DEFENSE DIGEST

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MARSHALL DENNEHEY

Offensive, But Not Actionable: The Limits of Pennsylvania's Real Estate Seller Disclosure Law

James D. Greco, Esq.

Key Points:

- Objectively-quantifiable flaw is needed in order to assert a claim for violation of the RESDL.
- Nazi floor design did not constitute a physical or structural problem with the property.
- Subjectivity cannot drive RESDL claims.

As is well known among real estate agents and brokers, Pennsylvania's Real Estate Seller Disclosure Law, 68 Pa.C.S. §§ 7301, *et seq.*, places responsibility on sellers to disclose material defects with respect to their property during a real estate sale. Specifically, the RESDL states:

> Any seller who intends to transfer any interest in real property shall disclose to the buyer any material defects with the property known to the seller by completing all applicable items in a property disclosure statement which satisfies the requirements of [§] 7304 (relating to disclosure form). A signed and dated copy of the property disclosure statement shall be delivered to the buyer in accordance with [§] 7305 (relating to delivery of disclosure form) prior to the signing of an agreement of transfer by the seller and buyer with respect to the property.

68 Pa.C.S. § 7303. Liability under the RESDL is extended to agents of the seller where they have actual knowledge of such defect.

While plaintiffs have attempted to expand the reach of the RESDL to more subjective claims, courts throughout the Commonwealth have historically limited permissible claims. Claims are restricted to those regarding defects that substantively impact the value of the real estate, while still being capable of recognition and quantification by objective standards.

The foregoing limitation was recently analyzed in *Wentworth v. Steinmetz,* 2025 WL 3157571 (Pa. Super. Nov. 12, 2025), which analyzed whether a symbol tiled into a floor of a home constituted a "material defect." *Wentworth* involved a dispute between the buyers and seller of a residence in Beaver County, Pennsylvania. After closing, the buyers found the basement floor to be tiled with a swastika and what they believed to be a Nazi eagle. This area of the floor had been covered by a rug when they initially viewed the home, thus, the buyers were not aware of it until after the closing. The buyers claimed they could not be expected to live in a home with such condition and asserted that it would cost $30,000.00 to replace the floor, arguing that the seller was liable for compensatory and punitive damages for failing to disclose the condition. The trial court found for the seller, determining that the symbols did not constitute a material defect, which the buyers appealed.

The Superior Court looked to *Milliken v. Jacono,* 103 A.3d 806 (Pa. 2014), *as modified on reconsideration* (Nov. 12, 2014) (*Milliken II)*, where the Pennsylvania Supreme Court held that purely psychological stigmas are not material defects of property that sellers must

disclose. *Milliken II* involved a claim for violation of the RESDL for the sellers' failure to disclose a murder-suicide that took place in the residence. If such a duty was to be created, the *Milliken II* court opined, it should be imposed by the legislature.

Applying the analysis set forth in *Milliken II*, the Superior Court reiterated that an objectively-quantifiable flaw is needed in order to assert a claim for violation of the RESDL, agreeing with the trial court's position that the floor design did not constitute a physical or structural problem with the property. The court further reiterated that this objective standard is necessary in order to not only apply the law with consistency, but also to limit the burden placed on sellers. Since the floor in question was sound and functional, the presence of the symbols, no matter how abhorrent, did not constitute a material defect.

While not involving real estate agents, *Wentworth* is instructive of how Pennsylvania's courts analyze the wide variety of claims under the RESDL, and the fact that the court appears disinclined to permit subjectivity to drive such claims. Thus, sellers and agents alike can take solace in the fact that claims based on how a party feels about a feature or fixture of a property, without any physical or structural issue, does not pass muster when it comes to the RESDL. Certainly, this is helpful to real estate agents and brokers who are not only bound by the RESDL where they have actual knowledge of an alleged defect, but also owe a duty to their clients to represent them in a professional manner during the sale of the real estate, including advising sellers as to the information that needs to be disclosed.

Indeed, the RESDL does encompass a broad set of areas with respect to the necessary disclosures. However, the courts' analyses in *Milliken II* and, more recently, *Wentworth*, limit the subjective nature of such claims, placing the onus on the legislature if there is to be any expansion with respect to the same. ◆

James works in our Scranton, PA office. He can be reached at (570) 496-4662 or JDGreco@mdwcg.com.

Whispering Isn't Enough for Harassment: Federal Court Sets a Boundary for Employers

Veronica Sansone, Esq.

Key Points:

- The U.S. District Court for the Eastern District of Pennsylvania recently held that there are limits to workplace harassment.
- The "severe and pervasive" standard cannot be stretched to cover a Title VII claim.
- To establish a protected activity, plaintiffs must show that a reasonable person would perceive the conduct described in the complaint as harassment and/or illegal.

Recently, the U.S. District Court for the Eastern District of Pennsylvania limited the scope of workplace harassment. In *Nyamu v. Merck & Co.*, 2025 WL 2599528, (E.D. Pa. Sept. 8, 2025), the court ruled in favor of the defendant-employer. It granted summary judgment and dismissed the plaintiff's claims for both retaliation and hostile work environment.

The plaintiff, Peter Nyamu, brought claims against his employer, Merck Sharp & Dohme LLC, for creating a hostile work environment based on sexual harassment and retaliating against him for reporting the harassment. The plaintiff was employed as a biotechnician and worked in a sterile lab. The plaintiff claimed that during a staff meeting, his supervisor forgot to hand him one of the schedules he was passing out. Allegedly, after the meeting, the supervisor came close to the plaintiff and whispered in his ear, "I don't know how I missed to give you a schedule because I use your voice to know where you are standing ... You have a voice that is very specific to me." Notably, the plaintiff is of African descent, and he perceived this remark as condescending – due to his heavy accent. After the meeting, the plaintiff filed a formal complaint about his supervisor.

The same year the incident at the staff meeting occurred, the plaintiff had failed six contamination tests, excluding him from working in a sterile area for one year as per policy. Under the policy, the plaintiff was able to request, and was later transferred to a department that did not involve entering a sterile area until his exclusion was lifted after a year. The transfer occurred after the plaintiff reported his supervisor's conduct at the staff meeting. The defendant claimed the transfer was based on the exclusion policy, which the plaintiff was made aware of prior to logging his complaint, and he was placed back in his original unit once his exclusion ended.

Cross-motions for summary judgment were filed by both the plaintiff and defendant. In deciding the motions, the court analyzed the standards for both a hostile work environment due to sexual harassment and retaliation. In most employment cases, summary judgment is uncommon and a high hurdle for defendants.

Here, the plaintiff alleged that his supervisor's comments were about his distinct voice – yet he brought a hostile work environment claim under sexual harassment only. Thus, the court could only examine the instance based on the totality of the circumstances in reference to the plaintiff's sex.

Under this type of claim, the plaintiff first had to show the sex discrimination was severe and pervasive. When analyzing this first prong of the claim, the court focused on the act of leaning in and whispering to a co-worker. It recognized that this act can be uncomfortable and interfere with one's personal space. However, based on the facts presented, it did not find that the supervisor was making a sexual advance toward the plaintiff. The court ruled that, while the plaintiff may have felt uncomfortable, the singular act of whispering in this instance was not severe and pervasive enough to support a gender-based claim, especially because the allegations did not involve his sex. Thus, the court granted summary judgment in favor of the defendant.

The plaintiff also brought a retaliation claim, which was based on being transferred to another unit after he complained about the incident with his supervisor. Therefore, the court had to examine if the plaintiff engaged in a protected activity under Title VII.

In *Wilkerson v. New Media Tech. Charter Sch. Inc.*, 522 F.3d 315, 322 (3d Cir. 2008), the Third Circuit held that if no reasonable person could believe the reported incident constituted unlawful discrimination, then the complaint is not considered a protected activity. In *Nyamu v. Merck & Co.*, the District Court determined that the plaintiff's supervisor whispering about his voice being distinct was not derogatory. In fact, the court further explained that this was an "isolated incident" and something one could reasonably determine was an attempt by the supervisor to be discrete. Ultimately, summary judgment was, again, granted in favor of the defendant.

This was a key win for employers. The ruling strengthens the legal standard for claims of hostile work environment and retaliation, providing employers with a strong defense to claims involving only isolated, minor incidents. The court's holding was consistent with previous interpretations of "severe and pervasive," and confirmed that not every workplace complaint meets the reasonable person standard required to establish a protected activity. ◆

Veronica works in our King of Prussia, PA office. She can be reached at (610) 354-8261 or VRSansone@mdwcg.com.

After Further Review: Manufacturers & Sellers Incidental Contacts and Their Impact on Venue

John P. Kelly, Esq.

Key Points:

- A manufacturer and seller of retail goods should seek a transfer of venue if their online sales in the plaintiff's selected forum generate limited revenue for the company.
- The mere act of online sales in a Commonwealth forum does not give rise to laying venue where these sales occur – the actions of the manufacturer or seller must also be deemed continuous, habitual, and systemic in that venue.
- Where a manufacturer or seller has no physical presence in the forum – such as brick-and-mortar locations, in-state sales representatives, or the licenses and authorizations required to conduct business in Pennsylvania – it may possess a strong basis for arguing that venue is improper.

In today's world of online advertisement and sales, manufacturers and sellers are seemingly serving forums at an increasing level. This trend is here to stay, as consumers across the nation and Commonwealth are adapting to, and addicted to, the ease of online shopping. As discussed below, the capacity to sell goods online has resulted in an ever-evolving, liability concern: forum shopping and unfavorable venues.

While online shopping may be a boon for the consumer, it raises concerns for manufacturers and sellers of goods. Mainly, how does the nature of a manufacturer's and seller's online presence impact its prospective liability in forums across the Commonwealth? After all, the reality of serving consumers in Philadelphia County or Lackawanna County creates a range of exposure more dire than, say, Clinton County or Columbia County. The nature of online sales was recently addressed by the Pennsylvania Superior Court in *Watson v. Baby Trend, Inc.*, 308 A.3d 860 (Pa. Super. 2024). While the purchase involved in *Watson* occurred in a retail store – Babies "R" Us – in Bucks County, Pennsylvania, the nature of the manufacturer's online sales formed the basis of the plaintiff's decision to select the Philadelphia Court of Common Pleas as the forum to file suit.

The *Watson* case was brought as a result of the plaintiffs' infant daughter dying of asphyxiation while sleeping in a car seat manufactured by the the defendant, Baby Trend. An amended complaint was filed in October of 2021, in the Philadelphia County Court of Common Pleas, bringing products liability/ strict liability, negligence, and breach of warranty claims against Baby Trend. Later that month, Baby Trend filed preliminary objections, asserting that the Philadelphia Court of Common Pleas was not the proper venue for suit.

Baby Trend argued Philadelphia was an improper venue as it did not own real estate in Philadelphia County, the car seat was not purchased in Philadelphia County, the tragic incident itself did not occur in Philadelphia County, and, most importantly, Baby Trend did not conduct substantial, continuous, and systemic business activities in Philadelphia County.

In this regard, the Philadelphia Court of Common Pleas analyzed Baby Trend's sales data under the well-established "quality-quantity" venue test. As noted in previous Superior Court precedent, "[a] business entity must perform acts in a county of sufficient *quality and quantity* before venue in that county will be established." *Zampana-Barry v. Donaghue*, 921 A.2d 500, 503 (Pa. Super. 2007) (emphasis added).

Baby Trend's business model is largely to sell its goods through big-box retailers, such as Walmart and Target. The Philadelphia Court of Common Pleas determined that roughly 99% of its sales occurred through big-box retailers. While it did have an online presence, this only comprised 1% of its sales revenues. The plaintiffs attempted to use Baby Trend's online sales in Philadelphia County as proof that their acts were of a sufficient "quality and quantity" to justify their selected venue. The Philadelphia Court of Common Pleas ultimately rejected this argument, sustaining the defendant's preliminary objections, and transferred suit to Bucks County in August of 2022. As a result of that decision, the plaintiffs appealed to the Superior Court.

The Superior Court narrowed its review of the trial court's decision by further analyzing Baby Trend's sales data and its applicability to the "quality-quantity" test. The Superior Court described the 1% of online sales directed to Philadelphia County consumers as incidental and *de minimis*. Thus, the quality prong was not satisfied. This is a big takeaway as it provides manufacturers with a clear-cut data point as to what kind of impact their online sales will have in relation to the forum they may expect to be haled into.

Further, the Superior Court reasoned that the quality-quantity test was not satisfied because Baby Trend did not own real estate in Philadelphia; did not have a place of business there; did not employ sales representatives there; did not own licenses, authorizations, or registrations from the Commonwealth of Pennsylvania; and was not registered as a foreign corporation for the purpose of doing business in Philadelphia. Thus, the court determined that Baby Trend's contacts in Philadelphia did not support suit in the forum because the evidence suggested that its contacts with Philadelphia were incidental by nature and would not be seen as continuous, habitual, or regular.

The Honorable Terrence R. Nealon of the Lackawanna Court of Common Pleas relied on *Watson* in a case currently being handled by our Scranton, PA office. While our preliminary objections to venue were overruled in that matter, Judge Nealon based his decision on the fact that an individual defendant had been properly named – making venue proper under Pa. R.C.P. 1006(a)(1). However, in his decision, Judge Nealon cited *Watson* as authority on proper venue, ultimately reasoning that the parties would have been directed to engage in venue discovery – as they did in *Watson* – to properly determine if the defendant's actions in Lackawanna County were continuous, general, or habitual. *See Celli v. Endless Mountains Extended Care, LLC*, 2024 WL 4182838 (C.P. Lacka. Sept. 12, 2024).

Thus, *Watson* serves as a significant Pennsylvania decision for determining proper forum/venue for cases brought against manufacturers and sellers. Plaintiffs often seek to establish venue in plaintiff-friendly forums, aided by tenuous connections to the forum. However, *Watson* provides the defense bar with a myriad of arguments to combat these efforts, particularly in the context of retail liability. ◆

John works in our Scranton, PA office. He can be reached at (570) 496-4640 or JPKelly@mdwcg.com.

Court Affirms Strong Liability Protections for Rideshare Companies Under Florida Law

Sophia E.D. Philor, Esq.

Key Points:

- Florida law treats rideshare drivers as independent contractors when statutory conditions are met.
- The law in effect on the date of the accident controls liability analysis.
- Isolated complaints and traffic citations are generally insufficient to prove negligent hiring.

A Florida appellate court recently affirmed summary judgment in favor of Lyft, highlighting the liability protections available to rideshare companies under Florida's Transportation Network Company statute. In *Abner v. Lyft Florida, Inc.*, 422 So.3d 1226 (Fla. 3d DCA 2025), the District Court of Appeal of Florida, Third District, held that Lyft could not be held liable for injuries caused by one of its drivers, rejecting claims for both vicarious liability and negligent hiring and retention.

The case arose from an accident on July 5, 2017, where a Lyft driver collided with a motorcyclist, causing serious injuries. At the time, the driver was providing a prearranged ride through Lyft's digital platform. The injured motorcyclist's guardian sued both the driver and Lyft. While claims against the driver were settled, the claims against Lyft continued.

The plaintiff argued Lyft was responsible in two ways: the driver was acting as Lyft's employee or agent at the time of the accident, and that it was negligent in hiring and retaining the driver. Lyft moved for summary judgment, relying on Florida's Transportation Network Company statute, section 627.748, Florida Statutes (2017), which had taken effect just days before the crash.

The plaintiff argued the statute should not apply because the driver had been approved to drive for Lyft before it went into effect. The court rejected that argument, explaining that Florida law applies the statute in effect when the cause of action accrues. In negligence cases, that is the date of the accident. *R.J. Reynolds Tobacco Co. v. Sheffield*, 266 So. 3d 1230, 1233 (Fla. 5th DCA 2019). Since the accident occurred after the statute became effective, the statute governed the claims against Lyft.

Under section 627.748(9), a rideshare driver is considered an independent contractor, not an employee, if certain conditions are met. These conditions include allowing drivers to set their own hours, permitting work on competing rideshare platforms, not restricting other business or employment, and confirming independent contractor status in writing. Lyft presented evidence that these conditions were satisfied, including the driver agreement and testimony from its corporate representative.

The plaintiff argued that the driver did not qualify as an independent contractor because the agreement allegedly limited other work. The court disagreed, finding that the agreement only limited the driver's activities while actively providing rides through the Lyft platform. Outside of those times, the driver remained free to pursue other employment or business activities. The agreement explicitly confirmed the driver's discretion to work or not work. The court noted this is consistent with prior Florida cases recognizing rideshare drivers as independent contractors. *McGillis v. Department of Economic Opportunity*, 210 So. 3d 220, 225-226 (Fla. 3d DCA 2017).

Since the driver qualified as an independent contractor, Lyft could not be held vicariously liable for the driver's alleged negligence. Florida law generally holds that companies are not responsible for the negligent acts of independent contractors when they do not control how the work is performed. *Stander v. Dispoz-O-Prods., Inc.*, 973 So. 2d 603, 604 (Fla. 4th DCA 2008).

The plaintiff also claimed Lyft was directly liable for negligent hiring and retention, citing a speeding citation, a reckless driving citation, and two negative passenger complaints. The court found this evidence insufficient. Under the statute, disqualification is triggered by certain criminal convictions, and not merely by citations. The driver's reckless driving incident was only a citation, and a single moving violation did not meet the statutory threshold for disqualification. The passenger complaints were similarly inadequate: one was a vague two-star review with no explanation, and the other involved a single passenger reporting unsafe driving. Given the hundreds of rides the driver had safely completed, the court considered this evidence isolated and minimal.

The limited evidence led the court declining to broadly define negligent hiring claims against transportation network companies. Instead, it resolved the case narrowly, emphasizing judicial restraint. The court explained that if evidence is insufficient to survive a directed verdict at trial, it cannot survive summary judgment. *CG Tides LLC v. SHEDDF3 VNB, LLC*, 388 So. 3d 1081, 1084 (Fla. 3d DCA 2024); *In re Amendments to Florida Rule of Civil Procedure 1.510*, 317 So. 3d 72, 75 (Fla. 2021).

For insurance professionals, *Abner v. Lyft Florida, Inc.* reinforces the protections Florida law provides to transportation network companies. It highlights the importance of applying the law in effect on the date of loss, confirming independent contractor status, and assessing the sufficiency of evidence for negligent hiring claims. It also demonstrates how Florida's summary judgment standard can resolve weak claims early, reducing exposure and defense costs. The appellate court ultimately affirmed summary judgment in Lyft's favor. ◆

Sophia works in our Fort Lauderdale, FL office. She can be reached at (954) 233-3026 or SEPhilor@mdwcg.com.

Statutory Employer Immunity Lives On: Pennsylvania Supreme Court Reaffirms General Contractor Protection

John Paul Abda

Key Points:

- Statutory employer immunity is still a powerful shield for general contractors. The court declined to overrule the doctrine and left any policy change to the General Assembly, preserving a major tort-exposure limitation on construction losses.
- The defense is "jurisdictional" and not waivable. Reaffirming *LeFlar*, the court reiterated that the Workers' Compensation Act deprives common pleas courts of jurisdiction over negligence suits against employers/statutory employers, so the issue can be raised even if not timely pled.
- The court reaffirmed the five-part *McDonald* test and the importance of allowing a defendant the opportunity to build a record to meet it.

On October 23, 2025, the Pennsylvania Supreme Court issued an important decision in *Yoder v. McCarthy Constr., Inc.*, 345 A.3d 668 (Pa. 2025), reaffirming the strength and continued viability of the statutory employer doctrine under the Pennsylvania Workers' Compensation Act. The court held that general contractors who satisfy the statutory employer test remain immune from third-party negligence claims brought by injured subcontractor employees, even where workers' compensation benefits are paid by another entity. For insurers and employers in the construction industry, the decision provides welcome clarity and reinforces a critical limitation on tort exposure arising from workplace injuries.

It is important to understand the concept behind this legal framework. The general notion is that an injured worker's proper avenue for relief is the Workers' Compensation Act. Thus, because an injured worker can seek relief pursuant to the administrative processes provided in the Act, the employer is generally afforded immunity from tort claims relating to the injury. The Act further provides a framework to address a situation where a subcontractor fails to pay benefits to an injured worker. In this scenario, the general contractor is held secondarily liable as a statutory employer. Of course, in exchange for this liability, the general contractor is awarded *the same tort immunity* the subcontractor enjoys. This all makes perfect sense, but what happens when an injured employee of the subcontractor is receiving benefits from the subcontractor pursuant to a workers' compensation claim? Courts have held that the statutory employer immunity *still protects* the general contractor from tort liability, and in the instant case, the Pennsylvania Supreme Court resisted efforts to overturn that precedent.

In the case at issue, McCarthy, a general contractor, entered into a construction contract with the Borough of Norwood to perform work on the Norwood Public Library. Included in the work to be completed was the installation of a new roof, and McCarthy subcontracted with RRR Contractors, Inc.. Yoder was an employee of RRR working on the project when he fell through an uncovered hole in the roof of the building, sustaining permanently disabling injuries.

Yoder filed a complaint for negligence against McCarthy on May 10, 2018. On February 6, 2020, McCarthy filed an answer and new matter asserting affirmative defenses, seeking to bar or limit Yoder's claim. Yoder moved to strike McCarthy's answer and new matter as untimely, a request the trial court granted. McCarthy sought to preclude Yoder from presenting evidence on liability based on a statutory employer defense and Yoder argued that McCarthy had waived that defense. The trial court granted Yoder's motion to preclude McCarthy's statutory employer defense, ruling that McCarthy had not established he was a statutory employer and, thus, was not afforded immunity. The case went to a jury trial, where McCarthy was found negligent, awarding Yoder $5 million.

Following the verdict, the trial court denied McCarthy's post-trial request for a judgment notwithstanding the jury's verdict and entered judgment in favor of Yoder. McCarthy appealed to the Superior Court, who vacated the trial court's judgment and remanded the case for entry of judgment in favor of McCarthy. In doing so, the Superior Court first concluded that the trial court erred in denying McCarthy's motion for post-trial relief, holding that the precedent in *LeFlar v. Gulf Creek Industrial Park #2*, 515 A.2d 875 (Pa. 1986) established that a lack of subject matter jurisdiction in the context of common law actions in tort for negligence against employers is not a waivable affirmative defense. The defense may be raised at any time and may be raised by the court *sua sponte*. The Superior Court then went through each of elements set forth in *McDonald v. Levinson Steel Co.*, 153 A. 424 (Pa. 1930) to determine whether McCarthy satisfied the five-part statutory employer test. The court concluded that McCarthy did. Specifically, McCarthy established that it was under contract with the borough, it occupied or controlled the premises, it entered into a subcontract with RRR, it entrusted a regular part of its business to RRR, and Yoder was an employee of RRR. Accordingly, the Superior Court found that McCarthy was a statutory employer of Yoder and, thus, immune from tort liability.

On appeal to the Pennsylvania Supreme Court, Yoder raised three issues. He first argued that the court should overrule *Fonner v. Shandon, Inc.,* 724 A.2d 903 (Pa. 1999). In *Fonner*, the court had addressed the argument that the amendments to the Act in 1974 limited the tort immunity enjoyed by general contractors to only instances where the statutory employer actually pays benefits to the subcontractor's employee. The court was not persuaded by Yoder's arguments and reaffirmed the holding in *Fonner.* The general notion behind the holding in *Fonner* was that if the General Assembly had intended for the 1974 amendments to limit tort liability for general contractors to only those contractors who paid benefits to an injured subcontractor, they would have amended the statutory employer provision in Section 302(b) of the Act.

Next, Yoder argued that the court should overrule their decision in *LeFlar,* specifically the holding that the statutory employer defense is unwaivable, as it is a challenge to the common pleas court's subject matter jurisdiction. Again, the court was not persuaded, reasoning that in order to overrule prior precedent, the principles of *stare decisis* apply, requiring the court to find a special justification for overruling *LeFlar*. The court found that Yoder was unable to establish any such justification.

Lastly, Yoder argued that McCarthy failed to establish the first, second, and fourth elements of the *McDonald* test. The court got into a lengthy legal discussion about whether the Superior Court abused its discretion by exceeding its scope of review on appeal, ultimately finding that it did. However, they also held that the trial court improperly divested McCarthy of an opportunity to develop the record when they denied his motion for summary judgment based on the statutory employer defense without explanation. Thus, the case will go back down to the trial court level where it will be determined whether McCarthy satisfies the *McDonald* test.

Therefore, in a practical sense, the Pennsylvania Supreme Court held that general contractors will continue to enjoy tort liability from injured subcontractors, regardless of whether they are paying benefits to an injured subcontractor. Additionally, a general contractor can raise the statutory employer defense at any time, and the defense is not waivable. Until the General Assembly amends Section 302(b) of the Act, this will continue to be the rule of the Commonwealth. ◆

John Paul works in our Scranton, PA office. He can be reached at (570) 496-4617 or JPAbda@mdwcg.com.

Watch That First Step! New Jersey Again Addresses the Eternal Battle of Intentional Injuries vs. the Exclusive Remedy Doctrine

Robert J. Fitzgerald, Esq.

Key Points:

- The exclusive remedy doctrine bars a petitioner from filing a personal injury suit arising out of a workplace injury.
- The exclusive remedy doctrine can be overcome if a petitioner can prove an “intentional injury.”
- A petitioner has a high burden of proof under a multi-part analysis to succeed on an intentional injury claim.

The Appellate Division of the New Jersey Superior Court once again reaffirmed the strength of the exclusive remedy doctrine of the New Jersey Workers’ Compensation Statute against alleged intentional injury claims in *Jonathan Little v VDM Metals USA, LLC, et al.,* 2025 WL 3276688 (NJ Super. App. Div. Nov. 25, 2025). In this case, the petitioner worked as a material handler for VDM, a steel manufacturer, when he sustained a compensable fall while exiting a trailer. The petitioner was clearing packing materials on a flat-rack trailer: an open trailer with only two sides – front and back. The petitioner sustained head injuries in the fall and was unable to describe the accident.

The petitioner’s supervisor, Frendly Blas, provided some details leading up to the accident, although he did not witness the fall. Blas testified that, prior to the accident, the petitioner received safety training on fall prevention. Blas estimated the flat-rack trailer bed sat five or six feet off the ground. Further, a "RollaStep Mobile Platform," intended to protect workers from falls whenever they accessed a surface at least four feet off the ground, was near the truck, but not used at the time of the fall. Blas was responsible for ensuring the use of the RollaStep, but did not remember why it was not used during the incident.

An OSHA report confirmed the RollaStep was positioned nearby the trailer. OSHA determined the primary cause of the accident was complacency, as it appeared the RollaStep was generally not used when there were only a few steel plates being unloaded. The petitioner’s expert report in the personal injury case indicated that training records did not show the petitioner received specific training on flat-rack trailers.

The petitioner filed a personal injury action for negligence, gross negligence, and intentional wrongs against the employer, VDM. More specifically, the petitioner asserted VDM failed to provide adequate training, safety measures, and protective equipment, along with not providing enough staff to safely operate the facility. After discovery concluded, VDM won a motion for summary judgment. The trial court found that the plaintiff failed to establish that VDM’s conduct was an intentional act sufficient to surmount the Act's high bar, and dismissed the petitioner’s complaint. The court employed the two-part standard test in *Laidlow v. Hariton Mach. Co.*, 790 A.2d 884, 894-896 (N.J. 2002): the court determined the petitioner had not established his injuries were substantially certain to occur or fell outside the "facts of life" attendant to industrial employment.

On appeal, the petitioner argued the trial court erred in granting summary judgment, as he established sufficient facts to show the defendant's intentional conduct. The petitioner contended that the record contained facts sufficient to show that adequate training was not provided related to unloading the flat-rack trailer or protecting his safety by using the RollaStep safety measure. Thus, claiming the fall from an elevated surface could not be a fact of industrial life for someone that finished and packed material.

The Appellate Division affirmed the dismissal, noting that the intentional wrong exception in *Laidlow* is interpreted very narrowly so that as many work-related injury claims as possible can be processed exclusively within the workers' compensation system. Thereunder, to successfully prove an intentional injury claim the petitioner must prove:

(1) that the employer knew that its actions are substantially certain to result in injury or death to the employee; and

(2) the resulting injury and the circumstances of its infliction on the worker must be (a) more than a fact of life of industrial employment and (b) plainly beyond anything the legislature intended the Act to immunize.

Laidlow, 790 A.2d at 894.

Further, the petitioner bears the burden of establishing both the "conduct" and "context" prongs. To satisfy the conduct requirement, a petitioner must show a defendant acted with "substantial certainty" that injury or death would result. Again, mere knowledge and appreciation of a risk is insufficient.

In this case, the court noted VDM failed to utilize the RollaStep during small unloading jobs, and that OSHA concluded that the defendant failed to provide the RollaStep due to "complacency." However, the court also noted there was no evidence to suggest any employees previously fell from a trailer while unloading it. Further, the petitioner was not unloading the truck, but exiting the trailer after the work was completed. Thus, even presuming his inexperience with "unloading," the petitioner was not handling or removing the metal sheets when the fall occurred.

Additionally, the petitioner was trained to avoid falls, albeit not specifically to avoid falls from flat-rack trailers. Without evidence that VDM was aware of a known or heightened danger, any lack of training, even considered together with VDM's failure to use a RollaStep, did not demonstrate that the defendant was substantially certain that harm would arise from its actions. Additionally, there was no evidence that the defendant deliberately and deceptively removed the safety device from the location.

Even if VDM knew that the failure to use the RollaStep created some degree of danger, mere knowledge by an employer that a workplace is dangerous does not equate to an "intentional wrong." The court noted that it had rejected the idea that a longstanding negligent or reckless practice should be deemed an intentional wrong under the Act simply because the risk posed by an ongoing wrongful practice will eventually occur.

While this case does not necessarily add anything new to the "intentional injury" test, it is a great reminder as to the court's analysis of such claims. Again, a petitioner has a very high burden of proving both the "conduct" and "context" prongs under Supreme Court's *Laidlow* decision.

The purpose of the exclusive remedy doctrine is to keep work claims in the workers' compensation forum, while only the most egregious cases dealing with poor employer conduct can pierce the bar. Regardless of this decision, employers and carriers should always take great strides in insuring workplace safety. If you have any questions about your workplace safety program and procedures, please reach out to your TPA carrier and counsel for advice before the next potential work injury. ◆

Robert Fitzgerald works in our Mount Laurel, NJ office. He can be reached at (856) 414-6009 or RJFitzgerald@mdwcg.com.

ON THE PULSE

On the Pulse…Defending the Professionals Who Power the Insurance Industry

Timothy G. Ventura

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The Insurance Agents and Brokers Defense Practice Group at Marshall Dennehey is nationally recognized for its skillful representation of insurance professionals in complex civil litigation. With decades of collective experience, our attorneys provide sophisticated, results-driven defense to insurance agents, brokers, managing general agents, and other intermediaries facing professional liability claims. We understand the intricate regulatory frameworks, contractual obligations, and industry standards that govern the insurance marketplace, allowing us to craft defenses that reflect both legal prowess and practical business insight.

Our team regularly defends clients in claims alleging negligence, misrepresentation, breach of fiduciary duty, failure to procure coverage, and errors in policy placement or renewal. We also handle disputes arising from alleged bad faith, premium miscalculations, claims denial, and compliance violations. Whether the matter involves a single claim or a multi-jurisdictional class action, our attorneys have the depth of knowledge and trial experience necessary to protect our clients' reputations and minimize their exposure.

Beyond litigation, our practice group emphasizes proactive risk management and claim prevention. We partner with insurance agencies and brokerages to conduct internal audits, develop best practices, and deliver training on evolving industry risks, emerging coverage issues, and regulatory developments. This preventative approach reflects our broader commitment to supporting our clients as trusted advisors, not just defenders, throughout the life of their businesses.

At Marshall Dennehey we understand that every claim against an insurance professional carries significant professional and reputational consequences. Our clients rely on us for strategic, efficient, and discreet representation that aligns with their long-term business goals. By combining deep industry knowledge with vigorous advocacy and an unwavering commitment to service, our Insurance Agents and Brokers Defense Practice Group stands at the forefront of protecting the professionals who keep the insurance industry moving. ◆

Tim is Chair of the Professional Liability Practice Group, and he can be reached at TGVentura@MDWCG.com.

ON THE PULSE

Recent Appellate Victories

Kimberly Berman (Fort Lauderdale, FL) and **Brad Blystone** (recently retired) successfully obtained an affirmance by the Sixth District Court of Appeal in a premises liability claim, stemming from a slip and fall. The appeal attempted to conflate the burdens of proof on summary judgment. The court rejected the appellants' arguments and affirmed the final judgment entered in favor of our client without oral argument.

Kimberly Berman and **Jonathan Kanov** (both of Fort Lauderdale, FL) convinced the Fifth District Court of Appeal to affirm a dismissal on behalf of our clients, a well-regarded personal injury law firm and two lawyers who had handled a personal injury. The plaintiff sued the law firm and lawyers for legal malpractice. Our client moved to compel arbitration based on the unambiguous language in the retainer agreement, where the parties agreed to resolve all disputes, including legal malpractice claims, in arbitration and not in court. The trial court granted the motion to compel arbitration, and the plaintiff appealed. The Fifth District dispensed with oral argument and affirmed the dismissal order, sending the plaintiff's claim to arbitration in accordance with the retainer agreement.

Kimberly Berman (Fort Lauderdale, FL) and **Heather Carbone** (Jacksonville, FL) obtained an affirmance of a final order by the Judge of Compensation Claims (JCC), upheld by the First District Court of Appeal. The order determined an employer/employee relationship and found the statute of limitations barred the claimant's allegation against his lone statutory employer. The appeal involved the interpretation of section 440.10, Florida Statutes, and a question of whether all employees of a contractor and subcontractors "shall be deemed to be employed in one and the same business' for purposes of workers' compensation benefits." The claimant presented a novel theory that the general contractor and its subcontractor are "unified employers" jointly responsible for the payment of benefits. The JCC rejected the theory, and the First District dispensed with oral argument, affirming the final order in favor of the employers and carriers.

Patricia Monahan (Pittsburgh, PA) and **Audrey Copeland** (King of Prussia, PA) convinced the Pennsylvania Supreme Court to reverse the Superior Court's en banc decision and reinstate summary judgment in favor of the defendant. The plaintiff brought a promissory estoppel claim against our client as the subrogee of its insureds, the owners of motor vehicles and property destroyed in a garage fire caused by a BMW that our client insured. The plaintiff alleged that our client broke a promise to preserve the BMW for future testing, preventing a product liability claim from being filed. The court granted review to consider (1) whether the Superior Court's decision was inconsistent with the Supreme Court's decision in *Pyeritz v. Commonwealth*, 32 A.3d 687 (Pa. 2011), or with (2) Pennsylvania law on subrogation. The three-Justice majority did not reach the first issue, but held that the subrogation claim failed as a matter of law because the plaintiff's subrogation rights were limited to recovery against any party liable for the direct or accidental loss or damage to covered property. As a result, the plaintiff lacked standing for its promissory estoppel claim against our client, as they did not cause the property damage. One Justice dissented in part, opining that the plaintiff's self-designation as subrogee was not fatal and that they had pleaded a promissory estoppel claim, however, he concurred in the majority decision, reasoning that the plaintiff's claim failed as a matter of law for the same reasons that precluded a negligent spoliation claim in *Pyeritz.* Another Justice dissented to the extent he would hold that the plaintiff had standing; however, he disagreed that *Pyeritz* foreclosed the plaintiff's promissory estoppel claim. ◆

ON THE PULSE

Other Notable Achievements

THOUGHT LEADERSHIP

David Shannon, chair of our Privacy & Data Security Practice Group, and William Cordio, director of incident response at Surefire Cyber Inc., discuss remediation v. forensic investigation after a cyber attack on the PLUS (Professional Liability Underwriting Society) podcast. Episode 2 of "Managing Cybersecurity Threats in 2025" explores current and emerging cybersecurity risks facing organizations today. The episode features expert discussions on new threat vectors, recent case studies, and practical approaches to strengthening digital defenses. Listeners will gain a clearer understanding of the evolving cybersecurity landscape and learn about effective strategies and tools for managing risks in 2025 and beyond. Hear their tips for minimizing costly business interruptions **here**.

SPEAKING ENGAGEMENTS

On January 15, **Mike Bradford** (Tampa, FL) presented "Out with the Old and In with the New: Changes in Marine Technology" at the Tampa Bay Mariners Club Marine Insurance Seminar - Emerging Issues 2026.

On January 20, **Ben Goshko** (Philadelphia, PA) co-presented "Common Building Envelope Failures and the Lawsuits that Follow" to the Philadelphia Chapter of American Institute of Architects.

On February 8, **Sara Mazzolla** (Roseland, NJ) was a speaker at the NAFDMA (North American Farmers' Direct Marketing Association) Agritourism Convention & Expo. In "Safety & Legal Prep: Hope for the Best, Prepare for the Worst – Waivers, Signage, Documentation," Sara and her co-presenters spoke about how managing risk means being proactive and prepared.

On February 11, **Robert Aldrich** and **Melissa Dziak** (both of Scranton, PA) presented a webinar for the Pennsylvania Association for Health Care Risk Management (PAHCRM). In "Navigating the Digital Shift: Balancing The Benefits and Legal Risks of Patient Portals," Rob and Missy discussed mitigation strategies for managing risks associated with the use of patient portals and how the reliance on patient portals impacts medical malpractice laws.

On February 4, **Dana Gittleman** (Philadelphia, PA) and **Jeff Rapattoni** (Mount Laurel, NJ) co-presented at Temple University's Gamma Iota Sigma Chapter's H. Wayne Snider Distinguished Guest Lecturer series. In this presentation "Hot Topics in Insurance Risk Mitigation," they discussed risk mitigation best practices, insurance agents and brokers, what to do if you get sued, and insurance fraud (stats, various types, recent trends).

On February 4, **Ariel Brownstein** and **Jonathan Magpantay** (both of Mount Laurel, NJ) presented "Modern Staged Accidents & Provider Fraud" at the NICB Mid-Atlantic Region 2026 Training Event held in Philadelphia.

PUBLISHED WORKS

Lisa Maeyer (Wilmington, DE) authored the article, "Delaware Supreme Court Examines Whether Liability Waiver Covers Injuries Based on Implied Agency Relationship," appearing in The Legal Intelligencer's Personal Injury Supplement. Published on November 25, the article discusses how the court's ruling may impact how future personal injury cases are litigated. Read her article **here**.

Jeff Rapattoni (Mount Laurel, NJ) and **Adam Calvert** (New York, NY) authored the article, "Staged Accidents, Real Consequences: Combating Crash-for-Cash Schemes in Commercial Auto," published in the Winter 2025 issue of SIU Today. You can read their article here: "Staged Accidents, Real Consequences: Combating Crash-for-Cash Schemes in Commercial Auto."

John Hare's (Philadelphia, PA) article, "What Lawyers Can Do to Protect and Promote Judicial Independence," was published in the January 2026 issue of Pennsylvania Bar Association Quarterly. The article addresses the responsibilities of lawyers to protect and promote judicial independence and was written as a companion to an article by the Honorable Jordan Yeager about what trial courts can do to protect and promote judicial independence. The publication is available to PBA members and may be accessed **here**.

Dana Gittleman and **Tim Ventura** (Philadelphia) authored the article, "Pennsylvania Superior Court Rejects Breach of Oral Contract Claim Against Insurance Agent," appearing in the January issue of PLUS Blog. In the article, they discuss how the court's ruling strengthens existing case law in favor of insurance agents and brokers on both negligence and breach of contract claims. You can read the article **here**.

RECOGNITION

At the Pittsburgh Legal Diversity & Inclusion Coalition (PLDIC) Annual Members Meeting on November 12, **Stuart Sostmann** and **Patrick Reilly** (both of Pittsburgh, PA) were elected to leadership positions. Stu was elected to a three-year term on the Board of Directors, and Pat is the incoming Retention Committee Chair.

Sarah Cole (Wilmington) has been elected to membership in the American Board of Trial Advocates (ABOTA). ABOTA is a national association of experienced trial lawyers and judges dedicated to the preservation and promotion of the civil jury trial right provided by the Seventh Amendment to the U.S. Constitution. Membership is invitation-only and is reserved for trial lawyers who meet certain qualifications and have significant experience in leading civil jury trials to verdict. ◆

ON THE PULSE

Defense Verdicts and Successful Litigation Results

CASUALTY DEPARTMENT

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 more than 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 and then claimed it had created sufficient record activity. However, 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, if no record activity occurred. The court agreed with our argument that the plaintiff's notice for trial was untimely and did not qualify as a statement of good cause and dismissed the case.

Christopher Reeser and **Coryn Hubbert** (both of Harrisburg, PA) obtained summary judgment on behalf of two homeowners in a premises liability action. One of the homeowners called his father, the plaintiff, asking him to come to his house because he was having his roof replaced and had concerns about the work being done. The plaintiff arrived at the home and observed nails and other debris strewn about the entire property. Nonetheless, he entered the property to assess the roofing work and took care to avoid stepping on any nails. As he was leaving the property, 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 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 the 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 on the property and, nonetheless, voluntarily proceeded to walk onto the property. The court agreed and granted summary judgment in favor of the homeowners.

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.

Walter Klekotka and **Ashley Davis** (both 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.

Ian Glick (Melville, NY) obtained a significant win in a New York Labor Law action, securing 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 sustaining injuries when roof trusses collapsed on a construction project managed by a co-defendant on property owned by the municipal library. He claimed the collapse resulted from inadequate bracing. Following discovery, the plaintiff sought summary judgment under Labor Law § 240, asserting absolute liability against the library as the property owner. Ian opposed the motion and sought partial summary judgment dismissing all claims against the non-property-owning clients, all but the § 240 claim against the library, dismissal of the co-defendant's cross-claims, and contractual and common law indemnification from the plaintiff's employer. The court agreed with Ian's arguments, denying the plaintiff's motion after finding questions of fact as to whether the plaintiff was the sole proximate cause of the accident. The court also granted Ian's motion, in part, dismissing all claims against the non-property-owning clients, all but the § 240 claim against the library, dismissing the co-defendant's cross-claims, and granting the library unconditional contractual indemnification from the plaintiff's employer prior to any finding of liability.

Evan Saltzman's (Philadelphia, PA) motion for summary judgment was granted, in part, in a Philadelphia jury case where our client was driving his company's car. Evan argued on behalf of the corporate entity that, despite the fact that our client was driving a company car and his job consisted of travel, he was not in the course and scope of his employment at the time of the accident. For the loss of consortium claim, Evan argued the plaintiff had not provided evidence of record to support this claim. Therefore, the loss of consortium claims were also dismissed.

Matthew Gray (Melville, NY) successfully saved his client over $113,000 in a New York No-Fault/PIP action. The applicant, a major medical provider, filed an arbitration matter in the total amount of $114,531.00, alleging our client owed it for the claimant's unpaid medical bills following a major motor vehicle accident. After the claimant had been involved in a motor vehicle accident, he sought payment for medical treatment(s) rendered post-accident. Counsel for the medical provider argued that the medical billing was never properly paid, and, therefore, payment of the claims was overdue. However, Matthew 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 $621.06. While the arbitrator ruled in the applicant's favor (an expected outcome, given the facts and law), the arbitrator did limit the demand to the $621.06 fee schedule amount, thus saving nearly $113,909.94 (or 99.46%) in exposure.

Ryan Burns, **Kimberly Berman**, and **Angie Colorado** (all of Fort Lauderdale, FL) won summary judgment in a foodborne illness wrongful death case. The plaintiff filed a wrongful death action against multiple parties, including the seafood supplier, distributors, transporters, and the restaurant that served the decedent. The plaintiff alleged the decedent died as a result of eating raw oysters that contained vibrio vulnificus. Ryan, Kimberly, and Angie represented the supplier and argued there was no evidence the oysters were defective when they left the supplier's hands. An expert was retained to support our motion for summary judgment. The expert prepared an affidavit citing the applicable duties pertaining to the harvesting, processing, and transportation of the oysters and stated the supplier did not breach any of the applicable duties. Utilizing

calculated pressure tactics in a long-term strategy execution, plaintiff's counsel eventually conceded that the record evidence did not support a finding that the supplier breached its duties, resulting in the court granting summary judgment. The case remains ongoing with multimillion dollar demands against the remaining defendants.

Taylor Naughton and **Dominic DeLuca** (both of Jacksonville, FL) received summary judgment in a vehicular accident case involving disputed liability. Mr. Thurman was the third vehicle in a three-car collision in which the first vehicle admitted fault and was ticketed. Following the accident, the plaintiffs claimed they were in a fourth vehicle and alleged that Mr. Thurman caused the crash. When the claim was denied—and on the eve of the implementation of tort reform—the plaintiffs filed individual lawsuits against Mr. Thurman alone. The cases were assigned to Taylor, who served discovery aimed at obtaining evidence to support the defense. Taylor subpoenaed the repair shop that serviced Mr. Thurman's vehicle and obtained records confirming that there was no front-end damage. When the plaintiffs failed to respond to discovery, we prepared motions for summary judgment in both cases. In response, only one plaintiff submitted an affidavit, while Mr. Thurman provided his own affidavit denying the allegations. Dominic argued the motions, demonstrating that the evidence showed the plaintiffs were not involved in the collision and that Mr. Thurman bore no fault. The court ruled in our favor in both cases. Before the orders could be entered, however, the plaintiffs filed notices of voluntary dismissal with prejudice. Before moving for summary judgment, Taylor had served Proposals for Settlement on the plaintiffs and their counsel. After the dismissals, Dominic filed a motion establishing entitlement to attorney's fees, and the parties ultimately reached an agreement resolving all fees and costs in both cases.

Erica Cagan (Jacksonville, FL) won a motion to dismiss in a property dispute matter by convincing the court that the plaintiff failed to join an indispensable party. The plaintiffs claimed that our client's underground utility services encroached onto their property and demanded our client remove them. Erica successfully argued the utilities were not owned, controlled, or maintained by our client, and that Choctawhatchee Electric Cooperative, Inc. (CHELCO), which did own and control them, was an indispensable party whose absence from the suit prevented a complete and enforceable judgment. The plaintiffs argued that CHELCO would move the utilities at our client's request; therefore, they argued, should the court consider CHELCO indispensable, the appropriate remedy was for our client to join CHELCO. The court rejected these arguments and ruled in our client's favor.

Adam Barnes and **Ryan Joyce** (both of Pittsburgh, PA) were successful in having the Commonwealth Court affirm the trial court's order sustaining preliminary objections to a complaint. The plaintiff sought to recover compensatory damages for property damage to its building due to flooding alleged to be the result of an improperly constructed sewage separation line. Preliminary objections were filed on the grounds that the lawsuit was filed after the expiration of the two-year statute of limitations. Those objections were sustained by the trial court. On appeal, the plaintiff sought to reverse the trial court's decision on the grounds that the complaint averred sufficient facts to support a claim for continuous trespass. The Commonwealth Court affirmed the trial court's decision on the grounds that the plaintiff did not dispute that the lawsuit was filed beyond the two-year statute of limitations and on the plaintiff's failure to include a cause of action for continuous trespass.

Brielle Winkler (Mount Laurel, NJ) obtained summary judgment in the Gloucester County Superior Court on behalf of a supermarket in a slip-and-fall-on-ice case that occurred in a multiunit commercial parking lot. The plaintiff brought suit against multiple stores after falling on black ice in a shared parking lot. On the day in question, the plaintiff had not patronized our client's store, but she had shopped at the store adjacent to our client. The court granted summary judgment to our client because, as a tenant in a multi-unit shopping center, it did not owe a duty to maintain the parking lot. The landlord had a contractual obligation to do so.

Brendan Smith (Orlando, FL) was successful in a case where the consumer filed a claim with the BBB Auto Line seeking to have his 2024 Lamborghini Revuelto repurchased under the Florida Lemon Law. Under this statute, if the vehicle is out of service more than 30 days, the vehicle is a lemon and a buyback is appropriate. The vehicle in this case had over 100 days out of service. Brendan successfully argued the vehicle was not originally sold in Florida and, thus, not eligible for relief under the Florida Lemon Law. Had Brendan lost at the BBB level, our client would have had to repurchase a vehicle with a sticker price of $787,058.00. The consumer claimed that he paid $837,058.00 for the vehicle and likely would have been awarded that amount as a refund. The next step will to be defend this before the Attorney General's Lemon Law Arbitration Division.

Brittany Bakshi and **Steve Sess** (both of Harrisburg, PA) won summary judgment in a slip-and-fall case. The plaintiffs, a husband and wife, alleged the husband suffered injuries following a slip and fall, due to claimed faulty steps and staircase, as he was performing work at a residence. The plaintiffs brought a lawsuit against the property owners, who then brought a claim against our client, a general contractor. During the course of litigation, the plaintiffs repeatedly failed to provide discovery responses, leading to a motion to compel, which was granted, followed by a motion for sanctions, that requested that the plaintiffs be precluded from offering evidence in support of their claims. Sanctions were granted. We filed a joint motion for summary judgment along with the property owners, arguing the plaintiffs could not support a *prima facie* claim of negligence as they could not prove damages. The court disagreed with the plaintiffs' claims that summary judgment was overbroad and not properly tailored to address their discovery violations. The court, instead, relied on the plaintiffs' continued failure to provide discovery and granted our joint motion for summary judgment.

Emily Davis (Cincinnati, OH) successfully negotiated the dismissal of a property holdings company in a personal injury matter brought in the U.S. District Court for the Southern District of Ohio. The plaintiff alleged that her minor daughter slipped and fell in a Dollar General store. The property holdings company subleased the property to Walgreens, who, in turn, subleased the property to Dollar General. Emily successfully argued that the property holdings company was not in possession of the property, nor did it have any control of the premises or its day-to-day operations. Accordingly, Walgreens and/or Dollar General were the responsible parties for handling any latent hazardous conditions. The plaintiff agreed to file a joint motion to substitute Walgreens for all claims brought against the property holdings company, resulting in the dismissal of the property holdings company from the lawsuit.


Ralph Bocchino and **Robert McCormick** (both of Philadelphia, PA) successfully received summary judgment in a slip-and-fall case in Philadelphia after their Rule 1036 motion was earlier denied. The plaintiff brought a premises liability suit after sustaining injuries from a slip and fall on a street in Philadelphia. The plaintiff claimed that our clients' property contained a metal protrusion above the pedestrian walkway, creating a dangerous condition. We filed a motion to dismiss on April 24, 2025, arguing that our clients had no affiliation with the property. The court denied this motion for being outside the scope of Pa.R.C.P. 1036. After unsuccessfully attempting to obtain signatures for a stipulation of dismissal, we filed a second motion to dismiss on December 10, 2025, arguing prejudice upon the completion of discovery, which the court ultimately granted.


Ralph Bocchino (Philadelphia, PA), **Kevin Todorow** (Philadelphia, PA), and **Peter Lentini** (Mount Laurel, NJ) successfully obtained reconsideration of the original denial of a motion for summary judgment before the Court of Common Pleas, moments before heading to a jury trial. In a construction accident case involving a leading personal injury firm, the plaintiff's were demanding $35 million. We filed a motion for summary judgment on the basis of *Patton v. Worthington, et al.*, arguing that our general contractor and subcontractor were statutory employers of the plaintiff. The original motion was denied. However, we argued *Yoder* before the Court of Common Pleas, filing a motion for reconsideration. On the eve of the trial, two weeks before selecting jury members, our motion was granted. This major decision is very rare, especially in Philadelphia, making this a significant win for our clients.





Allison Snyder, **Sarah L. Schwartz**, and **Mark Wellman** (all of New York, NY) successfully obtained summary judgment in a trip-and-fall action arising from a sidewalk ramp at the Kings County Supreme Court. The plaintiff was allegedly injured after stepping onto a rubber mat positioned between the roadway and sidewalk in an area where construction activity was underway. Our client, a utility company, had performed roadway work in the general vicinity of the accident location. Despite extensive discovery, the contractor responsible for placing the mat was never identified. We argued that our client did not perform work in the specific portion of the intersection where the accident occurred, and thus neither created nor contributed to the alleged defect. The court agreed, granting summary judgment and dismissing all claims against our client.


Christopher Block and **Paul Lanza** (both of Roseland, NJ) successfully obtained a defense verdict in a trucking accident in New Jersey. The plaintiff claimed that our client merged into her lane at the George Washington Bridge toll plaza causing her to sustain neck and back injuries for which she underwent two spinal surgeries. Our client testified that both of their lanes ended and, because they were required to merge, he had the right-of-way since the front of his truck was ahead of the front of her vehicle. Our accident reconstruction expert confirmed that our driver had the right-of-way and opined that plaintiff was the sole cause of the accident. We also disputed the causation of plaintiff's alleged injuries based on the very limited property damage to her vehicle, as well as the fact that she had prior, similar injuries. After little more than an hour of deliberations, the jury returned a verdict finding that our driver was not negligent. The trial team was assisted by associate attorney, **Haleigh Catalano**, and paralegal, **Kelly Dermody**, who provided critical support with motions in limine and trial management.


Elizabeth Guariglia and **Adam Calvert** (both of New York, NY) successfully obtained summary judgment in a multi-vehicle collision case before the Kings County Supreme Court. Our client was stopped at a red light when their vehicle was hit from behind, causing it to propel into another vehicle directly in front of it. We filed for summary judgment, which was granted after the court found that the vehicle that rear-ended our client was responsible creating a chain reaction, resulting in the damage of multiple vehicles.

HEALTH CARE DEPARTMENT

Robert Evers, **Nataliana Guida**, and paralegal, **Elina Sheldon** (all of Roseland, NJ) secured a defense verdict on behalf of an oral surgeon in a medical malpractice matter. The plaintiff alleged that our client deviated from accepted standards of care when extracting four wisdom teeth resulting in permanent injury to the inferior alveolar nerve. The jury returned a unanimous verdict for the defense.

Michael Roberts and **David Williamson** (both of Cincinnati, OH) successfully secured a dismissal on behalf of a health care system at oral argument via a motion to dismiss. We argued that the plaintiff's cause of action could not proceed as she failed to comply with the Affidavit of Merit requirement under Civil Rule 10(D)(2) and, thus, could not establish the adequacy of her complaint. The court agreed and dismissed plaintiff's complaint in its entirety.

Michael was also successful in having a dental malpractice case dismissed at trial. The plaintiff alleged, among other things, that our client improperly placed a crown on a tooth, leading to a severe infection. At the trial, Michael argued that this case should be dismissed as the plaintiff failed to provide an affidavit of merit and expert testimony. The magistrate agreed and entered a dismissal on behalf of our clients.

PROFESSIONAL LIABILITY DEPARTMENT

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

Christin Kochel (King of Prussia, PA) obtained a favorable decision in an underinsured motorist claim that proceeded to binding arbitration. The plaintiff was involved in a rear-end motor vehicle accident. Following the accident, the plaintiff settled her case with the tortfeasor for the $100,000 in bodily injury limits. Thereafter, she submitted an underinsured motorist (UIM) claim to her insurer, requesting the $100,000 in UIM limits and claiming significant injuries from the accident, including a concussion with post-concussive symptoms, trigeminal neuralgia, a left shoulder tear, and neck pain. The plaintiff underwent extensive treatment with pain management doctors, orthopedists, and neurologists, and underwent physical therapy, vision therapy, and multiple injections.

As of the date of the arbitration, and three years after the accident, the plaintiff was still treating and receiving Botox injections for ongoing headaches. The plaintiff also obtained a Life Care Plan Report, opining she will incur almost $400,000 in future medical costs. Following the arbitration, the Arbitrator awarded the plaintiff and her husband $115,000 for pain and suffering and loss of consortium as well as the stipulated lien and out-of-pocket expenses of over $6,000, for a total arbitration award of a little less than $122,000. Our client had already agreed to pay $20,000 as the low amount. After applying the $100,000 third-party credit, the plaintiffs were awarded a little less than $22,000—the case was properly valued.

Michael Roberts (Cincinnati, OH) received a defense verdict after bench trial in an insurance exclusionary clause dispute. The plaintiff's personal property in a storage unit was damaged when a municipal water main broke outside the storage facility. The claims representative offered the full policy limits before trial. However, the plaintiff sought recovery of the full claim amount for her damaged property. Mike argued that her recovery was specifically excluded by the water damage exclusion provision within her insurance policy. The judge agreed and concluded that the water main was part of a containment system for water and the exclusionary clause was applicable.

Christopher Conrad (Harrisburg, PA) and **Jacob Gilboy** (Scranton, PA) were successful in a Dauphin County, Pennsylvania, 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 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 upon our client under the Pennsylvania Rules of Civil Procedure.

Christopher and **Jacob** 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 objections to the complaint on. substantive legal grounds. Following oral argument, our preliminary objections were granted. The plaintiff did not appeal and voluntarily withdrew his action.

Jack Slimm (Mount Laurel, NJ) obtained an order for summary judgment in a legal malpractice action arising out of estate distributions, which were handled by our client, an attorney who specializes in administration of estates.

Patricia McDonagh (Roseland, NJ) won an affirmance by the New Jersey Appellate Division of orders granting summary judgment and denying the plaintiff's motion for reconsideration pursuant to the exclusive remedy provision of the New Jersey Workers' Compensation Act. Our client and the plaintiff were co-employees of the subcontractor, which did not carry worker's compensation insurance as required by the Act. Therefore, the plaintiff was paid worker's compensation benefits by the general contractor's insurance carrier pursuant to N.J.S.A. 34:15-79. The appeal presented issues of whether the plaintiff was an employee or a casual employee of the employer and whether a general contractor/subcontractor relationship existed and worker's compensation benefits were properly paid to the plaintiff, pursuant to N.J.S.A. 34:15-79.

Michele Frisbie and **Kevin Todorow** (both of King of Prussia, PA) received summary judgment in favor of a HOA, with the court holding that the HOA had no duty to protect the plaintiffs from the attacks of neighbors' dangerous dog. On two occasions, the plaintiffs were attacked by their neighbors' dogs, causing serious injuries and permanent scarring. The plaintiffs alleged that the HOA had a duty to protect them from the dogs. The court granted summary judgment for the HOA, holding that under *McMahon v. Pleasant Valley West Association*, 952 A.2d 731 (Pa. Cmwlth. 2008), a HOA has a "duty to the members of the common-interest community to use ordinary care and prudence in managing the property of the community that is subject to its control." However, that duty does not extend to removing an allegedly dangerous dog as the HOA has neither the obligation nor the ability to remove dogs from the community.


Ray Freudiger and **Michael Roberts** (both of Cincinnati, OH) obtained a dismissal of an action on a motion to dismiss after oral argument. The plaintiff joined our clients and a wealth of other defendants and alleged, among other things, that our clients failed to look out for his child's best interests and broke confidentiality. Due to the nature of the allegations in the complaint, we moved to dismiss for failure to state a claim under Civ. R. 12(b)(6). We also argued that the court did not have jurisdiction over this matter as the plaintiff failed to perfect service on our clients. The court agreed with these arguments and dismissed the plaintiff's action in its entirety.

Ray Freudiger and **Michael Roberts** (both of Cincinnati, OH) recently secured a significant victory on summary judgment on behalf of their client, an insurance agency. The plaintiff alleged that the agency failed to update his policy to reflect the appreciation in value of his classic motor vehicle. However, Ray and Michael were able to demonstrate that Ohio law does not impose a duty on an insurance agency to unilaterally increase the limits of an insured's coverage absent a specific request to do so. In addition, Ray and Michael were able to establish that their client did not owe the plaintiff a fiduciary duty. The court agreed with their position and dismissed the plaintiff's claims in their entirety.

John Hare and **Shane Haselbarth** (both of Philadelphia, PA) convinced the Superior Court of Pennsylvania to vacate a $1.09 billion jury verdict and remand for a new trial. The court held that the jury had not been properly instructed on the elements of a crashworthiness claim under Pennsylvania law. The court's ruling received press coverage in both *The Legal Intelligencer* and *The Philadelphia Inquirer*.


Diane Toner and **Matt Flanagan** (both of New York, NY) successfully defended an appeal from the denial of the plaintiff's motion to set aside the verdict following a unanimous jury verdict in favor of our clients. The plaintiff, Hyon S. Yi, as administrator of the Estate of Chin W. Yi, commenced this action against our clients alleging causes of action for legal malpractice, breach of contract, breach of fiduciary duty, and a violation of Judiciary Law § 487. The plaintiff alleged that our clients committed legal malpractice by: (1) failing to assert claims in the underlying action; (2) changing the terms of the retainer agreement to a contingency agreement after discovering that settlement of the underlying action was imminent; (3) failing to assert direct shareholder claims against the corporate defendant in the underlying action; (4) failing to assert fiduciary duty claims against the majority shareholders of the corporate defendant; (5) failing to seek a receivership or attach the assets of Eastern Farms; (6) and failing to demand prejudgment interest in the second underlying action brought in 2015. The jury found in favor of our clients on


all counts. Diane was able to secure dismissal of the plaintiff's appeal by arguing that the order denying the plaintiff's motion to set aside the jury verdict was an intermediate order from which there was no right of direct appeal once the final judgment was entered, and that plaintiff did not appeal from the final judgment. The Appellate Division agreed and dismissed the appeal.

Walter Kawalec and **Matthew Behr** (both Mount Laurel, NJ) obtained an affirmance of summary judgment from the New Jersey Appellate Division in favor of our client in a claim involving the Fair Housing Act and the New Jersey Law Against Discrimination. Our client, a homeowners association, sought to enforce the Declaration of Covenants and Restrictions which did not permit the homeowners to own and keep chickens, a coop, and a run in their backyard. The homeowners sought an accommodation, arguing that the chickens were emotional support animals. The Appellate Division rejected this argument and also dismissed all of the counterclaims for intentional infliction of emotional distress, fraud, and abuse of process.

Michael Jacobson (New York, NY) was successful in having a legal malpractice case, with breach of fiduciary duty, fraudulent misrepresentation, and a Judiciary Law 487 claim, dismissed. The plaintiff retained our clients to bring an employment discrimination claim against the plaintiff's former employer, which had terminated his employment in March of 2014. Our clients filed a complaint against the employer in the Supreme Court of the State of New York, New York County. The employer successfully moved to compel arbitration of the claim, and the case was arbitrated in an American Arbitration Association proceeding. Following a four-day hearing, the arbitrator ruled against the plaintiff. In his decision, the arbitrator found that the employer successfully proffered a legitimate, non-discriminatory reason for the plaintiff's termination. In our motion to dismiss the malpractice claim, we argued that the plaintiff's complaint failed to allege negligent conduct and proximate causation, particularly in view of the arbitrator's findings in the underlying proceeding. Additionally, we argued that, because the plaintiff's other three causes of action were duplicative of his cause of action for legal malpractice, they should also be dismissed. We also argued that a Judiciary Law § 487 claim cannot be based on attorney conduct in an underlying arbitration proceeding. The judge agreed with all of our arguments and dismissed the case.

Maria Nudelman and **Michael Jacobson** (both of New York, NY) were successful in having their motion to dismiss granted in a legal malpractice and breach of fiduciary duty case. Our client represented the plaintiffs in an underlying landlord-tenant proceeding commenced against them by the Department of Housing Preservation and Development of the City of New York (HPD). The plaintiffs, who owned buildings in Brooklyn, allegedly failed to correct over 20 Building Code violations. Our client, who was retained by the managing agent of the buildings, appeared as counsel and executed a Consent Order on behalf of all the respondents in the underlying proceeding, including the plaintiffs. The Consent Order gave the plaintiffs and the other respondents until June 30, 2021, to pay $37,500 to HPD, and if they failed to make the payment, a judgment for $375,000 could be entered against them. The plaintiffs claimed that they never knew about the Consent Order and were not told that they had to make the $37,500 payment. As a result, they allege, a $375,000 judgment was entered against them. We moved to dismiss, arguing that, even if their allegations were true, the claim was barred by the statute of limitations. We further argued that the breach of fiduciary duty claim was simply duplicative of the malpractice claim and should also be dismissed. The court agreed and dismissed both counts.

Sean Govlick and **Christopher Block** (both of Roseland, NJ) obtained a case dismissal in a liability matter in New Jersey. The plaintiff alleged that following the cancellation of coverage by a prior carrier, our client accepted payment for workers' compensation insurance, but failed to provide a certificate of insurance. After the 120-day deadline passed with no Affidavit of Merit (AOM), we filed for dismissal. The plaintiff argued that the AOM statute does not apply to economic losses, and raised for the first time during oral argument, that failing to provide a certificate of insurance is a common knowledge issue that does not require expert testimony. We responded that the statute expressly covers insurance producers, whose alleged negligence typically results in economic rather than physical harm. Additionally, we argued that evaluating the alleged failure to procure coverage requires expert analysis of Department of Banking and Insurance regulations, industry standards, cancellation and reinstatement procedures, certificate implications, underwriting, and what coverage should have existed. The court agreed that the claim is not a common knowledge matter, holding that economic losses fall within the AOM statute, dismissing the case.

Sean was successful in a case in which former unit owners claimed entitlement to eminent domain proceeds for a condemned common element beach. The claimants contended that entitlement should be determined based on ownership at the time of the taking. We argued that the statute's distribution provision shows a clear legislative intent to award proceeds only to current unit owners, because the statute expressly allows associations to apply proceeds to repairs and benefits only for current owners. The court agreed and held that proceeds were properly limited to current owners.

Sean also successfully obtained a case dismissal in a matter stemming from a Consumer Fraud Act (CFA) claim. The plaintiff brought a CFA claim, alleging that the agency failed to obtain coverage for an off-site theft. The court dismissed that count with prejudice after we successfully moved for an order holding that insurance producers qualify as learned professionals, pointing to the detailed statutory and regulatory framework governing producers and their express inclusion in the Affidavit of Merit statute. As a result, the CFA did not apply, and the good faith count was dismissed for the same reason.

Jillian Dinehart (Cleveland, OH) was successfully granted summary judgment in a disclosure matter. Our client, the seller of a $400,000 home, completed two disclosures during the sale. 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 to cancel a showing due to 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.

Jillian was also successful in having a case dismissed after filing for summary judgment. The plaintiff voluntarily dismissed a claim for fraud and breach of fiduciary duty following deposition and a summary judgment motion. The Plaintiff, an investment buyer, claimed

that the seller's realtor disclosed a fire in the basement of the vacant property, but failed to disclose a second fire that allegedly resulted in structural damage. The plaintiff argued that the seller's realtors were aware that the property was condemned prior to closing. In addition, there was an error on the agency disclosure documents that marked the seller's realtor as the buyer's agent. Relying on that misstatement, the plaintiff alleged there was a breach of fiduciary duty. The summary judgment motion argued there were no damages to the property, that the plaintiff lacked any expert analysis as to the loss, that the plaintiff lacked capacity to sue, and that there was no duty of the realtors to disclose the events. The plaintiff dismissed the case without responding to the summary judgment motion.

Jennifer Ruth and **Andrew Norfleet** (both of Harrisburg, PA) were successful in having preliminary objections sustained in a breach of contract matter. The plaintiffs participated in a program for low-to-moderate income homeowners to complete home renovations and repairs with the goal of increasing energy efficiency. The plaintiffs claimed that work was left incomplete and not performed in a workmanlike manner, alleging a breach of contract and a violation of the Home Improvement Protection Act (HICPA). We filed preliminary objections, which were sustained by the court, resulting in the dismissal of the case with prejudice. The trial team was assisted by paralegal attorney, **Kelly Mazer**, and administrative assistant, **Aimee Paukovits**.

Andrew and **Jennifer** were also successful in having the appellant's appeal denied at the Court of Common Pleas in Dauphin County, Pennsylvania. The claimant brought a demolition of property claim against our client. We presented substantial evidence, along with Pennsylvania's historic preservation laws, highlighting that demolition would have an adverse impact on the general historic and architectural nature of the district. The court agreed, denying the appellant's appeal.

WORKERS' COMPENSATION DEPARTMENT

Michele Punturi (Philadelphia, PA) successfully prosecuted a termination petition on behalf of a local hospital in a workers' compensation matter involving a 62-year-old employee with more than 16 years of service who alleged a work-related low back injury. Through diligent efforts to obtain medical records documenting a significant pre-existing history, Michele also successfully defended a review petition that sought to expand the accepted injury beyond a low back sprain. The workers' compensation judge found the opinions of the defense medical expert—a board-certified orthopedic surgeon—both competent and credible in establishing full recovery. His conclusions were supported by a comprehensive physical examination, as well as his review of the claimant's medical records and diagnostic studies. The expert noted that the claimant's reported pain was entirely out of proportion to the clinical findings. Additionally, the claimant's own treating physician had documented physical abilities far greater than those demonstrated at the IME, underscoring a clear inconsistency. This decision will result in a substantial recoupment of indemnity benefits paid during the litigation through a Supersedeas Fund Recovery.

Tony Natale (King of Prussia, PA) successfully prosecuted a termination petition on behalf of a local municipality. The claimant, a police officer for the borough, sustained a work injury to the neck, back, and lower extremities in the form of aggravations of

pre-existing conditions. A termination petition was filed based on the defense expert's opinion of full recovery. The claimant testified that he was only treated sporadically for the pre-existing condition before the work injury and that his treatment intensified greatly after the work injury. To the contrary, the medical records showed the claimant regularly treated for his medical conditions—three times a week prior to the work injury, all the way up to two days before the work injury. The claimant's expert was unaware of the prior care, and on cross examination Tony was able to force the expert to agree that the claimant's base-line condition was equivalent to the current symptomatology. As such, the court granted the full recovery as the claimant reached base line and fully recovered from the work aggravation.

Rachel Ramsay-Lowe and **William Murphy** (both of Roseland, NJ) received dismissal, without prejudice, in a workers' compensation claim. The petitioner alleged that a motor vehicle accident on May 5, 2024, resulted in injuries to her neck, back, left side of her body, and her left arm. We filed a motion to dismiss for lack of employment, arguing that the petitioner was never in the employment of our insured. The motion was unopposed, and on November 25, 2025, the judge ordered dismissal of the claim for lack of employment.

Anna Robertelli and **William** received dismissal, without prejudice, in an occupational exposure matter. The petitioner alleged occupational exposure from October 2013 to October 2023, resulting in orthopedic and neurologic injuries to his right arm, hand and wrist, including but not limited to carpal tunnel syndrome. Following the petitioner's failure to timely respond to our discovery requests, we filed a motion to dismiss for lack of prosecution. On December 8, 2025, the judge entered an order to dismiss for lack of prosecution.

Michael Duffy (King of Prussia, PA) and **Alana Staniszewski** (Pittsburgh, PA) had a claim petition denied where the claimant averred he sustained work-related chemical burns. The claimant testified that while working for the employer, he sat on an overturned trash can to take a brief break before clocking out. After getting up, he noticed his pants and underwear were wet. He punched out and walked to his apartment about a block away. He undressed, took a shower, and noticed his buttocks burning. He put a cream on it, but it became worse. The next morning he sought medical treatment. He was hospitalized from August 3, 2024, until September 3, 2024, as he had second degree chemical burns on his buttocks and the back of his thighs. He received an incision, debridement, and soft tissue necrosis procedure to his perineum, buttock and left thigh. He eventually was released to return to work without restrictions and found fully recovered by his doctor. The claimant submitted medical records and relied upon a one-page report opining that his burns were related to sitting on a wet trash can. No details were provided regarding any specific exposure to chemicals. We presented fact witness testimony detailing the claimant's job duties and exposure to chemicals, which revealed he was not exposed to any hazardous chemicals, only normal cleaning supplies. Video footage submitted revealed the claimant sitting on the trash can, getting up, moving to another trash can and then leaving without issue; he never looked at his pants or felt his pants to see if they were wet. The workers' compensation judge found the claimant's testimony not credible because he would expect the claimant to try to touch his pants, look at it, or dry it off. He did not find the claimant credible regarding showering and then sleeping with the burning sensation before seeking treatment 16-or-more hours later. He found the employer's fact witness credible. He did not find the claimant's one-page

medical report credible as this claimant's expert opinion was cursory and provided no explanation other than merely relying on the claimant's history. Thus, the claim petition was denied and dismissed.

Michael Duffy (King of Prussia, PA) successfully settled a case with no admission of liability and a settlement of $24,500 with no payment of medical bills. The claimant, a mason, alleged he sustained a stroke while at work. According to his testimony, he reported to work in the morning, although he told his supervisors he was not feeling well. He was provided an apprentice and told to take it easy. He left after about two-to-three hours of working. He then went to the hospital, was discharged, and then went back. When he returned, he was told he had a stroke. He was hospitalized for a period of time and then discharged with out-of-work restrictions. His expert testified that the claimant's job duties as a mason caused his stroke. Specifically, this expert alleged the claimant's job was physically demanding, he was regularly exposed to concrete dust, and had stressors from supervising an apprentice, all of which caused his stroke. Our expert testified that the claimant's stroke was the result of his unregulated hypertension and failure to consistently take his blood pressure medication. The employer's fact witness testimony revealed the claimant did not supervise any apprentice and wore respirators whenever he was exposed to concrete dust. After completing all evidence, claimant's counsel presented a demand of $310,000 plus payment of medical bills and reimbursement of litigation costs. Because the claimant is a Medicare beneficiary, we recommended to our client to make an offer of $24,500 in order to stay below the Medicare threshold or go to a decision on the merits. We agreed to make the offer. Claimant's counsel accepted without any further negotiations.

Tony Natale (King of Prussia, PA) successfully obtained a defense verdict in a workers' compensation matter in Pittsburgh. The claimant sustained a work-related upper-extremity injury and returned to work in a modified capacity. A year after resigning from the position, the claimant alleged a secondary injury to her opposite upper extremity that developed prior to her resignation. The claimant filed a review and reinstatement petition, which we were successful in getting dismissed based on a causation and potential notice defense. The claimant appealed to the Workers' Compensation Appeals Board (WCAB), arguing that the court did not have a reasonable basis to dismiss the matter. After a heated dispute on the issues of causation and notice, the Board affirmed the lower court, and dismissed the review and reinstatement
petitions.

Tony was successful in having a suspension petition granted, resulting in a defense verdict. The claimant sustained a catastrophic injury resulting from a steep fall. Our client determined a multitude of serious and semi-permanent diagnoses that were work-related. With some very strict release restrictions, employment was made available to the claimant, which was refused. We presented medical evidence to support claimant's ability to return to work. In a key cross-examination of a medical expert, it was determined that the claimant was capable of working with the required restrictions. The court granted the petition, suspending indemnity benefits, along with determining that several of the claimant's diagnoses had been completely resolved.

Tony also successfully obtained a defense verdict in a workplace injury matter in which the claimant sustained wrist and knee injuries after slipping at her workplace. We moved to file a termination petition, alleging a full recovery based on the fact that the claimant's strains had resolved, and her current complaints were made on the basis of pre-existing severe arthritis. During cross examination, an expert testifying on the claimant's behalf admitted that the arthritis was the significant contributing factor to the claimants' ongoing pain and disability. The court found the claimant to be fully recovered from the work injuries and that any ongoing complaints were unrelated.

Ben Durstein (Wilmington, DE) convinced the Industrial Accident Board to grant an employer's petition to terminate total disability benefits. The claimant's medical expert, the treating doctor, did not believe the claimant could work in any capacity due to her work-related low-back injury. However, the Board found the employer's medical expert's opinions to be more credible and determined that the claimant was able to return to work with sedentary duty restrictions. There were jobs available for her within the open labor market, and the claimant was placed on temporary total disability. During the hearing, the Board granted Ben's motion to exclude late-produced job search documentation from evidentiary consideration.

Perry Merlo (Harrisburg, PA) was successfully granted a termination petition in a workers' compensation matter in Pennsylvania. The claimant was struck by a motor vehicle in a hit-and-run while performing his job as a trash collector. He sustained injuries to his lower back, neck, shoulders, and leg. We filed a termination petition on behalf of our client, presenting an expert medical witness, along with surveillance evidence showing the claimant performing rigorous physical activity, despite his claims of being unable to do so. The workers' compensation judge agreed, granting our petition.

Michele Punturi (Philadelphia, PA) was successfully granted a termination petition in a workers' compensation matter in Bristol, Pennsylvania. We filed a termination petition involving an employee with a significant pre-existing back injury. We presented evidence, including medical records and expert medical opinions, highlighting that the pre-existing history limited the nature of the accepted injury by a Stipulation of Fact. Our expert witness, a Board Certified Orthopedic Surgeon who examined the claimant on two separate occasions, emphasized that the claimant would make a full recovery based on a comprehensive physical examination, review of medial records revealing no post-traumatic findings, and a significant improvement in the claimant's capabilities requiring no further treatment or restrictions. The court granted our petition, resulting in a substantial recoupment of payments of both indemnity and medical benefits. ◆

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