



Do The New Amendments to the ADA Impact You?

The recent amendments to the Americans with Disabilities Act shifts the focuses from individual's disability to the discrimination itself. The amendment also changes the definition of "disability." While ADA's basic definition of "disability" (an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment) has remained the intact, the amendment changes the way that some statutory terms are interpreted.

For example:

- ◇ "Major life activities" was expanded by including two broad lists which include many previously recognized activities such as walking but also added new activities that were not specifically recognized such as reading, bending, and communicating. The second list sets forth major bodily functions including functions of the immune system, normal cell growth, digestive, bowel, bladder, respiratory, neurological, brain, circulatory, endocrine, and reproductive functions.
- ◇ The amendment makes clear that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- ◇ The amendment adds that where an individual is subjected to an action prohibited by the ADA because of an actual or perceived impairment will now meet the "regarded as" definition of disability, unless the impairment is "transitory and minor."
- ◇ Individuals who are considered disabled under the "regarded as" prong are no longer entitled to reasonable accommodation.
- ◇ Emphasizes that the definition of "disability" should be interpreted broadly.

[Please Visit Our Employment Law Website](#)

Our office will provide you a thirty minute free telephone consultation to discuss your Employment Law matter. Contact Ashley or Derek to schedule your free consultation.



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IMPORTANT OFFICE INFORMATION

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Jury Trials – Time For A Change



Our Community Involvement

This Year's Jump Street's Derby Day Fundraiser is on May 5, 2012

As always, our office is proud to be a part of Jump Street's 11th Annual Derby Day Celebration. This year's event begins at 2:30 pm at the King Mansion on Front Street in Harrisburg, PA.

Once again, Peter Russo will be acting as the Event Chair for Derby Day and his committee is already working to make this Derby Day even more special than years past.

Guests can avail themselves of food, beverages, music, live and silent auctions, a \$10,000 Raffle and other games of chance and the opportunity to help one of the region's most far reaching arts based non-profit, [Jump Street](#).

Sponsorship opportunities range from \$300 to \$5,000. Please feel free to contact the office so that you and your company can be a part of the region's most exciting UPSCALE lawn party of the year.

[Dave Castro](#) of the [Bean Cuisine](#), located at the Farmstead Farmer's Market, is assisting with this year's fundraising efforts by allowing Jump Street to "brand" their own coffee with labels specially designed by three students participating in Jump Street Arts Programs. Dave is donating the proceeds from the sale of the coffee to Jump Street. Thank you Dave!

Please feel free to contact our office for more information about Derby Day 2012.

Our American system of justice provides that people who have a controversy, whether civil or criminal, will typically have their day in court, often before some type of "finder of fact." The average person believes the finder of fact is a jury of your peers.

While a noble thought, at times the system does not provide you that right. Consider just a few of the ways you can be deprived of a trial by a jury of your peers:

- A document which contains a Confession of Judgment/Waiver of Jury Trial Clause
- A document which contains a Mediation or Arbitration Clause
- Most Summary Criminal Cases
- DUI cases where it is your first offense

If you are lucky enough to have the right to a jury trial, get ready to meet a jury of "your peers.". Most jury pools are taken from a very large cross section of the community in which you live. For example the United States District Court for the Middle District of Pennsylvania's jury pool is selected from 33 of the 67 counties in Pennsylvania.

I have often heard judges tell jurors that service on a jury was a tremendous civic duty which was second only to military service. While I agree with the concept, I always recall something a very senior attorney once told me about juries - the only people who served on juries were those who either wanted to decide someone else's future, people who hated their jobs they would rather sit in a courtroom or retired people who needed something to do.

While I don't agree with that opinion, I do have some concerns with how our jury system sometimes works. One of the issues with the jury system is the lack of control. While a judge will remind jurors to keep an open mind, many trial attorneys believe a jury trial is won long before closing arguments. Many people believe a trial is won or lost:

- As soon as the parties walk into the courtroom

- Whose lawyer looks better
- Whose lawyer is better dressed
- Which party is the "good one"

"Keep an open mind" is a common courtroom phrase but so is "you can't un-ring a bell." Sometimes a jury will hear something that they should not have and a judge will instruct them to disregard that information that was just conveyed to them.

I believe human nature prevents us from being able to *completely* disregarding information once the bell has rung. I contend the same is true for some jury members. As much as they want to keep an open mind, their most basic of instincts prevents that from happening. They take sides from the beginning and may create additional subconscious burdens for the parties to overcome.

With ALL that said, I'm left with two more words

PROFESSIONAL JURORS

It might be radical but, in the long run, it would seem to be beneficial for all parties to have jurors who have been trained to better understand their roles.

Just one lawyer's thoughts.



Recent Developments

In Dog Law

Simon Raban, a West Chester, Pennsylvania man was recently sentenced to six months of probation and a \$500.00 fine. So your first question is probably why is Simon Raban's criminal sentence that important to me? Raban's dog ownership led to a violation of 3 P.S. § 459-305 which is something many dog owners tend to unknowingly violate.

On a July evening Raban's Giant Schnauzer named "Muncy," left their property, crossed a neighboring road and got into a "dog fight" with "Hubble," a Bernese Mountain dog. During the 30 second fight, "Muncy" grabbed "Hubble" by the neck which seemed to cause "Hubble" to limp for a short time after but did not result in any long term injury.

Unfortunately for Baran, "Muncy" not restrained with a leash or an electric fence collar. When the West Vincent Township Police arrived Baran's was issued a citation for and later convicted of violating 3 P.S. § 459-305(a)(1) for failing to properly confine his dog.

Section 305 of the Dog Law, 3 P.S. § 459-305 provides:

It shall be unlawful for the owner or keeper of any dog to fail to keep at all times such dog either:

- (1) confined within the premises of the owner;
- (2) firmly secured by means of a collar and chain or other device so that it cannot stray beyond the premises on which it is secured; or
- (3) under the reasonable control of some person, or when engaged in lawful hunting, exhibition or field training.

Raban attempted to defend his and "Muncy's" actions by arguing:

1) 3 P.S. § 459-305 requires that the actors (dog and/or owner) must have knowledge of the wrongness or illegality

of the failure to restrain "Muncy"

2) Since Raban owned the land upon which the roadway lies which is open to the public, in this case a right of way, is not within the owner's control and therefore not the owner's premises under the meaning of this section. Further, Raban argued he has no control regarding who passes over the land to access the five homes served by the right of way.

3) Raban, maybe sensing where this was going decided to use an old tried and true defense of saying the criminal responsibility is attributable solely to his wife.

4) Then lastly, argued "Hubble" wasn't really hurt therefore the violation and damages were so minor that a conviction could not be sustained.

The reason I tell you about the tale of Muncy and his owner is because the courts did not accept any of Raban's arguments are sufficient to reverse his conviction. Lesson to be learned from the story... you're responsible for what your dog does off a lease, regardless of how minor and regardless if it was foreseeable or not.

Reverse Tax Audits

Know someone who owns or works for a company that pay a great deal of sales tax or use tax?

We can do a **FREE** audit of their sale and use tax payments to see if they are due a refund. There is **NO COST** to the business owner and **ANY** fee due is paid from any recovery obtained by us on the business's behalf. This is a **WIN-WIN** for any business paying a great deal of sales or use tax.

Call us for a **FREE** consultation.

Some Reasons to Revise Your Will

- People named in your old will are deceased.
- New people should be named in your will
- Divorce or marriage.
- Change in guardians, personal representatives, or trustees.
- Children reach the age of 18.
- A substantial increase or decrease in the value of your estate.
- The acquisition or disposition of a significant asset.
- The passage of time is reason enough. You should review your will and estate planning documents every three to five years.

SOME OF OUR PRACTICE AREAS

Family Law

Divorce - Custody - Support
Property Agreements - Adoption
Name Changes - Visitation - PFA
Collaborative Law

Business Law

Business Startup - Business Litigation
Contract Disputes - Business Startup
LLCs - S Corps - Contract Review
Business Purchase or Sale

Real Estate Matters

Buying or Selling
Residential or Commercial
Title Insurance - Agreements of Sale
Post Settlement Problems

Employment Law

Unemployment Compensation
Workers' Compensation
Discrimination - Sexual Harassment
HIPPA - PHRC - EEOC
Employment Agreements / Handbooks

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The Verdict Is In

Retaliation; Employment; Wrongful Termination; Discrimination; ADA

Verdict (P) \$353,500

Case Ricky A. Shaw v. Cumberland Truck Equipment Co., No. 1:09-cv-00359

Court U.S. District Court, Middle District of Pennsylvania, Harrisburg

Judge Christopher C. Conner

Date 5/23/2011

Plaintiff Attorney(s)

Michael J. Crocenzi, Goldberg Katzman, P.C., Harrisburg, PA
Peter J. Russo, Law Offices of Peter J. Russo, P.C., Mechanicsburg, PA

Defense Attorney(s)

Veronica W. Saltz, Saltz Polisher P.C., Wayne, PA

Facts & Allegations

On July 10, 2000, plaintiff Ricky Shaw, AGE?, was hired by Cumberland Truck Equipment (CTE) to be employed as a warehouse worker. Shaw alleged that, on Feb. 27, 2007, with no advance warning to him, Brenda Hoffman, the company's director of human resources, told Shaw that he had to submit to a physical exam at Concentra Medical Center. Shaw complied and was examined by a physician's assistant at the center. Upon his return to work later that day, Hoffman told Shaw that Concentra' medical director concluded that Shaw was unable to perform certain functions of the standard warehouse worker job description. As a result, CTE refused to allow Shaw to return to work and hold him to apply for short-term disability benefits.

Shaw claimed that on Feb. 28 and again on May 17, he requested reasonable accommodation; specifically, he requested a that he be permitted to continue working and that CTE just change the job description to match the restructured warehouse worker position that he had been successfully performing for years with the approval of CTE management. Shaw claimed that he stated that he was open to any alternative accommodations that CTE could suggest in order to reasonably accommodate him.

According to Shaw, CTE did not provide or suggest any reasonable accommodation to him at any time after he requested a reasonable accommodation. Subsequently, CTE harassed and retaliated against him by not permitting him to return to work, forcing him to apply for short-term disability benefits and FMLA leave, and forcing him to submit to additional physicals conducted by a general practitioner at Concentra. CTE prohibited him from returning to work, terminated him, and then notified him on Aug. 20 that he had been replaced.

Shaw sued CTE, asserting claims of retaliation, discrimination and wrongful termination. Cumberland denied the allegations. Defense counsel maintained that Shaw was not disabled as defined by the Americans with Disabilities Act. As to plaintiff's claim of retaliation, such claim is based on the fact that plaintiff was not permitted to return to work despite the finding that plaintiff, after three independent medical examinations was found unable to perform the essential functions of his job as well as the supporting opinion of his own physician. As to plaintiff's claim that he was forced to apply for short term disability benefits and

and FMLA leave, there is no evidence that any one at CTE forced plaintiff to do anything. Rather, the information was provided to plaintiff in accordance with CTE policy and the law, the defense maintained.

Injuries/Damages

Plaintiff sought to recover \$92,905 for defendant allegedly not allowing Shaw to work from Feb. 27, 2007, to the date of the trial, as well as lost earnings and 401(k) income. Shaw also sought to recover lost future income and lost 401(k) investment income of \$176,102.68.

Result

The jury found against defendant and in favor of plaintiff in the amount of \$353,500.

Plaintiff Ricky A. Shaw

\$50,000 punitive damages
\$30,000 compensatory damages
\$98,500 back pay
\$175,000 front pay
\$353,500 Plaintiff's total award



Federal County Judge Blogs

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