DEFENSE DIGEST

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ON THE PULSE...

MARSHALL DENNEHEY

Precedent Established: New York Appellate Division Grants Discovery of Third-Party Litigation Funding

Diane K. Toner, Esq, Adam C. Calvert, Esq. and Maura R. Ryan, Esq.

Key Points:

- The Appellate Division, First Department, affirmed that defendants may obtain discovery of third-party litigation funding agreements, breaking with prior public policy protections.
- The court upheld defendants' fraud counterclaim, emphasizing the importance of specific, detailed evidence (such as the claims representative's chronology and links to other staged accidents) rather than mere allegations.
- This decision not only establishes a new discovery right but also sets a higher evidentiary bar for fraud claims in personal injury litigation.

In a ruling that establishes critical legal precedent, appellate attorney Diane Toner, Special Counsel in our New York City office, obtained the first-ever appellate decision granting the discovery of third-party litigation funding material in New York, which had previously been protected from discovery for public policy reasons.

In *Lituma v. Liberty Coca-Cola Beverages LLC*, 2025 WL 3235985 (1st Dept. 2025), the Appellate Division, First Department, affirmed the decision and order of the Supreme Court, Bronx County, which granted the defendants' motion to remove the case from the trial calendar, vacate the note of issue, and compel extensive discovery related to the allegations of fraud, including discovery of litigation funding agreements.

Lituma involved a personal injury claim stemming from a motor vehicle accident. The defendants, Liberty Coca-Cola Beverages, LLC, argued that the accident was staged, alleging that the plaintiff deliberately sped up, cut in front of them, and then slammed on the brakes to cause a collision. The defendants' underlying motion was supported by a detailed affidavit from a claims representative, whose thorough investigation uncovered numerous connections between the plaintiffs and other claimants in similar staged accidents, as well as medical providers involved in other suspicious accidents.

The appellate court found that the defendants had met their burden of demonstrating "unusual or

unanticipated circumstances" sufficient to vacate the note of issue because the suspected fraud began to surface only one month before the plaintiffs filed the note of issue. With respect to the specific issue of the discovery of litigation funding material, the appellate court held that the defendants established that the information sought is "material and necessary" as it could reveal a financial motive for fabricating the accident.

The appellate court rejected the plaintiffs' argument that fraud claims do not lie in a personal injury action and, therefore, the defendants were not entitled to the discovery. The court noted that the plaintiffs had not made this argument in opposition to the defendants' motion to vacate the note of issue, nor had they appealed from the order permitting the defendants to amend their answer to include the fraud affirmative defense and counterclaim.

In addition to establishing legal precedent for the discovery of third-party litigation funding, the *Lituma* decision sets forth a standard for maintaining a counterclaim for fraud by citing to the insurance agent's detailed chronology and specific evidence of connections to other suspicious individuals. In contrast, in *Linares v. City of New York,* 233 AD3d 479 (1st Dept. 2024), the appellate court dismissed a counterclaim for fraud where the defendants relied solely on "unproven allegations of fraud" in the RICO complaint.

Next Steps

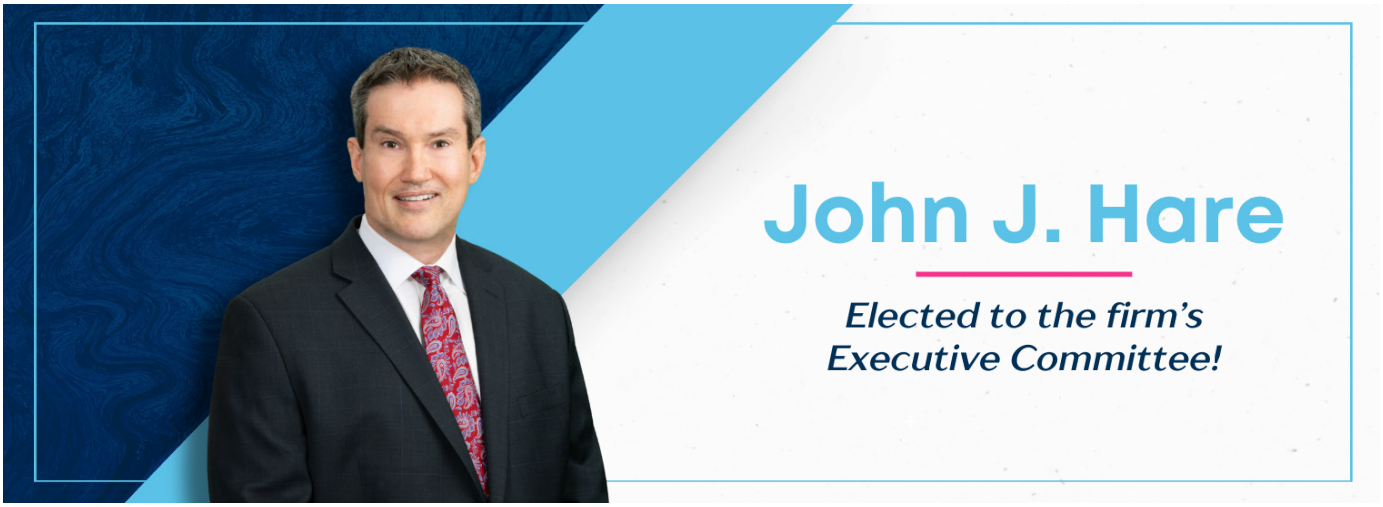
Marshall Dennehey attorneys Adam Calvert and Maura Ryan are handling the case at the trial level. Now that the appellate court has affirmed the order awarding discovery, the next step will be to obtain the discovery, including unrestricted HIPAA authorizations, depositions of police and EMS personnel, social media and phone records, depositions of related claimants, depositions of the plaintiffs' former employers, fraud-related depositions of the plaintiffs, additional independent medical examinations (IMEs) such as independent radiology studies, and depositions of the plaintiffs' medical providers. Should the plaintiffs fail to comply with these court-approved discovery demands, the defendants can rely on the appellate order to move to dismiss the case.

Stay tuned for further updates on this pivotal ruling and its impacts on cases involving third-party litigation funding. ◆

** Diane Toner is special counsel in our New York City office. She can be reached at 212-376-6422 or DKToner@mdwcg.com.*

** Adam Calvert, a shareholder, works in our New York City office and can be reached at 212-376-6414 or ACCalvert@mdwcg.com.*

** Maura is an associate in our Mount Laurel, NJ office. She can be reached at 856-779-6114 or MRRyan@mdwcg.com.*



The $30,000 Oops! An Insurer's Costly Overpayment

Elias R. Hassinger , Esq.

Key Points:

• Commonwealth Court held that pharmacy was not a party in the underlying Utilization Review litigation and could not be made a party to the insurer's review billing petition since there is no equitable remedy in the Workers' Compensation Act that would allow recoupment of overpaid medical bills by the insurer.

• Accordingly, insurer had to forfeit $30,000 overpayment.

Unlike most Commonwealth Court cases addressing workers' compensation issues, *Pioneer Construction Co., Inc., Eastern Alliance Insurance Company, and Employers Alliance, Inc. v. Insight Pharmaceuticals, LLC (d/b/a Insight Pharmacy),* 338 A.3d 234 (Pa. Cmwlth. 2025), was an appeal of a Court of Common Pleas decision, not a Workers' Compensation Appeal Board opinion.

The insurer, Eastern Alliance Insurance Company, mistakenly overpaid Insight Pharmacy over $30,000. In a 2020 decision, a workers' compensation judge granted a petition to review medical treatment or billing and ordered the pharmacy to reimburse the insurer the overpaid amount. However, the Commonwealth Court ultimately ruled that the insurer could not be reimbursed and had to forfeit the money.

This case started with a March 2015 Utilization Review (UR), which found that, as of December 2014, certain compound creams were no longer reasonable or necessary treatment for the claimant's work injury. The UR was not challenged by the claimant; therefore, the insurer was no longer responsible for payment of the compound creams.

However, in October 2018, the pharmacy submitted bills for the unreasonable and unnecessary compound creams to the insurer, which processed those bills. The insurer mistakenly paid the pharmacy $30,767.14. (Yikes!)

Upon realizing its $30,000 error, the insurer asked the pharmacy to refund the payments. The pharmacy declined. The insurer then filed a workers' compensation petition to review medical treatment or billing and a petition to join the pharmacy to the proceedings.

In response to the petitions, the pharmacy argued that the workers' compensation judge lacked jurisdiction to order reimbursement because the pharmacy could not be a party to the judge's proceedings and the Workers' Compensation Act contains no reimbursement remedy for insurers who overpay providers. The pharmacy argued that equity was not available to the insurer and the underlying judge's proceedings violated its right to due process because it could not be a party to that proceeding.

In an October 2020 decision, the workers' compensation judge found that the insurer had overpaid the pharmacy, granted the billing review

and joinder petitions, and ordered the pharmacy to reimburse the insurer the $30,000 overpayment. The pharmacy did not appeal this decision.

In January 2021, the insurer filed a praecipe in Common Pleas Court, requesting that the $30,000 judgment ($30,767.14 plus $475.41 in statutory interest) be entered against the pharmacy.

In a February 2021 letter to the insurer, the pharmacy demanded that the insurer withdraw the praecipe or the pharmacy would seek sanctions against the insurer on the bases that:

- the insurer falsely identified the pharmacy as a party to the judge's proceedings,
- the pharmacy could not appeal the judge's decision because it was not a party to the workers' compensation litigation, and
- the insurer did not properly serve the praecipe on the pharmacy.

The insurer responded by arguing that because the pharmacy participated in the judge's proceedings and did not take an appeal from the judge's October 2020 decision and order, the pharmacy was bound by that decision.

In April 2021, the pharmacy filed a motion to open the default judgment and a motion for sanctions in the Court of Common Pleas and a brief in support. The insurer filed a response opposing the petition and a supporting brief.

Only weeks later, in May 2021, by order and without a hearing, the Court of Common Pleas denied the pharmacy's petition. On May 27, 2021, the pharmacy appealed from the Common Pleas Court's order to the Commonwealth Court of Pennsylvania.

In its opinion, the Commonwealth Court reviewed a discussion of the pharmacy's arguments and its holdings, which ultimately were unfavorable to the insurer. The pharmacy first argued that the Court of Common Pleas lacked jurisdiction because the pharmacy "was never properly served with the judgment." The Commonwealth Court did not accept that argument—that the trial court lacked jurisdiction because the judgment was not properly served—and held that it lacked merit.

Second, the pharmacy argued that the insurer filed the praecipe in the Court of Common Pleas despite the fact that the pharmacy was not a party to the prior UR and judge's proceedings that gave rise to the judgment; thus, the trial court violated its due process rights and erred by entering judgment against it. The Commonwealth Court held that, because the Workers' Compensation Act provides no reimbursement remedy for insurers that overpay providers, the pharmacy's counsel participated before the judge solely to assert that there was no basis under the Act for the judge to join the pharmacy or order it to reimburse the insurer. The Commonwealth Court held the judge had no valid equitable basis to join the pharmacy to the insurer's billing review petition; therefore, the pharmacy was not, and could not, be a party to the UR and the judge's proceedings. The Commonwealth Court held that, because the pharmacy was not a party to the UR and judge's proceedings, the trial court erred as a matter of law by not striking the judgment against the pharmacy.

Third, the pharmacy argued that the trial court erred by denying the pharmacy's petition to open the default judgment where Section 428 of the Act authorizes only employees or dependents deprived of compensation to recover from an employer or insurer in default of payment. The Commonwealth Court held that, without precedential supporting legal authority, the trial court disregarded the plain language of Section 428 of the Act to allow the insurer to become an entity requesting judgment against an entity not statutorily liable (an employee or dependent). The Commonwealth Court held that the pharmacy was not statutorily able to be liable for a default judgment and the Court of Common Pleas erred by not striking the judgment against the pharmacy on that basis.

Ultimately, the Commonwealth Court held that the pharmacy was not a party in the underlying UR litigation and, therefore, cannot be made a party to the insurer's review billing petition since there is no equitable remedy in the Act that would allow recoupment of overpaid medical bills by the insurer. Accordingly, the insurer was out of luck and had to forfeit the $30,000 overpayment.

Going forward, insurers and employers should pay attention to Utilization Review determinations to avoid similar situations. After obtaining a favorable UR determination that finds treatment to be unreasonable and unnecessary, follow-up with the insurer's billing or payment departments so they, too, know that further provider payments should not be made. Unfortunately, if they are paid mistakenly, they cannot be recouped. ◆

**Eli is a member of our Workers' Compensation Department in Philadelphia. He can be reached at 215-575-2868 or ERHassinger@mdwcg.com.*

Delaware Supreme Court's Reversal of Trial Court Decision on Zantac Expert Testimony May Carve a Path for Heightened Scrutiny of Experts in Asbestos Litigation

Ana M. McCann , Esq.

Key Points:

- Supreme Court held that trial court misinterpreted the plaintiffs' burden by stating Delaware Rule of Evidence 702 should be applied with a liberal thrust favoring admission.
- Supreme Court ruled that the plaintiffs failed to show by preponderance of the evidence that their experts' opinions were reliable.
- Court emphasized that "an expert offering an opinion regarding general causation for a product must opine as to the product itself," not the toxicity of some individual component.
- Court observed that there is no consensus in Delaware law as to "threshold dose."

As of September 2022, there were approximately 75,000 pending Zantac (ranitidine) cases in Delaware, coming from more than a dozen national plaintiffs' firms with three Delaware firms acting as local counsel. These cases were filed in the Superior Court of Delaware.

The plaintiffs in *In re Zantac (Ranitidine) Litig.,* 2025 WL 1903760 (Del. 2025) alleged that their ingestion of the molecule ranitidine—marketed under the brand name Zantac, in which N-Nitrosodimethylamine (NDMA), an alleged carcinogen, may be found—caused the cancer with which they were diagnosed.

In November 2023, the defendants moved to exclude the plaintiffs' general causation experts under Delaware Rule of Evidence 702 (DRE 702), which is modeled after Federal Rule of Evidence 702 (FRE 702), and the principles set forth in *Daubert v. Merrell Dow Pharms., Inc.,* 509 U.S. 579 (1993), which determine whether expert testimony is admissible. *Daubert* reiterates the requirements of FRE 702 by stating that expert opinions must be the product of a reliable process measured by things like peer review and general acceptance in the scientific community. *Daubert* also states that judges should act as gatekeepers to ensure that potential expert opinions are both reliable and relevant before they can be heard by the jury.

The defendants' principal arguments were that (1) the original lab study was an outlier, conducted under unrealistic conditions, and the results were never duplicated; (2) the plaintiffs' experts failed to offer threshold-dose opinions; and (3) the plaintiffs'

experts inappropriately focused on toxicity of NDMA itself as opposed to causation associated with ranitidine use.

The trial court denied the defendants' Rule 702 motion, finding that (1) the studies focused on NDMA toxicity were sufficient to establish general causation—ignoring the defendants' argument that no studies show a connection between ranitidine use and cancer; (2) Delaware law does not "recognize a threshold-dose requirement as part of the general causation analysis"; and (3) Delaware law requires a trial court to apply a "liberal thrust" favoring admissibility of expert testimony. Consistent with this liberal-thrust standard, the court dismissed each of the defendants' critiques of the plaintiffs' experts, stating that they went to weight rather than admissibility and, therefore, were jury questions.

The defendants requested that the Superior Court certify its order for an interlocutory appeal. The Superior Court denied certification. However, the Supreme Court of The State of Delaware reviewed and granted the request.

The Supreme Court acknowledged that evidentiary rulings are rarely appropriate for interlocutory review, but it noted that the trial court's decision raised substantial issues regarding the *Daubert* standard and mass tort litigation specifically. Further, recognizing the significance of the issues, the Supreme Court elected to hear the case en banc.

The appellants raised three claims on appeal:

(1) The Superior Court applied an unduly lenient standard and wrongly held that all methodological critiques went to weight, not admissibility. Specifically, the appellants argued that an analysis under DRE 702 should not be conducted with a "liberal thrust favoring admission" and that it is a trial court's duty to ensure that an expert applies his or her methodology reliably.

(2) The Superior Court erred in focusing its general causation analysis on NDMA, rather than ranitidine.

(3) The Superior Court erred in holding that the plaintiffs' experts did not need to identify the threshold dose required to cause the cancers at issue.

On July 10, 2025, the Supreme Court reversed the trial court's ruling on several grounds.

First, the court held that the trial court misinterpreted the plaintiffs' burden by stating DRE 702 should be applied with a liberal thrust favoring admission. The court stressed that *Daubert* never created a presumption of admissibility. Instead, they opined that "the proponent of an expert opinion must prove its admissibility by a preponderance of the evidence" with no presumption toward admissibility.

After clarifying the burden of proof, the Supreme Court took a deep dive into the underlying studies. The court noted several instances where the plaintiffs' experts ignored—without explanation—major peer-reviewed epidemiology studies in favor of lower-quality and less-relevant publications. In doing so, the court affirmatively ruled that the plaintiffs failed to show by preponderance of the evidence that their experts' opinions were reliable.

The Supreme Court also found that the trial court erred by framing the general-causation question on the alleged carcinogenic agent—NDMA—rather than the actual product at issue—ranitidine. The court emphasized that "an expert offering an opinion regarding general causation for a product must opine as to the product itself," not the toxicity of some individual component. Having held that the plaintiffs' experts' opinions were deficient, the court determined that it did not need to reach the separate "threshold dose" question the defendants raised on appeal, but it observed that "there is no consensus in Delaware law as to 'threshold dose.'" ▶

There are several takeaways from the Supreme Court's ruling that may be relevant to asbestos litigation.

First, with the Delaware Supreme Court clarifying a preponderance-of-the evidence standard (with no presumption of admissibility) over the previously understood "liberal thrust favoring admission," plaintiffs' and defense experts are likely to face heightened scrutiny.

Further, it now appears that experts offering causation opinions "must opine as to the product itself," as opposed to asbestos toxicity generally. Plaintiffs may likely be required to show that exposure to a specific product has a higher rate of developing asbestos disease. This may pose a potentially significant obstacle for plaintiffs when asbestos fibers are encapsulated within a product. ◆

** Ana works in our Wilmington, DE office. She can be reached at 302-552-4322 or AMMcCann@mdwcg.com.*

Limitations to Expert Testimony

Angie M. Colorado, Esq.

Key Points:

- An expert may not testify to matters that fall outside his or her area of expertise.
- Biomechanical engineers are generally qualified to opine about an accident's forces and the general types of injuries those forces may generate.
- Biomechanical engineers may not offer opinions regarding patient-specific causation without appropriate medical expertise.

Experts play a critical role in litigation. In cases where there is a dispute over whether the forces involved in an accident were sufficient to cause an alleged injury, biomechanical experts are especially valuable. These experts analyze human movement and applied forces to assist in accident reconstruction and injury mechanism analysis.

Under Section 90.702, Fla. Stat. (2025):

[A] witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:

> (1) The testimony is based upon sufficient facts or data;
>
> (2) The testimony is the product of reliable principles and methods; and
>
> (3) The witness has applied the principles and methods reliably to the facts of the case.

The Fifth District Court of Appeal recently addressed the limits of biomechanical expert testimony in *Clark v. Hahn,* 401 So.3d 550, 551 (Fla. 5th DCA 2024), in which the plaintiff filed a lawsuit against Kermit and Evelyn Hahn for negligence.

The plaintiff alleged she suffered permanent injury as a result of a car accident. During the trial, the plaintiff requested that the court prohibit the defense expert from giving medical causation opinions. The defendants' counsel assured the court that the biomechanical expert would not offer medical opinions.

However, during the trial, the biomechanical expert was asked whether the forces applied to the plaintiff's spine could have produced the injury mechanisms at issue. The expert opined that the particular accident would not have generated the mechanisms necessary to cause an intervertebral disc herniation in the cervical spine in a person of the plaintiff's height and weight, given the specific vehicle involved. The trial

court overruled the plaintiff's objection and permitted the testimony.

The jury ultimately found that the plaintiff did not suffer a permanent injury. The trial court denied the plaintiff's motion for a mistrial, and the plaintiff appealed. On appeal, the Fifth District Court of Appeal reversed and remanded for a new trial, holding that the expert's testimony exceeded the scope of his expertise.

The District Court reasoned the expert testified to matters outside of his area of expertise by offering a patient-specific causation opinion. The biomechanical expert was not a medical doctor and, thus, not qualified to render such an opinion. The court explained, "While biomechanical experts may discuss the forces generated by an accident and how a hypothetical person's body will respond to those forces they are not qualified to render medical opinions regarding the precise cause of a specific injury."

Biomechanical experts are not generally allowed to render opinions that require medical expertise, such as the permanency or severity of an injury. Such opinions require a medical evaluation of the patient, which is beyond the typical expertise of a biomechanical engineer. This limitation does not necessarily apply if the biomechanical engineer is also a medical doctor. Doctors retained as experts may testify as to specific causation.

The expert's training, education and certifications must be analyzed alongside their expected testimony to determine whether their opinions are beyond their expertise. In such cases, a *Daubert* motion must be timely filed to exclude the opinions that are outside of the expert's scope. The *Daubert* standard stems from a United States Supreme Court case that outlines the trial courts' role as the "gatekeepers" of expert testimony. *Daubert v. Merrell Dow Pharms., Inc.,* 509 U.S. 579 (1993). The *Daubert* standard is codified in § 90.702, Fla. Stat. (2025), and requires the expert's testimony to be both relevant and reliable. Understanding the limitations of an expert's testimony plays a vital role in structuring litigation strategy.

Clark reinforces a key evidentiary boundary for expert testimony. Biomechanical engineers may testify regarding the magnitude of accident forces and the general injury mechanisms such forces can produce. However, biomechanical engineers may not cross into medical causation opinions without the appropriate medical qualifications. The case also highlights the importance of timely objecting to improper expert testimony. ◆

**Angie is a member of our Casualty Department. She can be contacted at 954-905-3800 or AMColorado@mdwcg.com.*

Pennsylvania Supreme Court Slams Door Shut on Claims Filed Against Home Inspectors

Dana A. Gittleman, Esq. and Danielle M. Vugrinovich, Esq.

Key Points:

- PA Supreme Court affirmed that home inspectors in Pennsylvania are protected by a one-year statute of repose under the state's Home Inspection Law.
- Any lawsuit against a home inspector must be filed within one year of the inspection, regardless of when the problem is discovered.
- Decision provides an important tool for defending claims brought against home inspectors more than one year after delivery of the inspection report.

This article originally appeared in the October 28, 2025, issue of PLUS Blog.

The Pennsylvania Supreme Court recently affirmed that home inspectors in Pennsylvania are protected by a one-year statute of repose under the state's Home Inspection Law. This means that any lawsuit against a home inspector must be filed within one year of the inspection—regardless of when the problem is discovered.

In *Gidor v. Mangus d/b/a Mangus Inspections*, 2024 WL 80950 (Pa. Super. Jan. 8, 2024), the Superior Court found that Section 7512 of the Pennsylvania Home Inspection Law (68 Pa.C.S. § 7512) operated as a statute of repose, not a statute of limitations, and thus was not tolled by the discovery rule.

Gidor's petition for allowance of appeal to the Pennsylvania Supreme Court focused on the designation of Section 7512 as a statute of repose, arguing that the statute is ambiguous and places the burden of commencing an action on a plaintiff as opposed to a *defendant*, raises constitutional issues, and violates legislative intent. In response, Mangus analogized Section 7512 to the Construction Statute of Repose and raised public policy considerations as to the intent of the General Assembly to limit claims against home inspectors.

The Pennsylvania Supreme Court rejected the argument that the language was ambiguous and that a statute of repose requires a precipitating event by a defendant. The court unequivocally concluded

that Section 7512 is a statute of repose "because it plainly, unambiguously, and without equitable exceptions, requires a plaintiff to commence an action within a specified time period after the occurrence of a definitely established event, regardless of when the claim accrues." *Id.* at *13.

As set forth by the Pennsylvania Supreme Court, "unlike a statute of limitations, a statute of repose 'is not related to the accrual of any cause of action' because the injury need not have occurred, much less been discovered." *Id.* at *8 (citing *Abrams v. Pneumo Abex Corp.,* 981 A.2d 198, 211 (Pa. 2009)). To be sure, the date of accrual and preclusion of the discovery rule is a key distinction between a statute of limitations and statute of repose, and has clear implications for the viability of a litigant's claim.

This decision provides an important tool for defending claims brought against home inspectors more than one year after delivery of the inspection report. Best practices for home inspectors include:

- Treat the date of report delivery as the critical cutoff for potential litigation.
- Deliver reports promptly to start the one-year clock running.
- Use time-stamped delivery methods—such as email or certified mail—to establish proof of delivery.
- Maintain clear records of both the delivery date and the report itself for an extended period, ensuring documentation is available if a claim is later filed.

The litigation process can be lengthy and tedious, particularly in the context of complicated real estate transactions. The *Gidor* decision will force claimants to expeditiously decide whether to pursue claims, and may limit future litigation to the extent purported defects are latent or undisclosed beyond the one-year statute of repose period. ◆

**Dana is Chair of our Real Estate E&O Liability Practice Group. She works in our Philadelphia, PA office and can be reached at 215-575-4556 or DAGittleman@mdwcg.com.*

**Danielle is Chair of our Consumer Financial Services Litigation Practice Group. She works in our Pittsburgh, PA office and can be reached at 412-803-1185 or DMVugrinovich@mdwcg.com.*

Plaintiff's Failure to Identify Factual Causation Among Multiple Possible Defects Warrants Summary Judgment

Stephen G. Keim, Esq.

Key Points:

- The Superior Court of Pennsylvania reaffirms a plaintiff's burden to prove causation.
- Where the plaintiff is unable to identify factual causation, or provides multiple theories of causation, a dispositive motion should be considered.
- A jury is not permitted to reach a verdict based on speculation or conjecture as to causation.

Where a plaintiff cannot establish the factual cause of an injury, summary judgment may be appropriate. For example, in *Mohar v. Shawver et al.,* 317 A.3d 607 (Pa. Super. 2024), the Superior Court of Pennsylvania reaffirmed a plaintiff's burden to establish a *prima facie* negligence claim; specifically, the causal connection between the alleged injuries and the alleged negligence. The court affirmed the trial court's order granting summary judgment because the plaintiff failed to identify the specific defect that caused her to fall.

The plaintiff alleged she slipped and fell while attending a house showing. While touring the property, the plaintiff walked up a ramp to a shed in the backyard; she slipped and fell as she turned.

She filed a lawsuit, sounding in negligence, against several defendants, including the property owners and real estate professionals. Notably, during discovery, the plaintiff could not identify what caused her to fall. She testified: "It happened so fast. I was standing and then I wasn't. I can't answer that." Furthermore, she was unable to describe the defective or slippery condition, attributing it to multiple defects, including wet leaves, moss, or the wet wood. Notably, the plaintiff could not rule out the possibility that she may have just lost her balance.

At the conclusion of discovery, the defendants moved for summary judgment based on the plaintiff's failure to establish a connection between her alleged injuries and the alleged negligence. While the plaintiff identified multiple potential defects, she failed to identify which, if any, of the alleged defects actually caused her to slip.

In granting summary judgment, the trial court relied upon *Houston v. Republican Athletic Ass'n*, 22 A.2d 715, 716 (Pa. 1941), where the court held that the plaintiff failed to establish the element of causation sufficient to submit the case to a jury as there were multiple theories attributing an accident to a variety

of causes for which the defendants could not be held liable. The court also relied on *Freund v. Hyman,* 103 A.2d 658 (Pa. 1954), where the Supreme Court granted compulsory nonsuit as the testimony did not identify the cause of the fall, and *Erb v. Council Rock Sch. Distr.*, 2009 WL 9097261 (Pa. Cmwlth. Mar. 26, 2009), where the court granted summary judgment after determining that the plaintiff did not produce any evidence that a defective condition was the proximate cause of her fall and injury.

In affirming the trial court's order granting summary judgment, the Superior Court explained, in viewing the evidence in the light most favorable to the non-moving party, the evidence of causation was completely circumstantial and there was no evidence that any of the alleged potential defects actually caused the plaintiff to fall. Furthermore, there was an equal possibility that the plaintiff's alleged injuries resulted from a trip or stumble without such tripping or stumbling having any connection with the alleged defect. Even though the plaintiff could testify as to where she slid, she failed to make the connection between slipping and the alleged negligence. A jury is not permitted to reach a verdict based on speculation or conjecture as to causation.

The *Mohar* decision reiterates and underscores the importance of holding a plaintiff to their burden of establishing proximate causation as a *prima facie* element of a negligence claim. If a plaintiff is unable to identify the cause of an accident, provides vague discovery responses or multiple theories of causation, defense counsel should consider filing a dispositive motion.

Finally, the *Mohar* decision has been cited in recent orders granting summary judgment, including *Regina v. Summit Pointe Property Owners Ass'n*, Monroe County Court of Common Pleas Case No. 1172-CV-2020 and *Orwig v. Shinn*, 323 A.3d 216 (Pa. Super. 2024). ◆

**Stephen works in our King of Prussia, PA office. He can be reached at 484-895-2317 or SGKeim@mdwcg.com.*

A Shift in Wrongful Incarceration and Malicious Prosecution Lawsuits: Multi-Million Dollar Settlements Turned into Case Dismissals

Jahlee J. Hatchett, Esq.

Key Points:

• The pleading standard for wrongful incarceration and malicious prosecution cases may gradually be shifting to require more specific allegations in order to establish such claims.

•The Constitution does not provide individuals with a right to have an "adequate" investigation conducted.

In recent years, there has been a drastic shift in the way that local prosecutor's offices handle wrongful incarceration cases, specifically as it relates to overturned homicide convictions. For instance, since 2020, the City of Philadelphia has paid in excess of $20 million in fees for settlement of lawsuits stemming from wrongful incarcerations. Separately, juries have awarded plaintiffs more than $10 million in wrongful conviction cases.

These wrongful incarceration lawsuits have been fueled, in part, by efforts by prosecutors to hold police officers accountable for engaging in unethical practices while investigating crimes. In 2021, the Philadelphia District Attorney's Office charged three long-retired homicide detectives with perjury and related charges in connection with their testimony in a criminal trial. The underlying criminal trial stemmed from the rape and murder of an elderly woman, which occurred in 1991. The defendant in that case was convicted, in part, based on a confession that he provided. The defendant was later granted a new trial, and the homicide detectives provided testimony concerning the methods used to obtain the confession. The defendant was acquitted.

Following the acquittal, the Philadelphia District Attorney's Office arrested the homicide detectives based on their testimony at the re-trial. Two of the three detectives were later convicted of perjury and related offenses. The criminal defendant later filed a civil rights lawsuit, which settled for millions of dollars.

In another case, a former Philadelphia homicide detective, James Pitts, was arrested and convicted of felony charges for perjury and obstruction of justice in connection with the 2010 interrogation of a homicide suspect. In that case, Pitts investigated a gruesome robbery/homicide and developed O.O. as a suspect. Pitts interrogated O.O. and obtained a confession. The confession was later used to prosecute and convict O.O. for homicide and related charges. In 2021, O.O.'s conviction was overturned,

in part, based on the District Attorney's finding that O.O.'s confession was coerced. In 2022, Pitts was arrested for perjury and related charges following a grand jury indictment. Pitts was later convicted and sentenced to more than two years' incarceration.

Following Pitts' incarceration, several civil lawsuits were filed against him, alleging he coerced the plaintiffs into providing false confessions and maliciously prosecuted them for crimes they did not commit.

Prior to the case of *Wallace v. City of Phila. et al.*, 2025 WL 2935248 (E.D. Pa. Oct. 15, 2021), the District Court routinely allowed those lawsuits to advance through discovery simply based on an allegation that law enforcement officials obtained coerced confessions and/or physically assaulted criminal defendants. However, in *Wallace*, District Court Judge Karen Marston ruled that barebones claims of malicious prosecution, in the absence of something more, do not establish a viable malicious prosecution or wrongful incarceration claim.

In *Wallace*, the plaintiff brought claims of malicious prosecution, deprivation of due process, violation of the plaintiff's right against self-incrimination, civil conspiracy, failure to intervene, Section 1983 *Monell* violations, and state law malicious prosecution. In the complaint, Wallace alleged that, in 2012, he was wrongfully convicted of second-degree murder based on Pitts' wrongful conduct, including obtaining a false confession. In that case, Wallace claimed that he was merely present in a home when his associate shot and killed an off-duty police officer. Wallace claimed that following the shooting, Pitts obtained a coerced confession from him while he was heavily sedated and that Pitts also forcibly requested that bullet fragments be retrieved from the plaintiff's body, against his will. Wallace was subsequently convicted of homicide and related charges and served more than a decade in prison before his conviction was overturned.

In response to the complaint, Pitts filed a motion to dismiss on several grounds including: (1) the complaint failed to establish that he engaged in conduct that amounted to malicious prosecution; (2) the plaintiff failed to establish that Pitts fabricated evidence; (3) the plaintiff failed to establish that exculpatory evidence was deliberately withheld or suppressed; (4) the plaintiff did not establish that an adequate investigation was not conducted: (5) the plaintiff did not establish a violation of the 5th Amendment right against self-incrimination; (6) the plaintiff failed to establish a civil conspiracy; and (7) the plaintiff failed to establish a claim of failure to intervene.

In granting the motion to dismiss in its entirety, Judge Marston zeroed in on the malicious prosecution claim and found that, in order to establish such a claim, a plaintiff must establish the following: (1) the government initiated a criminal proceeding; (2) the criminal proceeding ended in the plaintiff's favor; (3) the proceeding was initiated without probable cause; (4) the government acted maliciously or for a purpose other than bringing the plaintiff to justice; and (5) the plaintiff suffered a deprivation of liberty consistent with a legal seizure. *Wallace*, 2025 WL 2935248, at *7 (E.D. Pa. Oct. 15, 2025).

In dismissing the claims, the court emphasized that the plaintiff did not put forth any allegations to suggest that Pitts knowingly provided false information to prosecutors in order to secure a conviction. In drawing this distinction, Judge Marston doubled down on a well-established proposition that a mere allegation of coercion, without more, is a legal conclusion that ordinarily will not survive a motion to dismiss. *Id.* at *8 (E.D. Pa. Oct. 15, 2025). Last, Judge Marston clearly delineated that the Constitution does not provide individuals with a so-called right to have an adequate investigation conducted. *Id.* ◆

**Jahlee is a member of the Professional Liability Department. He can be reached at 215-575-2780 or JJHatchett@mdwcg.com.*

ON THE PULSE

King of Prussia Office: A Historic Legacy and a Dynamic Future of Legal Excellence

Michael L. Detweiler, Esq.

Situated in the shadow of Valley Forge and the rich history of the Revolutionary War, the King of Prussia, Pennsylvania, office is steeped in history. The office itself has a long history of servicing the counties adjacent to Philadelphia, in addition to Philadelphia. Though once located in the Montgomery County seat of Norristown, this office now sits not far from the King of Prussia Mall and an always active Top Golf facility. The office is also steeped in firm history as it has been affiliated with many of the firm's founders and leaders through the years, including Jack Warner, Tom Brophy, Christopher Dougherty, Joe Santarone and Wendy Bracaglia, to name a few.

Today, with approximately 40 attorneys and 60 staff employees, the King of Prussia office is one of the firm's largest branch offices and one of the largest law offices in Montgomery County. The office has long serviced Chester, Delaware, Montgomery, and Philadelphia Counties. We consolidated with our Doylestown and Allentown offices several years ago, and we now also service Berks, Bucks, Carbon, Lehigh, Monroe, Northampton, and Schuylkill Counties. The addition of attorneys from other offices and the acquisition of key talent from other firms through the years has created a dynamic team comprised of attorneys with numerous backgrounds, skill sets, and perspectives.

The health care team has been a powerful engine for the office for years and continues to flourish. The group has long-standing client relationships with health care systems and providers throughout eastern Pennsylvania and continues to develop new relationships. Led by attorneys Robin Snyder and Donna Modestine, the group continues to grow, even with the recent retirements of several key health care attorneys in the past several years. In 2024, Gary Samms, one of the most sought-after trial attorneys in Pennsylvania, joined an already stalwart group of attorneys: Joan Ford, Joe Hoynoski, and Gabor Ovari. Recent special counsel and associate additions in the past several years include Kevin Majernik, Jonathan Landua, Evan Pentz, David McColloch, and Julianna Malloy, all of whom have joined us from other firms and have added to an already strong and highly-regarded unit.

Despite retirements of several experienced and senior attorneys in the past several years (we will sorely miss Mark Riley and Ed McGinn when they retire at year's end) from the Casualty Department, we have pivoted and recently welcomed several talented and energetic associates—Khaliyah Pugh, Richard Lechette, and Ashley Stasak—to our core casualty group, consisting of Michele Frisbie, Michele Krengel, Tim Hartigan, Ed Tuite, and Rob Morton, in addition to those attorneys who strengthened our group after joining us from the Allentown office: Jason Banonis, Steve Keim, and Wendy O'Connor. The casualty attorneys handle a wide array of high-exposure casualty matters, ranging from construction personal injury to serious auto and premises liability matters and everything in between.

Frank Wickersham, Judd Woytek, Tony Natale, Michael Duffy, and Anna Jaoudi comprise the office's workers' compensation unit, which routinely achieves favorable results on behalf of their clients and is very well-regarded by the workers' compensation bar. Tony and Anna also work in our Medicare Compliance Practice Group, providing the entire firm with an invaluable resource in reaching solutions for often complicated questions created by settlements and Medicare issues.

Finally, the firm is fortunate to have a group of attorneys who handle a wide array of professional liability matters. They include Audrey Copeland, who handles appeals; Gregory Kelley, who focuses on professional liability and construction defects; Maureen Fitzgerald and Christin Kochel, who handle a wide variety of professional liability cases; and Paul Laughlin, who handles professional liability and health care cases. These added practice areas, and the skill with which these attorneys practice, ensure that the office, the firm, and our clients have access to invaluable resources and representation in numerous practice areas.

The office is defined, in large part, by the skill and talent of its attorneys, but it has had its share of characters and levity through the years, too. There has never been a shortage of social events (Top Golf, happy hours, associate dinners), games (trivia night), music (a staple on the "Class Action" tour circuit) and the occasional awkward photo of an office attorney from yesteryear. The office has always embodied one of the defining features that makes Marshall Dennehey special and unique: "A culture where humor is the great equalizer, and no one is above the friendly jest." The office is also blessed with hard-working and talented paralegals and support staff, who are an integral part of our success and are led by our dedicated and tireless office manager, Suzie Spitko.

One of the office's primary strengths remains its versatility, both in the various practice groups that provide skilled lawyering and in its capacity to provide representation in numerous venues in eastern Pennsylvania. We have always thrived, in great part, due to our flexibility and adaptability and in bringing on new talent to continue our tradition of excellence. In many ways, the King of Prussia office serves as a microcosm of the firm at large: rich in history but poised for great things moving forward. ◆

** Mike is the managing attorney of our King of Prussia, PA office. He can be reached at 610-354-8271 or MLDetweiler@mdwcg.com.*

ON THE PULSE

On the Pulse…Navigating the Complexities of Cannabis Litigation: Marshall Dennehey's Multidisciplinary Approach to a Rapidly Evolving Industry

Kristen L. Worley, Esq. and Todd J. Leon, Esq.

Cannabis litigation is on the rise and impacts multiple facets of law. Marshall Dennehey's Cannabis Law Practice Group is adept at helping clients navigate this evolving legal landscape, offering a full suite of legal services, no matter what type of claim a cannabis business or its insurers may be facing. Our services include analysis of insurance coverage and the defense of commercial general liability (CGL), professional liability, cybersecurity, employment, workers' compensation, and health care claims.

Coverage

Our team defends insurers and managing general agents (MGAs) against cannabis-related coverage and bad faith claims, including those related to equipment breakdown, application of protective safeguard endorsements, business interruption, and crop losses. We are familiar with the industry's underwriting goals and policies that reflect the unique risks of this segment.

CGL Claims

Commercial general liability claims encompass a wide range of casualty matters relevant to cannabis operations and recreational product usage. These claims may include auto liability matters, product liability claims, "Gram-Shop," and other retail accessory risks, such as landlord liability and delivery service claims. We defend typical retail claims at cannabis dispensaries, such as falls and even assault claims involving altercations between patrons and, occasionally, employees. In doing so, we utilize varied technology assets of clients, such as surveillance and body cam footage and, where appropriate, pursue loss-transfer claims against third parties. Additionally, we defend clients in cannabis product liability matters, including claims of tainted product, and have identified a team of experts in the various fields of toxicology, analytical chemistry, food safety, and forensic science to assist in defending these claims.

Professional Liability Claims

Our vast history and focus on defending professional liability claims across a broad range of industries affords our attorneys a unique advantage in defending claims brought against cannabis professionals, such as growers, cultivators, consultants, accountants, lawyers, MGAs, adjusters, and others who work within this space.

Cybersecurity Claims

Ransomware attacks and data breaches threaten cannabis operators and their obligation to safeguard their customers' sensitive medical and personal data. Likewise, security breaches with track-and-trace software designed to track cannabis from "seed-to-sale" can interrupt an operator's regulatory compliance. In the event of a data compromise, our cyber team is available to quickly mobilize and mitigate the damage caused by a ransomware attack.

Employment and Workers' Compensation Claims

With the growing approval of recreational cannabis usage and the increasing number of cultivators and dispensaries popping up to meet consumer demand, it is not surprising that employment and workers' compensation lawsuits in these fields are trending upwards. Our attorneys defend facility owners and operators when wage-and-hour disputes, discrimination and harassment, and retaliation claims arise. We also represent insurers and employers in workplace injury and occupational hazard claims. Our approach extends to cannabis industry-specific risks that include cultivation and manufacturing operations, as well as retail sales and distribution environments.

Health Care Claims

While many states have legalized the medical use of cannabis, it remains illegal under federal law. This dichotomy creates significant legal challenges for health care providers. Our attorneys leverage their experience in helping clients navigate health care regulations, such as HIPAA laws and patient privacy protections, and apply it to the uniquely complex environment surrounding the cannabis industry. We defend clients against civil claims, including medical malpractice matters, and can assist health care providers—including physicians, dispensaries and clinics—in understanding the evolving standards of care for cannabis as a therapeutic option, which can differ significantly from conventional treatments. Such claims may involve appropriate patient evaluations, dosage recommendations, and documentation requirements within the framework of state medical cannabis programs. We are also well-equipped to address challenges related to informed consent.

As the legal and regulatory frameworks surrounding cannabis continue to evolve, so too do the risks and complexities faced by businesses operating within this area. Our Cannabis Law Practice Group stands at the forefront of this rapidly developing field, providing clients with informed, strategic, and results-oriented counsel. Our multidisciplinary approach—spanning coverage, liability, cybersecurity, employment, workers' compensation, and health care—ensures that clients receive comprehensive support tailored to the unique challenges of the cannabis industry. Whether addressing emerging claims or guiding proactive risk management, our team is committed to protecting our clients' interests and positioning them for continued success in this dynamic legal landscape. ◆

** Kristen works in our Philadelphia, PA office and can be reached at 215-575-2849 or KLWorley@mdwcg.com.*

** Todd works in both our Philadelphia, PA and Mount Laurel, NJ offices. He can be reached at 215-575-2605, 856-414-6029 or TJLeon@mdwcg.com.*

ON THE PULSE

Recent Appellate Victories

Carol VanderWoude (Philadelphia, PA) convinced the Commonwealth Court of Pennsylvania to reverse the trial court's denial of motions for post-trial relief and to direct entry of judgment notwithstanding the verdict (jnov) in favor of Marshall Dennehey's client. The plaintiff alleged he was injured while standing unsupported on a moving bus. He claimed that he lost his balance when the bus accelerated away from a bus stop and that he grabbed an overhead bar to keep from falling and injured his arm. The video showed only that the plaintiff lost his balance when the bus started moving. At trial, the defense moved for nonsuit and directed verdict, arguing that the evidence was insufficient, particularly in light of the video evidence, to overcome the jerk-and-jolt doctrine applicable to a passenger injured on a moving bus. Submission of a jerk-and-jolt case to a jury requires a sudden stop or jerk so unusual and extraordinary as to be beyond a passenger's reasonable anticipation. The trial court denied our motions for nonsuit and directed verdict, as well as post-trial motions, having determined that the video evidence presented a jury question under the jerk-and-jolt doctrine. After independently reviewing the video evidence, the Commonwealth Court reversed and granted jnov to the defendant, pointing out that various of the trial court's observations "were not supported by the video or testimony" adduced at trial.

Carol VanderWoude (Philadelphia, PA) and **Aaron Moore** (Wilmington, DE) obtained the Delaware Supreme Court's affirmance of the trial court's dismissal of a complex legal malpractice claim. The plaintiffs, seven affiliated companies and their owners in the business of developing property, had been sued by their bank for defaulting on multiple lines of credit. The bank filed multiple lawsuits against the property developers, claiming approximately $7 million in damages, plus attorneys' fees, which were recoverable pursuant to the terms of the promissory notes. The property developers retained our client to defend the lawsuits, asserting that the amounts claimed to be owed to the bank were significantly overstated. Our client vigorously defended the bank's underlying lawsuits. Ultimately, the property developers settled the bank's lawsuits for the entire amount owed, plus interest, and the bank's legal fees. The developers argued that its attorneys should have advised them to settle the bank's claims after the lawsuits were commenced and that, if they had done so, they would not have had to pay the bank's legal fees ($825,000), our client's legal fees ($485,000), or expert witness fees ($335,000) or the additional interest on the loan. The property developers also claimed that not settling with the bank earlier caused them lost business opportunities valued at nearly $1 million. The plaintiffs' legal malpractice claims were dismissed because their expert witness, a Maryland attorney with no business litigation experience, was not qualified to serve as an expert and because their damage claims were speculative.

Kimberly Berman and **Matthew Wildner** (both of Fort Lauderdale, FL) succeeded in obtaining an affirmance by the Fourth District Court of Appeal of a final order dismissing claims against Marshall Dennehey's client, a professional engineer and his engineering firm, in a construction defect case in Florida. The appeal presented an issue of whether a non-supervisory engineer and his firm, who were retained by a third party to examine and inspect a contractor's work, which third party then told the contractor to stop work, could be held liable for professional negligence. The trial court dismissed the professional negligence claims with prejudice, and without oral argument. The appellate court affirmed.

Kimberly House (Philadelphia, PA) convinced the Pennsylvania Superior Court to dismiss the plaintiffs' appeal of a judgment on a defense verdict for our client that was obtained by **Allison Krupp** (Harrisburg, PA). Our client issued a professional liability insurance policy to the plaintiffs, who were sued for legal malpractice. They notified our client of the suit and asked them to provide counsel to defend the matter. The plaintiffs never agreed to counsel proposed by our client. The plaintiffs then proceeded to mediation in the legal malpractice action and settled the matter without notifying our client. As a result, our client denied the plaintiffs' request for indemnification. The plaintiffs brought suit for breach of contract and bad faith. In the trial handled by Allision, the jury returned a defense verdict, and the plaintiffs filed post-trial motions, which were denied. On appeal, the plaintiffs argued that the trial court erred in allowing the jury to see a copy of the insurance contract during their deliberations. The Superior Court dismissed the appeal, finding that the plaintiffs waived their argument by failing to cite to relevant legal authority in their appellate brief. The Superior Court also stated in a footnote that, should the court have reached the issue on appeal, it would have found it meritless because the insurance contract was a central piece of evidence to which the plaintiffs did not object during trial.

Kimberly House and **Scott Gemberling** (both of Philadelphia, PA) successfully defended the plaintiff's appeal of a trial court decision sustaining a preliminary objection on the ground of improper venue. In the underlying case, the Philadelphia Court of Common Pleas found that venue was improper in Philadelphia County and ordered that the case be transferred to Centre County, and the plaintiff appealed. The Pennsylvania Superior Court, in a precedential decision, affirmed the trial court's decision and found that there was no abuse of discretion. In support of its decision, the Superior Court found that the plaintiff's arguments were unsupported by Pennsylvania law. The Superior Court, in finding waiver of an issue, quoted directly from the brief prepared by Kim.

ON THE PULSE

Recent Appellate Victories

Audrey Copeland (King of Prussia, PA) obtained the Pennsylvania Commonwealth Court en banc's affirmance of the grant of summary judgment on remand in favor of our client, which had been obtained by **Patricia Monahan** (Pittsburgh, PA). The court denied the plaintiff's (a retiring police officer) claim for unjust enrichment and breach of contract regarding his pension benefits. It was the law of the case from the prior appeal that, although the plaintiff's employment contract stated that he would be entitled to Act 600 pension benefits, he had an existing Act 15 pension pursuant to an ordinance under the Pennsylvania Municipal Retirement Law and the defendant Borough had never enacted an ordinance to establish an Act 600 pension. The Borough was not unjustly enriched by not providing the plaintiff with such a plan and, too, the Borough did not "fail" to contribute the plaintiff's pension contributions to a pension plan. The court also upheld denial of the plaintiff's breach of contract claim.

Audrey Copeland (King of Prussia, PA) persuaded the Pennsylvania Superior Court to affirm the trial court's transfer of venue from Philadelphia County to York County obtained by Audrey and **Edward McGinn** (King of Prussia, PA) for our client. The court had found that our client had no Philadelphia presence, customers, or sales and was in the business of processing and packaging canned and frozen vegetables. The Superior Court found that importing raw vegetable material through the Port of Philadelphia and the use of third-party vendors to carry out the importation and transportation was analogous to the purchase of supplies and did not meet the standard of "regularly conducting business." Venue was also not proper merely because the defendant's products were offered for sale in Philadelphia stores.

Audrey Copeland (King of Prussia, PA) and **Suzanne Utke** (Philadelphia, PA) obtained the dismissal of the plaintiff's appeal of judgment in favor of Marshall Dennehey's client as the plaintiff and his attorney failed to file post-trial motions after the defense verdict. Therefore, they had waived all issues for appeal.

John Hare and **Shane Hasselbarth** (both of Philadelphia, PA) conduced a successful oral argument before the Supreme Court of Pennsylvania that resulted in the Court's unanimous ruling to uphold statutory employer immunity on Pennsylvania construction sites. The six Justices who voted rejected the plaintiff's arguments that such immunity should be overturned as antiquated and should be deemed waivable. Read more about this case in *The Legal Intelligencer*. ◆

*Results do not guarantee a similar result

ON THE PULSE

Defense Verdicts and Successful Litigation Results

CASUALTY DEPARTMENT

Walter Klekotka (Mount Laurel, NJ) obtained dismissal, with prejudice, of all claims in a personal injury suit against a non-profit youth baseball league. The plaintiffs sought to hold the league liable for injuries their minor child sustained during play. Walt moved for summary judgment under New Jersey's Charitable Immunity Act, which protects non-profits from ordinary negligence. Plaintiffs challenged the league's non-profit status, claimed an exception based on the minor's age, and sought to add volunteer coaches—including the child's father—as defendants. The court agreed with our arguments, finding the league protected by charitable and volunteer-coach immunity and rejecting any showing of gross negligence. Summary judgment was granted in full, and the plaintiffs' motion to amend was denied as futile.

Walt and **Ashley Davis** (also of Mount Laurel, NJ) were granted summary judgment in a slip-and-fall case where the plaintiff claimed to have slipped and fell on snow/ice in a parking lot when getting into her car. Our client and one of the co-defendants had property lines next to each other. Based on the accident report, the plaintiff's testimony and our expert report, we argued that the plaintiff did not fall on our property and, as a result, we owed her no duty. The judge agreed and dismissed all claims against us.

Jon Cross (Philadelphia, PA), **Christin Kochel** (King of Prussia, PA) and **Carol VanderWoude** (Philadelphia, PA) obtained summary judgment in a lawsuit arising from an injury the plaintiff suffered at an indoor trampoline park after allegedly attempting to do a front flip off a trampoline. During the deposition, the plaintiff admitted that there are inherent risks of engaging in trampoline activities, including the risk of being injured. Under the no-duty rule, a defendant owes no duty of care to warn, protect, or insure against risks which are common, frequent, expected and inherent in an activity. In our motion for summary judgment, it was argued that a trampoline park has no duty to protect patrons from the inherent risks of injury when jumping from a trampoline. The court opined that the no-duty rule was implicated and granted summary judgment in favor of all defendants.

Kevin Hexstall (Philadelphia, PA) and **Michael Mongiello** (Harrisburg, PA) were successful after a three-day hearing before the PA Department of Human Services on an appeal of a child abuse determination levied against a home health nurse. As a result, the nurse's record is being expunged. The ▶

matter arose out of the alleged attack of a child-patient by a family pit bull during home nursing care. It was asserted that the nurse failed to properly supervise and protect the child and failed to properly respond to the incident when it occurred. We established a lack of definitive proof that the nurse negligently left the child unsupervised. We called into question the circumstances surrounding the alleged attack, including whether the dog had a known history of aggression, which led to credibility issues on the part of the family member witnesses. Medical experts also testified on the appellant's behalf to address possible alternate explanations for the child's injuries. Ultimately, we established that the prosecution failed to meet its burden of proof and highlighted multiple errors and inconsistencies relating to the investigation and reporting processes.

Keith Andresen (New York, NY) was successful in having the plaintiff's motion to restore his motor vehicle accident case denied and the case dismissed against our insured. Because the plaintiff never properly effectuated service within the timeframe of CPLR 306-b, the defendant moved to dismiss. The plaintiff then filed an order to show cause to vacate the dismissal. The defendant opposed this, and Keith substituted in for the defendant, V. Soni. The court denied the plaintiff's order to show cause as the plaintiff did not show any reasonable excuse for failing to timely interpose opposition to the underlying motion. The prior order was not vacated, and the case was dismissed against our insured.

Ian Glick (Melville, NY) secured a significant victory in a New York Labor Law case, obtaining partial summary judgment for a municipal library and defeating the plaintiff's motion for summary judgment on liability. The plaintiff alleged negligence and violations of Labor Law §§ 200, 240, and 241(6) after being injured when roof trusses collapsed on a construction project managed by a co-defendant on the library's property. Ian successfully argued that questions of fact existed as to whether the plaintiff was the sole proximate cause of the accident. The court dismissed all claims against the non-property-owning clients, all but the § 240 claim against the library, the co-defendant's cross-claims, and granted the library unconditional contractual indemnification from the plaintiff's employer.

Sarah Cole, with the assistance of **Kylee Harvey** (both of Wilmington, DE), received a defense jury verdict before the Delaware Superior Court, New Castle County. Although liability was undisputed at trial, damages were disputed. The plaintiff sought damages for head, neck, back, and left shoulder injuries. He had $350,000 in future medical bills and $78,000 in past medical bills that he could board. The plaintiff also had a $5 million lost wage claim that we were able to have dismissed prior to trial on a motion in limine.

Christopher Power (Melville, NY) obtained a defense verdict in New York Civil Court on behalf of an appliance company and its employee accused of stealing a $31,000 Rolex watch. The plaintiff alleged conversion, breach of contract, and negligent hiring after his watch went missing following a light fixture installation. Through cross-examination, Chris established that neither the plaintiff nor his wife had proof of theft, no criminal charges were ever filed, and the contracted work was fully completed. He further showed there was no evidence of negligent hiring or the watch's claimed value. After written summations, the court agreed and dismissed all claims in their entirety.

Kimberly Gitlin (Melville, NY) secured an arbitration win, slashing a $83,000 claim to $625. The appellant, a major medical provider, filed an arbitration matter in the total amount of $83,625, alleging our client owed it for the claimant's unpaid medical bills following a major motor vehicle accident. The claimant had been involved in the motor vehicle accident and sought payment for a series of medical treatments rendered post-accident. Counsel for the medical provider argued that the medical billing was never properly paid, therefore, payment of the claims was overdue. However, Kimberly successfully argued at the arbitration hearing that the applicant's demand amount was greatly over exaggerated and that the amount in dispute must be limited to the appropriate fee schedule limit of $625.82. After arguments were heard, the arbitrator ruled in our client's favor, thereby limiting any and all recovery to the $625.82 fee schedule amount, thus, saving nearly $83,000 in exposure.

Matthew Gray (Melville, NY) prevailed on appeal in a No-Fault/PIP case, and the arbitration dismissal was upheld. The appellant, a major medical provider, initially filed suit via arbitration in spring 2024. After much back and forth and a summer 2025 arbitration hearing, Matthew was able to successfully argue and obtain a dismissal, without prejudice, in our client's favor. The appellant later filed an arbitration appeal, arguing the lower arbitrator's findings were irrational, arbitrary, capricious, and incorrect as a matter of law. In our counter appeal, Matthew argued that the lower award was proper and based in legal rationale, grounded on the weight of the evidence provided, and available to all parties in the matter. After reviewing the briefs and arguments, the Master Arbitrator ruled that the lower award was, in actuality, proper and legally reasoned. The Master Arbitrator reaffirmed the lower arbitration decision.

Sean Greenwalt (Tampa, FL) successfully argued a motion to dismiss due to the plaintiff's failure to prosecute. The plaintiff filed a PIP/No-Fault action and then failed to file any documents or take any affirmative action for over three years. The plaintiff had three months to prepare for the motion to dismiss hearing but only filed a notice for trial two days before the hearing. The plaintiff then claimed it had created sufficient record activity. However, if no record activity occurred, the Florida Rules require record activity within 60

days of a hearing notice for failure to prosecute and a statement of good cause within five days. In dismissing the case, the court agreed with Sean's argument that the plaintiff's notice for trial was untimely and did not qualify as a statement of good cause.

Christopher Reeser (Harrisburg, PA) won a motion for summary judgment in Schuylkill County, PA, in a premises liability/product liability case. Chris represented the manufacturer of a concrete railroad crossing that had been installed at an intersection in 2005. In 2021, the plaintiff was riding his bike across the crossing when his bike tire allegedly became stuck in a gap in the concrete. There was ample evidence that the railroad was responsible for inspecting and maintaining the crossing while our client did nothing other than supply the prefabricated crossing. Chris argued the gap in the crossing was not the responsibility of the crossing manufacturer and that the statute of repose barred the lawsuit. The court agreed that the crossing manufacturer had no duty to maintain the crossing and granted summary judgment in favor of the manufacturer.

Chris and **Coryn Hubbert** (also in Harrisburg, PA) obtained summary judgment on behalf of two homeowners who were sued by family members in a premises liability action. One of the homeowners called his father, the plaintiff, and asked him to come to his house because he had concerns about roofing work being done. The plaintiff arrived at the home and observed nails and other debris strewn about the entire property. Nevertheless, he entered the property to assess the roofing work and took care to avoid stepping on any nails. As he was leaving, he stepped on a nail, which went through his foot. The plaintiff asserted claims of negligence against both homeowners and also attempted to assert that, because his son had requested that he come to inspect the roofing work, he was a business invitee rather than a licensee. Chris and Coryn argued that the plaintiff was a licensee as he was a social guest who was merely providing advice to his son. They further argued that the homeowners owed no duty to the plaintiff as he knew nails were strewn about the property and he understood the risk involved in walking there. Chris and Coryn also argued that the plaintiff's claim was barred by assumption of risk because as he was aware of the nails and, nonetheless, voluntarily proceeded to walk onto the property. The court agreed and granted summary judgment in favor of the homeowners.

Raychel Garcia (Orlando, FL) was successful in having her motion to dismiss based on the plaintiff's fraud granted on behalf of a national retailer. The plaintiff claimed that a product defect caused a dish he purchased from our client to cause a fire in his oven, which spread to his house. He alleged $90K in property damage to his home, severe burns, smoke inhalation, and several other injuries. Raychel obtained the plaintiff's medical and court records, which revealed a history of fraud. At deposition, Raychel used these records to impeach the plaintiff, establishing that he misrepresented both the

circumstances of the incident and the extent of his alleged injuries. Based on this evidence, Raychel successfully secured a dismissal of the case with prejudice.

In a premises liability case involving problematic liability for our client, **Olivia O'Reilly** (Philadelphia, PA) was able to achieve an extremely favorable settlement after taking the plaintiff's deposition. Olivia's tactical and thorough deposition resulted in plaintiff's counsel agreeing to remand the case to arbitration and, eventually, taking a mere $5,000 to settle the case. The plaintiff had initially demanded six figures.

Joseph Lesinski and **James Cullen** (both of Pittsburgh, PA) secured a defense verdict after a seven-day bench trial in a $30+ million product liability case. Our client, a provider of engineered equipment for the energy sector, sold the plaintiff two reciprocating compressor systems in 2015. These systems injected lubricating oil into the gas stream, which the plaintiff was responsible for filtering out. The plaintiff alleged that weld debris from the compressors damaged filtration devices, allowing excess oil to enter a pipeline and foul turbines at a downstream power plant, causing substantial economic losses. The contract required litigation in Lake County, Indiana and a bench trial; we were admitted pro hac vice. The plaintiff sought $18 million in commercial losses, $4 million in attorney fees, and $5–7 million in pre-judgment interest. We demonstrated that weld debris was not the cause of the damage—material testing showed minimal weld debris compared to naturally occurring contaminants. Expert testimony revealed that the plaintiff's own design flaws, poor maintenance, equipment failure, and inadequate alarm response were likely responsible for the contamination. The court ruled in our favor.

Nicholas Bowers, **Carol VanderWoude** and **Kevin Todorow** (all of Philadelphia, PA) obtained dismissal of their clients by way of summary judgment in a Philadelphia Court of Common Pleas premises liability matter, where we represented the interests of the landowner and tenant. The original settlement demand was $2 million, and the demand at the time the motion for summary judgment was filed was $800,000. It was admitted that our clients were responsible for the maintenance and care of the sidewalk area in question. At the plaintiff's deposition, testimony was elicited from her indicating that she tripped on a smaller portion of an alleged defect which was larger in other portions of the sidewalk. We then drafted and filed a motion for summary judgment, arguing that the portion of the alleged defect in question that caused the plaintiff to fall was "de minimis" and, thus, not actionable under Pennsylvania law. Although the plaintiff submitted a comprehensive answer and memorandum of law in opposition, the court agreed with our arguments and dismissed the claims against our clients, with prejudice. The court also denied the plaintiff's motion for reconsideration.

HEALTH CARE DEPARTMENT

Melissa Dziak and **Robert Aldrich** (both in Scranton, PA) received a defense verdict after a two-day arbitration hearing in a traumatic brain injury case. With an initial $5.25 million demand, the plaintiff alleged overmedication led to his cardiac arrest and a traumatic brain injury, resulting in permanent neurocognitive impairment. Through testimony from our providers and experts across internal medicine, pulmonology, toxicology and, neuropsychology, Missy and Rob demonstrated that our client's care met the standard, did not cause the cardiac arrest, and any deficits could have been pre-existing.

Megan Nelson (Orlando, FL) was successful in having her Florida Rule 5.900 Petition for Expedited Judicial Intervention Concerning Medical Treatment Procedure granted. The allegedly incapacitated person had been medically cleared for discharge to a skilled nursing facility. However, his brother, who had been appointed as the health care surrogate and power of attorney, had refused to consent to his brother's transfer to any skilled nursing facility. After numerous unsuccessful attempts by the hospital's case management team to transfer the patient, Megan was retained to file a Florida Rule 5.900 Petition. After the emergency evidentiary hearing, the court granted the petition and ordered the brother to consent to the transfer of the patient to a skilled nursing facility.

Gary Samms (Philadelphia, PA/King of Prussia, PA), with outstanding support from **Adam Fulginiti** and **Nancy Farnen** (both of Philadelphia), secured a unanimous defense verdict in Philadelphia on behalf of a prominent orthopedic surgeon accused of inappropriate touching during a preoperative examination for bilateral hip surgery. Through precise cross-examination and persuasive advocacy, the team achieved a complete victory.

Gary also achieved a defense verdict for a Philadelphia hospital and two Emergency Department physicians following a six-day jury trial in a complex and emotionally charged case involving the tragic death of a seven-year-old child. Allegations centered on the alleged failure to admit and perform a urine drug screen on an 18-year-old patient under the influence of synthetic marijuana (K2). Gary successfully argued that the physicians performed appropriate testing, monitoring, and examinations until the patient achieved clinical sobriety. The patient was later discharged and, nearly a day afterward, tragically killed his sister. Paralegal Nancy Farnen (Philadelphia) played a key role in the defense.

In another matter, Gary obtained a mid-trial dismissal after cross-examining the plaintiffs' witnesses in a case involving a former NFL player and opera singer who claimed permanent injuries following knee surgery and an

alleged failure to diagnose a pseudoaneurysm. Plaintiffs' counsel voluntarily dismissed Gary and his client before the conclusion of their case to prevent further damage from his cross-examination, choosing instead to limit recovery to the remaining defendants.

Most recently, after an 11-day, hard-fought trial, Gary obtained a defense verdict on behalf of four physicians and a major teaching hospital in Philadelphia. The medical malpractice action arose from the labor and delivery of a baby later alleged to have a hypoxic birth injury, resulting in developmental delays and permanent brain damage, among other issues. The plaintiffs' experts boarded $21 million in future medical costs, and the pretrial demand reflected those figures.

Jeffrey Bates and **Travis Talbot**, with the help of paralegal **Jennifer Cicchetti** (all in Philadelphia, PA), secured a defense verdict in a dental malpractice case in Luzerne County. The plaintiff alleged negligence after a tooth extraction led to a serious infection and a 40-day hospital stay involving multiple procedures. Our client, had advised the plaintiff to remove all four wisdom teeth due to infection risk, but the plaintiff declined further treatment. When he returned in 2017 with an infected tooth, our client extracted it, prescribed antibiotics, and gave clear instructions to follow up if symptoms worsened. The plaintiff failed to do so until the infection had significantly progressed. Expert testimony confirmed the plaintiff's own decisions contributed to the outcome. The jury found our client was not negligent, and never reached the issue of contributory negligence.

Leslie Jenny (Cleveland, OH) received an arbitration defense verdict on behalf of a nursing home in a medical malpractice suit. The plaintiff, a 63-year-old, had fallen at home and sustained a spinal fracture. He was admitted to the nursing home for rehabilitation. While there, the plaintiff underwent a series of three epidural injections. He developed multiple pressure injuries that became infected with MRSA as well as paralysis. After he was transferred to the hospital, he was diagnosed with an epidural abscess and, unfortunately, died. This case was twice heard by the Court of Appeals and was later accepted by the Ohio Supreme Court, where Leslie argued and won enforcement of the arbitration agreement.

In another matter, Jenny obtained a defense verdict on behalf of a nursing home in Cuyahoga County. The case involved a 75-year-old resident who fell, fracturing his hip, and died. The medical examiner ruled that the death was accidental and due to the fall. The plaintiff claimed inadequate fall precautions and failure to assess appropriately after the fall against the skilled nursing facility, and requested punitive damages. The plaintiff's Final Pretrial Statement demanded $7 million. After three days of trial, the judge granted a directed verdict for the defense.

Matthew Butler (Scranton, PA) succeeded in having a default judgment opened in Lackawanna County on behalf of a long-term care client. After default had been entered, a hearing on damages was scheduled before the insurance carrier was on notice of the case. In having the default judgment opened, the court adopted Matthew's arguments that the petition to open was filed timely, that the judgment was entered in error, and that there was a viable, meritorious defense to the claim. What stood out about this victory was the unusual delay in attempting to open the default judgment, which was entered long before a scheduled hearing on damages. The defense had to overcome both the default judgment and the damages hearing in order to achieve a successful outcome.

Adam Fulginiti, **Bobbi Lewis**, **Ryan Harvie** and **Dorien Belle** (all of Philadelphia, PA) received summary judgment in the defendant's favor in a nursing home malpractice case. The plaintiff claimed that the facility failed to prevent various conditions and injuries during the resident's admission—such as UTI/sepsis, acute kidney injury/metabolic encephalopathy, dehydration and failure to thrive/weight loss, and skin breakdown. The plaintiff alleged these developments resulted in numerous damages, including, but not limited to, death. Our motion for summary judgment on behalf of the defendant sought dismissal on the grounds that the facility held immunity pursuant to the Pennsylvania Tort Claims Act. Our motion included numerous supporting documents, ranging from public entity reimbursement agreements, personnel information, corporate bylaws, and other materials. The plaintiff hotly disputed the issue. Ultimately, several rounds of briefing were required to achieve the ruling in the facility's favor. ◆

PROFESSIONAL LIABILITY DEPARTMENT

Andrew Campbell (Philadelphia, PA) achieved a successful outcome in multi-million dollar construction defect claim. Andrew successfully enforced claims for contractual defense, indemnity, and coverage as an additional insured in favor of our client—a large general contractor/construction manager—against the subcontractor and their carrier. Andrew's successful argument for risk transfer effectively ends any direct exposure to our client or their carrier.

Gregory Kelley (King of Prussia, PA) obtained a summary judgment dismissal, with prejudice, of an architect with respect to a personal injury claim. The plaintiff sued a school district, alleging she was injured by a dangerous condition in the bleachers of a high school stadium. The school district then joined our client on a theory that, five years earlier, in connection with a stadium upgrade project, the architect should have seen the condition and ▶

taken steps to have it corrected. With great assistance from our client, Greg convinced the court that the architect did not owe a duty to the school district for assessing and remedying the allegedly dangerous condition because the area in question was not part of the scope of the architect's project. The school district presented an expert report, claiming the Building Code required that the bleacher structure be brought up to current code. However, Greg and the architect showed the court that the school district's expert failed to cite the correct section of the Pennsylvania Construction Code as the International Existing Building Code specifically provided that no assessment and upgrade was required for the pre-existing condition.

Greg also obtained a summary judgment dismissal, with prejudice, of a residential exterior cladding/moisture testing company in a professional liability action in Montgomery County, Pennsylvania. The plaintiffs had purchased a $2 million home that needed remediation. They filed negligent misrepresentation and unfair trade practices claims, alleging the statements on our client's website and the findings in his report of his testing misrepresented the conditions of the exterior stucco and windows. Without ever taking a deposition or answering discovery, Greg obtained records from the plaintiffs' realtor that conclusively proved there were no misrepresentations as the plaintiffs had been fully informed of the condition of the home and proceeded to purchase it anyway. The case lives on for a claim against a stucco contractor, but our client has been dismissed with prejudice.

Lee Durivage and **Alexandra Freeman** (both of Philadelphia, PA) obtained a defense verdict in two consolidated matters in the Eastern District of Pennsylvania following a five-day trial. The first plaintiff alleged he was terminated in retaliation for filing a lawsuit and that he was subjected to racial discrimination during his employment. The second plaintiff alleged he was terminated in retaliation for supporting the wage and hour claims of the first plaintiff. After deliberating for approximately two hours, the jury answered "no" on the five theories asserted by the plaintiffs.

Aaron Moore (Wilmington, DE) obtained a defense verdict on behalf of his client, a real estate broker and agent. The plaintiffs, homebuyers, claimed that the sellers' broker and agent were liable to them for the value of fixtures that were taken by the sellers when they vacated the property, which were alleged to have been included in the sale. At a bench trial, the judge determined that neither the broker nor the agent could be held liable to the plaintiffs because the representations regarding what was included in the sale were made by the sellers.

Aaron also prevailed on a motion to dismiss on behalf of his client in a complex matter involving claims of fraud, misappropriation of trade secrets, tortious interference with contractual relations, and piercing the corporate veil. The plaintiff, an investment fund, had purchased a business that was controlled and primarily owned by our client. The business ultimately went bankrupt, and

the plaintiff claimed that the purchase was premised upon misrepresentation by our client. The plaintiff maintained that jurisdiction in Delaware was proper pursuant to the Asset Purchase Agreement. The District Court was persuaded by Aaron's arguments that it lacked personal jurisdiction over our client, a citizen of Canada, even though he signed the Asset Purchase Agreement, which included language conferring jurisdiction over claims arising from the sale in Delaware. The court agreed that Aaron's client did not sign the agreement in his individual capacity, and the plaintiff's piercing the corporate veil allegations were insufficient to confer personal jurisdiction.

Finally, Aaron obtained dismissal of an unjust enrichment claim brought by a condominium unit owner against the attorneys who represented her condominium association. The unit owner claimed that the law firm was liable to her for unjust enrichment in connection with legal fees it received from the association for legal services provided in efforts to collect on past due assessments owed by the unit owner. Pursuant to the association's governing documents, the charges were passed on to the unit owner. The court agreed with Aaron's argument that the fees paid to our client by the condominium association were properly earned.

Sharon O'Donnell (Harrisburg, PA), **Lee Durivage** and **Alexandra Freeman** (both of Philadelphia, PA) obtained dismissal in favor of a school district where a former student claimed the district was liable for damages under Title IX, Section 504, and the ADA after he was sexually abused by a teacher's aide from a different school. The student was transitioning back into the school district after attending a private school for his emotional support needs. During the summer months, the student's former aide was arrested and confessed to sexual abuse of the student. The student's guardians then removed him from the district's extended school year program. After the teacher's aide was released on bail, she contacted and met up with the student at a local park. The police were contacted by the student's family, and the teacher's aide committed suicide in the park when they arrived. In the lawsuit, the student alleged the district should have taken more steps to amend his Individualized Education Program and to conduct a Title IX investigation when it learned the teacher's aide was arrested, arguing that had this occurred, the meeting in the park would not have happened. The Magistrate Judge disagreed, finding the plaintiff could not state a plausible claim under Title IX, Section 504, and the ADA, and dismissed all claims against the school district, with prejudice.

Kristen Ballard (Tampa, FL) had her motion to dismiss granted in a business dispute regarding failure to perform obligations under a commercial equipment lease. The judge granted, in full, the defendant's motion to dismiss the plaintiff's complaint for fraudulent misrepresentation, negligent misrepresentation, and promissory estoppel. The judge also granted Kristen's motion to strike the plaintiff's claim for attorneys' fees.

Jeffrey Imeri (Long Island, NY), **Diane Toner** (New York, NY) and **Ashley Davis** (Mount Laurel, NJ) won summary judgment in a federal breach of contract case based on credit cardholders' assignment of Collision Damage Waiver benefits to the plaintiff, a car rental company. Just ten days before trial, the court dismissed the case in its entirety, finding that there was no underlying contract between our client and the cardholders; the contracts were between the cardholders and the non-party banks.

Matthew Flanagan (New York, NY) succeeded in obtaining a pre-answer dismissal of malpractice claims against a Brooklyn attorney who allegedly failed to advise his former client of the exposure he faced in a fraud lawsuit. The plaintiff claimed he understood the risk of losing at trial, but his attorney allegedly failed to advise him that he would be liable for pre-verdict interest, which amounted to over $389,000. Additionally, the plaintiff claimed the attorney failed to seek a set-off based on a co-defendant's settlement. Matt argued that documentary evidence, including emails the plaintiff denied receiving, established his awareness of the potential exposure. Matt also argued that the plaintiff would need to pay the amount of the judgment, less the set-off which he would have received, before he claimed to have been damaged by the failure to seek the set-off. The court agreed with both arguments and dismissed the complaint against our client.

Michael Jacobson (New York, NY) successfully secured the dismissal of fraud, RICO, and civil conspiracy claims against a New Jersey attorney and law firm sued in New York. In a pre-answer motion to dismiss, Michael argued that the court lacked jurisdiction over our clients because they did not have sufficient contacts with New York under New York's general jurisdiction and long arm jurisdiction statutes. The court agreed and dismissed the claims against our clients.

John Slimm (Mount Laurel, NJ) successfully defended an attorney who specializes in the representation of school boards in a grievance before the New Jersey Office of Attorney Ethics (OAE). The grievance was filed by a plaintiff's attorney who argued that our client violated the rules of professional conduct in connection with his arguments to the trial court and the appellate court. The OAE rejected the grievance, finding that the allegations of racist and misogynistic behavior by defense counsel were unfounded, that the attorney did not disrespect the court either at trial or on appeal, that the attorney did not lie about the employer's defenses, and did not make any false statements of fact in response to the plaintiff's grievance.

John Slimm and **Jeremy Zacharias** (both of Mount Laurel, NJ) successfully defended an appeal arising out of a legal malpractice/securities action in which they were successful at the trial level. The case is noteworthy because here, for the first time in New Jersey in a legal malpractice action arising out of a securities case, the court applied New Jersey's entire controversy doctrine and dismissed the complaint.

Raychel Garcia and **Matthew Wykes** (both of Orlando, PA) successfully struck the plaintiff's jury trial demand, ensuring the case will be decided by a judge. Because the allegations against our clients were of negligent hiring, this is a huge victory as sympathy from a jury pool is no longer a factor. The plaintiff, who alleged negligent hiring, had signed 10 consecutive leases containing a jury trial waiver. She claimed the waiver was unconstitutional and invalid due to her limited education. We argued that the plaintiff's right to a jury trial was not lost as she can still sue the individual who assaulted her; the waiver went both ways. The court agreed with our position that both parties knowingly waived the right to a jury trial and that the plaintiff's claimed lack of understanding did not void the contract.

Jillian Clark and **Leonard Leicht** (both of Roseland, NJ) obtained a directed verdict in a New Jersey Law Against Discrimination case filed against a national trucking company after two days of trial. The plaintiff, a laborer, assisted a truck driver making deliveries to a retail store. The driver admitted to making sexually explicit comments to the plaintiff. The plaintiff argued the comments were made due to his race (African American) and were protected under the LAD. We argued that the comments were offensive to anyone who heard them and had nothing to do with the plaintiff's race. At trial, the judge agreed with our argument that the language used by the truck driver, however offensive it was, could not sustain a cause of action under the LAD as it was not based on a protected category, as alleged by the plaintiff. The judge dismissed the case.

Christopher Conrad (Harrisburg, PA) and **Jacob Gilboy** (Scranton, PA) were successful in a Dauphin County case stemming from an alleged faulty deed certificate filed in conjunction with a prior real estate transaction. The plaintiff brought claims of negligence, quiet title/declaratory relief, and fraud. We prepared and filed preliminary objections to the plaintiff's complaint and amended compliant. Following oral argument, our preliminary objections were granted, disposing of the plaintiff's action on substantive legal grounds and on the basis that the plaintiff's pleadings were never properly served to our client under the Pennsylvania Rules of Civil Procedure.

Jillian Dinehart (Cleveland, OH) received summary judgment in a real estate fraud action. Our client represented the seller in the sale of a $400,000 home. During the listing, the seller completed two disclosures. The second disclosure did not include all of the same facts as the first disclosure and failed to identify defects in the roof, which were discovered during an inspection for a failed sale. Although the seller's realtor was aware of the defects, the realtor did not confirm that the disclosure was correct and did not inform the un-represented buyers of the defects. The buyers claimed that the realtor and the seller were involved in a conspiracy after finding evidence that the seller requested the realtor cancel a showing because of one of the undisclosed defects. Summary judgment was granted pursuant to the doctrine of caveat emptor, with the court finding that the purchase agreement contained an "as is" clause that overcame any misrepresentations. The court further found there was no

evidence that the defendants knew of or concealed any of the alleged defects or engaged in any fraud.

In another matter, Jillian obtained judgment on the pleadings for a municipality in a case involving a double above-the-knee amputee who alleged excessive force and ADA violations after being dropped while exiting a police vehicle during a DUI arrest. The Northern District of Ohio court found the complaint failed to allege improper force and that the officers are not duty-bound to adhere to an arrestee's accommodation requests if they utilize reasonable strategy. It also held their conduct did not violate any clearly established constitutional right. The claim, valued at approximately $500,000, was dismissed.

Christopher Conrad (Harrisburg, PA) and **Jacob Gilboy** (Scranton, PA) successfully represented a school district in a retaliation, slander, and defamation case. The suit was filed against the school district, its former Title IX coordinator, and its athletic director following a coach's removal. We prepared and filed preliminary objection to the complaint on substantive legal grounds. Following oral argument, our preliminary objections were granted. The plaintiff did not appeal and then voluntarily withdrew his action.

John Gonzales and **Connor Warner** (both of Philadelphia, PA) had their clients dismissed via sanctions imposed. The plaintiff was arrested by officers of a Narcotics Field Unit and alleged the officers seized $40,000 in cash from his vehicle, falsified a search warrant affidavit, disregarded proper procedures and withheld exculpatory evidence, leading to drug charges. The plaintiff entered a guilty plea for probation to avoid a lengthy prison sentence. The court granted the plaintiff's motion for a new trial based on after-discovered evidence, and the charges were nolle prossed. In his initial complaint, the plaintiff alleged federal civil rights violations under 42 U.S.C. § 1983 (unlawful arrest, search, seizure, malicious prosecution, and due process violations) and state law claims (false arrest, false imprisonment, malicious prosecution, assault and battery). Due to a related litigation involving the Narcotics Field Unit, the case was placed in suspense in 2020 and restored to the active docket in 2023. In April 2024, the plaintiff filed an amended complaint, asserting six causes of action: § 1983 claims for fabrication of evidence, suppression of evidence, malicious prosecution, civil rights conspiracy, municipal liability (against the City), and state law claims for false arrest, false imprisonment, malicious prosecution, and conversion. This past August, the U.S. District Court for the Eastern District of Pennsylvania dismissed the plaintiff's claims against the individual police officers under FRCP Rule 37(b) for failure to comply with discovery orders, with prejudice. Applying the *Poulis* factors, the court found the plaintiff personally responsible for nearly two years of non-communication with his counsel, which prejudiced the police officers by delaying trial preparation and demonstrated a history of dilatoriness without reasonable excuse. Lesser sanctions were deemed ineffective due to the plaintiff's prolonged unresponsiveness, and the merits of his claims could not be evaluated, rendering this factor neutral. The City's motion to join the police officers' sanctions motion was denied, as they did not move to compel discovery or demonstrate the plaintiff's violation of a related court order.

In a unconnected civil rights case, John and Connor also secured summary judgment granted in favor of the defendants on all counts. The plaintiff sued a township, its police officers, and the buyer of the plaintiff's former property after events in 2022 related to the sale of her condemned, cluttered home. After a fall and femur fracture in her home, the plaintiff was hospitalized and later granted court orders allowing "unlimited and unfettered access" to retrieve personal property until September 1, 2022. On August 12, 2022, police found her in a soiled hospital gown in extreme heat with no utilities, which lead to a Section 302 mental health arrest and evaluation. The 302 application was denied, and the plaintiff was released the same day. She returned to the property on August 13, 2022, removed plywood and attempted to reside there, resulting in her arrest for burglary, criminal trespass, defiant trespass, and criminal mischief. She was detained until September 7, 2022; charges were later dismissed. The plaintiff alleged constitutional violations under 42 U.S.C. § 1983 (false arrest, false imprisonment, malicious prosecution, failure to train) and common law claims (malicious prosecution, conversion). The court granted the our summary judgment motion, ruling that the plaintiff's court-ordered access was strictly for property removal, not residency. The court found probable cause for both the mental health evaluation and arrest and no evidence of malice or inadequate training. The judge acknowledged the plaintiff's significant hardships (injury, hoarding, mental health concerns) but emphasized a neutral application of the law and commended the officers for their professionalism.

Jacob Gilboy (Harrisburg, PA) obtained dismissal of negligence and breach of contract claims against a real estate agent. In his lawsuit against his former real estate agent, the plaintiff alleged negligence and a breach of the buyer-agency agreement and standard agreement of sale for a March 2025 property transaction. The plaintiff claimed that the agent misrepresented the property's tax information and that certain wiring defects within the property were known and intentionally withheld. Following a hearing where both the plaintiff and the defendant testified, Jake obtained a complete defense judgment.

Seth Altman (Fort Lauderdale, FL) and James Hanratty (Jacksonville, FL) obtained summary judgment in a coverage dispute where the plaintiff sought UM benefits under a policy for a car he owned, after an accident on his uninsured motorcycle. The court held that UM coverage was excluded for the motorcycle. The plaintiff argued the policy was ambiguous because the PIP section defined a "motor vehicle" as having four wheels—excluding motorcycles—while the UM section did not. This was an ambiguity in the policy that could have been interpreted against the carrier. The plaintiff had significant injuries that far exceeded the value of the policy. The court rejected this argument, agreeing with our position that the PIP and UM coverages are separate and distinct, and upheld both exclusions despite the plaintiff's significant injuries.

WORKERS' COMPENSATION DEPARTMENT

Benjamin Durstein (Wilmington, DE) secured multiple victories before the Delaware Industrial Accident Board. In one matter, following an evidentiary hearing, the Board dismissed a Petition to Determine Compensation Due after finding that the claimant failed to prove an "untoward event," a required element under the *Nally* successive carrier/subsequent accident analysis. Without such an event beyond the normal duties of employment, liability could not shift from the first employer/carrier to the subsequent one.

In a second case, the Board denied the claimant's petition alleging injuries to her right ankle, both upper extremities, and low back, finding her account of the accident not credible due to inconsistencies in her conduct before and after the alleged event and a lack of supporting evidence.

Finally, in a third matter, Ben successfully obtained termination of a claimant's temporary partial disability benefits. The Board determined that the claimant had voluntarily removed himself from the workforce, noting he was capable of medium-duty work, that suitable jobs were available, that he had performed only a minimal job search over an 18-month period, and that his daily activities reflected a retirement lifestyle rather than intent to return to work. Consequently, wage replacement benefits were terminated.

Linda Farrell (Jacksonville, FL) was successful in having her motion for indemnification granted in a case in which our client's subcontractor did not secure workers' compensation coverage as required by statute. Therefore, our client—the contractor—became the statutory employer and accepted the claim as compensable. Our client provided medical and indemnity benefits and reached a settlement compromise with the injured worker. Linda filed a motion for indemnification, requesting that the subcontractor be ordered to reimburse our client for all monies paid on the claim. After an evidentiary hearing, where we presented evidence and called the vice president of claims to testify, the judge of compensation claims granted our motion.

William Murphy (Roseland, NJ) achieved two defense victories on behalf of health care clients. In the first matter, Bill successfully obtained the dismissal, with prejudice, of a dependency claim filed by the husband of an emergency room physician who passed away from COVID-19. The claim sought $1.75 million, later reduced to $300,000, to be divided among multiple employers where the decedent had worked. Bill raised the statute of limitations defense, noting the petition was filed more than two years after the decedent's death. Ultimately, the matter was resolved with other defendants paying $140,000 and $10,000 respectively, while the claim against our client was dismissed, with prejudice, with no payment made.

In the second matter, Bill successfully obtained dismissal of a $104,688.13 medical provider claim seeking payment for treatment rendered following a work-related injury. Bill moved to dismiss for lack of jurisdiction, arguing there were insufficient contacts with the state of New Jersey to establish jurisdiction. The court agreed and granted the motion, dismissing the case in its entirety.

Gabrielle Winter (Mount Laurel, NJ) successfully argued a motion to dismiss for lack of jurisdiction on a medical provider claim petition where the medical provider was seeking $105,688.13. The judge dismissed the case, agreeing with Gabrielle's argument that there was insufficient contact with New Jersey and that the proper jurisdiction was New York.

Anthony Natale (King of Prussia, PA) achieved a series of defense victories before Pennsylvania workers' compensation judges, successfully representing employers across multiple complex matters.

In one case, Tony won a defense verdict on a penalty petition filed against a mushroom company. The claimant alleged that Supreme Court precedent required penalties as the carrier failed to issue an award check immediately after a decision on the merits. The check, issued 19 days post-decision, was within the 30-day industry standard. The court agreed with the employer's position that common-sense practice and precedent did not support the claimant's interpretation, and the penalty petition was denied and dismissed.

In another matter, Tony obtained a defense verdict on a claim petition filed by a township police officer who developed neurological symptoms after an active shooter standoff. The court found the claimant's medical expert not credible and accepted the employer's neuro-ophthalmologist's opinion that no work-related injury occurred, dismissing the petition in full.

In a case where the claimant repeatedly refused to attend independent medical examinations (IMEs), a petition to compel her attendance was filed and granted by the court. A new court-ordered IME was scheduled, which the claimant did not attend. Tony filed a petition to suspend both indemnity and medical benefits. The court found the claimant's refusal to cooperate warranted suspension of benefits.

In a separate claim involving a shoulder injury, Tony earned a defense verdict after proving that the claimant's loss of earnings resulted from his discharge for cause—not from a continuing work injury. After the claimant secured new employment with another company at lower wages, he alleged he was entitled to ongoing partial disability. The court found the employer's fact and medical witnesses credible, leading to dismissal of the claim petition.

Tony also prevailed on several termination petitions. In one, the court found a claimant fully recovered from a concussion and post-concussive syndrome after the claimant's own treating physician supported the employer's position. In another case involving a university employee with neck and low back strain injuries, the claimant's expert conceded on cross-examination that imaging studies showed no structural changes, leading the judge to find full recovery.

Finally, in a case involving a claimant who slipped and fell in an elevator, Tony successfully proved full recovery based on diagnostic imaging showing no objective changes pre- and post-injury. The court credited the employer's expert testimony and dismissed the claim in its entirety.

Michele Punturi (Philadelphia, PA) successfully prosecuted a termination petition on behalf of a renowned international automobile corporation. Michele secured medical records supporting a significant pre-existing history of a prior left knee replacement and treatment, thus establishing that the only work injury sustained was a left knee contusion. Further, the opinions of the defense medical expert, a board-certified orthopedic surgeon with a sub-specialty in the treatment of the knees, were found competent and credible, thus supporting a full recovery. The workers' compensation judge further found the employer had a reasonable basis to contest all issues and denied attorney's fees. This decision will result in a substantial recoupment of indemnity and benefits payments via a Supersedeas Fund Reimbursement recovery.

Ryan Hauck (Pittsburgh, PA) secured two significant defense victories. In the first matter, Ryan successfully defended a claim petition in which the claimant alleged multiple orthopedic fractures and dislocations to the upper extremity, hip and bilateral lower extremities, seeking both past and future wage loss and medical benefits. The workers' compensation judge adopted Ryan's position that the injuries did not arise in the course and scope of employment. Through strategic reliance on case law, precise cross-examination and close collaboration with the employer to establish property boundaries within a commercial complex, Ryan demonstrated that the claimant was injured off premises during an unpaid lunch break, was not furthering the employer's interests, and was not engaged in any authorized or work-related activity at the time. The claim was completely denied, and bifurcation of the issues led to substantial savings in litigation costs by avoiding unnecessary medical discovery.

In the second case, Ryan successfully defended a six-figure workers' compensation claim in which the claimant alleged back and leg injuries and sought more than $60,000 in past wage loss plus ongoing benefits. Working closely with the employer, Ryan presented compelling surveillance footage, persuasive medical testimony, and strategic cross-examination that undermined the claimant's factual and medical assertions. The judge found the defense evidence more credible and persuasive, resulting in a full denial of the claim petition.

Michael Sebastian (Scranton, PA) achieved multiple defense victories, successfully representing employers across several complex claims.

In one case, Mike defended a multinational food corporation in a matter involving petitions for suspension, reinstatement, claim, and utilization review. The claimant alleged that her right and left carpal tunnel syndrome (CTS) prevented her from working in a cold environment. Prior to the decision, the defense accepted the left-sided CTS as work-related, narrowing the dispute

to whether the claimant could return to work. The judge found the claimant and her medical expert not credible, noting that the claimant wore gloves and cold-weather gear and did not handle cold meat directly. The employer's witness conducted a temperature experiment showing that hand temperatures remained within safe limits, and the employer's medical expert testified that cold exposure does not affect CTS. The judge credited the employer's witnesses and experts, suspended the claimant's benefits, and found subsequent treatment with two providers unreasonable and unnecessary.

In a second matter, Mike obtained a defense verdict in a claim petition where the claimant alleged a work-related knee injury requiring knee replacement surgery and sought more than $149,000 in medical expenses. The judge found the claimant's testimony not credible, as he failed to identify a specific incident or repetitive trauma to support the claim. The claimant's medical expert was also found not credible because he did not examine the claimant until after surgery and lacked sufficient information. Given the unreliability of the claimant's evidence, the judge dismissed the claim without needing to address the employer's expert testimony.

In a third case, Mike successfully defended against a claim petition where the claimant alleged a back injury at work. The judge found significant inconsistencies in the claimant's testimony regarding the date, location, and cause of injury. Multiple employer witnesses credibly testified that the claimant had reported hurting her back at home after falling down stairs. The judge found the employer's witnesses and medical expert credible, determining that the claimant only sustained a lumbar strain from a non-work-related incident and had fully recovered. The claimant's testimony and expert opinions were rejected, and the claim petition was denied and dismissed in full.

A. Judd Woytek (King of Prussia, PA) received a favorable decision which found that our client had a valid subrogation lien in the amount of $82,266.60 that the claimant and her third-party attorney had failed to honor. The workers' compensation judge directed repayment of the employer's automatic and absolute subrogation lien in the total amount requested.

In another matter, Judd successfully defended against a petition for joinder of additional defendant that sought to place liability on our client as a statutory employer under the Workers' Compensation Act. The judge found that the original defendants had failed to join the proper party, had failed to prove that our client was a statutory employer, and had failed to prove facts sufficient to pierce the corporate veil. Our client was dismissed from the claim.

Kacey Wiedt (Harrisburg, PA) successfully defended against the claimant's claim and penalty petitions by proving the alleged injury occurred months later than claimed. The claimant, a technical operator, alleged a left shoulder tear from using a tool to dislodge cheese from a machine and claimed to have given timely notice. Through cross-examination and employer testimony,

Kacey established that notice was not provided until four-to-five months after the alleged incident and that the claimant left work that day because he was sick. Medical evidence further showed the injury occurred later than alleged, as the bicep showed no retraction 10 months after the claimed date. The workers' compensation judge found the employer's medical expert more credible, denying both the claim and penalty petitions in full.

Michael Duffy (King of Prussia, PA) obtained a favorable decision that saved the client millions of dollars. The claimant alleged a left shoulder dislocation, stroke, traumatic brain injury, gait dysfunction, central pain syndrome, and post-traumatic seizures from a workplace fall. We proved that the claimant only dislocated his shoulder, presenting witnesses who confirmed he never hit his head or bled as claimed. When the claimant later alleged his stroke was caused by a hypertensive crisis triggered by the fall, we demonstrated his long-standing, uncontrolled hypertension and lack of medical evidence linking the two events. The judge agreed, awarding only one day of wage loss benefits (approximately $88) for the shoulder injury and denying all other claims. This ruling avoided lifetime wage loss and medical expenses that would have totaled millions. ◆

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ON THE PULSE

Other Notable Achievements

THOUGHT LEADERSHIP

Dana Gittleman (Philadelphia, PA), and **Jeremy Zacharias** (Mount Laurel, NJ) recorded Episodes 2 and 3 of their PLUS podcast, "Insurance Agent E&O – Top Ten Tips for Risk Management." Episode 2 discusses key strategies for risk management in professional liability litigation—the importance of establishing personal contact with clients, retaining the right liability expert, and understanding the critical nuances of underlying litigation in E&O claims. You can listen **here**. Episode 3 dives into four critical areas for insurance professionals and defense counsel: assessing related litigation, understanding business relationships, staying organized, and getting creative with case strategy. With real-world examples and practical insights, they offer listeners actionable tools to strengthen claims handling and professional liability defense. You can listen to the final episode **here**.

SPEAKING ENGAGEMENTS

Robert Aldrich and **Melissa Dziak** (both of Scranton, PA) co-presented "Navigating the Digital Shift: Balancing the Benefits and Legal Risks of Patient Portals" at the 2025 ASHRM annual conference. Along with Gina Kittek, System Director, Risk Management & Corporate Compliance at United Health Services, Rob and Melissa discussed mitigation strategies for managing the risks associated with the use of patient portals and how the reliance on patient portals impacts medical malpractice laws.

Christopher Block (Roseland, NJ) served as faculty for the School of Casualty Claims at the CLM Alliance (Claims and Litigation Management Alliance) annual Claims College this past September in Baltimore. He shared strategies and tools that claims professionals can apply to help them better manage their case files.

Ariel Brownstein and **Matthew Burdalski** (both of Mount Laurel, NJ) and **Gary Lesser** (Roseland, NJ) co-presented "NJ PIP - A DRPA's Perspective" at the 34th New Jersey Special Investigators Association's Seminar & Networking Conference. Ari and Matt also co-presented "Ping! Utilizing Modern Technology to Answer the Who, Where and When" at the NYAct 2025 Annual Education Conference.

Josh J.T. Byrne (Philadelphia, PA) co-presented at the Philadelphia Bar Association's 2025 Bench-Bar & Annual Conference. Josh joined Marie C. Dooley, member of the Disciplinary Board of the Supreme Court of Pennsylvania, to present "Pennsylvania's Attorney Disciplinary Process and Our Changing World." The session reviewed the attorney discipline process in Pennsylvania with a particular emphasis on how it has changed over the last year with significant opinions from the Pennsylvania Supreme Court. The duo also examined potential ethical/disciplinary issues related to changes to the environment for attorneys since the new administration took office. Josh also presented at "Succession Planning for Law Firms and Lawyers 2025," a Pennsylvania Bar Institute program focused on helping attorneys and firms build continuity, retain key client relationships, and develop the next generation of leaders.

Christopher Conrad (Harrisburg, PA) co-presented "Left Behind? Today's U.S. Department of Education and the Potential Impact on Special Education and Disability Services" at Pennsylvania Bar Institute's Exceptional Children Conference.

Jon Cross (Philadelphia, PA) served as a panelist at the International Adventure & Trampoline Parks Association annual conference in Maricopa, Arizona. The panel's presentation, "Defensibility Strategies – Reduce Liability: Supervision & Documentation," focused on risk management practices to help park operators and entities minimize liability and strengthen their defense against potential claims and incidents.

Scott Eberle (Pittsburgh, PA) co-presented "Auto Law Update 2025" for the Pennsylvania Bar Institute, an annual update for auto law practitioners.

Heather Carbone and **Linda Farrell** (both of Jacksonville, FL) were presenters for The Florida Bar's Workers' Compensation Section webinar on "Florida's New Rules of Civil Procedure and Impact on Workers' Compensation Claims." Heather and Linda discussed the interplay between the new Florida Rules of Civil Procedure involving discovery and the Rules of Procedure for Workers' Compensation Adjudications, Chapter 60Q-6. The webinar specifically addressed the updated Rule 1.280 and how it may be applied to workers' compensation cases and/or civil cases that have an impact on workers' compensation claims. They also discussed proportionality and what mechanisms should be used to apply the new discovery rule.

Matthew Keris (Scranton, PA) recently co-presented a CLE for the Pennsylvania Coalition for Civil Justice Reform. "Medical Malpractice in Pennsylvania" featured a panel discussion exploring a number of emerging legal issues in medical malpractice, such as the continuing surge of Philadelphia cases; the dilution of plaintiffs' burden to prove agents' causation; preserving issues on appeal and waiver rulings of the Superior Court; ethical concerns with double and triple booking; and the rise of punitive damages.

ON THE PULSE

Other Notable Achievements (cont.)

Mark Kozlowski (Scranton, PA) presented on Civil Rights and the 14th Amendment at Marywood University's "The Courts and Our Community" Lecture Series. The semester long workshop was presented by Marywood University's Center for Law, Justice, and Policy. Designed to introduce students to key legal concepts and foster civic awareness, the sessions offered direct engagement with judges, attorneys, and legal scholars.

Paul Krepps (Pittsburgh, PA) presented "Litigating Qualified Immunity" at the County Commissioners Association of Pennsylvania Insurance Programs Defense Counsel meeting in Harrisburg. The program, part of the Pennsylvania Counties Risk Pool, brings together defense counsel who represent counties and related entities throughout the state.

Megan Nelson (Orlando, FL) presented a CLE on "Incident Reporting From a Lawyer's Perspective" to the members of the Central Florida Chapter of the American College of Health Care Executives. As an attorney and registered nurse, Megan offered insight into the importance of incident reporting from both a health care and legal point of view.

Michele Punturi (Philadelphia, PA) joined attorneys from the claimant's and defense bars, the judiciary, and the Appeal Board for an in-depth CLE program on the past and future of the Workers' Compensation Adjudicatory System. Hosted by the Philadelphia Bar Association's Workers' Compensation Section, panelists examined historical transformations in the practice of workers' compensation, spanning from in-person hearings at the State Office Building to modern day hearings and virtual practice.

Jeffrey Rapattoni (Mount Laurel, NJ) co-presented "Artificial Intelligence-Legal Considerations" at the joint National Insurance Crime Bureau/National Conference of Insurance Crime Attorneys national conference. Jeff also co-presented "Building a Better Major Case Investigation" with Derek Maki of Liberty Mutual at IASIU - Michigan Chapter's annual fall seminar. Jeff and Derek discussed the changing face of medical fraud, ring activity and fraud fighting post-Covid. He presented "AI Vendor Management" to the attendees of the New Jersey Special Investigators Association Fraud Summit. Finally, Jeff participated in the webinar "Trends in Insurance Panel Counsel" hosted by AM Best's Insurance Professional Resources.

Robin Romano (Philadelphia, PA) was a co-presenter at the Pennsylvania Bar Association's Workers' Comp Fall Section Meeting in Hershey, PA. During her presentation, "Civility in Practice," Robin discussed the importance of treating all parties involved in litigation with respect, professionalism and fairness to promote effective communication and foster trust, and ultimately lead to more efficient and just outcomes in the claims

process. The discussion explored practical strategies for fostering civility across all roles in the system, challenges to maintaining professionalism under pressure, and tools for improving communication and collaboration.

Suzanne Tighe (Philadelphia, PA/Scranton, PA) joined the Pennsylvania Bar Instiutute's Auto Law Update 2025, sharing insights on the latest developments and trends shaping auto law practice across Pennsylvania. The focus of her presentation was "Ridesharing and Computer Rental Issues."

John Slimm (Mount Laurel, NJ) participated in the New Jersey State Bar Association's CLE *2025 Trial Bootcamp: Master the Art of Trial Advocacy*. Jack and the Honorable Christine P. O'Hearn, U.S.D.J. and Dennis J. Drasco, Esq. co-presented "Selecting the Jury." ◆

PUBLISHED ARTICLES

November 17, 2025 – "Your Engagement Agreement as a Defense Against Fee Disputes," by **Alesia Sulock** and **Josh J.T. Byrne** (both of Philadelphia, PA) was published in *The Legal Intelligencer*. Read their article **here**.

November 10, 2025 – **Daniel McGannon's** (Harrisburg, PA) article "Redefining Harm: Did SCOTUS Expand Title VII Protections in '*Muldrow v. City of St. Louis*'?" was published in *The Legal Intelligencer's* Labor & Employment/Workers' Compensation Supplement. Read Dan's article **here**.

November 10, 2025 – **John Paul Abda's** (Scranton, PA) article "PTSI and First Responders: Act 121—A New Era in Pa. Workers' Compensation" was published in *The Legal Intelligencer's* Labor & Employment Law/Workers' Compensation Supplement. Read John Paul's article **here**.

October 28, 2025 – "Pennsylvania Supreme Court Strengthens Legal Protections for Home Inspectors," by **Dana Gittleman** (Philadelphia, PA) and **Danielle Vugrinovich** (Pittsburgh, PA), was published on PLUS Blog. Read **here**.

October 22, 2025 – **Anthony Natale** (King of Prussia, PA) authored the article, "Compensating the Boys of Fall - College Sports May Soon Face the Ultimate Call: Player or Employee?" appeared in *CLM Magazine*. Read **here**.

Fall 2025 – "From Instagram to the Jury: Lessons in Digital Evidence Authentication," by **Brad Haas** (Pittsburgh, PA) was published in *PAMIC Magazine*. Read **here**.

September 19, 2025 – "Status of 'Gist of the Action' in Legal Malpractice Claims Following *Swatt v. Nottingham Village*," by **Alesia Sulock** and **Josh J.T. Byrne** was published in *The Legal Intelligencer.* Read **here**. ◆

Our 2026 Shareholder Class

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TOP 10 MOST-READ ARTICLES IN 2025

TOP 10

Win for Employers: Florida Appellate Court Limits Negligence Claims

Erica R. Cagan

Did the Cat Move the Ladder?

Keith M. Andresen

A Costly Mistake

Michael R. Duffy

District Court of Appeals Tell Plaintiffs They 'Can't Have Their Cake and Eat It Too' Jacksonville, Florida Casualty Department

From 'Brownish' to Baseless: Florida Court Reinforces Slip-and-Fall Standards

Matthew R. Wykes

Change Is in the Air: A Shift in Pennsylvania Judge's Role in Jury Selection Effective April 1, 2025

Nicholas D. Bowers

A Deadly Encounter: Court Clarifies Use of Force in Police Shooting of Mentally Ill Individual

D. Connor Warner

A Double Take: Workers' Compensation Liens Render UIM Non-Duplication Clauses Unenforceable

Joshua D. Scheets

All Bark and All Bite

Keith M. Andresen

Proposed Expert's Qualification to Proffer Standard of Care Opinions Must Be Evaluated Under the Entirety of Section 512 of the MCARE Act

Tyler R. Price

Defense Digest, **Vol. 31, No. 4, December 2025**, is prepared by Marshall Dennehey to provide information on recent legal developments of interest to our readers. This publication is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.