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## Case Bulletin: Insurance Law

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Pennsylvania Supreme Court rules that HMOs are not barred by the MVFRL from pursuing subrogation against third party tortfeasors.

*Jonathan Wirth, individually and on behalf of all others similarly situated, Appellant, v. Aetna U.S. Health Care Appellee*  
28 EAP 2005 – Opinion Dated August 22, 2006.

Upon a Third Circuit petition to the Pennsylvania Supreme Court for certification of a question of Pennsylvania state law, the Supreme Court held that Health Maintenance Organizations (HMOs) are exempt from § 1720 of the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL), which prohibits insurers from pursuing subrogation rights against third party tortfeasors. The Court considered the interplay of § 1720 of the MVFRL and § 1560(a) of the Pennsylvania Health Maintenance Organization Act, which provide as follows:

### § 1720 MVFRL

In actions arising out of the maintenance or use of a motor vehicle, there shall be no right of subrogation or reimbursement from a claimant's tort recovery with respect to workers' compensation benefits, benefits available under section 1711 (relating to required benefits), 1712 (relating to availability of benefits) or 1715 (relating to availability of adequate limits) or benefits paid or payable by a program, group contract or other arrangement whether primary or excess under section 1719 (relating to coordination of benefits).

### § 1560(a) HMO Act

Except as otherwise provided in this act, a health maintenance organization operating under the provisions of this act shall not be subject to the laws of this State now in force relating to insurance corporations engaged in the business of insurance nor to any law hereafter enacted relating to the business of insurance *unless such law specifically and in exact terms* applies to such health maintenance organization.

(Emphasis added).

The Supreme Court observed that the General Assembly did not “specifically and in exact terms” state in § 1720 of the MVFRL that the anti-subrogation provision applies to HMOs. The Court concluded that that section does not apply to HMOs, who are, therefore, not restricted from pursuing their subrogation rights against third party tortfeasors.