NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

VICTOR D'AMORE Appellant v. EXELON GENERATION COMPANY, LLC, DAVID G. THOMPSON, GLEN R. CANDELETTI, MARTHOM CORPORATION, THE STRESS CENTER FOR COMPREHENSIVE PSYCHOLOGICAL SERVICES, PC Appellees	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 562 MDA 2011

Appeal from the Order Entered March 11, 2011
In the Court of Common Pleas of Dauphin County
Civil Division at No(s): 2008-CV-14476-CV

BEFORE: BOWES, J., OLSON, J., and WECHT, J.

MEMORANDUM BY WECHT, J.: **FILED MAY 22, 2013**

Victor D'Amore ("Appellant") appeals the trial court's order granting the motions for summary judgment filed in this case by Exelon Generation Co., LLC ("Exelon"), David G. Thompson, Glen R. Candeletti, Marthom Corp. ("Marthom"), and The Stress Center for Comprehensive Psychological Services, P.C. ("The Stress Center") (collectively, "Appellees"). As well, Appellant challenges a number of other trial court rulings, including those pertaining to preliminary objections and discovery. We affirm.

In the trial court's Memorandum Opinion of December 28, 2011, which the court incorporated by reference in its April 18, 2012 opinion pursuant to

Pa.R.A.P. 1925(a), the court provided the following account of what it found to be "essentially undisputed facts":

> [Appellant] had entered into an employment contract with CDI Business Solutions, a firm which performed contract work for [Exelon], in November-December, 2007. In November, [Appellant] had entered into an employment contract with CDI Business Solutions, a firm which performed contract work for Exelon at the [Three Mile Island Nuclear Power Plant ("TMI")]. The intention of [Appellant] was to be placed into a position as an electrical engineer at TMI. It was a condition of such employment that [Appellant] obtain "unescorted access" rights, a security clearance which permits access to secure and vital areas of nuclear power plants without an escort – all as required by the Nuclear Regulatory Commission [("NRC")] Regulations. ***See*** 10 C.F.R. § 73.56.
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> On December 10, 2007, [Appellant] began the three-day, pre-employment screening process at Exelon. [Appellant] completed computer-based training courses and other training classes as well as completed required paperwork. During the "in-processing," Exelon staff members noticed that [Appellant] appeared to be acting erratically and becoming argumentative. The concerns of one or more of the staff members were reported to supervisory personnel who asked [Appellant] to undergo a "clinical demand interview," a semi-structured interview which is conducted to determine the emotional stability, reliability and trustworthiness of an applicant. Exelon arranged for [Appellee Glen R. Candeletti], a clinical psychologist and owner of [The Stress Center], to perform the demand interview. Dr. Candeletti, in turn, contacted a colleague, [Appellee] David G. Thompson of [Marthom], for the purpose of conducting [Appellant's] interview. Dr. Candeletti had regularly contracted with Dr. Thompson for such purposes.
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> During [Appellant's] demand interview, Dr. Thompson asked [Appellant] if he had been granted unescorted access status in the past at any nuclear facility. [Appellant] replied that he had been granted such access at four different nuclear facilities. Dr. Thompson attempted to confirm [Appellant's] statements and telephoned Stephen Henry, an Exelon employee, who had access to a centralized database regarding access at nuclear facilities. That system is referred to as the Personnel Access

> Database System (PADS), a central, computerized, restricted-access data system on which the [NRC] requires licensed nuclear power plants and their accepted contractors and vendors to post information regarding the granting or denial of unescorted access to any applicant so that such information would be available to any other nuclear power reactor licensee. Mr. Henry told Dr. Thompson that the PADS database showed no prior grant of unescorted access to [Appellant] at any nuclear power facility. Because [Appellant's] response to Dr. Thompson's question could not be reconciled with the information found in the PADS database and [Appellant] did not provide Dr. Thompson with any documentation of his claimed prior unescorted access, Dr. Thompson recommended to Dr. Candeletti that [Appellant] not be granted unescorted access to TMI. Dr. Candeletti passed that same recommendation to Exelon which denied [Appellant] unescorted access status.[1] On January 14, 2008, [Appellant] appealed Exelon's decision to deny him unescorted access; however, his appeal was denied by Exelon on April 10, 2008[1]. Thereafter, [Appellant] lost his employment opportunity with CDI.
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> [1] Exelon determined that all procedures and policies were performed in accordance with NRC requirements and nothing in the record before us suggests that [Appellant]

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[1] The trial court's findings in this regard appear to be materially foreshortened, inasmuch as the record shows that Exelon staff and Dr. Thompson observed erratic behavior that was wholly independent of Appellant's honesty regarding prior unescorted access, which plainly informed their decision to deny him access. ***See*** Email, Nancy Miller to Kevin P. Concannon, 12/11/2007 (detailing behavior during interview that was "very defensive," a "pattern" of challenging the interviewer's questions, inconsistent accounts of his work history, excuses for the provision of incomplete information based upon inaccurate characterizations of other Exelon staff members' directions, rudeness, and obstreperousness regarding various mandatory aspects of the interview process); Notes of Piper A. Walsh, Ph.D., regarding telephone conversations with Dr. Candeletti, undated, but relating calls conducted on June 3, 4, and 12, 2008 (noting psychological (rather than behavioral) concerns including "Difficult to interview"; "Over-responded to questions"; "[b]ehavioral observations" during the interview and Appellant's difficulty "coping" with the interview).

> provided Exelon with any evidence of any past grants of unescorted access to [Appellant] at any nuclear facility.
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> [Appellant] brought this lawsuit claiming that each [Appellee] defamed him, that each [Appellee] intentionally interfered with his existing or prospective business relations and that [Appellees] Candeletti and Thompson committed malpractice.

Trial Court Opinion ("T.C.O."), 12/28/2011, at 1-3.

Appellees collectively filed three sets of preliminary objections, the clinicians filing in tandem with their respective employers. The trial court sustained the preliminary objections in three orders filed on September 2, 2009. In particular, the trial court sustained Appellees' preliminary objections as to all counts due to the lack of specificity in Appellant's complaint. In explaining this aspect of its rulings, the court called attention to Appellant's failure to set forth each count separately as to each individual Appellee. The court rejected Appellant's contention that to do so would be to require the repetition of approximately 100 paragraphs of redundant allegations as to each defendant, resulting in a complaint approximately 500 paragraphs in length. The trial court characterized this argument as "disingenuous at best," noting Appellant's "complete disregard" for Pa.R.C.P. 1019(a) (requiring the statement of material facts underlying a cause of action in concise form) and Pa.R.C.P. 1019(g) (permitting the

incorporation by reference of any part of a complaint into another part of the same pleading). Trial Court Orders, 9/2/2009.[2]

Thereafter, Appellant filed an amended complaint. While he managed to keep his amended complaint less lengthy than the threatened 500 paragraphs, it nonetheless comprised 286 numbered paragraphs (versus 101 in the first complaint, both paragraph counts excluding dozens of sub-paragraphs). Therein, Appellant asserted five counts each of defamation and conspiracy to defame (all Appellees); five counts each of intentional interference with existing and prospective business relationships and conspiracy (all Appellees); and four counts of malpractice (all Appellees except Exelon).

Once again, all Appellees raised preliminary objections in three separate filings. By orders entered on April 14, 2010, the trial court overruled the Appellees' preliminary objections, except for all five parties' respective demurrers to all counts of civil conspiracy. Trial Court Orders, 4/14/2010.

Thereafter, the parties engaged in discovery, spawning a litany of disputed motions and orders amongst the parties, several of which orders are challenged in seven of Appellant's stated issues on appeal. These include a trial court order directing Appellant to produce, *inter alia*, records

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[2] Perhaps ironically, this direction was repeated in materially identical form in each of the trial court's orders.

concerning Appellant's prior psychiatric treatment, arrest record, income tax, and an order denying Appellant's request for a subpoena for a corporate representative deposition concerning certain records produced pursuant to a prior subpoena. ***See*** Brief for Appellant at 54-67.

Following discovery, all Appellees filed motions for summary judgment. The trial court granted all Appellees' motions in full by order entered December 28, 2011, which order was supported by an explanatory memorandum opinion. This appeal followed. The trial court directed Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), and Appellant complied. The trial court issued its Rule 1925(a) opinion on April 4, 2012, and then a revised opinion on April 17, 2012. In the latter, the trial court incorporated by reference its prior memoranda as to all of Appellant's issues except as to Appellant's challenges to the trial court's discovery rulings. Those, the trial court explained in its Rule 1925(a) opinion. The court also observed that, because the discovery issues did not play into the court's ruling on summary judgment, the discovery issues would be moot if this Court affirmed that ruling.

We agree that this is the case. Consequently, we begin by assessing whether the trial court erred in granting summary judgment. Our standard of review of a trial court order granting summary judgment is as follows:

> "[S]ummary judgment is appropriate only in those cases where the record clearly demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment

> as a matter of law." ***Atcovitz v. Gulph Mills Tennis Club, Inc.,*** 812 A.2d 1218, 1221 (Pa. 2002); Pa.R.C.P. 1035.2(1). When considering a motion for summary judgment, the trial court must take all facts of record and reasonable inferences therefrom in a light most favorable to the non-moving party. ***Toy v. Metropolitan Life Ins. Co.,*** 928 A.2d 186, 195 (Pa. 2007). In so doing, the trial court must resolve all doubts as to the existence of a genuine issue of material fact against the moving party, and, thus, may only grant summary judgment "where the right to such judgment is clear and free from all doubt." ***Id.*** On appellate review, then,
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> > an appellate court may reverse a grant of summary judgment if there has been an error of law or an abuse of discretion. But the issue as to whether there are no genuine issues as to any material fact presents a question of law, and therefore, on that question our standard of review is *de novo.* This means we need not defer to the determinations made by the lower tribunals.
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> ***Weaver v. Lancaster Newspapers, Inc.,*** 926 A.2d 899, 902–03 (Pa. 2007) (internal citations omitted). To the extent that this Court must resolve a question of law, we shall review the grant of summary judgment in the context of the entire record. ***Id.*** at 903.

Summers v. Certainteed Corp., 997 A.2d 1152, 1159 (Pa. 2010) (citations modified).

In his statement of the questions presented, Appellant violates the letter and spirit of Pa.R.A.P. 2116, which calls upon an appellant to "state concisely the issues to be resolved, expressed in the terms and circumstances of the case but without unnecessary detail." Rule 2116 directs that the statement be no greater than two pages in length. Appellant's statement asserts fifteen separate issues, several of which are quite lengthy. The statement exceeds two pages in length, set single-space. Moreover, the many issues presented may be grouped into three

straightforward categories, a more sensible arrangement for Appellant to have used, since, under Rule 2116, the statement "will be deemed to include every subsidiary question fairly comprised therein." Pa.R.A.P. 2116(a).

Employing the above-suggested three-issue consolidation of Appellant's fifteen stated issues, we find the following assertions of error. First, Appellant contests the trial court's grant of summary judgment to all Appellees. In his second category of issues, Appellant challenges the trial court's ruling sustaining Appellees' preliminary objections as to Appellant's counts asserting civil conspiracy. Finally, Appellant challenges several of the trial court's discovery rulings. If Appellant's challenges to summary judgment fail in all respects, and we find that they do, the remaining issues all are moot, and we need discuss them no further. Accordingly, our discussion begins (and ends) with that issue and its sub-issues.

We first must address Appellant's challenge to the trial court's ruling that Appellant's defamation, intentional interference with current and prospective business relations, and malpractice claims will not lie due to Appellant's voluntary execution of two documents that purport to release Appellees from all liability associated with the psychological assessments underlying this litigation. Resolving this question requires this Court to interpret these documents according to contract principles, a question of law. We do so *de novo* as to the trial court's interpretation, and our standard of review is plenary. ***Profit Wize Marketing v. Wiest***, 812 A.2d 1270, 1274 (Pa. Super. 2002).

The first document in question was furnished by Exelon, and executed by Appellant, prior to Appellant's training and unescorted access assessment, and expressly concerned the release and movement of information regarding Appellant contained in the PADS database. The one-page consent form provided, in relevant part, as follows:

Exelon PADS Consent Form

> Exelon has my consent to obtain, retain and transfer information necessary to determine whether to grant me unescorted access to a nuclear power plant and to allow me to maintain such access. The [NRC] requires that this information be used in determining that an individual is trustworthy, reliable, and fit-for-duty prior to granting and while maintaining unescorted access. The results of this determination must be available to other power reactor licensees.
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> * * * *
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> I . . . understand that [PADS] is intended to permit nuclear power reactor licensees and their accepted contractors/vendors to meet regulatory requirements mandating that certain information be available to any power reactor licensee by retaining certain access information in a centralized computer database. I understand that the information may be transferred, electronically or otherwise, to other licensees and contractor/vendors or the agents of each.
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> * * * *
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> I authorize any individual, organization, institution, or entity that now has, or obtains in the future, access-related information about me . . ., whether or not such information is included in the PADS database, to release any such information in order to perform the investigation and evaluation required for unescorted access.
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> * * * *
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> I understand that information obtained pursuant to this Consent shall be treated as confidential. The release of access-related information about me shall be limited to regulatory agencies and

> such personnel of nuclear utilities and their contractors/vendors who have been designated as having a "need to know" the information in order to do their jobs.
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> * * * *
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> I understand that, upon my written request to Exelon, and at no cost to me, I will be provided, within 10 working days, with a printed copy of the information about me which is recorded in the database. If, after my review of such information, I can show that any of the information is incorrect or incomplete, such information will be corrected and/or completed as soon as is reasonably practical.
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> * * * *
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> **I hereby release Exelon, other PADS participants, NEI, and the officers, employees, representatives, agents, and records custodians of each as well as the officers, employees, representatives, agents, and records custodians of any entity or individual supplying or using such information from any and all liability based on their authorized receipt, disclosure, or use of the information obtained pursuant to this Consent and to determine my eligibility for unescorted access.**
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> * * * *
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> I have read and understand this Consent and authorize Exelon to take such actions as are described herein or specified by PADS procedures. While I understand that unescorted access is dependent upon my accepting the regulatory requirements of this program, the statements made by me in this Consent and my decision to sign this Consent are voluntary. The statements were not induced by any promise nor have I been subjected to any threat, duress or coercion to sign the Consent.

Exelon PADS Consent Form (executed by Victor S. D'Amore, 12/10/2007) (emphasis added).

The second such document, issued by Appellee The Stress Center, the entity retained by Exelon to conduct the assessment (which, in turn,

retained Marthom and Dr. Thompson to perform the assessment), provided in relevant part:

**AUTHORIZATION FOR PSYCHOLOGICAL EVALUATION
RELEASE OF INFORMATION
AND HOLD HARMLESS AGREEMENT**

* * * *

> I, VICTOR DAMORE [*sic*] authorize Exelon to have [The Stress Center] conduct a psychological evaluation as partial determination of my eligibility for unescorted access areas of nuclear plants. [The Stress Center] does not make final decisions regarding unescorted access authorization. This evaluation is in accordance with security screening procedures and consistent with requirements of 10 CFR 73.56, 10 CFR Part 26 and the NRC Compensatory Measures Order, Access Authorization dated January 7, 2003. I understand that I will take an objective written psychological test that will be evaluated by a licensed psychologist. Additionally, I may be asked to undergo a clinical interview with a licensed psychologist in order to clarify the initial test results. **The signing of this authorization indicates my informed consent and releases [The Stress Center] its officers, employees and associates from any and all liability for damages arising from this evaluation, including the release of or use of these psychological conclusions**. . . . Further, I hereby authorize [The Stress Center] to release confidential information related to this evaluation and provide [a] recommendation (with a brief rational[e] of findings) based upon psychological data and conclusions, as to my eligibility for unescorted access authorization.

The Stress Center Authorization for Psychological Evaluation (executed by Victor S. D'Amore, 12/10/2007) (emphasis added).

The trial court found first that the Exelon consent form insulated Appellees from all claims, and alone was sufficient to warrant summary judgment in favor of all Appellees. T.C.O. at 4. The trial court also found

that all Appellees except Exelon also were shielded from liability by the Stress Center authorization. The Stress Center and Dr. Candeletti (as the proprietor of same) were shielded by the express terms of the latter release. In so ruling, the trial court found that Dr. Thompson and Marthom were "associates" of The Stress Center, and consequently also protected under the plain language of The Stress Center authorization. ***Id.*** at 5.

Accordingly, we must review Appellant's arguments that the trial court erred in construing the above releases to protect the Appellees against Appellant's claims and in determining that the documents were enforceable. Appellant first argues that his consent did not extend "to the disclosure of non-existent and untrue information of any type, whether related to access or anything else." Brief for Appellant at 37. He emphasizes that the PADS database's undisputed lack of comprehensiveness and/or reliability as to permissions granted before 2003 rendered sole reliance upon that resource deficient, inasmuch as Appellant last had been granted access in or about 1997. ***Id.*** He further argues that the PADS consent form's "need to know" restriction obligated Exelon to "determine the use that would be made of the access-related information" before releasing that information. ***Id.*** at 37. If Exelon did not make that determination before any such release, Appellant argues, then the release would be in violation of the PADS consent form, rendering that form unenforceable against Appellant. ***Id.*** at 37-38. Appellant adds, without elaboration, that "[i]t was not necessary for [Appellees] Thompson and Candeletti to know this false information in order

to perform their psychological assessment[s]." ***Id.*** at 38. He also contends that "the consent implies the release of only truthful and accurate information," an implication he dubiously argues that we should detect in the consent form's language concerning the "authorized receipt, disclosure or use of the information obtained pursuant to this Consent." ***Id.*** Once again, Appellant does not develop his reasoning as to why the latter language has the former effect, and we do not find that such an effect necessarily or obviously follows. We must emphasize that Appellant cites no on-point legal authority in support of the above conclusory arguments.

Of somewhat more substance is Appellant's argument that the PADS consent form was neither valid nor enforceable under the precepts embodied in our Supreme Court's decision in ***Topp Copy Products, Inc., v. Singletary***, 626 A.2d 98 (Pa. 1993). In that case, our Supreme Court set forth an oft-cited and broadly applicable framework for evaluating the validity of exculpatory contractual terms:

> It is generally accepted that an exculpatory clause is valid where three conditions are met. First, the clause must not contravene public policy. Secondly, the contract must be between persons relating entirely to their own private affairs and thirdly, each party must be a free bargaining agent to the agreement so that the contract is not one of adhesion. ***Princeton Sportswear Corp. v. H.&M. Assoc.***, 507 A.2d 339 (Pa. 1986); ***Employers Liability Assurance Corp. v. Greenville Business Men's Ass'n***, 224 A.2d 620 (Pa. 1966). In ***Dilks v. Flohr Chevrolet***, 192 A.2d 682 (Pa. 1963), we noted that once an exculpatory clause is determined to be valid, it will, nevertheless, still be unenforceable unless the language of the parties is clear that a person is being relieved of liability for his own acts of negligence. In interpreting such clauses we listed as guiding standards that:

> 1) the contract language must be construed strictly, since exculpatory language is not favored by the law; 2) the contract must state the intention of the parties with the greatest particularity, beyond doubt by express stipulation, and no inference from words of general import can establish the intent of the parties; 3) the language of the contract must be construed, in cases of ambiguity, against the party seeking immunity from liability; and 4) the burden of establishing the immunity is upon the party invoking protection under the clause. ***Dilks****,* 192 A.2d at 687.

Topp Copy, 626 A.2d at 99 (citations modified). Appellant contends that the PADS consent form "contravenes public policy as it concerns matters of interest to the public or the state including the employer-employee relationship, public service, public utilities, common carriers, and hospitals." Brief for Appellant at 38 (internal unattributed quotation marks omitted; minor grammatical modifications for clarity). Appellant's argument from ***Topp Copy*** continues (and ends) as follows: "The Exelon PADS Consent Form plainly related to [Appellant's] ability to continue employment with CDI to provide services at a regulated nuclear facility for the provision of electricity to the public." Brief for Appellant at 38.

Aside from making a token wave at incorporating by reference its subsequent argument regarding the validity of The Stress Center authorization under ***Topp Copy*** into its argument regarding the PADS consent form, Appellant's comments amount to only a minimalist legal argument that the trial court erred in finding dispositive exculpatory language in the PADS consent form. But inasmuch as Appellant does at least allude to his lengthier discussion of ***Topp Copy*** in the context of The

Stress Center authorization, we will review that discussion to give Appellant's argument regarding the PADS consent form due consideration.

The important part of Appellant's argument against The Stress Center authorization focuses upon the proposition that exculpatory clauses must be stated with the utmost particularly and, when ambiguous, must be construed strictly against the party seeking immunity from liability. Brief for Appellant at 40-41; ***see Topp Copy***, 626 A.2d at 99. However, Appellant's specific arguments raise issues peculiar to the text of The Stress Center authorization, language without equivalent in the PADS consent form. For example, Appellant challenges the effectiveness of The Stress Center authorization on the basis that Dr. Thompson's interview of Appellant was unauthorized because it was not performed "in order to clarify the initial test results," Brief for Appellant at 39-41, a phrase that appears in The Stress Center authorization but not in the PADS consent form. In short, Appellant's argument fails to connect his citations to precedent with the specific language of the PADS consent form in a way that establishes why the PADS consent form's exculpatory language should not be applied consistently with its express terms to shield all Appellees from each of Appellant's claims.

We note that our own precedent, and recent precedent of our Supreme Court, suggest that an exculpatory clause, if sufficiently clear, may preclude claims for negligence even without using the word negligence. ***See generally Chepkevich v. Hidden Valley Resort, L.P.***, 2 A.3d 1174 (Pa. 2010); ***Nissley v. Candytown Motorcycle Club, Inc.***, 913 A.2d 887

(Pa. Super. 2006). ***But see Tayar v. Camelback Ski Corp., Inc.***, 47 A.3d 1190 (Pa. 2012) (deeming a pre-injury release for reckless conduct of the party seeking the release is unenforceable as against public policy). While it might colorably be argued that the rule established in these cases should not extend to an employment case, Appellant fails to provide adequate reason for us so to conclude. Consequently, we are left with the general proposition that a party may by contract disclaim liability for its own negligence provided that the contract language is sufficiently clear to be understood to have that effect. We must conclude that the language of the PADS consent form's exculpatory clause clearly established Exelon's intention to disclaim such liability for claims arising from its use of PADS data by itself, its employees, and its agents, The Stress Center, Marthom, and Drs. Candeletti and Thompson. Appellant fails to establish a basis for construing the contract otherwise.

In the alternative, Appellant argues that the PADS consent form and The Stress Center authorization alike are contracts of adhesion, and, as such, are unenforceable. "An adhesion contract is a 'standard form contract prepared by one party, to be signed by the party in a weaker position, usu[ally] a consumer, who adheres to the contract with little choice about the terms.'" ***Chepkevich v. Hidden Valley Resort, L.P.***, 2 A.3d 1174, 1190 (Pa. 2010) (quoting BLACK'S LAW DICTIONARY 3342 (8th ed. 2004)).

Appellant argues that "[i]n the employment context, where an agreement does not represent a free choice on the part of the plaintiff,

where he is forced to accept the clause by the necessities of his situation, courts have refused to enforce such agreements as contrary to public policy." Brief for Appellant at 43. He likens the instant case to two cases involving exculpatory clauses attached to the administration of polygraph examinations. ***Id.*** (citing ***Polsky v. Radio Shack***, 666 F.2d 824 (3d Cir. 1981); ***Leibowitz v. H.A. Winston Co.***, 493 A.2d 111 (Pa. Super. 1985)). However, his argument in its entirety amounts to no more than a vague, conclusory assertion about what he believes the law requires: "There is little difference between a polygraph exam and a psychological interview for these purposes. Clearly, [Appellant] had little leverage if he wanted to obtain employment." ***Id.***

Even a cursory review of the cases cited by Appellant underscores that they are quite distinguishable. In ***Polsky***, the federal court of appeals, the decisions of which do not bind us,[3] found a disputed issue of material fact sufficient to preclude the entry of summary judgment when an employer discharged an employee based upon the results of a polygraph examination that was administered in apparent violation of a Pennsylvania statute making it a crime for an employer to require an employee to submit to polygraphy "as a condition for employment or continuation of employment."

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[3] "[A] federal court's interpretation of state law does not bind state courts." ***Martin v. Hale Prods., Inc.***, 699 A.2d 1283, 1287 (Pa. Super. 1997) (emphasis omitted).

666 F.2d at 824-25 (citing 18 Pa.C.S. § 7321(a)). In that case, defendant Radio Shack sought to avoid the effect of section 7321 by requiring the employee to sign a release advising her of her rights under section 7321 and memorializing her putative waiver of said rights before administration of the polygraph exam. In the instant case, of course, there is no statute Appellant has identified – or, to our knowledge, **can** identify – that documents a similar public policy in the context of this case. To the contrary, as well documented by both parties, most of the procedures followed in this case are **required** by federal law and NRC regulations, which reflect a self-evidently salutary public policy in ensuring the safety and security of nuclear power facilities.

As in ***Polsky***, in ***Leibowitz*** the claimant alleged that, upon the discovery of approximately $250 missing from a safe owned by his employer, he was directed to submit to a polygraph test in arguable violation of 18 Pa.C.S. § 7321. 493 A.2d at 112. Once again, the party administering the test obtained from the employee a putative release of his rights under section 7321. ***Id.*** at 112-13. Like the ***Polsky*** court, this Court determined that a question of fact precluding summary judgment inhered as to whether the claimant was compelled as a condition of continuing employment to submit to a polygraph examination. ***Id.*** at 114-16. Thus, our decision in ***Liebowitz*** is no more on-point than the ***Polsky*** decision. Appellant's asserted analogy between a psychological examination as a prerequisite to employment, as required by federal regulations, and submission to a

polygraph as a condition of **continuing** employment in facial violation of state law is unpersuasive.

In short, regarding the PADS consent form, Appellant has failed to establish either that its exculpatory provision is ineffective, or that the form, in its entirety, constitutes a contract of adhesion. A common element connecting these and other, less clear arguments raised by Appellant against the enforcement of the PADS consent form is Appellant's failure to identify or marshal applicable legal authority in service of his arguments. It is not that he does not cite cases, but rather that he does so sparingly at best, mostly to establish uncontroversial propositions of Pennsylvania law that do not, by themselves, compel a result for or against him under the circumstances presented.

Consequently, we can discern no basis upon which to find that the trial court erred as a matter of law or abused its discretion in finding no genuine issue of material fact concerning the exculpatory intention or effect of the PADS consent form undisputedly executed knowingly and voluntarily by Appellant in conjunction with his submission to Exelon's vetting process in furtherance of securing employment at TMI. In addition to Appellant's failure to provide legal authority in support of his position, he does not dispute convincingly that what he agreed to was a standard procedure employed across the nuclear industry, and one largely prescribed by federal regulations. Accordingly, we are constrained to affirm the trial court's

determination that the PADS consent form fully immunized all Appellees from liability for all of the claims asserted herein.

To be clear, in addition to Appellant's claims for defamation and interference with contractual relations,[4] this ruling also dispenses with Appellant's claims of malpractice against the clinical Appellees. Appellant argues at some length regarding those Appellees' duty of care to Appellant. Brief for Appellant at 44-50. Critically, Appellant does not aver that he had a conventional physician-patient relationship with any Appellee under these circumstances. Brief for Appellant at 44 ("[Appellant] does not contend here that, under Pennsylvania law, there was a psychologist-patient relationship between [Appellees] Thompson and Candeletti and [Appellant]."). Hence, the duty of care upon which he bases his argument does not implicate malpractice in its proper sense; rather, his claim amounts to a conventional negligence claim, obligating Appellees to observe the appropriate standard of care relative to the context in question.[5] Moreover, given that his claim

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[4] The obviation of these claims necessarily entails the elimination of any associated conspiracy claims. ***See Goldstein v. Phillip Morris, Inc.***, 854 A.2d 585, 590 (Pa. Super. 2004) ("[A]bsent a civil cause of action for a particular act, there can be no cause of action for civil conspiracy to commit that act.").

[5] We do not intend by this ruling to signal any conclusions regarding the enforceability of an exculpatory clause in relationship to malpractice claims asserted as such.

sounds in negligence, our discussion above regarding the validity of the PADS consent form's exculpatory clause applies equally to this claim.

Thus, even if we assume that the duty asserted by Appellant attached under these circumstances, ***see, e.g., Sharpe v. St. Luke's Hosp.***, 821 A.2d 1215 (Pa. 2003) (imposing "a duty upon the Hospital to exercise reasonable care in the collection and handling of the urine specimen [for drug testing required of the appellant by his employer], despite the absence of a contract between the two parties"), that does not bear directly on the validity and effectiveness of the PADS consent form. We have determined that the PADS consent form effectively immunized "Exelon, other PADS participants, . . . and the officers, employees, representatives, agents, and records custodians of each as well as the officers, employees, agents, and records custodians of any entity or individual supplying or using such information from any and all liability based on their authorized receipt, disclosure, or use of the information obtained" in the pre-screening process. We also have found that this language encompasses all Appellees to the instant litigation. We see no basis upon which to carve out Appellant's "malpractice" claims from the sweep of that language, and Appellant provides us with none.

This ruling also renders moot Appellant's numerous challenges to the trial court's discovery rulings. The trial court's summary judgment order was founded first and foremost upon the PADS consent form and/or The Stress Center authorization, neither of which was produced or informed by

the discovery rulings in question. Thus, because we affirm the trial court's summary judgment order on this basis, our view of the discovery issues has no bearing on the outcome of this appeal.

Order affirmed. Jurisdiction relinquished.

Judgment Entered.

Mary A. Hoyle

Deputy Prothonotary

Date: 5/22/2013