DEFENSE DIGEST

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ON THE PULSE...

MARSHALL DENNEHEY

Win for Employers: Florida Appellate Court Limits Negligence Claims

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Key Points:

- Vicarious liability requires employee negligence: Since the jury found the employee was not negligent, the employer could not be held vicariously liable for his actions.
- Direct negligence claims (like negligent training/supervision) against an employer only apply if the employee acted outside the scope of employment.
- Claims for negligent supervision may still apply to individual supervisors, but not the corporate employer.

The Fifth District Court of Appeal recently addressed the interplay between vicarious liability and direct negligence claims against an employer. The case arose from injuries sustained by a hotel guest during an altercation with a hotel employee, leading to claims against the hotel operator for both vicarious liability based on the employee's conduct and direct negligence for alleged negligent training and supervision. The court ultimately clarified that these theories cannot be pursued simultaneously when the employee's actions are within the scope of employment and the jury finds no underlying negligence.

In *Gabor v. Remington Lodging & Hospitality LLC and Robert Henderson*, 413 So.3d 261 (Fla. 5th DCA 2025), the plaintiff filed suit against Remington Lodging and Hospitality, LLC, the company that operated the hotel, as well as Henderson, the employee involved in the altercation. The complaint alleged two separate causes of action against Remington: (1) vicarious liability based on Henderson's conduct and (2) direct negligence by Remington in the form of negligent training and negligent supervision of Henderson. The complaint additionally alleged a claim of action against Henderson for direct negligence.

During the course of litigation, all parties stipulated that Henderson's actions occurred within the course and scope of his employment with Remington. Based on this fact, Remington moved for a directed verdict on the negligent training and supervision claims. They argued, because Henderson was acting within the course and scope of his employment, they could not be held liable under negligent training and supervision, a theory that is typically reserved for situations in which the employee acts outside the scope of employment. The trial court denied the motion, allowing all three claims to proceed to the jury.

The jury found there was no negligence on the part of Henderson that was the legal cause of damage to the hotel guest, the plaintiff – Michael Gabor. The jury separately found that both Remington and Gabor were the cause of Gabor's injury, apportioning 80% fault to Gabor and 20% to Remington. Notably, the jury was not asked to specify under which theory of negligence Remington was found liable.

Remington appealed, challenging the trial court's refusal to grant its motion for directed verdict on the negligent training and supervision claims. The Fifth District Court of Appeal addressed how these claims function when an employer is also facing a vicarious liability theory.

The appellate court first examined the vicarious liability claim. Under Florida law, an employer can be held liable for an employee's negligent acts committed within the course and scope of employment. However, this theory is wholly dependent on the employee being found negligent. Since the jury found that Henderson was not negligent and did not cause Gabor's injuries, Remington could not be vicariously liable for his conduct.

The court then turned to the negligent training and supervision claims. These are considered direct negligence claims against the employer and are typically viable only when an employee acts outside the scope of employment. The rationale is that if an employee is acting within the scope of their job duties, the employer's liability, if any, should fall under vicarious liability rather than a separate claim for negligent supervision. As the parties had stipulated, and the evidence confirmed, that Henderson was acting within the scope of employment, Remington could not be held directly liable under these theories either.

Importantly, the appellate court addressed a common point of confusion in employer liability cases. It explained that, although a corporate employer cannot be held liable for negligent training or supervision where the employee's actions fall within the scope of employment, a different rule applies when the claim is brought against an individual supervisor. In such cases, Florida law permits claims for negligent hiring, retention, supervision, or training even if the underlying conduct occurred during the course of employment. In this case, however, Gabor did not assert any claim against Henderson's direct supervisor. As the court noted, this might have been a missed opportunity, but it had no bearing on the outcome of the appeal.

The Court of Appeal ultimately concluded that the trial court erred by denying Remington's motion for a directed verdict on the negligent training and supervision claims. Because the jury found no negligence on Henderson's part, and because Remington could not be liable under either theory advanced by Gabor, the appellate court reversed the final judgment and remanded the case with instructions to enter judgment in favor of Remington.

This case serves as a significant reminder of the legal distinctions between vicarious liability and direct negligence claims against employers. Plaintiffs often seek to assert both, hoping that at least one theory will succeed. However, *Gabor v. Remington* underscores that these claims are not always compatible, especially when an employee's conduct is undisputedly within the scope of employment and the jury finds no underlying negligence. ◆

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Dealing With Snow in Summer

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Key Points:

- Landlords should ensure that their leases are clear regarding who has the responsibility for snow and ice removal.
- If a lease is ambiguous, the landlord could face liability should a slip and fall occur due to slippery conditions caused by snow and ice.
- The lease should indicate who has the responsibility for snow and ice removal, as well as specifically state what areas that responsibility applies to.

When most people think about summer, thoughts of taking a trip to the beach, heading to the nearest amusement park, or cooking burgers on the grill likely come to mind. But if you are a landlord, you should take some time in the summer to prepare for the snow. Snow brings with it the potential for slippery conditions that could cause a slip and fall which could ultimately lead to being sued. Many landlords may feel that they do not need to be concerned about snow and ice because they believe that their leases address the responsibility for snow and ice removal, but that may not be the case if a lease does not sufficiently place this responsibility on the tenant. Here are some “blasts” of ice and snow from the past that illustrate this point and provide some present-day, summer guidance for landlords.

In *Stuski v. Philadelphia Authority for Industrial Development*, 162 A.3d 1196 (Pa. Cmwlth. 2017), the Commonwealth Court of Pennsylvania addressed premises liability in the context of a slip-and-fall incident, holding that a property owner leasing to the City was not liable because the lease clearly assigned maintenance duties, including snow and ice removal, to the tenant. The plaintiff, a City worker, slipped and fell in the parking lot where he parked his car. He brought a negligence action against the property owner, who was leasing the property to the City, which included the parking lot where the plaintiff fell.

Pivotal to the landlord’s success was the fact the lease was clear regarding the duties of both parties. The lease clearly put the responsibility for snow and ice removal on the City and was specific as to the locations where the City was responsible for snow and ice removal. The lease was supported by email communications in which the City acknowledged that it would be responsible for snow and ice removal. There was also deposition testimony that only City workers were ever observed removing snow from the parking lot.

In deciding the case, the court noted that liability is not premised merely on ownership but, rather, on possession and control. When an owner leases out parts of a building, the landlord is responsible for those areas not specifically leased or in the absence of a contrary provision in the lease. The court determined that the lease was clear regarding the City’s duty to remove snow and ice from the parking lot and that the property owner could not be held liable for the fall.

The key for landlords is to make sure that their leases are not ambiguous regarding who is responsible for snow removal. For example, in *Eisbacher v. Maytag Corporation*, 2017 WL 947606 (Pa. Super. Mar. 9, 2017), the court determined there was a genuine question regarding who controlled an area and, therefore, who was responsible for the removal of snow and ice that caused an injury.

The lease in *Eisbacher* made the landlord responsible for snow removal of the common areas, parking areas, loading areas, and roadways. A drawing was included in the lease that indicated what areas of the property were considered common areas. There was also a contract with a snow removal service. The incident in question involved a trailer drop lot, which was not indicated as a common area in the drawing that was included with the lease. The tenant of the property had the ability to move trailers in the drop lot.

The court determined that it was unclear who had the authority to request that the snow removal company come to the property to plow. Since the lease was not clear on who had control of the drop lot and the responsibility for ensuring snow and ice were removed from that lot, the court determined that it was ultimately up to the jury to determine who had control over the drop lot; therefore, neither the landlord nor the tenant could escape potential liability.

In *Schouppe v. Upright*, 2019 WL 6701763 (Pa. Super. Dec. 9, 2019), the court again addressed whether a lease was ambiguous regarding who had the responsibility for snow and ice removal. Therein, the plaintiff slipped and fell on a patch of snow and ice on land that was leased to a post office. The lease provided a detailed list of the areas that the post office agreed to furnish and pay for snow removal. The lease made the landlord responsible for snow removal for the roof, as well as maintenance and repair of all common areas. The plaintiff claimed that the lease could not be used to shield the landlord from liability because the landlord had the responsibility for maintenance and repair of the area where the fall occurred.

The court determined that the lease was clear regarding the post office's responsibility for snow and ice removal where the fall occurred. While the landlord had the responsibility for repairs, there was not a dangerous condition prior to the post office's taking possession of the property. Once again, the clarity of the lease prevented the landlord from being liable for an injury caused by snow and ice when the tenant was responsible for their removal.

A lease is an important document that should provide both parties with a clear picture of their rights and responsibilities. If the intent of the lease is for the tenant to be responsible for the removal of snow and ice, the lease should clearly indicate that. Thus, should an accident occur due to the tenant's negligence in failing to properly remove the snow and ice, the landlord will not face potential liability due to ambiguity in the lease.

While dealing with snow in the summer may not be the first thing a landlord may think about, it could prevent issues when the snow falls in the winter. ◆

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Pennsylvania Supreme Court Overrules Specific Loss Precedent, Grants Benefits to Estate of Deceased Worker

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Key Points:

- Pennsylvania Supreme Court held that the estate of a claimant is entitled to the payment of specific loss benefits because the claimant died from a work-related injury.
- Section 410 of the Workers' Compensation Act states that an estate is entitled to payment of benefits when a claimant dies before the final adjudication of a claim and when there are no dependents.
- This decision affects the settlement analysis of claims that include a specific loss and has greatly increased the potential exposure of such cases where the liability for payment of the specific loss benefits does not extinguish with the death of the claimant due to the work-related injury.

The Pennsylvania Supreme Court has expanded the scope of recoverable workers' compensation benefits by holding that specific loss benefits may survive a claimant's work-related death and be payable to the estate when no dependents exist. In overruling longstanding precedent, the court clarified that Section 410 of the Workers' Compensation Act provides a distinct pathway for such recovery, significantly impacting how catastrophic injury claims are valued and resolved.

Facts

In *Steets v. Celebration Fireworks* (*WCAB*), 335 A.3d 1076 (Pa. 2025), the claimant, Christina Steets, was working for Celebration Fireworks Inc., the employer, when she sustained a serious injury following a firework explosion. The employer accepted liability for the injury in a Notice of Compensation Payable and paid the claimant temporary total disability benefits. The accepted injury was described as the amputation of multiple body parts.

The claimant's condition deteriorated, and she filed Claim and Review Petitions, seeking to add a number of additional injuries, including loss of use of both arms. The workers' compensation judge granted the Review Petition and awarded specific loss benefits. Thus, the claimant would be entitled to 840 weeks of specific loss benefits following the expiration of her total disability benefits.

The employer appealed to the Workers' Compensation Appeal Board, which affirmed the workers' compensation judge's decision. The employer then appealed to the Commonwealth Court, which ultimately affirmed the rulings below.

During the pendency of the employer's appeal to the Commonwealth Court, the claimant died from a complication of her work-related injury. Following her death, her estate filed Claim, Review, and Penalty Petitions, seeking payment of funeral expenses, specific loss benefits, and a penalty based upon the employer's alleged failure to pay previously awarded specific loss benefits. The estate was comprised solely of the claimant's non-dependent sister.

The workers' compensation judge granted the petition for funeral expenses as the death was work-related. However, denied were the Review and Penalty Petitions regarding the payment of specific loss benefits. The Appeal Board affirmed the decision, and the estate appealed to the Commonwealth Court. The Commonwealth Court issued a split decision in which it affirmed the judge's ruling that the specific loss benefits were not payable.

The estate appealed to the Pennsylvania Supreme Court. It requested that the court overrule *Estate of Harris*, 845 A.2d 239 (Pa. Cmwlth. 2004), where the Commonwealth Court had held that Section 306(g) of the Act was the exclusive means by which specific loss benefits survive the death of the worker.

Result

There were essentially two distinct questions in the *Steets* case: (1) do specific loss benefits survive following the claimant's death caused by the work-related injuries; and (2) if the specific loss benefits survive, can they be paid to the estate of the claimant? The Supreme Court held that the Act does not categorically bar recovery of specific loss benefits when a worker dies from their work-related injuries. In reaching this decision, the court focused on Sections 306, 307, and 410 of the Workers' Compensation Act.

First, the court acknowledged that Sections 306 and 307 limit the survivability of specific loss benefits to situations where the claimant died from causes unrelated to the work injury.

However, the court stated that Section 410 provides a distinct form of relief when the claimant dies prior to the final adjudication of their claim from a work-related injury or cause. The plain language of Section 410 states that specific loss benefits may be paid to the estate of the claimant where there are no dependents to inherit. Therefore, the estate is entitled to the payment of the specific loss benefits.

This case explicitly overrules the holding in *Estate of Harris* and opens the door to a broader application of the specific loss provisions in the Act.

Impact

Estate of Steets expands the ability of a claimant's beneficiaries to receive specific loss benefits following the death of the claimant, regardless of whether the death was caused by the work-related injury or an unrelated cause. This will affect the value of specific loss cases moving forward and will alter settlement strategy and claim handling.

In the event of a serious injury with the potential for, or realization of, a specific loss benefit, it is no longer the case that the right to the specific loss would extinguish should the claimant die from the work-related injury. Instead, the specific loss benefit will have to be calculated and considered as a part of the case when discussing the potential outcome or settlement of the case.

While this decision represents a shift in workers' compensation precedent in Pennsylvania, it certainly is not a "sky-is-falling" scenario. The Pennsylvania Supreme Court rested its decision primarily on Section 410 and the fact that the claimant died prior to the final adjudication of her claim. Therefore, this decision does not stand for the unequivocal statement that when a claimant dies from work-related injuries and is entitled to specific loss benefits, their estate is entitled to payment of specific loss benefits. ◆

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This Is a Story About Control, Co-Owners' Control: How *Simone v. Alam* Reshaped the Standard for Indispensable Parties in Premises Liability Actions

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Key Points:

- The Supreme Court of Pennsylvania recently held that mere ownership does not render a party indispensable in a premises liability action.
- The Supreme Court held that the indispensability of a party who co-owns a property that is the subject of a premises liability action hinges on that co-owner's control and possession of the property.

Recently, the Supreme Court of Pennsylvania established a new rule relative to indispensable parties. Specifically, in *Simone v. Alam*, 333 A.3d 359 (Pa. 2025), the court held that a tenant in common who did not exercise possession or control over the subject premises is not an indispensable party in a premises liability action.

Nicole Simone, the plaintiff, alleged that she slipped and fell on an area of ice that had accumulated in the common area of a rental property owned and operated by the defendant. At the time of the alleged incident, the property was co-owned by the defendant and his brother, who was not named as a defendant. Despite knowing that the defendant and his brother co-owned the property as tenants in common, the plaintiff never sought to join the brother as an additional defendant. Instead, her position was that the defendant was solely responsible for the hazardous condition that caused her injuries as he was the property owner in possession and control of the premises.

After expiration of the applicable statute of limitations, the defendant filed a motion to dismiss, arguing that regardless of his brother's lack of possession or control over the property, his brother's status as a co-owner of the property made him an indispensable party. In opposition, the plaintiff maintained that the brother was not an indispensable party as he was merely a co-owner with no possession or control over the operations of the premises as a rental property.

The defendant's motion to dismiss was granted by the trial court and upheld by the Superior Court of Pennsylvania. Both courts held that the brother's status as a mere co-owner of the property was enough to render him an indispensable party, thus depriving the trial court of subject matter jurisdiction and requiring dismissal of the action.

On appeal to the Supreme Court, the issue was whether a tenant in common of real property who did not exercise possession or control over the property was an indispensable party in a premises liability action. As part of its ruling on this issue, the Supreme Court analyzed Pennsylvania Rule of Civil Procedure 2227(a), which states that an individual with a joint interest in the subject matter of an action is an indispensable party to that action. The court held that Rule 2227(a) must be construed by its plain language, enforcing that words or phrases that are expressly defined be understood in accordance with such definitions.

Relying on *Black's Law Dictionary*, the Supreme Court deconstructed Rule 2227(a) and defined a "joint interest" as one "that is acquired at the same time and by the same title as another person's." The court also defined "subject matter" as "the issues presented for consideration; the thing in which a right or duty has been asserted; the thing in dispute." Using these definitions, the court construed the meaning of Rule 2227(a) to find indispensable parties as those who have the same interest in the issues presented in an action.

The court reasoned that the subject matter in a premises liability action is the liability of a possessor of property for the injuries a party has sustained as a result of a hazardous condition on that property. The court held that liability stems from the possession and control of the property, not the ownership. Applying the plain language construction of Rule 2227(a) to premises liability actions, the court ruled that a party is indispensable to a premises liability action when that party has a joint interest in the possession and control of the premises at issue.

Given its holdings, the Supreme Court declined to extend the rule set forth in *Minner v. Pittsburgh*, 69 A.2d 384 (Pa. 1949), reasoning that the rulings in *Minner*—specifically, co-owners of a property are indispensable parties due to their mere ownership interests in the property—were limited to the facts of the case. The court found that liability in *Minner* arose from ownership of the property since it was the sole indicator of possession and control over said property.

In distinguishing *Minner*, the Supreme Court reasoned that the plaintiff's allegations of negligence in the present matter arose from the defendant's actions in possession and control of the property, as opposed to his status as a co-owner of the property. The court explained that the abundance of factual support pointed towards the defendant's position as a sole landlord occupying the premises with intent to control its at-issue common areas.

The court further explained that, as the defendant's brother was a tenant in common, who did not exercise any possession or control over the property, he was not an indispensable party to the plaintiff's premises liability action. As such, the court ruled that the lower courts erred in their dismissal of the action. The Supreme Court reversed the decision of the Superior Court and remanded the case to the trial court for further proceedings.

The Supreme Court's ruling in *Simone* signals that a premises liability case will not be dismissed for failure to join an indispensable party based solely upon an argument of ownership. Instead, attorneys will need to establish that the indispensable party had joint interest in the possession and control of the property. ◆

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New Jersey Appellate Division Continues to Turn Away Alleged Intentional Workplace Injury Claims

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Key Points:

- New Jersey Appellate Division, once again, turns away intentional injury claim in an attempt to overcome the workers' compensation bar.
- To prove an intentional wrong under the Workers' Compensation Act, a plaintiff must show that: (1) the employer knows its actions are substantially certain to result in injury or death to the employee; and that (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 Workers' Compensation Act to immunize.

The New Jersey Appellate Division has once again turned away an intentional injury claim in an attempt to overcome the workers' compensation bar in *Estate of Michael Alexander et al., v. Northeast Sweepers, et al., and Crisdel Construction, et al.,* 2025 WL 1711136 (N.J. App. Div. Jun 19, 2025). The case itself has an extensive record and a long procedural history, including two prior appeals, from a workplace injury going back to 2014. For purposes of this article, we have cited only the most relevant facts from the court's analysis of the intentional injury issue.

On July 11, 2014, Mike Alexander, an employee of Crisdel Construction, was struck by a sweeper truck owned by Northeast Sweepers and operated by a co-employee of Crisdel, Christopher Hackett. Alexander was taken to a hospital and passed away approximately one month later. Crisdel was the general contractor and was responsible for milling and paving operations. Alexander had served as a milling foreman on the resurfacing project.

At the time of the accident, Alexander was wearing a reflective safety vest, hard hat, and a flashlight that had been turned on. The resurfacing work area consisted of two lanes of the New Jersey Turnpike and the right shoulder. Crisdel had 12 pieces of machinery, including milling and paving equipment, two sweepers, and at least five dump trucks.

The work area was illuminated by the lights from various vehicles and the moon, but there were no light towers. The sweeper trucks and milling machines had lights, which pointed several feet directly behind each vehicle. The sweeper trucks and milling machines also had backup alarms, but the milling and paving work generated a great deal of noise in the work area.

Workers at the scene had not reviewed a written traffic control plan before the accident. The workers had gathered at the outset of the night to discuss where they would be operating and what they would be doing that night. There were no flag persons or spotters.

Hackett had over 15,000 hours of experience in operating the sweeper, and Northeast considered him to be a "senior operator." Before the accident, some workers, including Alexander, had discussed that Hackett was a "dangerous operator." Approximately one week beforehand, Alexander had allegedly brought his concerns to the attention of the project manager. There were, however, no formal complaints regarding Hackett or his job performance.

It was Crisdel's practice to assign a dump truck to each sweeper truck for efficiency and safety reasons. At the time of the accident, however, no dump truck was near Hackett's sweeper. The accident occurred when Hackett drove his sweeper around a milling machine and struck Alexander. At his deposition, Hackett testified: "I think it was my error. I missed [Alexander] in my line of sight. And I'm responsible for a human life."

OSHA conducted an investigation and determined that Crisdel had failed to "furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees," and failed to "establish a pre-planned traffic pattern for pedestrian and construction traffic . . . to ensure the safety of the employees working and walking within the construction work zone." The "type of violation" was noted as "serious," but not "willful" or "repeated."

In an amended complaint brought in their civil action related to Alexander's death, the plaintiffs, Estate of Mike Alexander, deceased, by Lorraine Alexander as Executrix of the Estate, and Lorraine Alexander, individually, alleged that Crisdel had engaged in conduct that constituted intentional wrongs that resulted in Alexander's death. Alexander and his estate had received workers' compensation benefits related to the accident. In Crisdel's answer, it asserted the affirmative defense that the plaintiffs' claims were barred by the New Jersey Workers' Compensation Act. Crisdel then moved for summary judgment to dismiss the plaintiffs' claims against it.

The trial court granted summary judgment in favor of Crisdel and found that the plaintiffs had failed to produce evidence that would allow a reasonable trier of fact to conclude that Crisdel had committed an intentional wrong. The trial court also reasoned that the accident which caused Alexander's death was in the nature of the type of accidents that occur in construction areas. The plaintiffs then appealed the order granting summary judgment to Crisdel.

The Appellate Court first noted that the Workers' Compensation Act reflects a historic trade-off whereby employees relinquish their right to pursue common-law remedies in exchange for automatic entitlement to certain, but reduced, benefits whenever they suffer injuries by accidents arising out of and in the course of employment. *Rodriguez v. Shelbourne Spring, LLC,* 327 A.3d 134, 140 (N.J. 2024) (quoting *Millison v. E.I. Du Pont de Nemours & Co.*, 501 A.2d 505, 512 (N.J. 1985)). The only exception to the workers' compensation bar is for injuries caused by intentional wrongs. *Richter v. Oakland Bd. of Educ.*, 252 A.3d 161, 178-179 (N.J. 2021) (quoting *Laidlow v. Hariton Mach. Co.,* 790 A.2d 884, 894 (N.J. 2002)).

To prove an intentional wrong under the Workers' Compensation Act, a plaintiff must show that: (1) the employer must know its actions are substantially certain to result in injury or death to the employee; **and that** (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 Workers' Compensation Act to immunize. *Id*. The court noted that the New Jersey Supreme Court has explained that "the 'substantial certainty' test is still a high standard to meet: to avoid allowing employees to circumvent the Act, courts must demand a virtual certainty before employees can proceed under the intentional wrong exception to sue their employer in tort." *Van Dunk v. Reckson Assocs. Realty Corp.*, 45 A.3d 965, 978 (N.J. 2012) (quoting *Millison*, 501 A.2d at 514).

In this appeal, the plaintiffs identified six specific areas of safety protocols or devices that were allegedly known to and ignored by Crisdel on the night of the accident: (1) work lighting, (2) audible backup alarms, (3) properly functioning mirrors, (4) dedicated dump trucks, (5) the use of spotters, and (6) a written traffic control plan. The plaintiffs also argued that Crisdel ignored the complaints concerning Hackett's dangerous operation of the sweeper and failed to learn from prior incidents.

In their detailed analysis of each allegation, the court noted that none of the evidence pointed to by the plaintiffs constituted evidence of an intentional wrong within the meaning of the Act. The court also noted there were no formal complaints regarding Hackett's job performance and that he was not previously involved in any accidents while operating a sweeper. Concerning the OSHA violations, the court noted that there were no prior OSHA citations at the New Jersey Turnpike job site and that the subsequent OSHA violation cited Crisdel for "serious" issues but not "willful" violations. Moreover, the New Jersey Supreme Court has explained that OSHA safety violations do not, on their own, establish the virtual certainty required to prove an intentional wrong. *Van Dunk,* 45 A.3d at 978. See also *Laidlow*, 790 A.2d at 898.

This case illustrates the constant barrage of intentional injury claims being asserted against the workers' compensation bar. In a construction scenario such as this, the two most common means of attack, lately, are whether the employer had safety training, programs, and/or protocols prior to a workplace accident, and whether there was a significant violation in any subsequent OSHA investigation. All employers are urged to routinely update their safety programs to make sure that they, at a minimum, meet the OSHA standards and, preferably, go beyond those standards. Further, employers should designate employee health and safety compliance as a top priority, not just for the personnel directly involved in the department, but for every employee in the organization, to prevent a workers' compensation liability. ◆

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Marshall Dennehey Expands Pittsburgh Office with Addition of Seven Attorneys from Walsh Barnes

ON THE PULSE

Jacksonville Office Expands and Leads Litigation Practice in Northern Florida

James P. Hanratty, Esq.

In 2024, the Jacksonville, Florida office celebrated our 20th year by moving to beautiful, new office space. We remain a presence in downtown Jacksonville and continue to cement our position as a premier litigation practice in Northern Florida. The Jacksonville office's territory stretches from the Atlantic Coast to the Gulf Coast, across the northernmost counties of the state and across two time zones. Our lawyers have leveraged technology to allow us to service our clients' needs in the most efficient way possible. When travel is necessary, we are perfectly situated to reach our expansive practice area quickly and effectively.

The Jacksonville office is made up of talented lawyers working in the firm's four practice departments: Casualty, Health Care, Workers' Compensation, and Professional Liability. While only about 3% of all Florida lawyers have the distinction of being Board Certified as Specialists by the Florida Bar, almost 30% of our Jacksonville lawyers hold this honor. These highly-qualified lawyers include Elizabeth Ferguson, the leader of our Architectural, Engineering & Construction Defect Litigation Practice Group, Heather Carbone and Blake Hood, who are certified specialists in workers' compensation practice, and myself, who works in the Casualty Department and has the honor of being certified as a specialist in civil trials. These distinctions and our commitment to our practices demonstrate the quality of counsel available to our clients as well as the excellent mentoring available to our newer lawyers.

Our newer attorneys are routinely named in the various professional journals lists of up-and-coming, talented attorneys. They are well situated to continue the growth of Marshall Dennehey's presence in Northern Florida. As we continue to expand, we do so with an eye toward maintaining the Marshall Dennehey culture, which demands that we are not just great lawyers for our clients, but good people to each other, our families, and our opposition. Northern Florida continues to experience rapid and sustained growth, and the Jacksonville office is poised to continue to be a leader in the market as we move forward. ◆

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ON THE PULSE

Navigating the New Era of Dram Shop Liability: Marshall Dennehey's Hospitality & Liquor Liability Practice Group Steps Forward

Patrick T. Reilly, Esq. and Carolyn Kelly Bogart, Esq.

Dram shop liability, or liquor liability, is civil liability—typically for bars and restaurants—for personal injuries arising out of service of alcohol to either a minor or a visibly-intoxicated patron. And it is quite the hot topic these days. An article about "dram shop" cases recently graced the front page of The *Philadelphia Inquirer*; quite a far stretch from what has long been a somewhat overlooked and largely ignored area of personal injury litigation.

Marshall Dennehey has been handling liquor liability claims since the days when the most common question we fielded was, "What is dram shop?" These cases have always had the **potential** to inflame juries due to the volatile nature of the fact patterns and circumstances surrounding alcohol-related incidents. But now, in the era of the "nuclear verdict," juries are rendering astronomical verdicts in these cases.

Philadelphia attorney, M. Scott Gemberling, and King of Prussia attorney, Tony Michetti, have been at the forefront of this litigation for the past 40 years. With Tony's recent retirement, and Scott's transition to senior counsel at the firm, we have been appointed co-chairs of the firm's longstanding Hospitality & Liquor Liability Practice Group.

While it may seem like a "new era" here, we have been learning from and working with Scott and Tony for the past two decades. And while Scott and Tony have tried plenty of liquor liability cases to verdict, their true legacy is a forward-thinking strategy focused on smart, fixed, and speedy investigation of claims, along with an evaluation of early mediation. The hope is to avoid, where possible, the nuclear verdicts that are increasingly splashed across the front pages of newspapers.

This is the legacy we intend to carry forward. Drawing on our many years of experience, our team is here to handle any type of accident that accompanies or is related to the service of alcohol. While the classic "dram shop" scenario involves the patron who leaves a bar or restaurant and gets into a motor vehicle accident while intoxicated, that is just one scenario. We have handled cases against bars and restaurants arising out of numerous types of injuries that can occur, including cases involving:

- Alcohol poisoning
- Bar fights
- Car accidents
- Motorcycle accidents
- Shootings
- Stabbings
- Suicide
- University fraternity/sorority events

Additionally, the members of our group routinely present on the topics of safe service of alcohol, as well as risk management best practices, to help avoid and protect against claims and litigation.

Whether you are faced with a lawsuit involving alcohol, or whether you are a business looking to avoid such a situation, our Hospitality & Liquor Liability Practice Group is here to help.

** Patrick and Carolyn co-chair our Hospitality & Liquor Liability Practice Group. Patrick works in our Pittsburgh, PA office, and Carolyn works in our Mount Laurel, NJ office.*

ON THE PULSE

Recent Appellate Victories

Kimberly Berman Kimberly Berman (Fort Lauderdale, FL) succeeded in obtaining reversal of a non-final order that granted leave to amend to an estate to assert a claim for punitive damages and gross negligence against a dive captain, dive master, and the corporate-entity, dive companies. A woman drowned while scuba diving on a chartered tour, after which the toxicology report revealed high levels of illicit drugs and alcohol. During the litigation, her estate moved for leave to amend to add a claim for gross negligence and punitive damages, claiming the defendants were grossly negligent for failing to use the buddy system and for allowing the decedent to dive when they knew or should have known she was intoxicated. The estate also claimed gross negligence for the dive master allowing the decedent out of his eyesight for four to ten minutes during the dive despite having identified the decedent as requiring "special assistance." In support of the motion, the estate relied on the police statements, deposition testimony, and an expert report. The defendants argued the evidence was insufficient to support the amendment and that none of the witnesses knew that the decedent was intoxicated before the dive. At the hearing, the trial judge noted the standard was "very liberal" and refused to consider the defendants' evidentiary arguments because it "put the cart before the horse." In granting the motion, the trial court did not make an affirmative finding that the estate had made a reasonable showing by evidence which would provide a reasonable evidentiary basis to recover punitive damages. On appeal, the Fourth District Court of Appeal agreed with our arguments and reversed on several grounds. The court found that: the trial court applied the wrong legal standard; the estate failed to present sufficient evidence to establish a reasonable basis for recovery of punitive damages against the dive captain and dive master; and the estate's proposed, amended complaint did not properly allege a claim against the corporate entity defendants. Thus, the order for leave to amend was reversed.

David Blake and **Walter Kawalec** (both of Mount Laurel, NJ) successfully overturned a $1.8 million judgment on appeal in a case that involved the *Laidlow* exclusion in a workers' compensation/employers liability policy. The decedent succumbed to heat exhaustion while at work, and the plaintiff alleged the death was due to working conditions the employer knew were substantially certain to lead to injury. The plaintiff filed suit in the Superior Court, alleging both negligence and intentional torts. Our client, the insurer, offered to defend the employer, but only to the extent of obtaining dismissal of the workers' compensation claim, which had been filed in the wrong forum. The insured rejected the offer, and suit for the injury and coverage claims commenced. At summary judgment, the trial court refused to apply the policy's clear and prominent *Laidlow* exclusion, which would have barred all coverage for claims in the Superior Court whether alleged as negligent or intentional. The trial court entered judgment in the amount of the arbitration award and awarded defense costs for the *Laidlow* suit, costs of the declaratory judgment action and interest. The matter went up on appeal. After briefing, but before argument, the New Jersey Supreme Court released the *Rodriguez* decision, which validated our client's position on application of the *Laidlow* exclusion and went even further to hold that the employer's liability carrier has no obligation to provide a defense for the common law negligence claims filed in the Superior Court. The *Rodriguez* decision was unpublished and at the appellate level, while our case was at the trial level. The trial court refused to apply the principles enunciated by the Appellate Division in the *Rodriguez* decision and refused to apply the reasoning of a second unpublished appellate court decision directly on point. The trial court simply ignored the cases, reasoning they were unpublished. However, prior to oral argument in our matter, the *Rodriguez* decision was published, and the plaintiffs abandoned the case, settling for nuisance value.




Kimberly House and **Oswald Clark** (both of Philadelphia, PA) successfully defended the plaintiffs' appeal from a verdict obtained by **Aaron Moore** and **Alesia Sulock** (both of Philadelphia, PA) for our client in a legal malpractice claim. During the case, the trial court partially granted our motion for judgment on the pleadings, which dismissed several tort claims and a claim for unfair trade practices. The matter then proceeded to trial on the remaining breach of contract claim. The jury returned a verdict in favor of our client, and the plaintiffs appealed, challenging the rulings on the motion for judgment on the pleadings and a motion in limine that purportedly precluded the plaintiffs from introducing certain evidence. The Superior Court affirmed in a unanimous decision, holding that the plaintiffs' tort claims were barred by the statute of limitations and that the plaintiffs' argument regarding the trial court's decision on the motion in limine was waived because they failed to properly develop the argument in their appellate brief. ▶

ON THE PULSE

Recent Appellate Victories

Kim Boyer-Cohen (Philadelphia, PA) convinced the Commonwealth Court of Pennsylvania to reverse the trial court's order that reinstated our client as a party for purposes of trial and the verdict sheet. The plaintiff, an employee of the co-defendant, brought suit after she slipped and fell during her employment. The Honorable Sean Kennedy had granted our client's motion for summary judgment and dismissed all claims and cross claims against them. Over one year later, the Honorable Linda Carpenter granted the co-defendant's motion in limine, allowing the co-defendant to present evidence against our client at trial, place our client on the verdict sheet, and essentially vacate the order granting summary judgment. The Commonwealth Court held that Judge Carpenter's order violated the coordinate jurisdiction rule and reversed the order reinstating our client as a party at trial and on the verdict sheet.

In another matter, Kim Boyer-Cohen persuaded the Court of Appeals for the Third Circuit to affirm the summary judgment granted in favor of our client, a township solicitor, and the other township defendants. The plaintiffs sued the defendants for a substantive due process violation based on the defendants' alleged appropriation of a portion of the plaintiffs' property as a public road. The Third Circuit declined the plaintiffs' "invitation to constitutionalize garden-variety land-use disputes" and affirmed the District Court's grant of summary judgment, finding that the defendants' conduct was a not virtual taking which shocked the conscience.

Audrey Copeland (King of Prussia, PA) convinced the Commonwealth Court to affirm the decision of the Workers' Compensation Appeal Board in favor of our client, the employer, which upheld the workers' compensation judge's denial of a claim petition. By memorandum opinion, the court found that the judge's credibility findings were neither contradictory nor arbitrary and capricious, and the decision was well reasoned. The court agreed with the employer that the defense expert's opinions constituted substantial evidence, also noting that the Social Security Administration's findings of disability were irrelevant to the issue of work-relatedness. The court concluded that the claimant failed to sustain her burden of proving a work-related injury, and since the causal connection between her "lingering symptoms and her work duties" was not obvious, she was required to present unequivocal medical evidence establishing that connection, which she failed to do.

John 'Jack' Slimm and **Jeremy Zacharias** (both of Mount Laurel, NJ) successfully defended an appeal of a legal malpractice action in the New Jersey Appellate Division. The action was tried in Burlington County, New Jersey, and arose out of the plaintiff's claims regarding our client's settlement of underlying equitable distribution and alimony claims in connection with the plaintiff's ownership of an ultrasound company. ◆

ON THE PULSE

Defense Verdicts and Successful Litigation Results

CASUALTY DEPARTMENT

Peter Lentini and paralegal **Bozena Klodnicki** (both of Mount Laurel, NJ) defended a client in a motor vehicle/wrongful death trial in which the jury awarded a much smaller amount than the plaintiff sought. The decedent was rear-ended on the New Jersey Turnpike while driving 9.9 miles per hour at 3 a.m. He was intoxicated, with a blood alcohol level of .095. His car, which was black with black wheels and black-tinted windows, was disabled by the collision and came to rest broadside in the left travel lane. A good Samaritan tow-truck driver saw the crash and stopped to render assistance. He used the flashlight feature on his phone to warn oncoming cars about the disabled black car in the left lane. The decedent, who was uninjured in the initial accident, borrowed the tow-truck driver's phone/flashlight and re-entered his car in the left lane. Our client's truck subsequently hit the disabled car while the decedent was in it. The trial judge refused to allow us to introduce evidence relating to the first accident. The decedent's contributory negligence in causing the first accident, which put him in peril, was to have been the focus of our defense. The court's decision to prohibit evidence relating to the first accident was almost certainly mistaken, and we advised our client that we were almost certainly entitled to a new trial. Given the surprisingly small verdict, the client indicated that it would likely accept the result. Before trial, the plaintiff's economist estimated the value of lost services to the family at $6 million+. The judge dismissed damages relating to two siblings. The jury awarded significantly reduced damages to the decedent's mother in accordance with the arguments we made.

Kimberly House and **Oswald Clark** (both of Philadelphia, PA) were successful in a Philadelphia arbitration matter, obtaining a defense verdict as to the plaintiff's claims and an order requiring the co-defendant to reimburse attorneys' fees. It was undisputed that a motor vehicle accident occurred involving a third-party independent contractor of our client, a prominent homebuilding company. The plaintiff claimed he was a passenger in the vehicle and, accordingly, brought a negligence action against our client, who tendered its defense to the independent contractor based on a contractual provision requiring defense and indemnification. The independent contractor denied the tender and was subsequently joined into the action. During discovery, it was revealed that the plaintiff's claims were fraudulent; he falsely claimed he was a passenger in the vehicle. The independent contractor again denied the tender, claiming that because the plaintiff's claims were fraudulent, its duty to defend was never triggered. The case proceeded to an arbitration where the arbitration panel found neither defendant was liable but disagreed with the co-defendant's arguments regarding defense and indemnity. Accordingly, the arbitration panel entered a judgment in favor of our client and ordered the co-defendant to reimburse all reasonable attorneys' fees expended defending the action.

Wendy O'Connor (King of Prussia, PA) won summary judgment in a motor vehicle case before the Court of Common Pleas of Northampton County, Pennsylvania. The plaintiff was in the course and scope of her employment at the time of the vehicle collision. She filed a workers' compensation claim, and the workers' compensation judge ultimately determined that her alleged injuries were not related to the motor vehicle accident. The plaintiff appealed that decision to the Workers' Compensation Appeal Board, which affirmed. In her civil action against the driver and owners of the other vehicle, we asserted that the decision of the workers' compensation judge acted as collateral estoppel with regard to all claims, thus barring recovery by the plaintiff against our client. In opposition to our motion for summary judgment, the plaintiff argued that the right to a jury trial, as guaranteed under the Pennsylvania Constitution, precluded application of collateral estoppel. The trial court disagreed, finding ample case law to support the application of collateral estoppel in such circumstances, and granted our motion for summary judgment.

Raychel Garcia and **Matthew Wykes** (both of Orlando, FL) were successful in having all claims against our client's hotel dismissed. This case involved deeply-distressing allegations of sex trafficking and abuse by the plaintiff's mother, occurring when the plaintiff was a minor. The claims against our client's hotel were brought under the Trafficking Victims Protection Reauthorization Act (TVPRA) and Florida law. While the court was unequivocal in acknowledging the tragic and serious nature of the plaintiff's allegations against her abusers, it ultimately found that the legal claims against our hotel were not supported by sufficient factual allegations to state a cause of action under either federal or state law. The court had previously dismissed the original complaint without prejudice, affording the plaintiff an opportunity to amend and cure the deficiencies identified. However, upon review of the amended complaint, the court agreed with our renewed motion to dismiss and concluded that the plaintiff failed to plausibly allege that our hotel knowingly participated in a trafficking venture or maintained a continuous business relationship with the traffickers. The amended complaint alleged only a single instance of trafficking at our client's hotel and asserted that the conduct was so blatant that hotel staff should have recognized it. The court found this insufficient to support a claim under the TVPRA. Additionally, the court found that the allegations did not meet the high legal threshold required to sustain a claim for intentional infliction of emotional distress under Florida law. As a result, the court dismissed all claims against our client with prejudice.

Matthew Gray (Melville, NY) was successful in having a New York No-Fault (PIP) action fully discontinued, with prejudice. The plaintiff, a major medical provider, filed suit in Kings County Civil Court in the total amount of $25,805.85, claiming our client owed it for the claimant's unpaid medical billing. The claimant had been involved in a motor vehicle accident and sought payment for medical treatment. Counsel for the medical provider argued that, since the billing was never paid by the insurer, it was due in full—despite the fact that the same matter had previously been fully exhausted and was processed/handled in full compliance with the applicable medical fee schedule(s). While there were evidentiary issues in our client's case, our arguments and position were strong. After negotiations and arguments, and prior to the necessity of motion practice and/or a trial, plaintiff's counsel acquiesced to a full discontinuance of the matter, with prejudice. Thereby, our client was absolved from any fiscal liability in this action.

Erica Cagan (Jacksonville, FL) won a motion for summary judgment in a premises liability case where the plaintiff lost control of her e-bike while riding over leaves in our client's RV sales lot. The plaintiff claimed that the fall caused an aggravation of a prior shoulder injury, resulting in surgery as well as chronic pain in her low back. Erica argued that the leaves were a naturally-occurring element of a wooded lot and, even if they were hazardous, they were open and obvious. The plaintiff argued that she did not perceive the leaves as being hazardous; therefore, there was an issue of fact regarding whether her perception was reasonable. The plaintiff also argued, the fact that our client had a maintenance contract with a service to remove fallen leaves indicated that they were on notice of the leaves being hazardous. The court did not agree with this argument and found in favor of our client. Erica is a first-year associate, and this is her first dispositive motion win.

Harris Kirsch and **Joanne Nachio** (both of Fort Lauderdale, FL) successfully argued at the pleading stage that their client, a hotel resort, should not be held liable as a matter of law for the plaintiff's significant injuries, including a toe amputation. The court agreed with this argument and granted the defendant's motion to dismiss with prejudice, finding as a matter of law that no duty existed to warn the plaintiff of the hot concrete and beach sand. The matter had initially garnered some media attention, including online articles in the *New York Post, Entreprenuer*, and Dailymail.com.

Raychel Garcia and **Matthew Wykes** (both of Orlando, FL) were granted final summary judgment in a slip-and-fall premises liability case. The plaintiff alleged she slipped and fell on an unidentified wet substance while waiting in line at the defendant's convenience store. The plaintiff admitted she did not see the substance prior to her fall and did not know what it was, where it came from, or how long it had been there. She testified that the wetness appeared to have been tracked in by other customers, noting their shoes were wet. We moved for summary judgment, arguing that the plaintiff could not meet her burden under § 768.0755, Fla. Stat., to prove that the defendant had actual or constructive knowledge of the alleged condition. Surveillance footage showed multiple customers walking through the area without issue, and no visible hazard appeared on video. The court agreed, relying, in part, on *Leftwich v. Wal-Mart Stores East, LP*, 396 So.3d 603 (Fla. 5th DCA 2024), and granted final summary judgment in favor of the defendant, dismissing the case with prejudice.

Carolyn Bogart and **Amy Fox** (both of Mount Laurel, NJ) won summary judgment in a wrongful death case, based on a lack of duty owed by a groom to his wedding guest, and dismissal of cross claims for lack of a viable contract owing indemnity under *Azurak*. The decedent was a plus-one guest at our client's wedding, which was held at a multi-building facility in Moorestown, NJ. Specifically, the venue consisted, in part, of a 131-year-old home with a castle-like outward appearance. The home's design included an elevated terrace (raised approximately five feet and accessible by stairs) with an unguarded, flat ledge. The plaintiff alleges the decedent was sitting and/or leaning against the ledge when he fell over, sustaining injuries that allegedly resulted in his death a few months after the event. Our client was an employee at the facility. The corporate owners of the property permitted him to use the home for his wedding, at no cost, provided he obtain an event insurance policy. There was no written contract. The co-defendants sought indemnification, arguing that the policy evidenced an agreement that our client would provide indemnification to them. It was our position, and the court agreed, that our client owed no duty to warn the decedent, as the ledge was an open and obvious condition that the decedent was aware of, or would have observed by a reasonable use of his faculties. Further, our client and the decedent were both invitees to the property, and it was the co-defendant landowners who had a non-delegable duty to use reasonable care to protect against dangerous conditions. Therefore, the claims raised in the complaint and cross-claims for contribution were dismissed. Further, the court found no breach of contract or enforceable agreement to indemnify; the negligence in this case was on the co-defendant commercial property owners, and there was no clear and explicit agreement, oral or written, by which our client agreed to be responsible for risks associated with the structural condition of the property.

Christopher Power (Melville, NY) obtained a defense verdict in a slip-and-fall case in Suffolk County Supreme Court. The plaintiff was a physician's assistant who alleged he slipped and fell on a wet area inside his medical facility. He testified at his deposition that he saw mop swirls in the wet spot. He brought suit against the facility's cleaning company (our client) over one year later. Unrelated to this incident, the plaintiff had a pancreatic cancer relapse after his 2019 slip and fall and was out on workers' compensation for over one year (which we argued was related to his cancer relapse). The workers' compensation lien was $229,000. At trial, plaintiff's counsel produced a note from the plaintiff's wife stating that he would not be testifying due to his medical condition; therefore, his deposition testimony was read to the jury, which the court allowed. Chris stressed in his opening statement that plaintiff's counsel had the opportunity to secure witness statements from numerous witnesses and former employees of his client whom counsel never subpoenaed for non-party depositions or trial. Chris's client (the cleaning company) testified that the plaintiff's employer had access to his janitorial equipment, including mops, which were always at their disposal. In his summation, Chris stressed to the jury that it would be speculation that a wet spot on a floor would have been caused by his client. Chris also stressed that cleaning companies were targets in slip-and-fall cases and seem to always get blamed for wet substances on floors. He again informed the jury that plaintiff's counsel had the opportunity to call witnesses but did not do so. The jury deliberated for 55 minutes and rendered a defense verdict.

Mark Wellman and **Diane Toner** (both of New York, NY) obtained dismissal of all claims against our client in a case involving a slip and fall at a hospital. The plaintiff was employed by a trucking company and was in the process of filling a liquid oxygen tank located in the parking lot of the hospital when he fell on a sheet of ice near the oxygen station evaporators. He sustained numerous injuries, including injuries to his spine, which resulted in a cervical fusion. As a result of the accident, the plaintiff alleged significant lost wages in addition to numerous personal injuries. Our client designed, installed, and maintained the oxygen station pursuant to a lease agreement with the hospital. We submitted evidence that our client properly inspected and maintained the oxygen station and that the ice was not caused by the operation of the oxygen station. After years of litigation and numerous depositions, our client moved for summary judgment, seeking a dismissal of the plaintiff's claims and for an order of indemnification against the hospital based on the lease agreement. The court rejected the plaintiff's attempt to argue that the station had been negligently designed because he had not pursued that theory throughout the litigation. The court granted our motion in its entirety and dismissed all claims. Diane's summary judgment motion carried the day and obtained a fantastic result for the client in an unfavorable venue.

Edward Tuite, **Michael Detweiler**, **Robert Morton** and paralegal **Kristin Anderson** (all of King of Prussia, PA) received a successful trial result in a premises liability matter in the Philadelphia Court of Common Pleas. The plaintiff's expert projected future surgeries and extensive life-long medical care costs of $1.25 million. Much of our defense centered on damages and demonstrating that the projected future medical care was not supported by the actual medical treatment provided. Additionally, video of the incident was used to demonstrate that the plaintiff had actual/constructive knowledge of spilled water on the premises but proceeded to walk in that area anyway. Forty percent comparative negligence was assigned to the plaintiff, and, despite the plaintiff's introduction of the medical cost projection described above, only $50,000 in future medical care was awarded by the jury. The total award, after a molded verdict, was $118,800, which our client viewed as a victory in this venue. The plaintiff's last formal demand prior to trial had been $240,000.

Brittany Bakshi and **Coryn Hubbert** (both of Harrisburg, PA) obtained summary judgment for residential renters in a trip-and-fall case. The plaintiff tripped and fell on a set of porch steps at our clients' home while attending a barbeque, breaking her ankle. She brought claims against the homeowner. The homeowner then joined our clients, asserting claims of negligence and contractual indemnity under the lease agreement. During her deposition, the plaintiff testified that she was familiar with the poor condition of the steps, had spoken with the renters about the steps prior to her fall, and witnessed two people, an adult and a child, trip on the steps during the same barbeque event. The homeowner also testified at his deposition that it was his responsibility to repair and maintain the subject stairs. Brittany and Coryn argued that our clients were not required to indemnify the homeowners under the *Perri-Ruzzi* rule and that they owed no duty to the plaintiff, a licensee, as she knew of the condition of the steps and the risks involved in using them. The court agreed and dismissed all claims against the clients.

Benjamin Goshko (Philadelphia, PA) successfully argued for venue transfer in a trip-and-fall case in which the fall took place at a fair located in Columbia County, PA. The plaintiff filed suit in Luzerne County, alleging that the fair conducted substantial business in Luzerne County in the form of ticket sales made in Luzerne County, invitations to Luzerne County-based vendors to obtain concession space at the fair, and substantial contracts with Luzerne County-based entities for supplies for the fair. Relying on recent case law, the defendants argued venue in Luzerne County was improper as ticket sales had not yet occurred in Luzerne County at the time of the accident and constituted less than 2% of the revenue generated by the fair in the year in which suit was filed. Other contacts with Luzerne County were argued to be incidental to the business of the fair. After two rounds of oral argument, venue depositions and seven sets of venue discovery requests, the court sustained the defendants' preliminary objections and ordered the matter transferred to Columbia County.

Vlada Tasich, **Michael Salvati**, and **Benjamin Matzke** (all of Philadelphia, PA) succeeded in having a product manufacturer and distributer dismissed for lack of personal jurisdiction in a wrongful death case. Our clients, a windshield manufacturer and distributer, are located in Ohio and South Carolina. The decedent was driving on I-95 in Philadelphia when a large piece of metal speared through the windshield and impaled the decedent's chest. The plaintiff, a Philadelphia police officer, alleged that the windshield was defective. Although the windshield was installed by a co-defendant in Philadelphia and the accident occurred in Philadelphia, we successfully argued against the "stream of commerce" theory of jurisdiction, demonstrating that our clients had insufficient contacts with Pennsylvania to be subject to jurisdiction here.

Rachel Insalaco and **Mark Kozlowski** (both of Scranton, PA) obtained the dismissal of our client, a county youth services (CYS) organization, from a matter involving allegations of child abuse and wrongful prosecution against a hospital and other medical providers. The plaintiffs, consisting of 12 sets of parents and their minor children, have alleged that the hospital, through then-director of its Child Advocacy Center, had wrongly accused the parents of child abuse after bringing their children in for routine medical treatment. They have alleged that, as a result of these accusations, many children were removed from their parents' custody and prevented from receiving needed medical care. The hospital filed a joinder complaint against our client and other county CYS agencies, alleging that the children could only have been removed from their parents' custody at a CYS agency's behest. We filed preliminary objections on our client's behalf, arguing that it was squarely immune from the claims at issue per the Political Subdivision Tort Claims Act and Child Protective Services Law, that the allegations in the plaintiffs' complaint did not support the hospital's assertions against our client, and that even if the claims against the agency were permitted to proceed, venue in Philadelphia County would be improper. The Philadelphia County Court of Common Pleas sustained our preliminary objections following oral argument. ◆

HEALTH CARE DEPARTMENT

Gary Samms (King of Prussia, PA/Philadelphia, PA) and **Shane Haselbarth** (Philadelphia, PA) succeeded in partially dismantling a complex claim against a major health care client. The family of a former in-patient resident who died as a result of complications from the Covid-19 virus filed suit, raising claims that the patient was sexually assaulted while in the care of the hospital and a subsidiary ambulance company. Asked to join the defense team shortly before trial, Gary effectively discredited the plaintiff's witnesses throughout the plaintiff's case-in-chief. Then at the nonsuit stage, Gary wholly extricated his client—sealing off any exposure to liability for the large, corporate parent company. Following the jury's $3.5 million verdict against the remaining defendants, Shane was engaged as appellate counsel and succeeded in further winnowing the liability exposure. He convinced the trial judge to: (1) deny the plaintiff's request to reinstate the punitive damages claim based on the trial record; (2) grant a partial judgment notwithstanding the verdict on one claim, lopping a full $700,000 off the jury's verdict; and (3) outright deny the plaintiff's motion for delay damages, which had sought to add $742,000 to the jury's verdict. All in all, a terrific result from a hard-fought trial. ▶

Robert Aldrich (Scranton, PA) obtained a defense verdict in binding arbitration on behalf of a nursing home client. The plaintiff alleged that the nursing staff provided inadequate pressure-reducing devices and negligently cared for his lower extremity, allegedly resulting in a below-the-knee amputation and permanent and total disability. Rob defended the case by establishing that, not only did the nursing staff treat the resident in accordance with the standard of care but, also, the resident's below-the-knee amputation was caused by the resident's vascular conditions and comorbidities, not by any alleged actions and/or inactions of the nursing home staff. After a lengthy arbitration, the arbitrator ultimately found in favor of the defense. ◆

PROFESSIONAL LIABILITY DEPARTMENT

Christopher Conrad and **Coryn Hubbert** (both of Harrisburg, PA) obtained summary judgment for a homeowners' association. The plaintiff owned an apartment in a planned community and sought to drill a hole through the exterior wall of the building to vent a HVAC unit. The HOA denied his request, and the plaintiff asserted claims of negligence and breach of the duty of good faith and fair dealings, alleging that the HOA treated him unfairly from other members by denying his request. Despite providing numerous photos of other holes through the exterior wall of the building, the plaintiff admitted during his deposition that the did not know whether the HOA had ever permitted another unit owner to drill a hole in the exterior wall. Chris and Coryn successfully argued that the plaintiff could not put forth any evidence demonstrating unfair treatment or that the request had been denied in bad faith. The plaintiff's lawsuit also included identical claims against the property management company of the building, and additional claims for breach of fiduciary duty, trespass, and intentional infliction of emotional distress, which were dismissed previously through preliminary objections.

Trish Monahan (Pittsburgh, PA) and **Audrey Copeland** (King of Prussia, PA) were successful in having the Commonwealth Court affirm summary judgment in a breach of contract/unjust enrichment matter. The plaintiff, a retired Chief of Police, sought an Act 600 Pension Plan as his contract stated. However, the Borough had never enacted an Act 600 Pension Plan, and the reference to an Act 600 Pension Plan in the plaintiff's contract was a scrivener's error and unenforceable. The Borough had a different pension plan in place that provided for lower benefits. The plaintiff also claimed unjust enrichment and entitlement to post-retirement paid sick and comp days. The Commonwealth Court held that the contract did not provide a monetary amount for said benefits and

affirmed summary judgment on that basis. This was the second time this case went before the Commonwealth Court. The first time was an interlocutory appeal and this time a direct appeal from a final order of summary judgment.

Trish Monahan (Pittsburgh, PA) won summary judgment in a discrimination in public accommodation action. The plaintiff claimed that she was denied a hotel room because of her race and that someone from the front desk called her the "n" word. The plaintiff had made a high six-figure demand, and the defense offered $1,500 to settle.

William McPartland and **Rachel Insalaco** (both of Scranton, PA) successfully convinced the Commonwealth Court of Pennsylvania to affirm the Court of Common Pleas of Wayne County's grant of our preliminary objections and dismissal of the plaintiff's complaint in mandamus. In its complaint in mandamus to the Court of Common Pleas, the plaintiff, a solar company, argued that a Township's letter denying its plan and application for the development of solar panels was insufficient under the Municipalities Planning Code, thus entitling it to a deemed approval of its plan. We had successfully filed preliminary objections to the complaint on the grounds that the Township's letter, which identified the plan's defects with specific reference to provisions of the Municipal Planning Code that had not been satisfied, was sufficient under Section 508 of the Municipal Planning Code. This section requires that, when a municipality denies an application for approval of a development plan, "the decision shall specify the defects found in the application and describe the requirements which have not been met and shall, in each case, cite to the provisions of the statute or ordinance relied upon." 53 P.S. Section 10508(2). The plaintiff appealed the decision, and we attended oral argument before the Commonwealth Court, following which the court affirmed the decision of the lower court on the same grounds.

D. Connor Warner (Philadelphia, PA) successfully had a defamation matter against an American Legion Post and certain of its members dismissed. According to the plaintiff, he joined the American Legion Post in 2022 and was allegedly asked by the defendant to address mismanagement within the Post. The plaintiff supposedly found unpaid invoices, canceled insurance policies, and non-compliance with Pennsylvania Liquor Control Board (PLCB) and gaming license regulations. He fired the restaurant manager, processed payroll, secured new insurance, and attempted to renew the gaming license at the defendants' direction. When the plaintiff urged compliance and stated he would cooperate with a potential PLCB investigation, he alleges that the defendants threatened him and accused him of misconduct, such as showing a video of a sexually explicit nature to another Post employee, failing to pay wages/vendors, making threats, removing a laptop, allowing unauthorized payroll access, and making unauthorized purchases. After the Post held a formal executive session regarding the plaintiff's conduct, he was permanently suspended from the Legion. Shortly thereafter, the plaintiff filed a defamation lawsuit in York County Court of Common Pleas, alleging that the various statements regarding his misconduct were false. The case was dismissed after the plaintiff failed to comply with two discovery orders and a subpoena for his counsel's deposition (who is also the plaintiff's wife), prompting the court to impose sanctions, dismissing the case.

Timothy Jaeger (Roseland, NJ) obtained summary judgment for his clients, a school district and its board of education, in a construction injury case. The school district hired a paving contractor to install a drainage pipe at one of its schools and to perform paving work at a number of its schools. The paving contractor had to excavate a trench to install the pipe. The plaintiff, an employee of the paving contractor, was working in the trench installing the pipe when the trench collapsed around him, trapping him up to his head and requiring that he be extricated by first responders. According to the plaintiff, the trench collapse was affected by a condition of the property that caused water to enter and destabilize the trench. He alleged that the school district was liable because the existence of the water was a dangerous condition of the property and, as the property owner, the district was negligent in failing to properly supervise the work and provide for the safety of the workers. The school district's superintendent had visited the site on the morning of the incident, observed mud in the trench, and said to the paving contractor that he should not let anyone work in the trench. In our summary judgment motion, Tim argued that the school district did not owe a duty of care to the plaintiff because the contractor was, by contract, in charge of the means and methods of its work and was contractually obligated to provide for the safety of its work and its workers. The court granted summary judgment to the school district, agreeing that it did not owe a duty of care to the plaintiff. The school district was not an expert in excavation or trenching and hired the paving contractor as the expert to perform such work. The court found that the plaintiff was injured as the result of a risk that was inherent to the trenching work being performed by the contractor; therefore, the school district did not owe a duty of care.

William McPartland and **Rachel Insalaco** (both of Scranton, PA) obtained summary judgment on behalf of a school district. The plaintiff—who was not a student at the school district—asserted causes of action for negligence and Title IX violations against the school district based on his sexual abuse by a teacher within the district who had adopted him. The court determined there was no evidence that any appropriate person within the school district had knowledge of the plaintiff's abuse, which occurred exclusively off school grounds and within the teacher's home. The court further determined that unsubstantiated rumors about the teacher within the district were insufficient to establish actual knowledge of the plaintiff's sexual abuse. As such, the court held that the plaintiff failed to offer sufficient evidence to support his Title IX claim or to overcome the school district's immunity from his negligence claim. The court granted our motion for summary judgment in its entirety.

ON THE PULSE

Defense Verdicts and Successful Litigation Results (cont.)

WORKERS' COMPENSATION DEPARTMENT

Anthony Natale (King of Prussia, PA) received dismissal of claim, review, and reinstatement petitions. The claimant sustained a shoulder injury during the course and scope of employment. She returned to work with the employer thereafter at a modified-duty job and then abandoned the job for a position with an alternate employer. Thereafter, she filed claim, reinstatement, and review petitions, alleging injuries to her opposite shoulder prior to her job abandonment. The parties submitted competing medical expert evidence, and the court found that the claimant did not sustain a new work injury. All petitions were dismissed.

A. Judd Woytek (King of Prussia, PA) received a decision the order from the U.S. Department of Labor denying the claimant's claim for Federal Black Lung benefits. This was the miner's fifth attempt to be awarded Federal Black Lung benefits. He was credited with 8.9 years of qualifying coal mine employment, and he was also found to have coal workers' pneumoconiosis. However, the evidence failed to show that his pneumoconiosis was disabling or would prohibit him from performing his last coal mine employment. Therefore, benefits were once again denied.

Michael Duffy (King of Prussia, PA) received an opinion from the Workers' Compensation Appeal Board that affirmed the decision that granted our termination petition. The employer had accepted an "upper back area" injury through a Notice of Compensation Payable. Prior to issuing the NCP, the employer secured an IME, where the doctor ultimately opined that the claimant was fully recovered from a lumbar sprain. The workers' compensation judge found that the claimant was fully recovered from the work injury based upon the credible opinions of the employer's medical expert. The judge also rejected the claimant's testimony and his expert's testimony. The claimant appealed, arguing the termination was improper as the IME occurred before the NCP was issued; therefore, the change in condition needed to occur after the NCP. Additionally, the claimant argued the termination was improper as the IME doctor found a different injury than the injury noted on the NCP. The Appeal Board opined that the employer sustained its burden of proof as its expert's testimony constituted substantial evidence, sufficient in nature to meet its burden of proof. The Appeal Board further found that since the employer was not disputing that an injury occurred, it was not attempting to re-litigate whether the claimant sustained a work injury. Rather, it was disputing whether the claimant was still disabled. The Appeal Board further opined that the claimant's expert evaluated the whole back and that the credible evidence revealed the claimant was fully recovered.

Benjamin Durstein (Wilmington, DE) was successful in obtaining the dismissal of a petition to determine compensation due that asserted a different date of injury. The Industrial Accident Board denied the claimant's motion to amend a petition to reflect a different date of loss because the amendment was made more than two years from the date of the alleged work accident. The pending petition was dismissed, and any new petition with the "corrected" date of loss was barred by the statute of limitations.

Robert Fitzgerald (Mount Laurel, NJ) received a significant positive outcome at trial. The petitioner sustained a significant injury in July 2013 and later filed a claim for permanent/total disability benefits. Given the petitioner's age and the exposure of the case, had the petitioner been successful at trial, he would have received more than 26 years of benefits; an indemnity exposure of $556,000. Prior to trial, the petitioner refused to accept any settlement offer below permanent/total disability benefits. Trial began on July 8, 2025, with the petitioner's testimony. Following the petitioner's testimony, the judge dismissed the petitioner's claim for permanent/total disability benefits and recommended a partial disability settlement, which equated to approximately $57,000 in total exposure, which the petitioner accepted.

Robert Schenk (Philadelphia, PA) was successful in having a claim petition denied. The claimant alleged he sustained an injury to his right elbow when he tripped and fell at work. The workers' compensation judge denied and dismissed the claimant's claim, finding no injury or disability. In doing so, the judge noted that the claimant's testimony as to how he was injured was completely inconsistent with video evidence from the employer's workplace. The claimant's testimony was basically that a pallet jack violently hit him and threw him to the floor, causing his injuries. The video showed the claimant tripping over a pallet jack. It also showed him getting up and continuing to work. Since the claimant was found not credible about being injured or disabled, the claim petition was denied and dismissed.

Robin Romano, and **Michael McMaster** on brief (both of Philadelphia, PA), were successful in having a claim petition denied and dismissed on behalf of a car rental company. The claimant alleged she was hurt when a customer's car backed into her on purpose. The claimant was later terminated from employment for belligerence to the customer. The employer's video surveillance showed that the car barely made contact with the claimant. Fact witness testimony by the employer's district manager, authenticating the footage and detailing the reasons for the claimant's termination, plus two defense medical experts, convinced the workers' compensation judge that the claimant failed to meet her burden of proof. ◆

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ON THE PULSE

Other Notable Achievements

THOUGHT LEADERSHIP



Dana Gittleman (Philadelphia, PA), chair of our Real Estate E&O Practice Group, and **Jeremy Zacharias** (Mount Laurel, NJ) kicked off their Professional Liability Underwriting Society (PLUS) podcast series with "Insurance Agent E&O – Top Ten Tips for Risk Management." From memorializing communications to protecting attorney-client privilege, Dana and Jeremy share practical strategies to help insurance professionals manage risk more effectively. Click **here** to tune it!

David Shannon (Philadelphia, PA), chair of our Privacy and Data Security Practice Group, and guest Evgueni Erchov from Cypfer, recorded the Professional Liability Underwriting Society (PLUS) podcast "Managing Cybersecurity Threats in 2025." This is the third season of David's ongoing podcast with PLUS. The program focused on ransomware, business-email compromise, AI, and the increasing sophistication of cyber-threat actors. Click **here** to tune in today! ◆

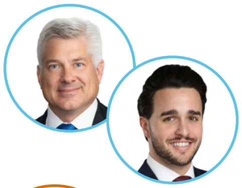
SPEAKING ENGAGEMENTS

Kimberly Berman (Fort Lauderdale, FL) spoke at the 28th Annual Florida Defense Lawyers Association (FLDA) Liability Claims Conference about "Pleading, Proof, and Preservation of Punitive Damages Claims: Tips for Florida Trial Lawyers and Appellate Attorneys."



Ryan Burns, **Angie Colorado**, and **A.C. Nash** (all in Fort Lauderdale, FL) presented "Relevant Procedural Rule Changes for Risk Managers" at the Tampa Bay RIMS (Risk & Insurance Management Society) educational luncheon. This program provided an insightful overview of the procedural changes in the Florida circuit court system. The discussion shed light on the impact of the Florida tort reform of 2023, aligning the state's court procedures with those of the Federal court. These changes are set to influence the way lawsuits are handled, introducing strict timelines throughout the process.

Josh J.T. Byrne (Philadelphia, PA) was a panelist at the Philadelphia Bar Associations' webcast, "Ethics and Legal Malpractice Avoidance." Josh is Co-Chair of the Bar's Professional Responsibility and Guidance Committee. **Josh also** co-presented "Ethics Hotline and Special Ethical Considerations for Prosecutors," at *District Attorney's Office: August CLE Program* hosted by the Philadelphia Bar Association. ▸



James Cole and **Alec DelConte** (both of Philadelphia, PA) presented “Untying Tangled Titles: How Property Deed Fraud Drives Costs and Indemnity,” at the annual conference of the International Association of Special Investigation Units.

Christopher Conrad (Harrisburg, PA) and **Lee Durivage** (Philadelphia, PA) presented “Hot Topics in Employment Law,” for the Pennsylvania Bar Association’s Law Firm Administrators’ Conference of Central Pennsylvania. Their presentation, which was attended by law firm administrators, human resources staff, and managing attorneys, focused on the current employment law issues facing law firms and practical advice for managing risk.

Michael Duffy (King of Prussia, PA) presented as part of the Pennsylvania Bar Institute’s and Pennsylvania Bar Association Workers’ Compensation Law Section’s conference *Tough Problems in Workers’ Compensation 2025*. Mike was part of a panel that presented “Surveillance and Using Social Media to Win Your Case.” Designed specifically by and for the experienced workers’ compensation practitioner, this presentation highlighted select challenges in workers’ compensation practice and offered techniques for managing them. Developments, practices, strategies, and preferences were discussed to help avoid making mistakes that could negatively affect a client’s claim.

Christina Gonzales (Philadelphia, PA) served as moderator for a panel at the 2025 Defense Research Institute’s *Diversity for Success Expo*, titled “Building Your Book of Business with Brand YOU! (Pitching Business and Executive Branding).” The discussion explored how developing a personal brand and growing a book of business are essential strategies for standing out—both within your organization and across the legal profession. Panelists shared practical insights on how to balance client development with professional responsibilities, offering guidance on how legal professionals can define their value, build meaningful relationships, and pursue long-term success—whether in a law firm, in-house role, or independent practice.

Gregory Graham (Pittsburgh, PA) presented “AI Litigation: The Current Landscape,” at the Pennsylvania Defense Institute’s annual CLE and Conference. This seminar focused on the current landscape of liability claims stemming from the use of generative and agentic AI. While generative AI is more commonly discussed at this point in time, it is agentic AI—particularly its end-to-end automated goal identification and action initiation—that is going to profoundly impact our clients’ industries.

Sean Greenwalt and **Amara Rodriguez** (both of Tampa, FL) spoke at the 28th Annual Florida Defense Lawyers (FDLA) Association Liability Claims Conference about effective use of proposals for settlement in Florida’s new legal landscape.

Matthew Keris (Scranton, PA) presented “MPL Crossfire: How to Prepare for AI From a Medico-Legal Perspective,” at the 2024 Medical Professional Liability Association conference. **Matt** also presented two seminars at the Hospital Insurance Forum 2025 Conference. For the first seminar, **Matt** co-presented with Jill Huntley Taylor. Their presentation discussed “New Jury Considerations in the Age of Big Law, Verdicts, and

ON THE PULSE

Other Notable Achievements (cont.)

Medicine." One day later, **Matt** presented "AI in Healthcare: Views From a Clinical and Legal Perspective." Finally, **Matt** joined a panel presentation for a webinar put on by the Pennsylvania Coalition for Civil Justice Reform. The program, "Medical Malpractice Pennsylvania Update," explored a number of emerging issues in medical malpractice, including the continuing surge of Philadelphia cases; dilution of plaintiffs' burden to prove that an agent causes harm; preservation of issues on appeal and waiver rulings of Superior Court; ethical concerns of double and triple booking; and the rise of punitive damages.

Paul Krepps (Pittsburgh, PA) spoke at the Pennsylvania Chiefs of Police Association Conference and Training Session on "Litigation After-Action – Lessons from the Perspective of a Defense Lawyer."

Missy Minehan (Harrisburg, PA) presented "Mitigating and Responding to a Professional Liability Claim: Documentation, Discovery, and Depositions" during the Skilled Nursing Development Institute's administrator appreciation event. Missy discussed pre-suit documentation issues, including documentation of arbitration agreements, missing medical records documentation and maintenance of key paper records (e.g. staffing, deployment, statements), and intra-lawsuit discovery and depositions.

Megan Nelson (Orlando, FL) presented "The Latest on Medical AI and Liability Claims," at the Florida Society for Healthcare Risk Management and Patient Safety's annual meeting and education conference.

Jeffrey Rapattoni (Mount Laurel, NJ) presented "Ethics and the Investigator," at the conference of the Illinois Chapter of IASIU (International Association of Special Investigation Units Inc.). **Jeff** also spoke at the Coalition Against Insurance Fraud's Mid-Year Meeting, participating in the panel "Insurance Fraud Through a Legal Lens: Insights from the Frontlines." At the annual conference of the International Association of Special Investigation Units, **Jeff** made two presentations, "Legal Update: Emerging Legal Issues in Fraud Fighting," and "Ethics."

Jack Slimm and **Jeremy Zacharias** (both of Mount Laurel, NJ) presented at the Camden County Bar Association *Annual Civil Practice Update*. **Jack** covered recent case law updates within New Jersey, and **Jeremy** moderated the panel discussion, which was also presented by the Honorable Steven J. Polansky, as well as several private practitioners. This annual seminar is well attended and has been a staple within the Camden County Bar Association for over two decades.

Jack Slimm was also a featured speaker at the annual New Jersey Institute for Continuing Legal Education seminar “Legal Malpractice Update.” Jack and Appellate Judge, Harry Carroll, presented “Rule 104 Hearings Regarding Experts In Legal Malpractice Actions.”

Jeremy Zacharias also presented at an all-day CLE for the New Jersey State Bar Association on “Solving Problems in Commercial Real Estate Transactions.” Jeremy’s topic included a discussion on ethical considerations in commercial real estate transactions. Jeremy covered topics including pitfalls using artificial intelligence with commercial real estate transactions, as well as the applicability of the Rules of Professional Conduct in representing clients. ◆

PUBLISHED ARTICLES

August 18, 2025 – **Todd Leon** and **Alec DelConte** (both of Philadelphia, PA) published an article in *The Legal Intelligencer’s* Insurance Law Supplement. Titled, “Choice of Law in Coverage Disputes: What Happens When the Policy, the Loss and the Parties Span State Lines?,” the article explores how “choice of law” issues arise in litigation, using a Pennsylvania–New Jersey insurance dispute scenario to highlight the significant impact differing state laws can have on insurers and policyholders. Read their article **here**.

August 1, 2025 – **Alana Staniszewski’s** (Pittsburgh, PA) article “Pa. Supreme Court Permits Payment of Specific Loss Benefits to a Deceased Injured Workers’ Estate,” was published in *The Legal Intelligencer*. Read her article **here**.

July 28, 2025 – *PLUS Blog* published “Navigating the Doctrine of Reasonable Expectations: A Liability Risk for Insurance Agents,” by **Dana Gittleman** (Philadelphia, PA). Read her article **here**.

July 21, 2025 – *The Legal Intelligencer* published **Alesia Sulock’s** and **Josh J.T. Byrne’s** (both of Philadelphia, PA) article “Socially Responsible Lawyers: Why You Need to Understand Social Media to Competently Represent Your Clients, Part 2.” You can read this article **here**.

July 11, 2025 – **William Murphy** (Roseland, NJ) authored the article “Medical Marijuana in New Jersey Workers’ Compensation Law,” appearing in the *New Jersey Law Journal’s Cannabis Supplement*. The article discusses developments since the 2021 *Hager* decision (*Vincent Hager v. M&K Construction*, 246 N.J. 1 (2021), and recent shifts in the legal landscape as state and federal laws have evolved with regard to medical marijuana. You can read the article **here**.

June 20, 2025 – **Mark Wellman** (New York, NY) was published in *CLM Construction Claims Magazine – Summer Edition* as a co-author of the article “Danger: Construction Site. Avoiding Liability & Workers’ Compensation Exposure in the Construction Industry.” The article explores key strategies for mitigating risk and managing claims in the high-stakes world of construction. You can read this article **here**. ▶

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Other Notable Achievements (cont.)

June 17, 2025 – **Jacob Gilboy's** (Harrisburg, PA) article "Employment Discrimination and Retaliation – Best Practices to Avoid Headaches," was published in *PLUS Blog*. Employment discrimination and retaliation claims can disrupt even the most well-run organizations. In this article, Jake shares five practical tips for navigating these situations without making them worse! Read it now on the Professional Liability Underwriting Society (PLUS) blog.

June 10, 2025 – **Ryan Friel** (Philadelphia, PA) authored the article, "Proposed FINRA Rule 3290—A Regulatory Breakthrough or a Halfhearted Attempt at Real Reform?," appearing in the *The Legal Intelligencer*. The article questions if the proposed rule is truly a modernization of outdated regulations or merely a cosmetic update that fails to address the core concerns of broker-dealers and their registered representatives. Read **here**.

May 19, 2025 – **Josh J.T. Byrne** and **Alesia Sulock** (both of Philadelphia, PA) published "The Barrier to Legal Malpractice Cases Arising Out of Class Action Settlements," in *The Legal Intelligencer*. Josh and Alesia explore a recent Delaware Supreme Court decision which examines why it is appropriate to have high barriers to legal malpractice actions after a class action settlement. You can read their article **here**.

May 2025 – **Michele Punturi** (Philadelphia, PA) co-authored, with clients, the article "Danger: High Risk Ahead – Managing Workers' Comp Exposure in Risky Industries," appearing in *CLM Magazine*. The article discusses best workers' compensation claims management practices for high-risk sectors including construction, health care, transportation, and retail and hospitality. You can read the article **here**. ◆

RECOGNITION

Jason Banonis (King of Prussia, PA) has been elected to the Board of Governors of the Bowie State University Maguire Academy for Risk Management and Insurance. He will also serve on its Education, Curriculum, and Program Committee. The Academy is affiliated with the Saint Joseph's University Maguire Academy of Insurance & Risk Management, which was created by Saint Joseph's alumnus James J. Maguire, founder and longtime CEO of the Philadelphia Insurance Company. Its purpose is to promote and support education in insurance, risk management, and actuarial science and offers services to its students, including scholarships, internships and co-op experiences, counseling, and assistance with career placement. Current academy board members include executives from global insurance companies and corporate risk managers. ▶


James Hanratty (Jacksonville, FL) and **Alesia Sulock** (Philadelphia, PA) have been admitted to membership of the International Association of Defense Counsel. The IADC is an invitation-only, peer-reviewed association that has served a prestigious membership of corporate insurance executives and insurance defense attorneys since 1920. Its members include many of the world's foremost corporate and insurance lawyers, as well as leading insurance executives.

Ryan Hauck (Pittsburgh, PA) was recently elected by his peers to serve a two-year term as a Council Member on the Allegheny County Bar Association Workers' Compensation Section Committee.

Blake Hood (Jacksonville, FL) was recently appointed as co-chair of the Jacksonville Bar Association's Social Security/Workers' Compensation Committee. ◆

★ Marshall Dennehey Named to BTI Consulting's Client Service A-Team 2025

Marshall Dennehey has once again been recognized as a leader in client service, earning a spot on BTI Consulting's **Client Service A-Team 2025**, which honors law firms delivering the highest levels of service to corporate clients. Based exclusively on feedback from corporate counsel, the firm ranked as a "Stand Out" among all law firms nationwide, affirming our continued strength in building trusted relationships, understanding client goals, and delivering consistent, results-driven service. The BTI Client Service A-Team is the only law firm ranking based solely on direct, unprompted feedback from legal decision-makers at large companies. The 2025 report is based on more than 350 in-depth interviews conducted between May 2024 and February 2025 with general counsel, chief legal officers, and their direct reports. To learn more, visit BTI's Client Service A-Team at **https://bticonsulting.com/bti-client-service-a-team-2025#order.**

Defense Digest, **Vol. 31, No. 3, September 2025**, is prepared by Marshall Dennehey to provide information on recent legal developments of interest to our readers. This publication is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.