30 Years in Publication

# DEFENSE DIGEST

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MARSHALL DENNEHEY

# To Plead or Not to Plead: Understanding the Tool of Interpleader Claims in a Post-Tort Reform Florida

Rebecca L. Doloski, Esq.

## *Key Points:*

- Shifting the focus on bad faith claims.
- The procedural impacts of the Tort Reform Act.
- Complexities and caution when filing interpleader claims.

On March 24, 2023, Florida Governor Ron DeSantis signed House Bill 837, also known as the Tort Reform Act, into law. Predominantly, the Tort Reform Act changed Florida's comparative fault scheme. The reform was an effort to reshape Florida's bad faith laws, with the intention of making Florida more business and insurer friendly. However, the Act made other significant changes that impact insurance claims in Florida. One notable change affects bad faith claims and the ability to make interpleader claims.

Prior to H.B. 837, Florida law required that an insurer act with good faith when addressing claims. A failure to do so resulted in statutory and common law ramifications detrimental to insurers. "Good faith" and "bad faith" had no statutory definitions, often causing insurers to be subject to bad faith claims and Civil Remedy Notices for perceived bad faith in the handling of insurance claims. The Tort Reform Act now clarifies what "bad faith" means and gives insurers a roadmap to ensure they do not subject themselves to bad faith claims.

The Act states, in part:

> An action for bad faith involving a liability insurance claim, including any such action brought under the common law, shall not lie if the insurer tenders the lesser of the policy limits or the amount demanded by the claimant within 90 days after receiving actual notice of a claim which is accompanied by sufficient evidence to support the amount of the claim.

Actual notice is "a notice that is given directly to a party or is personally received by a party informing them of a case that could affect their interests."

This 90-day deadline also impacts insurers' ability to make interpleader claims. Florida Rule of Civil Procedure 1.240 provides background as to the nature of interpleader claims. "Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability." ▸

The Tort Reform Act gives insurers another avenue for tendering the policy limits when an interpleader action is present. Picture a motor vehicle accident involving four vehicles and multiple claimants. The driver who caused the accident is insured by Florida's Best Insurance Company. Due to the number of parties involved, Florida's Best may be concerned that there could be four separate lawsuits against their insured and policy limits. To avoid this, Florida's Best asks their defense attorney to draft an interpleader complaint. Filing such a complaint will act as a shield for Florida's Best against repeated exposure. It will also require Florida's Best to deposit its policy limits covering an insured driver with the court in order to preserve these funds and ensure all the involved parties can be paid from these funds.

A word of warning when relying on the ability to make an interpleader claim following the passage of H.B. 837. The Tort Reform Act absolves insurers of bad faith claims only if, within 90 days of receiving notice of competing claims in excess of available policy limits, the insurer files an interpleader action under the Florida Rules of Civil Procedure. The Act emphasizes that an insurer's interpleader action does not alter or amend the insurer's obligation to defend its insured. It further specifies: "The insured, claimant, and representative of the insured or claimant have a duty to act in good faith in furnishing information regarding the claim, in making demands of the insurer, in setting deadlines, and in attempting to settle the claim."

While an interpleader action may sound like a slam dunk for insurance companies and defense attorneys, there are some cons of which to be aware. Interpleader actions can be procedurally complex. Further, the 90-day deadline imposed by the Tort Reform Act is not a suggestion, it is a requirement. Insurers must act promptly in requesting their defense attorneys file an interpleader claim after receiving actual notice of a claim. When insurers request their defense attorneys file an interpleader action, the attorneys must act quickly to get the action filed ahead of the 90-day deadline. Insurers must respond to their defense attorneys promptly regarding review and edits of a draft interpleader action, and defense attorneys must be responsive and timely with their edits and filings. Failure to do so can expose the attorneys to claims for frivolous lawsuits. The 90-day deadline is considered by critics to be "overly generous," and neither insurers nor attorneys should wait until the last minute to file, lest they miss the deadline and open themselves up to a true "bad faith" claim. Interpleader actions can be costly and inevitably delay resolution of claims, especially when many claimants and complex claims are involved.

Insurers and defense attorneys must be aware of Florida's changing laws and the pros and cons of such claims. They must act diligently to identify and file such claims as requested within the 90-day requirement laid out by the Tort Reform Act. Florida's Tort Reform Act has provided insurers and defense attorneys the benefit of protecting themselves against exposure from multiple claims, but it is up to the insurers and defense attorneys to determine the cost-benefit analysis of doing so and to ensure that all parties are acting in good faith, at all times. ◆

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# Just Because You Expunge a Record Does Not Mean Internal Affairs Records Are Not Subject to an Open Public Records Act Request

Matthew J. Behr, Esq.

## *Key Points:*

- New Jersey Statutes Annotated 2C:52-1(a) protects records of expunged criminal charges from disclosure.
- In *States Newsroom, Inc. v. City of Jersey City*, the New Jersey Superior Court, Appellate Division, determined how far an expungement order reaches when a separate, independent, Internal Affairs investigation has occurred.
- The Appellate Division held that the trial court should have analyzed the facts of the case to determine if there was common law right of access to the records, suggesting that the public would have an interest in disclosure and transparency.

New Jersey Statutes Annotated 2C:52-1(a) protects records of expunged criminal charges from disclosure, namely: "[r]ecords on file within any court, detention or correctional facility, law enforcement or criminal justice agency concerning a person's detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system." The question recently presented in *States Newsroom, Inc. v. City of Jersey City*, 2024 WL 4296597 (N.J. Super. App. Div. Sept. 26, 2024), was how far an expungement order reaches when a separate, independent Internal Affairs investigation has occurred. The Appellate Division concluded the expungement statute does not unequivocally exclude Internal Affairs documents from release pursuant to the Open Public Records Act (OPRA) and the common law right to access.

In August 2019, a lieutenant with the Jersey City Police Department hosted a barbeque for friends and family at his home. At the end of the party, there was an argument about what to do with leftovers. The fight escalated when the lieutenant retrieved his shotgun from a locked safe inside his home and then discharged the weapon.

State Police responded to the house and found the lieutenant's girlfriend and her son restraining him. The State Police incident report noted the lieutenant appeared to be under the influence. Police charged the lieutenant with making terroristic threats and possession of a weapon for an unlawful purpose. The lieutenant pled guilty to a lesser charge and completed pre-trial intervention.

Afterwards, he sent notice to all relevant agencies to expunge their records of his criminal matter pursuant to N.J.S.A 2C:52-1. Separately, the Jersey City Police Department conducted an Internal Affairs investigation into the incident. The Internal Affairs report concluded the lieutenant had negligently used a firearm while under the influence. Consequently, the Jersey City Police Department suspended the lieutenant for 90 days.

In *Rivera v. Union County Prosecutor's Office*, 250 N.J. 124, 135 (2022), the New Jersey Supreme Court ruled that Internal Affairs reports can be accessed pursuant to a common law right of access.

Based on *Rivera*, the plaintiff submitted an OPRA request for a copy of the Internal Affairs report from the defendants, who denied the request. The plaintiff then filed a lawsuit seeking the Internal Affairs documents pursuant to OPRA and the common law right to access. The trial judge denied the request. Relying upon the expungement statute, the trial judge found *Rivera* inapplicable to the facts of this case.

The common law right of access requires courts to consider the following:

> (1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government;
>
> (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed;
>
> (3) the extent to which agency self-evaluation, program improvement, or other decision making will be chilled by disclosure;
>
> (4) the degree to which the information sought includes factual data as opposed to evaluative reports of policymakers;
>
> (5) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and
>
> (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials.

*Rivera*, 250 N.J. at 144 (*quoting Loigman v. Kimmelman*, 102 N.J. 98, 113 (1986)).

Generally, the public has an interest in the disclosure of Internal Affairs reports in order to hold officers accountable and deter misconduct. Other reasons are to ensure the Internal Affairs process is working properly and to foster public trust in law enforcement.

The Appellate Division reversed and remanded this case, holding that the trial court should have analyzed the facts of the case by applying *Rivera* and *Loigman*. While the Appellate Division did not decide the ultimate issue of whether the Internal Affairs records would be discoverable, the court did strongly suggest that it would appear that the lieutenant's position, the misconduct he engaged in outside the scope of his work, the charges he faced, the subsequent guilty plea to a different offense and pre-trial intervention, and the Internal Affairs investigation generated in the aftermath, point to the fact the public would have an interest in disclosure and transparency. The court further required the trial judge to review the Internal Affairs report in camera and, if a determination is made for disclosure, the appropriate redactions to protect legitimate confidential information should be made.

While New Jersey generally favors disclosure of public documents, case law has made it clear that the courts must carefully review all of the factors set forth in *Rivera* and *Loigman* to determine whether Internal Affairs documents are subject to disclosure, whether an expungement order has been entered or not. As a result, whether disclosure will ultimately be ordered will be highly fact sensitive, and lawyers must be careful not to overreach in arguments, but provide the courts with practical reasons for non-disclosure. ◆

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# No Fixed Place of Work: An Exception for Your Workers' Compensation Claim

Andrea C. Rock, Esq.

## Key Points:

- If an employee is furthering the business interests of the employer, even an injury sustained off the employer's property can be considered compensable.
- The burden of proving that an injury was sustained in the course and scope of employment is very fact specific.
- Cases where the claimant was injured off the employer's property should only be accepted if convinced the claimant was in the course and scope of his employment.

Determining whether an injured worker was within the scope and course of his employment at the time of an injury is often a difficult decision to make, as these cases are based on the specific set of facts involved. On August 9, 2024, the Pennsylvania Supreme Court agreed to review a Commonwealth Court decision which found there was no exception to the coming and going rule as it applied to the claimant when he was involved in a motor vehicle accident while driving home from work. While we wait for the Supreme Court's final decision, it is worth reviewing the legal conclusions made by the Commonwealth Court.

Injuries sustained during an employee's commute are not compensable because the employee is neither on the employer's premises nor engaged in the furtherance of the employer's affairs. *Peer v. Workmen's Compensation Appeal Board (B & W Construction),* 503 A.2d 1096, 1098 (Pa. Cmwlth. 1986). However, there are exceptions to this rule. An injury sustained during an employee's commute to or from work can be compensable where any of the following apply:

(1) the employment contract included transportation to and from work;

(2) the employee had no fixed place of work;

(3) the employee was on a special assignment for the employer; or

(4) special circumstances are such that the employee was furthering the business of the employer.

*Bensing v. Workers' Compensation Appeal Board (James D. Morrissey, Inc.),* 830 A.2d 1075, 1078 (Pa. Cmwlth. 2003) *(quoting Bradshaw v. Workmen's Compensation Appeal Board (Bell Hearing Aid Center),* 641 A.2d 664, 666 (Pa. Cmwlth. 1994)).

In *Jorje Martinez v. Lewis Tree Service (WCAB),* 310 A.3d 327 (Pa. Cmwlth. 2024), the Commonwealth Court affirmed the workers' compensation judge's decision denying the Claim Petition, finding the claimant's injuries were sustained while commuting and, thus, were not compensable.

The claimant worked as a crew leader in the employer's tree-trimming business. While driving home in his personal vehicle at the end of his workday, he was involved in a motor vehicle accident and sustained injuries. He filed a Claim Petition, asserting he was a traveling employee with no fixed place of business and that his injuries were compensable, despite not occurring on the employer's premises.

The claimant explained, every morning he left his house, drove his personal vehicle to the yard where the employer's trucks were parked, got into one of the work trucks, and then drove to various work sites. At the end of the day, he returned to the yard and picked up his personal vehicle for the drive home. He explained that the employer did not have a fixed and permanent yard since it changed several times per year, depending upon the circuit the company was working. The employer presented fact witness testimony to explain that it does not compensate employees for their commuting time or expenses, it does not own the yards where they are headquartered for any particular period, and on the day of the accident, the claimant was assigned the job of moving the employer's trucks and equipment from one yard to a new yard.

The workers' compensation judge denied the Claim Petition, concluding the claimant was not in the course and scope of employment. In that decision, the judge credited the testimony of the claimant and the employer's fact witness, noting they were in agreement on every critical point of the analysis. The judge found that the facts placed the claimant outside of the course and scope of employment when the accident occurred because he was commuting from work.

The claimant appealed, and the Workers' Compensation Appeal Board affirmed the judge's decision. They found that the claimant's evidence did not establish any of the exceptions to the coming and going rule. To the contrary, the claimant reported to work at a fixed location.

The claimant appealed to the Commonwealth Court, arguing that he established he was a traveling employee and was entitled to a presumption that he was in the course and scope of employment while driving home from work. The Commonwealth Court focused on the fact that the claimant's evidence did not establish that he was a traveling employee without a fixed place of employment. Most importantly, the claimant was not furthering the business of his employer while commuting home in his own vehicle from the yard where he began his workday. The court found the claimant reported to the yard, where the truck and equipment needed to trim trees were stored. He then traveled to the location of the tree trimming job. He drove his personal vehicle, not the employer's vehicle, to and from his home, and his workday started at the employer's yard, not at his home. Further, the claimant was not reimbursed for travel expenses and did not store equipment at his home. The claimant had a fixed place of work, albeit one of short duration. Thus, a job that takes place in more than one location during a workday does not make one a traveling employee.

The claimant took a further appeal to the Pennsylvania Supreme Court, which is now awaiting a decision on the merits.

The ruling by the Commonwealth Court provides guidance to carriers that a thorough investigation must be undertaken when a claim is reported. Furthermore, since these cases are driven by the specific facts, it is often times the best practice to deny the claim and force the claimant to meet his burden of proving that the injury occurred in the course and scope of employment. ◆

Andrea, a member of our Workers' Compensation Department, is a shareholder and works in our Philadelphia, Pennsylvania office.

# Pennsylvania Pleading Requirements Clarified for Negligent Hiring and Related Claims: Rideshare Companies Have No Generalized Duty to Investigate Drivers

Angeline C. Panepresso, Esq.

## *Key Points:*

- To successfully plead a claim for negligent hiring, retention, or supervision, a plaintiff must plead specific facts establishing: (1) specific instances of prior misconduct on behalf of an employee; and (2) the employer had knowledge of such specific instances of prior misconduct and still chose to hire, failed to terminate, or declined to supervise the driver, thereby exposing the plaintiff to danger.
- To successfully plead a claim for negligent entrustment, a plaintiff must plead specific facts establishing that a vehicle owner allowed the driver to operate a vehicle with specific knowledge that the driver intended to, or was likely to, use the vehicle in such a way that would harm another.
- Rideshare companies have no generalized duty to investigate their drivers. If a rideshare company fails to investigate its driver, the inference is that it has no knowledge of its driver's qualifications, or lack thereof, for purposes of negligent hiring and related claims.

In *Henry v. Marcelin*, 2024 WL 4293055 (E.D. Pa. Sept. 25, 2024), the United States District Court for the Eastern District of Pennsylvania granted partial judgment on the pleadings in favor of the defendant, Lyft, a rideshare company, in a personal injury action arising out of a motor vehicle collision. In doing so, the court clarified the elements necessary to prove the similar, but distinguishable, claims of negligent hiring, retention, and supervision, and negligent entrustment. The court further held that rideshare companies have no generalized duty to investigate their drivers.

The plaintiff in *Henry* asserted a negligence claim against the defendant driver, as well as claims of vicarious liability and negligent hiring, training, retention, supervision, and entrustment against Lyft. Lyft filed a motion for partial judgment on the pleadings, arguing the plaintiff's negligent hiring, training, retention, supervision, and entrustment claim failed to state a claim upon which relief could be granted under F.R.C.P. 12(c). The court granted Lyft's motion, holding the plaintiff failed to allege specific facts establishing any prior misconduct or dangerous propensity on behalf of the defendant driver, let alone that Lyft had knowledge of such misconduct or propensity to support such a claim under Pennsylvania law.

In reaching its holding, the court analyzed the plaintiff's claim of negligent hiring, training, retention, or supervision separately from the claim of negligent entrustment and came to the same conclusion. The court noted that, for the former claim to proceed under Pennsylvania law, a plaintiff must allege specific facts establishing that (1) the employee demonstrated a propensity for misconduct or ill fitness for the position and that, (2) nevertheless,

the employer chose to hire, failed to train, declined to terminate, or failed to adequately supervise the employee, thereby putting the plaintiff in danger. The court further noted, although the theories of liability for negligent hiring, retention, and supervision are similar, they all have different elements a plaintiff must plausibly allege to proceed; specifically:

- To prove negligent hiring, the plaintiff must show that Lyft knew or was on notice of its driver's propensity for misconduct, but nevertheless hired him, thereby exposing the plaintiff to danger.
- A negligent retention claim is similar, but requires the plaintiff to show that Lyft negligently declined to terminate its driver after learning of a dangerous propensity.
- To prove negligent supervision, the plaintiff must show that Lyft knew or should have known of a need to supervise its driver, but failed to do so, thereby exposing the plaintiff to danger.

Although all of these theories share the requirement that the plaintiff must allege the driver's prior bad acts would put a reasonable employer on notice of his propensity to injure others, the plaintiff could not meet her burden merely by alleging the driver was "dangerous" or had a propensity for misconduct. Rather, the plaintiff had to allege *specific examples* of prior dangerous behavior *and* of Lyft's knowledge of such behavior. The plaintiff's complaint, however, included only broad allegations that Lyft hired and retained the defendant driver when it knew or should have known by and through his "prior unsafe conduct, and/or substandard driving conduct" that he was "incompetent and/or unfit to drive a motor vehicle." The complaint alleged no specific instances of prior misconduct or of Lyft's knowledge of such misconduct when it chose to hire, declined to terminate, and/or failed to adequately supervise its driver. Thus, the court dismissed the plaintiff's negligent hiring and related claims.

Similarly, the court held dismissal was also warranted on the plaintiff's negligent entrustment claim against Lyft, which required her to plead specific facts establishing that Lyft (1) permitted the defendant driver (2) to operate its automobile (3) with knowledge that the driver intended to or was likely to use the automobile in such a way that would harm another. The court again found the plaintiff's complaint included only conclusory allegations that Lyft knew of the defendant driver's "prior unsafe conduct" without alleging any specific facts to support such allegations and, thus, could not establish a plausible claim for relief.

Finally, and perhaps most significantly, the court held that the plaintiff's generalized allegations concerning Lyft's lack of investigation into its driver's record did not permit a reasonable inference that Lyft knew its driver was unqualified. Rather, such allegations permitted an inference that Lyft did not know anything about its driver's qualifications *because* Lyft did not investigate him.

The court then explicitly rejected the existence of any generalized duty on behalf of a rideshare company to investigate its drivers, reasoning that "under Pennsylvania law, lessors—who are arguably similarly situated to Lyft—do not have a duty to investigate a lessee's driving records unless they affirmatively assume responsibility from their lessee." Thus, the court held, because the complaint lacked any factual allegations that Lyft affirmatively assumed responsibility for its driver or had specific knowledge of prior misconduct, Lyft was entitled to dismissal without prejudice of the plaintiff's negligent hiring and related claims and any claim for negligent entrustment.

The District Court's ruling in *Henry* provides employers with greater clarity on the elements of the similar, but distinguishable, claims of negligent hiring, training, retention, and supervision, and of negligent entrustment. The decision provides a strong argument for a motion to dismiss any such claims—including during the pleadings phase—based on a lack of specific facts or evidence establishing prior

misconduct and the defendant employer's knowledge thereof. The decision also provides defendant employers—and, particularly, rideshare companies—with an argument that it has no generalized duty to investigate its drivers. ◆

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# Enforceability of Choice-of-Law Provisions in Maritime Contracts

Ashley L. Davis, Esq.

## *Key Points:*

- Choice-of-law provisions in maritime contracts are enforceable.
- The U.S. Supreme Court decision in *Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC* helps with the uniformity of federal maritime law.
- This decision helps save on costs and time if there is a future dispute to the contract.

## General Overview

A choice-of-law provision is a contractual provision that would be used to specify what law will govern the contract should a future dispute arise. Choice-of-law provisions have been known to be an issue when it comes to insurance contracts. A dispute arises when there are two different states' laws that may be applicable to a contract and the parties do not agree on which one should be applied. If the parties do not agree and cannot decide which state's law to apply, the court must then decide. These issues ultimately arise when the parties to the contract are in different jurisdictions. In many maritime contracts, the parties are from different jurisdictions, so this issue is one that comes up frequently. Enforceability of a choice-of-law provision is governed by federal maritime law.

The Supreme Court of the United States recently applied federal maritime law in *Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC*, 144 S. Ct. 637, 642 (2024). Their decision has streamlined this issue by holding, when there is a choice-of-law provision in a maritime contract, the court must enforce it, except if one of the two exceptions applies. Further, the Supreme Court stated that a "[l]ongstanding precedent establishes a federal maritime rule: Choice-of-law provisions in maritime contracts are presumptively enforceable." Before this case, the Court had not addressed this issue, but other lower courts had.

## Rule on Choice-of-Law Provisions

In its unanimous decision, the Supreme Court determined that choice-of-law clauses in maritime contracts are presumptively enforceable under federal maritime law, subject to two narrow exceptions: (1) when the chosen law would contravene a controlling federal statute or an established federal maritime policy; or (2) when the contracting parties cannot show any reasonable basis for the chosen jurisdiction. With regard to the second exception, the court must apply "substantial deference to the contracting parties."

## Advantages of Rule on Choice-Of-Law Provision

The Supreme Court stated: "By identifying the governing law in advance, choice-of-law provisions allow parties to avoid later disputes—as well as ensuing litigation and its attendant costs." *Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC*, 144 S. Ct. 637, 644 (2024). Further, by allowing a choice-of-law provision to be enforceable in a contract, it will save time and money that would be expended on motions and hearings to determine which state's law should apply to the dispute. If a maritime contract has a provision with the choice-of-law already agreed upon, there would be no dispute as to what law the court would apply to the case. Moreover, determining the choice-of-law in advance helps maritime shippers to decide on the front end "what precautions to take" on their ships (*American Dredging Co. v. Miller*, 510 U.S. 443, 454 (1994)) and enable[s] marine insurers to better assess risk (see Brief for American Institute of Marine Underwriters et al. as Amici Curiae, at pp. 12–13). Choice-of-law provisions, therefore, can lower the price and expand the availability of marine insurance. Should a dispute between parties arise, the court would then turn to the choice-of-law provision in the contract as the law to be applied, unless the contract falls within one of the two exceptions listed above.

## The Future

The Supreme Court did not discuss the "issue of federalism in admiralty and the scope of application of state law in maritime cases..." *Great Lakes Ins. SE,* 144 S. Ct. at 642 (quoting 1 T. Schoenbaum, Admiralty and Maritime Law § 4:4, p. 268 (6th ed. 2018). As stated above, this rule on choice-of-law provisions applies to federal maritime law. However, if a state court is hearing a maritime case, it can apply its state laws, as long as they do not conflict with the federal maritime law.

## Conclusion

This decision is favorable for insurers as these provisions will generally be upheld in future contracts. Also, by having these provisions in maritime contracts going forward, insurers will be saving time and costs on disputing these issues pre-trial. Lastly, knowing what law will apply to the contract gives the contracting parties the advance opportunity to determine what protections/precautions they should take. ◆

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**Jeremy Zacharias, RPLU,**

shareholder in Marshall Dennehey's Mount Laurel, New Jersey, office, has been elected to the Board of Trustees of the Professional Liability Underwriting Society (PLUS). The PLUS Board of Trustees sets the strategic direction for the organization, which provides industry-leading professional liability education, programs, products, seminars and networking events. He will serve a three-year term, effective November 12, 2024.

Read more **here**.

# Celebrating 30 Years of Defense Digest: A Look at the Last 30 Years in New Jersey Workers' Compensation

Angela Y. DeMary, Esq.

## *Key Points:*

- The term "palliative" is not decisive as to liability to provide treatment.
- When addressing requests for temporary total disability benefits from former employees, investigate entitlement beyond a doctor's note changing work status.
- There are exclusions to the general principle that injuries during volunteering activities are not compensable.

Thinking back to 1994—30 years ago—many of us may not recall where we were or what we were doing. In fact, many readers may not have even been born at the time. However, the celebration of 30 years of Marshall Dennehey's publication of *Defense Digest* provides a good opportunity to review a few significant New Jersey workers' compensation judicial decisions from the last three decades that still impact claims handling today. This article will focus on one decision from each decade.

## 1994–2004

The first decade, 1994–2004, brought the world such noteworthy events as the debut of the television show "Friends" (1994), the election of Nelson Mandela as President of South Africa (1994), and the unforgettable events of September 11, 2001. The decade also brought a notable New Jersey Appellate Division decision that still raises issues for practitioners today.

In 1995, the Appellate Division analyzed the term "palliative" with regard to a respondent's liability to provide medical treatment. In *Hanrahan v. Township of Sparta,* 284 N.J. Super. 327 (App. Div. 1995), the court held that an employer is required to provide such treatment if there is (1) competent medical testimony that (2) the treatment is both reasonable and necessary to (3) cure or relieve the effect of the work-related injury such as to improve ability to function. Prior to that time, defense counsel would use "palliative" as an indicator to cease liability. Per this decision, that is not the legal analysis.

However, according to the court, "palliative" treatment could cease if it is no longer curing or relieving the effect of the work-related injury to improve one's ability to function. Therefore, a practitioner should determine whether these requirements apply when addressing this issue.

## 2004–2014

The next decade, 2004–2014, brought about additional significant events. The world was introduced to Facebook (2004) and saw the election of Barack Obama as President of the United States (2009). This decade also included the death of

music icon Michael Jackson (2009). In addition to these events, this decade brought about important judicial decisions in New Jersey workers' compensation. Next, we will take a look at one of them.

In 2006, the Appellate Division addressed the issue of entitlement to temporary total disability benefits when an injured worker is terminated from employment for reasons unrelated to the work-related injuries and is, thereafter, placed out of work or on modified duty status by the medical doctor. In *Cunningham v. Atlantic States Cast Iron Pipe Co.,* 386 N.J. Super. 423 (App. Div. 2006), the court held that a former employee has the burden of proving that they would have been employed "but for" the work-related disability in order to receive temporary disability benefits. In other words, the work-related disability has to be the reason for the unemployment, not something else.

It is important for practitioners to ask additional questions when a former employee is placed out of work or on modified-duty status following termination. Specifically, practitioners should inquire whether there was any active employment elsewhere, receipt of unemployment benefits, or proof of an active search for employment at the time of the medical change-in-work status. If the lack of employment was due to some other reason (i.e., simply had not sought employment since termination of employment or personal reasons unrelated to the work injury), there would be an argument that temporary total disability benefits are not due. Thorough investigation is key.

## 2014—2024

Lastly, 2014–2024. During this period, the world witnessed the marriage of Prince Harry and Meghan Markle (2018) and continues to be impacted by the COVID-19 pandemic (2020). In New Jersey, Chief Judge Maria Del Valle Koch was appointed as the first woman Director and Chief Judge of the Division of Workers' Compensation (2022). In addition to these events, there continues to be important legal decisions. Of those, we will take a look at one New Jersey Supreme Court decision.

In 2021, the court analyzed the compensability issue related to employee volunteers in *Goulding v. NJ Friendship House, Inc.,* 245 N.J. 157 (2021). The court reiterated that an injury is compensable where there was compulsion by the employer for the employee to volunteer and that injuries during purely social or recreational events are not compensable. The court also reviewed the two-prong test used in analyzing the compensability issue for employees volunteering at employer-sponsored events: (1) whether the injury was a "regular incident of employment" and (2) whether the event provided a benefit to the employer beyond improvement in employee health and morale.

When encountering this issue, practitioners should apply the two-prong test to the facts of the claim to determine if it is met. Analysis is very fact sensitive. As such, it is worthwhile to conduct a thorough investigation.

The review of these decisions shows that, although a decision may have been rendered many years ago, it is necessary to be aware of it as it may continue to impact claims handling today. These decisions and analyses can influence your decision as to whether to provide compensation. *Defense Digest* will continue to be a source of information on legal trends, cases, and updates in the law. ◆

Angela is a shareholder and member of our Workers' Compensation Department. She works in our Mount Laurel, New Jersey, office.

# Undefined Parties and the Statutory Employer Defense

Osama A. Samad, Esq.

## Key Points:

- A recent Pennsylvania Superior Court decision highlights the importance of clarity in contracts for employers asserting a statutory employer defense.
- Employers will not be able to successfully assert the statutory employer defense when there is ambiguity about contracting parties.
- Contractors should ensure they are contracted with the owner of the property to protect against liability from a workplace accident.

In litigation involving workplace accidents, a common defense raised by a contractor is the statutory employer defense under the Pennsylvania's Workers' Compensation Act. The Act requires an employer to pay workers' compensation benefits to employees injured in the course of their employment regardless of the employer's own negligence. In return for assuming secondary liability for the payment of workers' compensation benefits, a statutory employer is immune from suit brought by an employee for a work-related injury.

A recent Pennsylvania Superior Court case highlights issues that may arise when a subcontractor's agreement for a construction project is not properly executed. In *Feldman v. CP Acquisitions 25, L.P.*, 2024 WL 4156993 (Pa. Super. Sept. 12, 2024), the Superior Court agreed with the trial court's decision that a contractor could not avoid liability using the statutory employer defense when it is unclear who the contracting parties are in a subcontracting agreement.

In this case the plaintiff, Brian Feldman, suffered grievous injuries from a workplace electrocution accident during a tree removal project during the construction of an apartment building. Cross Properties engaged Altino Concrete Construction as a contractor to build an apartment building on a property they had recently acquired. Near the end of construction on this project, Cross Properties reached out to Vito Braccia, the owner of Altino Concrete Solutions and Braccia Construction, LLC (VBC), to remove trees on an adjacent property owned by the South Eastern Pennsylvania Transportation Authority (SEPTA). Mr. Braccia then subcontracted with Colonial Tree Service, Inc., for the tree removal project.

Mr. Braccia did not carry out any safety planning before the tree removal project, even though he was aware of a high-voltage power line on SEPTA's property. Additionally, he failed to reach out to SEPTA for permission to enter the property or to have the power lines de-energized during the tree

removal project. On the day of the project, Mr. Feldman was electrocuted when a current arced from the power line and through a crane hoist. As a result, Mr. Feldman suffered extensive and severe burns, and spent the next six weeks recovering in a hospital burn unit. Mr. Feldman filed and prevailed in a personal injury suit against the general contractor, developer, and related entities.

VBC, the contractor for the tree removal, appealed the trial court's decision in favor of Mr. Feldman. One argument raised by VBC on appeal was that, as the plaintiff's statutory employer under section 302(b) of the Workers' Compensation Act, they were immune from a personal injury suit brought by Mr. Feldman.

The longstanding test to determine whether a person or entity qualifies as a statutory employer under this section was set forth by the Pennsylvania Supreme Court in *McDonald v. Levinson Steel Co.,* 153 A. 424 (Pa. 1930). The McDonald test requires an employer satisfy each of the following elements to be considered a statutory employer under section 302(b):

1. an employer who is under contract with an owner or one in the position of an owner;

2. the premises occupied by or under the control of such employer;

3. a subcontract made by such employer;

4. part of the employer's regular business entrusted [sic] to such subcontractor; and

5. an employee of such subcontractor.

It was undisputed that VBC was the contractor for the tree removal project. However, the respective representatives from Cross Properties and Colonial testified at trial that they believed they had an oral agreement with Altino Concrete Construction for the tree removal project, not VBC. As a result, the court determined there was no mutual understanding between the parties regarding who they were contracting with, which is essential for any contract. Therefore, the court held that VBC could not meet the first element of the *McDonald* test.

The court went further and noted that, even if a valid contract existed between Cross Properties and VBC, it would not help their case. They would still be unable to prove they had a contract with the property owner or someone in a similar position. This is because SEPTA was the actual owner of the property in question, not Cross Properties. As VBC never attempted to reach an agreement with SEPTA for the tree removal, they could not establish they were a statutory employer under Section 302(b).

In conclusion, *Feldman v. CP Acquisitions 25, L.P.* underscores the importance of clearly defining contractual relationships in construction projects. The court's ruling emphasizes that a lack of mutual understanding among contracting parties prevents the successful use of the statutory employer defense under the Pennsylvania's Workers' Compensation Act.

Contractors should ensure that subcontracting agreements clearly identify all parties involved and confirm ownership of the work site. By doing so, they can better protect themselves against liability in workplace accidents and minimize potential legal disputes. ◆

Osama is an associate and a member of our Casualty Department. He works in our Philadelphia, Pennsylvania, office.

# UIM Stacking Even When Not a Named Insured

Leo A. Bohanski, Esq.

## *Key Points:*

- Pennsylvania Superior Court addresses issue of first impression involving UIM stacking and coverage.
- The company president, insured under policy covering one vehicle, was entitled to inter-policy stacking of UIM benefits

The Pennsylvania Superior Court recently addressed an issue of first impression involving UIM stacking and coverage in *Baclit v. Sloan*, 323 A.3d 1 (Pa. Super. 2024). The plaintiff, Timothy S. Baclit, died acting as a good samaritan to aid the defendant, Steven Sloan, who was involved in a single motor vehicle accident after crashing into a bridge retaining wall. Mr. Baclit was operating a motor vehicle owned by his mother and stopped at the accident scene to render aid to Mr. Sloan. In the process of providing assistance to Mr. Sloan, Mr. Baclit fell from the bridge retaining wall and later succumbed to his injuries.

Mr. Sloan's automobile liability coverage through Farmers Insurance tendered the limits to the administrator of the estate of Mr. Baclit. The vehicle Mr. Baclit operated was insured under a multivehicle policy through State Farm Mutual Insurance Company with stacked UIM limits of $300,000. State Farm paid the stacked UIM policy limits under that claim. At the time of his death, Mr. Baclit owned a motorcycle that had UIM coverage through Progressive, which also tendered its UIM policy limits. What remained at issue was a commercial automobile policy through United Financial Casualty Company (United).

Mr. Baclit was the president and sole officer of a trucking business, TKC Trucking, which was covered by a commercial automobile insurance policy through United. Under that commercial policy, TKC Trucking was a "named insured" and Mr. Baclit and another individual were designated as rated drivers. The subject policy covered a truck and load trail trailer and provided stacked UIM coverage.

The administrator of the estate for Mr. Baclit filed a complaint against United, asserting claims of breach of contract, bad faith, wrongful death, and survival. Notably, there was no waiver of stacking signed by Mr. Baclit under that policy and the premiums reflected higher payments for stacking coverage.

Upon inception of the policy, United charged a premium for stacking under the single car commercial policy. The trial court felt that, since the carrier chose to provide stacked insurance coverage on a one-vehicle commercial policy, where the injured party was both the sole officer of TKC Trucking and named as a rated driver in the policy, the attempt to deny stacked coverage served as a *de facto waiver*, in violation of the language of the Pennsylvania

Motor Vehicle Financial Responsibility Law (MVFRL). Thus, the trial court found that the estate was entitled to collect UIM benefits and granted its motion for summary judgment.

United appealed to the Superior Court, which noted that the only question before it was purely one of law requiring of a determination whether Mr. Baclit was entitled to UIM benefits under the United policy. The court examined the interplay between the provisions of the MVFRL and the plain language of the policy. It reviewed the various provisions of the MVFRL pertaining to UIM coverages, focusing on section 1738(a), which provided, when multiple vehicles are insured on one or more policies providing UIM coverage, any UIM coverages "stacked" by default and the amount of coverage shall be the sum of the limits for each motor vehicle as to which the injured person is an insured. See also *Gallagher v. Geico Indemnity Co.,* 201 A.3d 131, 137 (Pa. 2019). Section 1738 (a) unambiguously provides for inter-policy as well as intra-policy stacking.

Although UM/UIM coverage is stacked by default, a named insured may waive stacking of UM or UIM coverages, in which case, the limits of coverage available under the policy for an insured shall be the stated limits for the motor vehicle as to which the injured person is an insured. 75 Pa.C.S. § 1738(b). Each named insured purchasing UM/UIM coverage must be "provided the opportunity to waive stacked limits of coverage and instead purchase coverage as described under Subsection (b). The premiums for an insured who exercises such waiver shall be reduced to reflect the different cost of such coverage." Id. § 1738(c). Similarly, with regard to the waiver of UIM coverage, stacking may also be waived through the statutorily prescribed form contained in § 1738(b)(2). Failure to comply with the appropriate language in the rejection form will void any purported waiver.

Citing *Gallagher*, 201 A.3d at 137, the Superior Court stated that "[w]e must apply general principles of contract interpretation, as, at base, an insurance policy is nothing more than a contract between an insurer and the insured." It also referred to *Gallagher*, 201 A.3d at 137 (citation omitted), in noting that, "[i]mportantly, however, provisions of insurance contracts are invalid and unenforceable if they conflict with statutory mandates because contracts cannot alter existing laws." Based on *Erie Ins. Exch. v. Eachus*, 306 A.3d 930, 933 (Pa. Super. 2023), it indicated that "[t]he provisions of the MVFRL are mandatory, and where the insurance policy provisions fail … to comply with the provisions of the MVFRL, the policy provisions will be found unenforceable."

Utilizing these principles, the Superior Court interpreted the policy to determine whether Mr. Baclit, as a sole officer of the company, should be regarded as an insured under the subject policy and, therefore, entitled to stacked UIM benefits. The court first recognized that "[t]he owner and/or officers of a corporation are 'Class I' insureds under a policy issued in the name of a corporation." *Miller v. Royal Ins. Co.,* 510 A.2d 1257, 1258 (Pa. Super. 1986). The Superior Court in *Miller* had found that Mr. Miller was a de facto named insured under the business automobile policy and that the spouse of a corporate officer was also a "Class I insured." Taking the analysis in *Miller*, the court here felt that because Mr. Baclit was the sole officer and president of TKC Trucking and was the sole corporate officer and person responsible for paying premiums for the subject policy, he would be the one who would have had the power to decline waiver of UIM and stacking of coverage for TKC Trucking.

United contended the subject policy should have been considered a first priority UIM policy. Thus, the concept of "stacking" would not have come into play unless the insured had more than one vehicle insured under one or more policies providing UM or UIM coverage. United presented a hypothetical that Mr. Baclit would be seeking primary UIM coverage under the policy as a single policy of insurance that insures a single vehicle. Following the hypothetical through to its logical conclusion, Mr. Baclit would thereafter seek stacked UIM coverage from his mother's policy and his own motorcycle policy. As the driver or operator of the vehicle insured under the policy involved in an accident, wherein Mr. Baclit was not at fault, he would recover first priority

UIM coverage from the policy under §§ 1731 and 1733 and not stacked coverage under § 1738. Yet, there would be no mechanism for any individual to stack benefits paid for by TKC Trucking under the policy. As per the Supreme Court in *Gallagher*, this constituted *de facto* waiver of stacking benefits in violation of the MVFRL. *Gallagher*, 201 A.3d at 132.

In the absence of finding Mr. Baclit was an insured under the policy pursuant to *Miller*, the language of the policy (defining an "insured" in a corporate policy for purposes of stacking UIM benefits) operated as a *de facto* waiver of stacking coverage because, as in *Gallagher*, there was no ability for anyone to recover stacked UIM benefits, despite the fact that the carrier did not obtain the requisite waiver in violation of § 1738 of the MVFRL.

To the contrary, as in *Gallagher*, Mr. Baclit paid increased premiums to obtain stacked UIM benefits under the commercial policy and, as the sole officer of the company and one who made the payments, reasonably expected to receive such stacked UIM benefits. Unless Mr. Baclit was a named insured under the policy, United's constricted view of who could constitute as "an insured" for purposes of collecting stacked UIM benefits under a single-vehicle, business automobile policy violated the MVFRL. As such, the Superior Court found no error or abuse of discretion in the trial court's decision and affirmed the trial court's order granting the estate's motion for summary judgment seeking stacked UIM benefits under United's commercial automobile policy. ◆

Leo is a shareholder and member of our Casualty Department. He works in our Scranton, Pennsylvania, office.

## Teresa O. Sirianni Elected to Membership of the Academy of Trial Lawyers of Allegheny County

**Teresa O. Sirianni, shareholder in the Professional Liability Department in the Pittsburgh office of Marshall Dennehey, has been elected to membership of the Academy of Trial Lawyers of Allegheny County.**

**Read more here.**

# ON THE PULSE

## Erie, Pennsylvania, Office Profile

**G. Jay Habas, Esq.**
Managing Attorney Erie, Pennsylvania, Office

In the run up to the 2024 presidential election, Erie County was featured as the "bellwether" or "pivotal" county that could determine the outcome of the election. Erie County's history of voting for the winner in the last four presidential elections mirrored the outcome in Pennsylvania and created a blitz of media coverage and campaign appearances from both parties to try to win the all-important votes. Why Erie?

Erie County is located along the shores of Lake Erie in northwest Pennsylvania, equidistant from Buffalo and western New York, Cleveland and eastern Ohio, and Pittsburgh in the southwest part of the state. The county features the metropolitan area of the City of Erie, where Marshall Dennehey has its office, with rural areas surrounding the city. The County's 270,000 residents have strong blue-collar roots, with industrial employers such as Wabtec, the successor to General Electric's locomotive plant, and with expanded white-collar employers, including Erie Insurance Company, the area's largest employer and a Fortune 500 company. Several universities, the largest medical school in the country, and a strong tourist economy based on the recreational opportunities centered on Presque Isle State Park attract people from all across the area to Erie. These characteristics make Erie County an important area in politics and in law.

Erie has been home to a Marshall Dennehey office for 27 years, since opening in 1996. The Erie office serves 10 counties in northwest Pennsylvania, along with western New York State. Its downtown location has witnessed the transformation of the city core into a vibrant entertainment, office, and residential area. During this time, the attorneys and staff in the Erie office have provided its clients with defense representation in litigation across all practice areas of the firm.

Our office is currently staffed by five attorneys and two paralegals. This team of experienced professionals enables Marshall Dennehey to service clients in all areas of litigation. The practices of our attorneys include casualty, professional liability, employment and workers' compensation, and health care.

Thom Lent is the senior attorney in the office, and he directs the health care group. Thom has defended and tried numerous medical malpractice lawsuits on behalf of individual physicians and medical professionals, medical practices, long-term care facilities, and hospitals. He also has taught at the local medical school, and he enjoys moonlighting in a band featuring local attorneys.

Pat Carey handles both professional liability and casualty work, and he spends most of his time defending local municipalities in litigation involving public officials, law enforcement, and prisons. His practice is primarily in the Federal District Court in Erie.

Our office is staffed by two associates, Lori Mason and Emily Downing, who work in all areas of the firm's practice, but primarily in professional liability

and casualty. Lori's experience as an assistant district attorney, public defender, and in corporate law brings a well-rounded perspective to her work defending individuals and businesses in litigation. Emily worked in the Erie County District Attorney's Office for several years, where she was involved in several trials with outstanding results. Her background in law enforcement has enabled her to make a smooth transition to the defense of civil rights and public employment cases.

My practice is unique in that I have handled all types of cases for our clients, including premises and vehicular liability, employment and workers' compensation, and professional liability. My current practice focuses on defense of employment litigation for public and private entities, along with defending professionals in real estate, insurance, legal, law enforcement, and financial liability cases.

Our office also partners with the firm's offices in Pittsburgh, Cleveland, and New York State to provide further depth and expertise to its work and to handle cases in the Erie region. The collaboration among the attorneys and staff in these offices provides our clients with the unique capability of having local attorneys who know the judges, attorneys, and jurors, with the breath of expertise from other offices to complement the work.

Marshall Dennehey's presence in Erie and northwest Pennsylvania is unique in that it gives us the opportunity to provide strong defense representation to our clients in Pennsylvania and New York in a variety of practice areas and disciplines with the support of a 500-plus attorney regional law firm. This has enabled the Erie office to maintain its hold in the area as a premier defense litigation law firm, pivotal to the success of Marshall Dennehey. ◆

## 109 Marshall Dennehey Attorneys Recognized in the 2025 Editions of The Best Lawyers in America® and the Best Lawyers: Ones to Watch® in America

Marshall Dennehey is proud to highlight the firm's 109 attorneys who have been recognized in the 2025 editions of The Best Lawyers in America® and the Best Lawyers: Ones to Watch® in America. Less than 6% of all practicing lawyers in the U.S. were selected by their peers for this recognition.

Additionally, five of the firm's attorneys received the Best Lawyers® 2025 "Lawyer of the Year" awards in their respective practice areas and demographic regions.

Since it was first published in 1983, Best Lawyers® has become universally regarded as the definitive guide to legal excellence. Best Lawyers lists are compiled based on an exhaustive peer-review evaluation. For more information, click here.

### OUR 2025 LAWYERS OF THE YEAR

Harrisburg: **Allison Krupp**, Insurance Law
Harrisburg: **Christopher Reeser**, Personal Injury Litigation – Defendants
Pittsburgh: **Anthony Williott**, Litigation – Health Care
Orlando: **Brad Blystone**, Medical Malpractice Law – Defendants
Northeastern Pennsylvania: **Thomas Specht**, Insurance Law

Click here to see all of our 2024 Lawyers of the Year

# ON THE PULSE

## Recent Appellate Victories

**Kimberly Berman** (Fort Lauderdale, FL) and **Mark McCulloch** (Orlando, FL) succeeded in obtaining a *per curiam* affirmance in the First District Court of Appeal of a final order dismissing the plaintiff's fire-loss subrogation claim against our client, a tenant in a leased property it insured. The First District affirmed the trial court's finding that the specific fire-loss provisions in the lease between our client and the landlord shifted the risk of loss to the landlord; thus, our client was a co-insured under the policy, and an insurance company cannot sue its own insured.

**Kimberly Berman** **also** succeeded in obtaining a *per curiam* affirmance in the Fifth District Court of Appeal of a final order of dismissal. Kimberly represented an international not-for-profit private membership organization in an action by a former member for the alleged violation of his membership in said organization. The plaintiff attempted to use a settlement agreement from a prior case to show he was in compliance with the organization's membership requirements. The plaintiff also argued that the requirement to be a member of an underlying organization was unconstitutional because of an antiquated Florida law. Kimberly argued that: a settlement agreement could not be enforced against a third party with no privity or connection to a settlement agreement; the plaintiff failed to follow the procedural requirements to challenge the statute and, even if he did, the law was wholly inapplicable to our client; claim and issue preclusion were appropriate because the plaintiff had incorporated the issues and claims into his complaint, which demonstrated that the same set of operative facts and issues were being litigated for a third time; and the plaintiff failed to state a cause of action under the Florida Declaratory Judgment Act because the elements were not met and the court did not have jurisdiction under the Declaratory Judgment Act. The trial judge dismissed with prejudice. After dispensing with oral argument, the Fifth District affirmed the dismissal.

**Audrey Copeland** (King of Prussia, PA) convinced the Pennsylvania Commonwealth Court to affirm the decisions of the Workers' Compensation Appeal Board and a workers' compensation judge denying penalties. The claimant alleged the employer failed to pay for medications and that the workers' compensation judge did not properly credit Letters of Medical Necessity. Although the employer unilaterally ceased to pay the bills for the medications, the judge had found they were not causally related to claimant's work injury. Therefore, the Commonwealth Court found the claimant was not entitled to penalties under the Act and that the judge issued a reasoned decision by adequately explaining why she rejected the Letters.

**Carol VanderWoude** (Philadelphia, PA) obtained a reversal in the Pennsylvania Superior Court of the trial court's denial of preliminary objections to venue. She successfully moved in the trial court for certification of the ruling pursuant to Pa.R.A.P. 311(b) so that an immediate appeal from the interlocutory ruling could be taken, and she subsequently prevailed on appeal. The litigation arose from a helicopter accident that occurred in Afghanistan. Both plaintiffs, husband and wife, resided in Arizona. Carol's client is a Delaware corporation located in Bucks County, Pennsylvania, that refurbished the helicopter in Bucks County. The codefendant corporation leased the helicopter to the plaintiff-husband's employer, which was organized and principally operates in Montana. The plaintiffs' primary focus in seeking to establish venue was on Carol's client and, in particular, on the fact that it purchased two fabric interiors from a Philadelphia vendor. One of the interiors was

installed on the helicopter. In reversing the trial court, the Superior Court emphasized that the relevant time period for assessing a defendant's acts in Philadelphia County is at the time a lawsuit is filed, the limited amount of purchases in the relevant time frame and the lack of any evidence to show an ongoing business relationship. The Superior Court determined that the business dealings of Carol's client did not constitute actual business conducted in Philadelphia County. It stressed that "doing business with a Philadelphia County company does not amount to doing business in Philadelphia County if the obtained goods, services, or personnel are utilized elsewhere to further the defendant's business activities." Moreover, the Superior Court noted that our appellate courts have held that purchasing supplies from a vendor in Philadelphia County is not sufficient to confer venue. As to the codefendant, the Superior Court concluded the limited venue evidence pointed to a separate but related corporate entity, and that the evidence failed to show the co-defendant regularly conducts business in Philadelphia County. Because there was no evidence to support the imputation of a separate entity's contacts with Philadelphia on the co-defendant, venue as to the co-defendant was also improper.

**Carol VanderWoude also** successfully defended on appeal the trial court's grant of compulsory nonsuit in a legal malpractice action following the trial court's rulings on various motions in limine. The trial court granted our clients' motions in limine to preclude the plaintiff from introducing into evidence that its attorney sued the wrong parties, that its attorney obtained an uncollectable judgment, and that the plaintiff would have prevailed in a lawsuit against other parties. Following the motion in limine rulings, trial counsel moved for nonsuit—arguing the plaintiff could not carry its burden of proof without the precluded evidence. On appeal, the plaintiff argued the trial court's evidentiary rulings violated the law of the case set forth in the Superior Court's decision reversing the trial court's order sustaining our clients' preliminary objections and dismissing the amended complaint, and that the trial court erred in granting the motions in limine. The Superior Court rejected both arguments and affirmed the trial court's denial of the plaintiff's motion to remove compulsory nonsuit. The Superior Court held that the trial court did not abuse its discretion in granting the motions and that it properly concluded the plaintiff failed to present evidence to meet its burden of proof.

**Christopher Woodward** (Harrisburg, PA) and **Thomas Specht** (Scranton, PA) secured the Third Circuit Court of Appeal's affirmation of a district court's grant of summary judgment in favor of our client. The Third Circuit agreed with our arguments that regular use exclusions in UIM policies do not act as *de facto* waivers of stacked coverage and, thus, do not violate Section 1738 of the Motor Vehicle Financial Responsibility Law. ◆

**Kimberly Kanoff Berman | Mark McCulloch | Audrey Copeland | Carol VanderWoude**
**Christopher Woodward | Thomas Specht**

# ON THE PULSE

## Defense Verdicts and Successful Litigation Results

## CASUALTY DEPARTMENT

**Brittany Bakshi** (Harrisburg, PA) secured a directed verdict on behalf of her client, a car mechanic, following an arbitration. The plaintiffs alleged they had purchased a truck from a used car dealership with a current state inspection sticker granted by our client. However, the following year, the truck did not pass inspection. The plaintiffs claimed our client negligently and fraudulently passed the truck for inspection the year prior. The arbitration panel concluded the plaintiffs failed to present expert testimony regarding the condition of the truck at the time of purchase and, therefore, could not prove the inspection sticker was improperly granted by our client.

In a case that attracted international media attention, **Thomas Brown** (Orlando, FL) successfully resolved a wrongful death action involving a 14-year-old boy who tragically fell from an attraction at a major entertainment complex. Representing the ride's owner/operator, he was able to navigate the complexities of a concurrent criminal investigation, a State of Florida administrative review, and widespread media coverage.

**Michael Connolly** (Scranton, PA) obtained summary judgment on a case where the plaintiff fell down a flight of stairs at a raceway stand, sustaining multiple fractures. The plaintiff alleged that she fell due to water that had accumulated, presumably from patrons' coolers dripping through the bleachers onto the staircase below. The court dismissed the plaintiff's claims against the raceway in their entirety, agreeing with our argument that the plaintiff failed to adequately establish actual or constructive notice of a dangerous condition.

**Ephraim Fink** (Westchester, NY) won summary judgment in a nine-year-old supermarket slip-and-fall case. The plaintiff claimed that on June 1, 2015, she tripped and fell on the corner of a pallet/box of watermelons in the store's produce section, where customers first walk in. There was video capturing the incident, which the court had as an exhibit. Notably, the plaintiff admitted she did not see the pallet or its corner and was not looking where she was walking. After falling, she refused medical attention, continued shopping, and walked home. She came back the next day with her husband to report the incident. Ultimately, she underwent multiple surgeries, including cervical fusion. Her attorney's demand was $4 million. We argued that the watermelon pallet was a temporary merchandise display that was open and obvious to all with common sense. Indeed, customers walked by the pallet display before and after the plaintiff's accident at a rate of dozens per day. The store put the watermelons out in this manner as part of its display policy because the melons are delivered in cartons on pallets that cannot be taken apart. The plaintiff argued the pallet was a hazardous defect the store created and had notice of. The plaintiff submitted an expert engineer, who claimed the display violated American Society of Testing Materials' (ASTM) designation F1637-10 regarding safe walkway surfaces. In reply, E.J. submitted a rebuttal engineer, who demonstrated the ASTM standard asserted by the plaintiff applied to permanent structures—like floors and buildings—not the temporary pallet, and that the standard did not exist on the day of the accident. Moreover, the ASTM was never codified in New York State law or in a local ordinance. In granting summary judgment, the court concluded, while a landowner must act reasonably in maintaining its property in a reasonably safe condition, it is not an insurer of ordinary obstacles that are readily apparent as a matter of common sense and visibility. ▸

**Scott Gemberling**, **Kimberly House** and **Thomas Nardi** (all of Philadelphia, PA) were successful in having a wrongful death and survival action transferred from Philadelphia County to Centre County. This case involved the death of a 19-year-old woman who fell down an 11-story trash chute in a condo building. After three sets of preliminary objections on venue and nearly two years of venue discovery, the Philadelphia Court of Common Pleas sustained our objections and ordered that the case be transferred. The plaintiff recently filed a motion for reconsideration, which was denied.

**Brad Haas** (Pittsburgh, PA) successfully defended a national car-sharing company, resulting in a dismissal of all claims. The case involved a multiparty suit arising out of a commercial auto accident. Through aggressive pleading, Brad obtained a dismissal by arguing that both federal and state law provisions prohibited any claims against the car-sharing company. Brad additionally argued the facts, as set forth in the plaintiff's complaint, failed to establish any duty and/or breach on our client's behalf.

**Kevin Hexstall** (Philadelphia, PA), **Alicia Calaf** (Roseland, NJ) and **Walter Kawalec** (Mount Laurel, NJ) were successful in their representation of a national home improvement store. Kevin and Alicia handled the case at the trial level, where the judge granted their motion for a directed verdict and dismissed the case. Walt convinced the Superior Court of New Jersey, Appellate Division, to affirm the trial court's decision. The plaintiff had rented a flatbed truck in 2018 to move a cabinet he had just purchased. He alleged that a store employee gave him a set of ramps to use in the truck, but while doing so, they moved and he fell, sustaining a serious and permanent injury to his back. The plaintiff alleged he later returned to the store and was told he had been given the wrong ramps. The appellate panel said that the record included no actual evidence that the ramps did not fit the truck beyond the employee's saying they were the wrong ramps, or that the ramps slipped because they were incompatible with the truck. Even in his testimony, the appellate panel said the plaintiff did not actually identify any physical cause for the ramps to move. The court, therefore, affirmed the case on appeal.

**Kevin McKeon** (Mount Laurel, NJ) obtained a jury defense verdict in the Superior Court of New Jersey in a product liability case where the demand had been $650,000. The plaintiff alleged a defect in the handle of an ultraviolet light disinfecting device caused her to develop trigger finger. She alleged a design defect and failure to warn claim, claiming permanent damage to her ring finger and hand as a result of surgeries to correct the injury. The case included testimony from five experts, including two orthopedic experts, a civil engineer, biomechanical engineer, and mechanical/biomedical engineer.

**Tony Michetti** (King of Prussia, PA) won a motion for summary judgment in a case where the plaintiff suffered a hip fracture when he fell on the defendant's sidewalk while delivering a food order. At the time of the accident, there was an active freezing rain and sleet storm, and generally slippery conditions prevailed. Tony filed a motion for summary judgment based on the "hills and ridges" doctrine. The plaintiff argued the doctrine was inapplicable due to human intervention that allegedly altered the natural accumulation. The defendant had applied rock salt to the sidewalk approximately 45 minutes prior to the accident. In granting our motion for summary judgment, the court found there was no evidence that the application of rock salt created a dangerous condition or increased the natural hazards of the existing ice; therefore, the hills and ridges doctrine applied.

**Aaron Moore** (Philadelphia, PA and Wilmington, DE) and **Claire McCudden** (Wilmington, DE) successfully defended a property owner in a two-day trial against its lessee. The plaintiff leased from the defendant a parcel of land upon which it operates a shopping center. The plaintiff claimed that after the excavation of a swale located on the defendant's neighboring vacant property, mud, silt, and other debris flowed from the swale onto the plaintiff's leasehold, which caused storm drains to become clogged and resulted in flooding and property

damage. After complaints by the plaintiffs, the defendant remedied the problem by repairing the swale and claimed that this resolved the problem. However, the plaintiff disagreed. The court held the plaintiff failed to take any efforts to clear out the storm drains and that the paving had been damaged years before the water infiltration. Further, Delaware law recognizes the general right for an upper landowner to drain water by means of its natural flow. When the landowner artificially increases the flow of water, its conduct is judged based on a "reasonable user" rule. The court found that the defendant acted reasonably in promptly remediating the swale and, therefore, should not be held liable for any trespass or nuisance. The court further held that the plaintiff failed to prove that injunctive relief was warranted, especially when considering its own failure to maintain the property.

**Lauren Purcell** and **James Cullen** (both of Pittsburgh, PA) successfully secured summary judgment in the Westmoreland County Court of Common Pleas in favor of our clients in a neighbor dispute over alleged excessive water runoff. Our clients were sued by their neighbors for claims related to water runoff due to the installation of gutters and downspouts on a shed near the property line. Lauren and Jim effectively argued for summary judgment on the plaintiffs' injunction, trespass, nuisance, and negligence claims, demonstrating the plaintiffs lacked the necessary expert testimony to substantiate their case as required under Pennsylvania law. Additionally, Lauren and Jim successfully argued that the plaintiffs' negligence claim was barred by the two-year statute of limitations, which had expired at least six years before the suit was filed, as confirmed by deposition testimony from the plaintiffs themselves.

**Patrick Reilly** (Pittsburgh, PA) obtained summary judgment for a bar/restaurant in a brain injury dram shop case. The plaintiff had spent the afternoon at our client's bar/restaurant before driving ten minutes to his local country club to continue celebrating his birthday. An hour and a half after he arrived at the club, he fell down the stairs and suffered a severe brain injury. His Blood Alcohol Content was a .239 legal/whole blood, roughly three times the legal limit. He had previously worked as a high-end custom wood finisher, but he is now unable to see color, among having other deficits. He is alleged to be fully disabled. After more than 20 depositions and despite varying reports as to what the plaintiff had to drink at our client's establishment, Patrick argued that the plaintiff showed no signs of visible intoxication prior to the last service of alcohol by our client. Our motion was strenuously opposed by the country club, who argued there was testimony that the plaintiff appeared intoxicated upon his arrival at the club—a mere ten minutes after having left our client's restaurant. The court agreed with Patrick's argument that this was insufficient evidence for a jury to find that the plaintiff was served alcohol by our client while visibly intoxicated. As such, all claims against our client were dismissed.

**Jennifer Roberts** and **Ian Glick** (both of Melville, NY) were successful on a motion to dismiss. The underlying case involved allegations that the plaintiff was assaulted and battered by the under-aged insured. Further, the plaintiff alleged negligence claims against the insured. Having inherited the case from prior counsel, Jennifer and Ian first argued that the answer should be amended to include a cause of action for the breach of the statute of limitations. Second, Jennifer and Ian argued that, not only were the assault/battery allegations untimely under the statute of limitations, but the cause of action for negligence also arose out of the assault/battery claim and, thus, should be subject to the same one-year limit. The court granted leave to amend the answer and also dismissed all claims against the insured, finding they all arose out of the assault/battery and the statute of limitations had expired.

**Mark Wellman** (New York, NY) successfully achieved affirmance of the trial court's decision to dismiss all claims against a property owner and designer in a New York labor law matter. The plaintiff was injured when he fell from a ladder stacked atop a bakers scaffold while performing renovation work on a four-story brownstone. The 16-foot ladder and the scaffold were provided by his employer—the general contractor—and set up at his

employer's discretion. The plaintiff filed an action against the owner of the property and the designer, alleging violations of various labor law claims, including labor law Sections 240(1), 241(6), and 200. The defendants' motion for summary judgment, seeking a dismissal of all claims, was filed after the plaintiff's depositions but before any of the defendants were deposed and with extensive discovery outstanding. The plaintiff opposed the motion and cross-moved to compel further discovery. The Supreme Court granted the defendants' motion for summary judgment, dismissing all claims, as the property owners qualified for the owner and two-family dwelling exception to the labor law. The decision also denied the plaintiff's cross-motion to compel. The designer was dismissed as not a proper labor law defendant. The trial court held that the defendants did not direct, supervise, or control any of the plaintiff's activities. The plaintiff's counsel appealed to the Second Department and relied on an affidavit from his client, stating the owner and designer were involved in almost every aspect of the construction and alteration work and were directing the work performed by the plaintiff. Therefore, according to the affidavit, the single-family home exception did not apply. After oral argument, the Appellate Division affirmed the trial court's decision with costs. ◆

**Brittany Bakshi | Thomas Brown | Michael Connolly | Ephraim Fink | Scott Gemberling**
**Kimberly House | Thomas Nardi | Brad Haas | Kevin Hexstall | Alicia Calaf | Walter Kawalec | Kevin McKeon**
**Tony Michetti | Aaron Moore | Claire McCudden | Lauren Purcell | James Cullen | Patrick Reilly**
**Jennifer Roberts | Ian Glick | Mark Wellman**


**Marshall Dennehey is proud to be a signator to Project LITIGATE – Lawyers Initiative To Improve next Gen Attorneys' Trial Experience – an initiative from the Pennsylvania Supreme Court that has been ratified by the Pennsylvania Conference of Civil Trial Judges.**

**Read more here.**

# ON THE PULSE

## Defense Verdicts and Successful Litigation Results (cont.)

## HEALTH CARE DEPARTMENT

**Sharon Campbell-Suplee** and **Jessica Wachstein** (both of Mount Laurel, NJ) successfully defended a claim for failure to diagnose infectious endocarditis after a periodontal procedure. The plaintiff, who was 56 years old at the time, was diagnosed with streptococcal endocarditis after undergoing periodontal surgery with our client. As a result, he required an aortic valve replacement and claimed he had to sell his business as he could no longer work. It was asserted at trial that our client, the periodontist who performed the surgery, and the co-defendant dentist failed to recognize signs and symptoms of potential infectious endocarditis in post-op interactions with the plaintiff. The claim also alleged that, had the plaintiff been diagnosed sooner, he would not have required open heart surgery and could have successfully been treated with antibiotics only.

After an eight-day trial, **Joseph Hoynoski** (King of Prussia, PA) secured a directed verdict on behalf of his client, an orthopedic surgeon, who allegedly breached the standard of care as it relates to his performance of a reverse right shoulder replacement. The court found that the plaintiff failed to establish that the surgery performed by the orthopedic surgeon was unnecessary, as alleged.

**Julia Klubenspies**, **David Tomeo** and **Victoria Pepe** (all of Roseland, NJ) were successful in defending against a motion to amend a complaint to add the CEO of a major New Jersey hospital under a theory that a certain provision in the New Jersey Administrative Code made the CEO responsible for ensuring that certain newborn metabolic test results were timely received and reported. Following extensive briefing by David and Tori and many discussions with Julia and opposing counsel, the motion was withdrawn just prior to oral argument.

**Kathleen Kramer** (Philadelphia, PA) and **Gabor Ovari** (King of Prussia, PA) obtained a defense verdict after a week-long jury trial in the Chester County Court of Common Pleas in a medical malpractice case. The plaintiff alleged she sustained a bowel perforation injury in the course of a robotic-laparoscopic hysterectomy performed by an obstetrician/gynecologist. During the course of the procedure, a general surgeon was called in to evaluate the bowel for injuries. There were no injuries found, so the procedure was completed, and the patient was discharged the following day. Two days later, the patient returned in critically ill condition, and a bowel perforation in the sigmoid colon was identified. The plaintiff alleged the health care providers negligently failed to detect the injury during the hysterectomy. After a week-long trial, the jury returned a verdict in favor of all defendants.

**Donna Modestine** (King of Prussia, PA) received a defense verdict in a high/low arbitration. She represented a surgeon in a case in which the plaintiff alleged a delay in the performance of an appendectomy for a perforated appendix. The plaintiff went on to require a prolonged hospitalization and two subsequent surgeries. Donna successfully argued that the delay in the performance of the surgery did not result in any of the plaintiff's alleged injuries. ▶

**Gary Samms** (King of Prussia, PA and Philadelphia, PA) and **Ryan Gannon** (Roseland, NJ) obtained a defense verdict in a complex medical malpractice case after a two-week jury trial in New Jersey. The elderly plaintiff claimed his posterior lumbar laminectomy for decompression was negligently performed. It was alleged that care failures in performing the surgery caused a loss of bowel and bladder control that ultimately required an irreversible colostomy and placement of a suprapubic catheter, as well as subsequent infections requiring extended medical intervention and rehabilitative care. The plaintiffs also made a claim for lack of informed consent for a physician's alleged failure to inform the plaintiff regarding the risks of the surgery, which was thrown out by the court at trial. Gary and Ryan were successful in obtaining favorable admissions from the plaintiff's expert during cross-examination, and the strength of their standard of care expert's testimony was convincing to the jury, resulting in a defense verdict.

**Gary Samms** also achieved a unanimous defense verdict in a hotly-contested wrongful death case that included allegations of failure to do a workup and diagnose lung cancer. The nine-day trial revolved around the care provided by the primary care and orthopedic physicians. The plaintiffs claimed the patient's symptoms were related to a Pancoast tumor that was undiagnosed, resulting in his death. Gary was able to establish with the jury the superiority of the defense experts by comparison. He also successfully explained there can be concurrent diseases and there was an objective reason for each and every one of the patient's symptoms.

In a medical malpractice matter where the jury deliberated until 10:15 p.m. on Halloween night, **Gary Samms** also received a unanimous defense verdict on behalf of an orthopedic and physical therapy practice. The plaintiff's demand was $5 million. The jury deliberated for approximately six hours and had to decide whether the injuries sustained by the plaintiff—detached retina, macular hole and other related eye injuries resulting in five surgeries in two years—were related to any negligence by his clients. Gary was able to prove, through aggressive cross-examination, that the injuries were not related to any negligence on the part of the practice, even though they occurred while the patient was being monitored and treated in physical therapy. Gary's paralegal, **Nancy Farnen** (Philadelphia, PA), was instrumental in the preparation and defense of the matter. ◆

**Sharon Campbell-Suplee | Jessica Wachstein | Joseph Hoynoski | Julia Klubenspies**
**David Tomeo | Victoria Pepe | Kathleen Kramer | Gabor Ovari | Donna Modestine | Gary Samms | Ryan Gannon**

# ON THE PULSE

## Defense Verdicts and Successful Litigation Results (cont.)

## PROFESSIONAL LIABILITY DEPARTMENT

**Adam Levy** and **Eduardo Ascolese** (both of Mount Laurel, NJ) won a motion dismissing all claims with prejudice against our client, an engineering design professional, in a case involving a major $18 million public roads project. Adam and Ed filed a motion to dismiss in lieu of an answer to the plaintiff's amended complaint. Using New Jersey's Fictitious Pleadings Rule, the plaintiff had attempted to add our client—an engineering design professional—as a defendant after the statute of limitations had run. Adam and Ed argued that the Fictitious Pleadings Rule was created to protect a diligent plaintiff who is aware of a cause of action against a defendant whose name was not known; however, the practice is unavailable to a plaintiff who, through due diligence, could have identified the client as a defendant before filing the complaint after the statue had run. The plaintiff's knowledge of other potential defendants, which he should have then attempted to identify before filing his complaint, was shown through his own deposition testimony, as cited in relation to the pleadings, and as taken prior to our client's entry into the case. The court agreed that the plaintiff's lack of due diligence was fatal and dismissed all claims as to our client, with prejudice.

**Carly Edman** (Pittsburgh, PA) obtained a dismissal, with prejudice, of all claims in a Dragonetti action in federal court in the Western District of Pennsylvania. Our clients, a family law attorney and her law firm, were sued after they filed a series of emergency motions on behalf of a mother embroiled in a contentious divorce. The emergency motions concerned the welfare of children and contained sensitive allegations relating to purported abuse. Following the disposition of these motions, the husband and his current partner sued our clients for wrongful use of civil proceedings, abuse of process, and defamation. In a motion to dismiss, Carly successfully argued that all claims should be dismissed. Notably, the court's opinion quoted Carly's brief in support directly for its analysis of the controlling cases. The court dismissed all claims against our clients with prejudice.

**Christin Kochel** (King of Prussia, PA) obtained a defense verdict after a bench trial in the Philadelphia Court of Common Pleas, which found the plaintiff did not meet the definition of an insured entitled to underinsured motorist (UIM) coverage. The case arose out of a May 13, 2018, motor vehicle accident in which the plaintiff was a back-seat passenger in a vehicle that was struck by the tortfeasor. After settling his bodily injury claim with the tortfeasor and with the underlying UIM carrier that insured the vehicle he was a passenger in, the plaintiff submitted a UIM claim seeking UIM benefits under his alleged sister's (Ms. Handy's) UIM policy with our client. As a result of the accident, the plaintiff claimed numerous injuries with years of extensive treatment, including bilateral total knee replacements and multiple lumbar injections. As to coverage, there was no dispute the plaintiff was living with Ms. Handy at the time of the accident. Therefore, the only issue was whether the plaintiff could show he was an insured and entitled to coverage by proving he was related to Ms. Handy by blood, adoption, or marriage to meet the definition of a "family member" under the policy. Ms. Handy testified during discovery and at trial that she is not related to the plaintiff by blood, adoption, or marriage. After determining the plaintiff had no evidence supporting his claim of being a family member of Ms. Handy, other than his self-serving testimony, the judge found the plaintiff failed to meet his burden of proof and entered a defense verdict for our client. The plaintiff did not appeal the court's decision.

**Christin Kochel also** obtained an order granting her motion to dismiss for failure to allege facts supporting a bad faith claim pursuant to Pennsylvania and federal case law. The case arose out of an uninsured motorist (UM) claim from a January 2, 2023, motor vehicle accident involving the plaintiff and a phantom vehicle. As a result of the accident, the plaintiff averred that he sustained various injuries, including to his head, neck, back, both knees, and left shoulder. The alleged tortfeasor fled the scene, so there was no credit. The plaintiff asserted an uninsured motorist benefit claim under his insurer's policy, with $50,000 in UM benefits and with no stacking. In the complaint, the plaintiff asserted claims for breach of contract and bad faith. After Christin filed a motion to dismiss the bad faith count for failing to allege facts specific to support such a claim, the court agreed and dismissed the bad faith count, with prejudice. Shortly after the decision, the plaintiff settled his UM claim for a little over $8,000.

**Christopher Reeser** and **Coryn Hubbert** (both of Harrisburg, PA) won summary judgment in the Middle District of Pennsylvania on behalf of a highway construction company in a case that involved the alleged negligent installation of the end terminal of a guiderail on Interstate 81. The plaintiff's vehicle struck the end terminal, which then went through the floor board of the plaintiff's vehicle and severely injured his foot. Chris and Coryn argued that since the guiderail system was installed in 1999 through a contract with PennDot and the accident occurred in 2020, the claims against the contractor were barred by statute of repose. The court agreed that all elements of the statute of repose defense were met and dismissed all claims against the contractor.

**Dante Rohr** (Orlando, FL) was successful in having the court affirm an arbitrator's decision in a construction defect case involving the design and construction of a $13 million custom home. The owners' direct claims against the general contractor and our client, the window and door supplier and installer, were arbitrated. The owners claimed the window company misrepresented the fitness of the windows and doors for use in Florida's coastal environment. The custom wood windows and doors, with multi-point locking mechanisms, split and the locks froze in the humid, salty air environment. Dante argued the windows and doors were specified by the owner and architect and that our client performed proper due diligence by visiting the manufacturing facility and consulting with the manufacturer's engineers with regard to the application. The arbitrator found no liability as to our client because there was no evidence it was negligent in its recommendation of the product, as the product meet the very precise criteria specified by the owners and architect, and our client performed proper due diligence to ensure the product met those criteria.

**Lee Durivage** and **Alexandra Freeman** (both of Philadelphia, PA) obtained a defense verdict on behalf of the owners of a for-profit college following a three-day AAA arbitration before a panel of three arbitrators. The plaintiff was the former CFO of a college, who sought approximately $1 million in damages for unpaid salary, severance, and return of money he provided to the college after his termination from employment. Following the three-day hearing and extensive post-arbitration briefing, the panel determined there was no liability to the two owners in either their official or individual capacities.

**Estelle McGrath** (Pittsburgh, PA) was successful in having a federal district judge from the Western District of Pennsylvania granted our motion to dismiss with prejudice a putative class action lawsuit in a case where we represented a child care center. The plaintiffs were nine minority employees who were involuntarily furloughed in the fall of 2020. They filed suit, alleging their employment was terminated in violation of Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Family Medical Leave Act, the Pennsylvania Human Relations Act, the Wage Payment and Collection Law, and Section 1981 of the Civil Rights Act. The court agreed with Estelle's arguments, finding that the plaintiffs' class claims were not timely exhausted. The

court disagreed with the plaintiffs' arguments that their charges gave notice of their putative class claims because each charge only focused on the individual complainant's alleged personal disparate treatment. The court also found that the plaintiffs were not entitled to equitable tolling as they did not exercise reasonable diligence in obtaining essential information bearing on their claim. Accordingly, the court dismissed the entire complaint with prejudice, finding no need to address the other bases for dismissal or our client's request to strike the class action allegations.

**John Mueller** and **Michelle Michael** (both of Mount Laurel, NJ) recently completed a two-week trial in the Superior Court of New Jersey and obtained a "no cause" verdict in an employment law case. The plaintiff, an employee of a New Jersey State entity, asserted violations of the Contentious Employee Protection Act (CEPA). According to the plaintiff, after reporting purported deficiencies with an environmental permit, he was subjected to retaliation and a hostile work environment. We successfully argued that the plaintiff did not articulate a violation of law or public policy, nor did he prove that the various employment actions he received created a hostile work environment or were even caused by the alleged whistleblowing.

**Jeffrey Chomko** (Philadelphia, PA) obtained dismissal of a subrogation case involving a claim brought by an E&O insurer on behalf of an insurance agency against a lighting distributor due to its failure to procure adequate insurance coverage. Jeff effectively argued that the plaintiff/subrogor lacked standing to proceed against the distributor as there was no privity among the parties or any duty owed by the distributor to the subrogors. The case was withdrawn on preliminary objections.

**Candace Edgar** (Harrisburg, PA) prevailed in the U.S. Court of Appeals for the Third Circuit in a precedential decision upholding application of a household vehicle exclusion. A fifteen-year-old was seriously injured while riding an uninsured dirt bike on private property. After recovering the bodily injury limit of the tortfeasor's policy, he sought to recover UIM benefits under two household policies. Coverage was not excluded under the one policy, so the carrier paid the policy's UIM limit. However, the other household policy underwritten by the same carrier contained a household vehicle exclusion, which excluded UIM benefits under the facts of the accident, so coverage was denied. The carrier then filed a declaratory judgment action in the Eastern District Court of Pennsylvania, but lost because the District Court concluded that the household vehicle exclusion acted as an impermissible de facto waiver of stacking as a result of the carrier paying UIM benefits under the other household policy. On appeal, a unanimous panel of the Third Circuit vacated the District Court's order, holding in a precedential opinion that the household vehicle exclusion was valid and enforceable because the dirt bike involved in the underlying accident was uninsured.

**Christopher Woodward** and **Allison Krupp** (both of Harrisburg, PA) secured dismissal of a Pennsylvania state agency from a lawsuit alleging the agency owed statutory coverage of $1 million for an underlying medical malpractice claim. The case has broader implications for similar claims in that the decision reaffirmed the agency's interpretation of its statutory duties—or lack thereof, as the case may be. The case originated in the Commonwealth Court and was argued before a panel of three judges of that court.

**Matthew Flanagan** (Melville, NY and New York, NY) and **Jamie Sanderson** (New York, NY) secured a decision granting our motion to dismiss in full in an attorney malpractice matter. The plaintiff and daughter of the co-defendants sued her parents and our client for breach of contract, breach of fiduciary duty denominated as promissory estoppel, and constructive trust and sought damages of $800,000. The co-defendants allegedly purchased a property for the plaintiff to live and work in and agreed to deed the property to the plaintiff once she paid the mortgage in full. Our client created a family trust for the family, naming the plaintiff as trustee, in which the property would be transferred to the plaintiff following the death of both parents. However,

following a family dispute, the co-defendants replaced the plaintiff as trustee with our client. Upon the request of the co-defendants and in accordance with the terms of the trust, our client transferred the house to another beneficiary. We filed a motion to dismiss on all counts which the court granted in full.

**Matthew Flanagan** also successfully defended an attorney from malpractice claims stemming from a missed court appearance which resulted in a default. Matt filed a pre-answer motion to dismiss, arguing the complaint failed to allege that the outcome of the underlying proceeding would have been different but for the attorney's alleged malpractice. He also argued that the damages which the plaintiff sought—including emotional distress and pain and suffering—are not recoverable under New York law in a legal malpractice action.

**Aaron Moore** (Philadelphia, PA and Wilmington, DE) obtained a dismissal of claims brought derivatively and directly by a corporation, including aiding and abetting, breach of fiduciary duty, and tortious interference with contract. The claims were brought against our client, an out-of-state attorney who previously represented the corporation and its former director. The court granted our motion to dismiss, concluding the plaintiffs failed to sufficiently allege facts that would confer personal jurisdiction over the attorney under a conspiracy theory.

**Aaron Moore** also obtained dismissal of wrongful use of civil proceedings claims brought against two attorneys who were alleged to have wrongfully prosecuted a professional negligence claim against the plaintiff, a real estate agent. The plaintiff would not accept any settlement that was less than policy limits. After five years of litigation, the court granted Aaron's summary judgment motion, concluding the plaintiff failed to adduce facts that would reflect that the attorneys prosecuted the underlying action in a grossly negligent manner, or without probable cause. The court also held the plaintiff was unable to demonstrate that the underlying lawsuit was prosecuted for an improper purpose.

**Dante Rohr** (Orlando, FL) won a motion to dismiss in a case arising from our client's representation of a plaintiff in a criminal matter. The plaintiff claimed that, due to the attorney's negligence in failing to notify him of his pretrial hearing, he was incarcerated for 437 days based on his failure to appear at the hearing, resulting in the revocation of his bond. The court granted Dante's motion to dismiss because the plaintiff could not establish a necessary element of his claim—actual innocence. Although the court released the plaintiff based on a showing that counsel failed to notify him of the hearing, thereby exonerating him from the failure to appear, the plaintiff could not meet the actual innocence element. Therefore, the State entered a *nolle prosequi* and dropped the case.

**John "Jack" Slimm** (Mount Laurel, NJ) was successful at the trial and appellate levels in a complex and high-profile legal malpractice action with $10 million in damages on the line. The plaintiffs, a group of entities created for the estate planning of a married couple (now deceased), appealed the trial court's decision to deny their request to extend the time for discovery and to dismiss their claims against several defendants, including lawyers and law firms. The plaintiffs accused these defendants of negligence, breach of trust, misuse of funds, and legal malpractice related to a previous settlement and the handling of family business matters. The court found the plaintiffs did not provide the necessary evidence or expert testimony to support their legal malpractice claims. On appeal, the plaintiffs argued the court used the wrong standard when denying their request to extend discovery and claimed they had valid reasons for needing more time and the court unfairly dismissed their claims. However, the appeals court reviewed the trial court's actions and found no mistake in how the court handled the case. In agreement with Jack, the appeals court affirmed the trial court's ruling, emphasizing that the plaintiffs' inability to meet court requirements and present strong claims warranted the dismissal of their case. ▶

**Jack Slimm** was again successful at the trial and appellate levels in another high-profile legal malpractice action after a decade of litigation in various courts stemming from a judgment a multinational conglomerate obtained against the plaintiffs in which litigation ensued over debt collection. The plaintiffs alleged, as a result of the statements and arguments made by the defendant attorneys in the underlying litigation regarding the debt, the attorneys committed fraud and misrepresentation that led to the plaintiffs' damages, which they claimed were well in excess of $10 million. Jack argued the assignment agreement actually reduced the amount owed to the corporation and asked the court to dismiss the case, contending that his client was protected by legal privilege, the statute of limitations had passed, and it had no legal duty to the plaintiffs. The trial court agreed to dismiss the case, finding that the plaintiffs' claims were not supported by evidence. On appeal, the court once again agreed with Jack and upheld the decision, rejecting the plaintiffs' arguments. The Appellate Division found that our clients owed no duty to the plaintiff-debtors as non-clients since the attorneys' alleged misrepresentations were made during adversarial litigation and, thus, were not intended to induce reasonable reliance by a specific non-client. In addition, the Appellate Division rejected the plaintiffs' reliance on the Rules of Professional Conduct (RPC) to sustain their cause of action since in New Jersey a violation of the RPC, standing alone, does not create a cause of action for damages. Further, the court rejected the plaintiffs' request to permit malpractice claims by non-clients in the presence of fraud, collusion, or malicious acts. This decision is extremely important to the trial bar and provides attorneys with a level of protection/immunity in connection with statements and arguments they make as adversaries in litigation.

**Dante Rohr** (Orlando, FL) obtained dismissal in a data breach class action arising out of a ransomware attack against a hospital network. The attack compromised the personal information of over 90,000 patients. Class actions were filed in state and federal court. The federal court matters were dismissed for lack of jurisdiction. In state court, Dante's motion to dismiss was granted for lack of standing. The state court also granted our motion as to each cause of action for failure to state a claim on the basis that no implied contract existed with the entities for privacy protection and the negligence claims were not available under Florida law.

**Michael Salvati**, **Vlada Tasich** and **David Shannon** (all in Philadelphia, PA) prevailed on a motion to dismiss in a data breach class action pending in the Eastern District of Pennsylvania. A group of sixteen named plaintiffs filed a class action alleging a hacker had stolen the personal information of over one million individuals nationwide. Mike, Vlada, and Dave represented the debt collector whose computer servers were hacked. The plaintiffs' theories against our client were expansive and novel, including not just a negligent failure to protect the plaintiffs' data, but also breach of implied contract, invasion of privacy, negligence per se, and various state consumer protection statutes. Mike, Vlada, and Dave challenged the plaintiffs' overreaching, and succeeded in having eight of the named plaintiffs dismissed for lack of standing and 15 of the plaintiffs' 17 causes of action dismissed with prejudice.

**Scott Dunlop** and **Nathan Marinkovich** (both of Pittsburgh, PA) obtained judgment in favor of their municipal client in a federal civil rights suit filed by a former volunteer firefighter (also a sitting city councilman). The plaintiff theorized that his arrest by a county detective on charges of mishandling fire company funds had been orchestrated through the malevolence of the City's fire chief, who was alleged to have provided the detective with false information in order to retaliate against the plaintiff based on political rivalry within the fire department. The case was dismissed by a district judge, who granted a Rule 12 motion to dismiss, and, in his opinion, quoted a segment of the argument contained in our brief with approval.

**Christian Marquis** (Pittsburgh, PA) obtained dismissal of an enforcement claim against a municipal township. The case involved claims brought by property owners who sought the township to enforce its zoning ordinance against a cellular phone carrier that allegedly constructed generators on adjacent property in violation of a

setback requirement of the township's zoning ordinance. The court sustained the township's preliminary objections, accepting Christian's argument that a local municipality is generally under no duty to enforce its zoning ordinance. Furthermore, the court determined that the claims sounded in mandamus, which have been held to be improper based on precedent. Therefore, the court correctly held the plaintiffs were unable to utilize 53 P.S. § 10617 of the Pennsylvania Municipalities Planning Code to compel the township to enforce its zoning ordinance against third parties because this section did not permit such a cause of action against a municipality.

**Aaron Moore** (Philadelphia, PA and Wilmington, DE) successfully persuaded a plaintiff to voluntarily discontinue her claims against a real estate agent. The plaintiff, a recent homebuyer, sued the seller and the seller's agent, claiming the agent should have known of material defects in the plumbing system at the property. The agent's preliminary objections pointed out that in order to prevail against a real estate agent for non-disclosure of a material defect, the plaintiff must be able to prove the agent was actually aware of the material defect, which the agent failed to disclose to the buyer. Upon receiving the agent's preliminary objections to her complaint, the plaintiff voluntarily discontinued her claims.

**Christopher Conrad** and **Jacob Gilboy** (both of Harrisburg, PA) achieved dismissal of a suit against a school district by way of preliminary objections. The case involved allegations that the district deprived the plaintiffs of certain educational rights, premised on procedural due process violations, negligence, and subornation of perjury. Preliminary objections were filed to the plaintiffs' original complaint on both procedural and substantive grounds. The plaintiffs were granted leave to amend their complaint to correct their deficiencies. Following the filing of an amended complaint and additional preliminary objections on similar grounds, argument was held. As a result, the court agreed with Chris and Jake and dismissed the plaintiffs' amended complaint with prejudice and had the case marked as closed.

**William McPartland** and **Rachel Insalaco** (both of Scranton, PA) obtained summary judgment on behalf of two school districts in a matter brought by various plaintiffs against a consortium of eight school districts and four of its sending school districts. The plaintiffs had asserted claims under Title IX, the 14th Amendment, and Section 8542(b)(9) of the Pennsylvania Political Subdivision Tort Claims Act based on the sexual abuse by an automotive technology instructor. While permitting some claims to proceed against the consortium, the court dismissed all claims against the sending school districts on the grounds that: (1) the plaintiffs failed to demonstrate that any individual at any of the defendant-school districts had actual knowledge of the automotive technology instructor's conduct, and (2) the instructor was not an employee, independent contractor, or ostensible agent of any school district by virtue of his employment by the consortium. ◆

**Adam Levy | Eduardo Ascolese | Carly Edman | Christin Kochel | Christopher Reeser | Coryn Hubbert**
**Dante Rohr | Lee Durivage | Alexandra Freeman | Estelle McGrath | John Mueller | Michelle Michael**
**Jeffrey Chomko | Candace Edgar | Christopher Woodward | Allison Krupp | Matthew Flanagan**
**Jamie Sanderson | Aaron Moore | Dante Rohr | John "Jack" Slimm | Michael Salvat | Vlada Tasich**
**David Shannon | Scott Dunlop | Nathan Marinkovich | Christian Marquis | Christopher Conrad | Jacob Gilboy**
**William McPartland | Rachel Insalaco**

# ON THE PULSE

## Defense Verdicts and Successful Litigation Results (cont.)

## WORKERS' COMPENSATION DEPARTMENT

**Michael Duffy** (King of Prussia, PA) received a favorable decision where the workers' compensation judge granted our termination petition and denied the claimant's Petition for Penalties and Petition to Review Utilization Review Determination. The employer had accepted a right middle finger sprain. In prior litigation, the claimant's review petition seeking to expand this injury was denied. In the pending termination petition, the judge found the claimant not credible with regard to his ongoing complaints. The claimant alleged to be bed bound, and the judge opined that this allegation as a result of a finger sprain was absurd. The penalty petition related to payment of medical bills, and the judge found that, since the medical bills were related to the hand and not the finger, the penalty was denied. He also denied the claimant's Petition to Review the Utilization Review Determination, finding that more than 185 physical therapy visits were not reasonable for a finger sprain and, also, that the opinions of the reviewer were corroborated by the employer's expert's opinion of full recovery.

**David Levine** and **William Murphy** (both of Roseland, NJ) obtained orders for dismissal, with prejudice, where four New Jersey medical providers alleged they were entitled to additional monies for medical treatment provided in New Jersey to a New York resident. The underlying accident involved a laborer who resided in New York, worked in New York, and sustained the injuries in New York. Four medical providers filed medical provider claims against the employer in New Jersey, seeking $811,260.24 for treatment rendered in relation to this accident. David and Bill filed motions to dismiss these claims for lack of jurisdiction, asserting there were insufficient contacts with the state of New Jersey to establish jurisdiction. In their responses, the treatment providers argued that performing treatment in New Jersey was sufficient to establish jurisdiction. The judge of compensation ruled in favor of the employer, dismissing the four medical providers' applications with prejudice.

**William Murphy** (Roseland, NJ) was able to permanently close a matter involving a serious shoulder injury with a Section 20 resolution. In New Jersey, Section 20 settlements (full and final) are only approved in a small number of limited cases, including denied claims, minimal treatment, dispute as to whether there is any permanent disability, and the like. In this case, the petitioner sustained significant injuries to her shoulder, with an MRI showing tearing. The petitioner ultimately underwent two shoulder surgeries, and our own permanency expert found permanent disability of 7.5% partial total. Based upon wage statements we obtained, we asserted that any permanency award should be paid at a reduced rate—making the monetary award about $40,000 less than what would be paid at the full chart rate. When the workers' compensation judge attempted to have the parties settle for a higher percentage of disability—to make up for the lower rate—we indicated our intent to take the matter to trial. In order to avoid a trial, the judge indicated he would approve a Section 20 settlement. Thus, in an admitted claim involving serious injuries, two surgeries and our own doctor conceding permanency, we were able to close the matter permanently with a Section 20 resolution.

**Tony Natale** (King of Prussia, PA) successfully defended a nationwide tight-tolerance manufacturer serving OEMs in the aerospace, defense, semiconductor, and high-tech industries. The case involved a Claim Petition with complex injury allegations and a disturbing initial judgment on the pleadings, since the employer failed to timely answer the Claim Petition. When Tony became involved, he was able to limit the judgment on the pleadings to the date that a timely answer could have been filed. Ongoing disability in the case turned on the credibility of the claimant's medical evidence. The claimant presented an expert witness who opined that the claimant's virtual lifetime of serious low back and neck abnormalities were "aggravated" by his having sat down at work after feeling dizzy. Tony presented rebuttal expert evidence from a well-respected orthopedic surgeon demonstrating no architectural change in the claimant's lumbar spine or cervical spine due to the alleged injury event and no ongoing or acute problems. The court accepted the defense evidence as credible, and the claimant was found to be without ongoing disability and fully recovered from any condition subject to the former judgment on the pleadings.

**Tony Natale** also successfully defended litigation surrounding a penalty petition which alleged the insurer unilaterally suspended indemnity benefits on an open and accepted work injury claim. Tony presented complex evidence from the insurer that Pennsylvania's Workers' Compensation Automation and Integration System (WCAIS) electronic system has internal problems which result in unwanted and unrequested claim documents being issued when simple data changes are made to an open claim. Tony was able to prove that the carrier properly suspended the claim in the system and any and all updated "acceptance" documents filed by the WCAIS system were on the basis of a faulty data system. Moreover, the sequence of form filings in the electronic space (as opposed to the paper filings) conclusively demonstrated timely filing of all documents and no unilateral suspension. The penalty petition was dismissed in its entirety.

**Andrea Rock** (Philadelphia, PA) secured a decision granting a termination petition. Andrea presented the deposition testimony of the employer's Board-certified orthopedic surgeon. The workers' compensation judge found this expert's testimony more credible than the claimant's treating doctor, a Board-certified family doctor. Thus, the claimant's benefits were terminated as of the date of this doctor's medical exam, just six months after her original injury.

**Kacey Wiedt** (Harrisburg, PA) secured a decision denying the claimant wage loss benefits for an accepted work injury. The claimant sustained a left wrist contusion and extensor carpi ulnaris (ECU) peri-tendonitis injury when a 50-pound lid crushed his left arm in the course and scope of his employment. The claimant alleged that, as a result of the injury, he was unable to perform light-duty work as a system operator. Through medical evidence, Kacey was able to establish that the claimant had non-work-related medical issues unrelated to the accepted work injury that caused him to be out of work. The workers' compensation judge found the defendant's expert testimony more credible than the claimant's medical expert. Wage loss benefits were denied, resulting in a successful outcome for the defendant. ◆

**Michael Duffy | David Levine | William Murphy | Tony Natale**
**Andrea Rock | Kacey Wiedt**

# ON THE PULSE

## Other Notable Achievements

## RECOGNITION

We're proud to announce that six attorneys from our Wilmington office have been selected "Top Lawyers" by *Delaware Today Magazine*. Each year, the publication invites all practicing attorneys in the Delaware Bar to participate in a peer nomination process to select Top Lawyers in numerous practice areas across the state. Congratulations to:




Sarah Brannan Cole | Bradley Goewert | Thomas Marcoz, Jr. | Lorenza Wolhar


Aaron Moore | Keri Morris-Johnston

## PUBLISHED ARTICLES


**November 18, 2024** – *The Legal Intelligencer* published "What Are Forbidden Sexual Relations With Clients?," by **Alesia Sulock's** and **Josh J.T. Byrne** (both of Philadelphia, PA). You can read their article **here**.

**November 14, 2024** – **A. Judd Woytek's** (King of Prussia, PA) article "Goodbye 'Yellow Freight' Road?" was published in *The Legal Intelligencer*. You can read his article **here**.

**November 11, 2024** – **Michele Punturi** (Philadelphia, PA) provided commentary in the article, "Workers' Comp Making Gains in Attracting Claims Talent," appearing in the November issue of *CLM Magazine*. The article discusses Rising Medical Solution's benchmark study concerning the workers' compensation sector. Read **here**.


**October 29, 2024** – "Attorney Well-Being Doesn't Have to Be Spooky: Steps Attorneys Can Take to Support Mental, Emotional and Physical Health," by **Dana Gittleman** and **Alesia Sulock** (both of Philadelphia, PA) was published by PLUS Blog. You can read their article **here**.

**October 15, 2024** – *The Legal Intelligencer* published "How Do You Define Success? Four Women Lawyers Share Their Thoughts," authored by **Josie Scanlan** (Roseland, NJ). You can read her article **here**.

**October 10, 2024** – **Gregory Graham's** (Pittsburgh, PA) article, "Don't Reinvent the Wheel: Approaching Gen AI Usage in Litigation," was published in *The Legal Intelligencer*. You can read his article **here**.

**Fall 2024** – **James Cullen** (Pittsburgh, PA) authored the article, "Grossly Underestimated: Exploring Gross Negligence and Liability Waivers in Pennsylvania Premises Liability Law," which was published in the Fall 2024 issue of *Pulse*, the publication of the Pennsylvania Association of Mutual Insurance Companies. You can read Jim's article **here**.

**September 20, 2024** – **Kimberly Berman** (Fort Lauderdale, FL) authored "The 'Sunshine' State: New Comparative Negligence Jury Instructions Following the Adoption of House Bill 837," which appeared in the *Daily Business Review*. Read it **here**.


**September 18, 2024** – **Alesia Sulock's** and **Josh J.T. Byrne's** (both of Philadelphia, PA) article "Socially Responsible Lawyers: Why You Need to Understand Social Media to Competently Represent Your Clients (Part 1)" was published in *The Legal Intelligencer*. You can read their article **here**.

**September 13, 2024** – **Heather Carbone** (Jacksonville, FL) authored an article in the *Jacksonville Business Journal* about the potential impact of Florida's new heat exposure law on workers' compensation in the state. Read "Florida's New Heat Exposure Law May Impact Workers' Comp" **here**.

**September 12, 2024** – **Michele Punturi** (Philadelphia, PA) authored the article, "6 Key Workers' Compensation Safety and Data Analysis Considerations," for *Risk & Insurance*. Read the article **here**.

**September 2024** – **Rachel Insalaco's** (Scranton, PA) article, "Let the Sunshine In: Exploring the Impact of Pennsylvania's Sunshine Act on School Board Decision-Making," was published in *Counterpoint*. You can read Rachel's article **here**.

**September 5, 2024** – *The Legal Intelligencer* published **Matthew Keris's** (Scranton, PA) article "Say 'Goodbye' to Medical Negligence Cases as We Know Them." You can read his article **here**.


**August 20, 2024** – **Christopher Woodward** and **Allison Krupp** (both of Harrisburg, PA) co-authored the article, "'Regular Use Exclusions' Stand: Pa. Supreme Court's Latest Ruling Post-'Gallagher'," appearing in *The Legal Intelligencer's* Insurance Law Supplement. Read **here**.

**August 9, 2024** – *The Legal Intelligencer* published **Michael McMaster's** (Philadelphia, PA) article "AI in Workers' Compensation: Are We There Yet?" You can read Mike's article **here**.

**August 2024** – **Jon Cross** (Philadelphia, PA) was published in Insurance Law Global's *The Sports Bulletin*, 3rd Edition. Jon wrote on the topic "'No-duty' Rule Is Key to the Successful Defense of Sports Injury Lawsuits in Pennsylvania, U.S.A." You can read his article **here**.



**August 2024** – **Alicia Caridi** (Tampa, FL), **Sara Mazzolla** (Roseland, NJ) and **Carla Candelario** (Tampa, FL) were also published in Insurance Law Global's *The Sports Bulletin*, 3rd Edition. Alicia, Sara and Carla discussed "Negotiating the Call: What the Americans With Disabilities Act May Demonstrate as Trends in Finding the Line Between Equal Participation and Safety." You can read their article **here**.

## SPEAKING ENGAGEMENTS

**November 25, 2024** – **John "Jack" Slimm** (Mount Laurel, NJ) presented along with an all-star lineup of some of the most experienced and respected trial attorneys and jurists in the region at the New Jersey State Bar Association's Regional Trial Bootcamp. Presenters walked attendees through the framework of a trial by conducting the comprehensive trial of Al Capone for the St. Valentine's Day Massacre.

**November 20, 2024** – **Gregory Graham** (Pittsburgh, PA) presented "Searching for AI: Case Management Tips for Existing Litigation's AI Issues" for the Pennsylvania Defense Institute.

On **November 19, 2024** – **Scott Dunlop** (Pittsburgh, PA) presented "Local Government Immunity in Pennsylvania—A Study of the Political Subdivision Tort Claims Act," sponsored by PCoRP (The Pennsylvania Counties Risk Pool), to brokers and producers.

**November 14, 2024** – **Teresa Sirianni** (Pittsburgh, PA) presented on a panel, "A Primer on Pursuing and Defending Remedies and Damages," at the annual Allegheny County Bar Association Labor and Employment Law Symposium. Teresa, along with Colleen Ramage, Esq. of Ramage Lykos, LLC and federal Magistrate Judge Kelly Their, discussed the legal and equitable forms of relief that are available in the vast area of employment law, strategic concerns to consider when pursuing or defending your side of the case and practical wisdom that can only come from a view from the bench.


**November 14, 2024** – **Sean Greenwalt** (Tampa, FL) and **Alexander Lloret** (Orlando, FL) hosted a webinar with the Central Florida CPCU Society. "First Party Auto and Property Year in Review: 2024 Case Law Impact on Claims Investigation and Evaluation" focused on the impact of recent Florida legislative and case law results on first-party auto and fire insurance claim investigations and evaluations.

**October 31, 2024** – **Kimberly Berman** (Fort Lauderdale, FL) was a guest speaker at the Miami-Dade Bar Association Appellate Court Committee's CLE program "Advanced Brief Writing."

**October 29, 2024** – **Jeffrey Rapattoni** (Mount Laurel, NJ) presented the webinar "Legal/Ethics Update" at the Ohio Chapter of International Association of Special Investigation Units Fall Training.


**October 22, 2024** – **Matthew Burdalski** and **Ariel Brownstein** (both of Mount Laurel, NJ) presented "Cracking the Case: Investigating Chiropractic Care from Record Review to Examination Under Oath" at the New Jersey Special Investigators Association's 33rd annual seminar.

**October 18, 2024** – **Linda Wagner Farrell** (Jacksonville, FL) was a panelist for two "evidence" discussions at the Florida Office of Judges of Compensation Claims' OJCC Work Comp Academy. The program is aimed to educate young lawyers or lawyers new to the practice area.

**October 18, 2024** – **Christopher Conrad** (Harrisburg, PA) co-presented with Kathleen Metcalfe, Esquire, managing attorney for special education at Raffaele & Associates, "From Complaint to Appeal and Beyond: Litigating a Special Education Due Process Case," at the Pennsylvania Bar Institute's Exceptional Children Conference 2024.

**October 16, 2024** – **Robert Fitzgerald** (Mount Laurel, NJ) co-presented "Know When to Hold 'em, When to Fold 'em! Best Bets to Limit Exposure in Claims Management" at the National Workers' Compensation and Disability Conference.


**October 9, 2024** – **Dana Gittleman** (Philadelphia, PA) and **Estelle McGrath** (Pittsburgh, PA) co-presented at the Pittsburgh Insurance Club's annual Pittsburgh I-Day. Dana and Estelle presented "Risk Management for Insurance Agents and Brokers: Best Practices to Avoid Liability."

**October 8, 2024** – **Matthew Keris** (Scranton, PA) was a featured speaker at the 2024 American Society for Healthcare Risk Management Annual Conference in San Diego. Matt served as a panelist for "Multi-Disciplinary Evaluation of Opportunities and Risks with Artificial Intelligence (AI) in Health Care," "Recommendations to Safely Use AI in Health Care," and "Public Perception of 'Big Medicine' Requires New Jury Considerations."


**October 4, 2024** – **Linda Farrell** and **Heather Carbone** (both of Jacksonville, FL) made presentations at the Northeast Florida International Association of Rehabilitation Professionals 2024 Fall Forum. Linda's presented "Medical-Marijuana-Workers' Compensation," and Heather was part of a panel that discussed "Legal Updates/Changes Impacting Florida."

**October 3, 2024** – **Jeffrey Rapattoni** (Mount Laurel, NJ) delivered two presentations at the National Insurance Crime Bureau's Medical & Work Comp Fraud Conference in Chicago: "Ethics and the Investigator" and "Measuring an SIU Program's Success In an Ever-Changing Environment."


**September 26, 2024** – **Dana Gittleman** and **Alesia Sulock** (both of Philadelphia, PA) participated in the panel discussion, "Attorney Well-Being as a Matter of Professional Competence," at the Professional Liability Defense Federation Annual Meeting.

**September 26, 2024** – **Christopher Conrad** (Harrisburg, PA) co-presented "UNcivil Discourse: The 1st Amendment and Regulating Speech at Public School Board Meetings" at the Professional Liability Defense Federation annual meeting.

On **September 20, 2024** – **Josh J.T. Byrne** (Philadelphia, PA) participated in a panel discussion, "Emergency Planning for Attorneys," at the annual Philadelphia Bar Association Bench-Bar Conference.

**September 19, 2024** – **Lindsay McCormick** (Tampa, FL) was a speaker at the annual Claims and Litigation Management Alliance Construction Conference. Lindsay co-presented "Ethics Escape Room 2.0: Construction Defect Style."

**September 19, 2024** – **Darren Newberry** (Pittsburgh, PA) joined a panel of insurance professionals to present the webinar, "Trends in Oil and Gas Pipeline, Wellsite and Energy Production Injury Litigation," produced by AM Best Information Services.

**September 12, 2024** – **Anthony Natale** (King of Prussia, PA) co-presented "Average Weekly Wage" at the Pennsylvania Bar Association's Workers' Compensation Fall Section Meeting in Hershey, PA.

**September 10, 2024** – **Jon Cross** (Philadelphia, PA) co-presented "Audit Your Park to Lower Your Premiums" at the International Adventure & Trampoline Park Association annual conference.

**September 10, 2024** – **Matthew Flanagan** (New York, NY and Melville, NY) was one of the guest speakers at the New York State Bar Association's statewide "Risk Management for Lawyers" webinar. The issues he addressed included the joint and several liability of attorneys for malpractice under New York law; intra-firm relationships of attorneys; the supervisory obligations of lawyers under the Rules of Professional Conduct; and file retention requirements for attorneys under New York law.


**September 5, 2024** – **James Cole** (Philadelphia, PA) and **Christopher Block** (Roseland, NJ) once again served as faculty at the Claims and Litigation Management Alliance annual Claims College. Jim served as faculty for the School of Property Claims, and Chris served as faculty for the School of Casualty Claims. In their respective curriculums, they shared strategies and tools that claims professionals can apply to help them better manage their case files.

**August 26, 2024** – **Jeffrey Rapattoni** (Mount Laurel, NJ) participated in three seminars at the 2024 International Association of Special Investigation Unites Conference. He presented "SIU Ethics," "Building a Better Major Case: From Investigation to Suit," and "Legal Updates."

**August 16, 2024** – **Megan Nelson** (Orlando, FL), who is also a registered nurse, presented "Tort Reform: Where Do We Go From Here?" at the Florida Society for Healthcare Risk Management and Patient Safety 44th Annual Meeting and Education Conference.

**August 5, 2024** – **Josh J.T. Byrne** (Philadelphia, PA) was a panelist for the Philadelphia Bar Association Family Law Section webinar "Suicide Prevention and the 302 Process: Training for Family Law Practitioners."

**August 1, 2024** – **Michele Punturi** (Philadelphia, PA) was a co-presenter in "The Dream Team Approach to WC Case Management," which was part of Claims and Litigation Management Alliance Workers' Comp Week, a five-part series focusing on the latest trends and hot topics in workers' compensation.

**August 1, 2024** – **A.C. Nash** (Fort Lauderdale, FL) presented "DE&I – Your Ally in the War for Talent" at the 2024 Florida Risk Management Society Educational Conference. This session focused on inclusivity, why it is important, and how it can be a key differentiator in attracting and retaining talent within an organization.

**August 1, 2024** – **Scott Gemberling** (Philadelphia, PA) co-presented the webinar "Dram Shop, The Toxicology and the Law" for the National Academy of Continuing Legal Education.

**July 31, 2024** – **Anthony Williott** (Pittsburgh, PA) presented "Nursing Homes vs. Medical Malpractice Litigation" at the National Business Institute Nursing Home Failure of Care Litigation 2024 webinar.

**July 30, 2024** – **Mohamed Bakry** (Philadelphia, PA) co-presented "DEI Policies in the Crosshairs: A Discussion of *Students for Fair Admissions v. Harvard* and Its Impact on DEI Initiatives in the Private Sector" at the Federation of Defense & Corporate Counsel annual meeting in Toronto.




**July 22, 2024** – **Harold Moroknek** (Westchester, NY), with participation from **Scott Taffet** (Westchester, NY), **Peggy Smith Bush** and **Thomas Brown** (both in Orlando, FL), presented "Mock Trial, Trial Run, Tabletop Role Playing – GUILTY or NOT?" at the 2024 Annual Summer Meeting for the Bus Industry Safety Council.

# Top 10 Most-Read Articles in 2024

## Even While the Snow Is Falling, You May Be Liable

**Taniesha K. Salmons**

**Click here to read.**

## Asbestosis Takes the Stand: Raising Awareness of an Abnormally High Verdict for a Typically Low Value Case

**Renee D. Severino**

**Click here to read.**

## Multiple Entities, But One Claim – The Issue of Corporate Negligence

**Gabor Ovari**

**Click here to read.**

## Take a Closer Look: The Precise Language of an Out-of-State Coverage Provision Leads To Varying Results

**Noah Blake**

**Click here to read.**

## The Political Subdivision and Torts Claim Act's Sexual Abuse Exception: Application to Post-Assault in School Harassment

**Carl A. Fejko**

**Click here to read.**

## The Evolution of Political Subdivision Immunity in Ohio

**Morgan A. Henderson**

**Click here to read.**

### When a Hotel Swim Becomes a Work Duty: The Implications

David Levine

Click here to read.

### What Makes a Disease a Compensable Occupational Disease?

Linda Wilson

Click here to read.

### Pennsylvania Superior Court Discounts Big-Box Retail Sales for Determining Venue

John Yaninek

Click here to read.

### You Can't Get Two Bites at the Apple – Or, Oh What a Tangled Web We Weave

Jeffrey Bates

Click here to read.

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