Tayar was injured while snow tubing at Camelback's facility after being struck by another snow tuber. Appellee brought action against Camelback and its employee, Brian Monaghan, who sent the second snow tuber down the slope before appellee had cleared the receiving area at the bottom of the slope.

Appellants filed an answer and new matter, and thereafter moved for summary judgment, asserting Tayar's claims against Camelback and Monaghan were barred by the Release on the ticket. Camelback and Monaghan cited the ticket release as a warning exempting them from liability for the injuries and the trial court agreed reasoning the Release covered Camelback and thereby released it from any liability associated with Tayar's injuries. Additionally, the court determined that it did not need to address whether the Release encompassed Monaghan in his personal capacity because, in any event, the release printed on the lift ticket relieved Monaghan of liability. Further, while the court concluded the evidence demonstrated Monaghan acted negligently by sending snow tubers down the mountain too early, it did not suggest he acted recklessly or with gross negligence. Tayar appealed to the Superior Court, where a three-judge panel affirmed the trial court's decision in a split ruling.

Tayar requested another hearing before the full nine-member Superior Court, which reversed the trial court in a 5-4 ruling. Appellee petitioned the Supreme Court for review. In a matter of first impression, the Supreme Court was asked to rule whether it is against public policy to release reckless behavior in a pre-injury exculpatory clause. Upon review, the Supreme Court reversed the Superior Court's order in part, affirmed in part, and remanded the case. The Court reversed the order of the Superior Court to the degree it concluded that Monaghan was not covered by the Release. The Court affirmed the order and reversed the grant of summary judgment on the basis that the Release did not bar claims based on reckless conduct, and remanded for further proceedings. In addition, the Court affirmed on the alternative basis that, to the degree the Release released reckless conduct, it was against public policy. The Court noted, "(T)he overwhelming majority of our sister states find releases for reckless conduct are against public policy." The court further provided that "federal courts purporting to apply Pennsylvania law have barred the enforcement of releases for reckless behavior." As such, the court concluded that permitting recklessness would remove any incentive for parties to act with even a minimal standard of care.

III. INSURANCE LAW

New Jersey Law Applies to the Question of the Allocation of Coverage Among Excess Insurance Policies

In *In re Liquidation of Integrity Ins. Co./Sepco Corp.*, --- A.3d ----, 2012 WL 3600009 (N.J.Super.A.D. August 23, 2012), the court addressed two appeals, which raised the same issue of the application of conflict of law principles to breach of contract actions filed by claimants Sepco Corporation and Mine Safety Appliances Company (MSA) against Integrity Insurance Company in Liquidation. These appeals followed the denial of the claims of each by Integrity's Liquidator, as based on an improper method of allocating loss, and the affirmance of the Liquidator's decision by the Special Master and the trial court overseeing the liquidation.

Specifically, the appeals presented the question whether New Jersey's pro-rata approach to allocation of coverage among triggered insurers should be applied to the claims, or whether, under choice of law principles, a joint and several or "all-sums" approach to allocation, adopted in Pennsylvania and California, the states in which claimants are incorporated and maintain their principal places of business, was applicable. The choice of

law question was relevant to the determination whether the Liquidator breached the contracts between Integrity and the claimants when he denied payment.

The court applied choice of law principles to the insurance contracts at issue and concluded that the trial court properly held that the law of New Jersey applied to the question of the allocation of coverage among excess insurance policies potentially covering the claims for which recovery was sought. The court further affirmed the lower court's determination that, under New Jersey's pro rata approach to allocation, which takes account of the insurer's time on the risk and the degree of risk that was assumed, Integrity's excess policies were not triggered by these claims. The court rejected the insureds' argument that an "all sums" allocation, recognized by the courts of California and Pennsylvania, which permits the insured to recover in full under any triggered policy that it chooses, was applicable, thereby triggering Integrity's coverage. As such, the court found that conflict of law principles permitted the construction of Integrity's contractual obligation as a contingent one that has not vested in accordance with New Jersey law and therefore, affirmed the denial of Sepco's and MSA's claims.

Copies of the full text of any of the cases discussed in this Newsletter may be obtained by calling our office. The articles contained in this Newsletter are for informational purposes only and do not constitute legal advice.

© Thomas Paschos & Associates, P.C. (2012) All Rights Reserved.

[Home](#) [About Us](#) [Our Firm](#) [Our Practice](#) [Publications](#) [Our Clients](#) [Contact](#)