

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA CIVIL TRIAL DIVISION**

WILLIAM H. BRENDLEY, JR., Ph.D.	:	COURT OF COMMON PLEAS
2450 Exton Road	:	OF PHILADELPHIA COUNTY
Hatboro, PA 19040	:	
	:	
On behalf of himself and all others	:	
similarly situated,	:	CLASS ACTION COMPLAINT
	:	
Plaintiffs	:	
	:	
v.	:	
	:	AUGUST TERM, 2005
	:	
ROHM & HAAS CO.	:	NO. 1918
Independence Mall West	:	
5 th and Market Streets	:	
Philadelphia, PA 19106	:	JURY TRIAL DEMANDED
Defendants	:	

**PLAINTIFFS' REBUTTAL TO DEFENDANT'S REPLY TO PLAINTIFFS'
OPPOSITION TO DEFENDANT'S DEMURRER**

It is defendant who confuses the issue presented in this case. While medical monitoring is recognized as an independent cause of action in Pennsylvania, the injury is considered purely economic. *Redland Soccer Club, Inc. v. Department of Army*, 548 Pa. 178, 191, 696 A.2d 137, 143 (1997). Because the injury is not physical in nature, a claim for medical monitoring is not barred by the Workers' Compensation Act. In other words, The Workers' Compensation Act ("WCA") bars employees from bringing actions against their employer for physical injuries only; the Act does not bar actions seeking economic redress, such as what plaintiffs are seeking here. Consequently, the WCA is inapplicable and does not bar plaintiffs' action. Therefore, defendant's objection to plaintiffs' Complaint should be overruled.

Additionally, defendant failed to read *Simmons v. Pacor, Inc.*, 543 Pa. 664, 674 A.2d 232 (1996), in its entirety. At note 5, the Supreme Court acknowledges that its finding that

asymptomatic medical conditions are not a compensable injury under Pennsylvania law is consistent with its holding in *Voterano v. WCAB*, 536 Pa. 335, 639 A.2d 453 (1994), which held that employees seeking compensation for asymptomatic medical conditions are not entitled to workers' compensation because there is no compensable injury as defined under the Act.

As for the cases of *Fried v. Sunguard Recovery Services, Inc.*, 900 F.Supp. 758 (E.D. Pa. 1995) and *Jackson Township Volunteer Fire Company v. WCAB (Wallet)*, 140 Pa. Cmwlth. 620, 594 A.2d 826 (1991), defendant misstates their holdings and for the reasons raised in plaintiffs' response to the demurrer, neither is applicable to the facts of this case.

In summary, plaintiffs have brought a claim for medical monitoring. In Pennsylvania, the injury in a medical monitoring claim is the cost of medical care designed to detect latent diseases. The injury is not one for physical injury. Under the Pennsylvania Workers' Compensation Act, only physical injuries or occupational diseases are compensable. Because a claim for medical monitoring does not seek recovery for a physical injury or occupational disease, the Act does not bar the claim. Consequently, defendant's demurrer should be overruled.

LAYSER & FREIWALD, P.C.

BY: _____

AARON J. FREIWALD, ESQUIRE
PATRICIA M. GIORDANO, ESQUIRE
Counsel for Plaintiffs

DATED: _____

CERTIFICATE OF SERVICE

I, PATRICIA M. GIORDANO, ESQUIRE, hereby certify that service of a true and correct copy of the foregoing Plaintiffs' Rebuttal to Defendant's Reply to Plaintiffs' Opposition to Defendant's Demurrer to Plaintiffs' Complaint was served on opposing counsel on this date, via

Facsimile and United States First Class Mail, Postage Prepaid, as follows:

Dennis R. Suplee, Esquire
Ralph G. Wellington, Esquire
Samuel W. Silver, Esquire
Jennifer A. L. Battle, Esquire
Schnader Harrison Segal & Lewis LLP
1600 Market Street, Suite 3600
Philadelphia, PA 19103
Attorneys for Defendant, Rohm and Haas Company

LAYSER & FREIWALD, P.C.

By: _____
PATRICIA M. GIORDANO, ESQUIRE
Attorneys for Plaintiffs

DATED: _____