DEFENSE DIGEST

Vol. 32, No. 2, June 2026

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MARSHALL DENNEHEY

A Tale of Two Departments:

Can a Motor Vehicle Defendant Assert Counterclaims Sounding in Fraud in Actions Involving Staged Accidents in Matters Venued in the Second and First Departments of the New York Appellate Division?

Ian L. Glick, Esq.

Key Points:

- The Second and First Departments of the New York Appellate Division have recently issued divergent decisions affecting a defendant's entitlement to leave to amend its answer to assert counterclaims sounding in fraud where it appears that the accident at issue was staged/intentionally caused by the plaintiff depending on where the matter is venued.
- Based on these recent decisions, a defendant in a matter venued in a court in the Second Department is entitled to leave to amend its answer to assert counterclaims sounding in fraud based on mere allegations that the accident at issue was staged/intentionally caused by the plaintiff, the plaintiff knowingly made false representations to assert claims against the defendant, and that the defendant suffered damages consisting of its costs and fees incurred in investigating and litigating plaintiff's claims.
- However, a defendant in a matter venued in a court in the First Department is only entitled leave to amend its answer to assert counterclaims sounding in fraud where it submits *prima facie* evidence that the plaintiff staged/intentionally caused the accident and made false representations, and where the defendant alleges damages beyond those associated with its costs and fees incurred in investigating and litigating plaintiff's claims.

The Second and First Department of the New York Appellate Division both recently issued decisions addressing a defendant's entitlement for leave to amend its answer to assert counterclaims sounding in fraud arising from an accident that is apparently staged and/or intentionally caused by a plaintiff. Specifically, despite the underlying similarities between *Gimenez v. Pepsi-Cola Bottling Company of New York, Inc.*, 225 N.Y.S.3d 691 (NY 2d Dept. 2025) and *Anguisaca-Morales v. St. Paul and St. Andrew United Methodist Church*, 234 N.Y.S.3d 42 (NY 1st Dept. 2025), the respective decisions of the Second Department and First Department substantially diverged. As a result of these contrasting decisions, the venue of a matter will affect a defendant's ability to successfully obtain leave to amend its answer to assert counterclaims sounding in fraud against a plaintiff.

Both *Gimenez* and *Anguisaca-Morales* involved plaintiffs whose alleged injuries resulted from accidents where liability would normally and presumably be decided against the defendants. In *Gimenez*, the plaintiffs allegedly were injured due to their vehicle being rear-ended by the defendants' vehicle. In *Anguisaca-Morales*, the plaintiff allegedly fell from an unsecured ladder while working at a construction site. Both actions involved appeals from lower court decisions on the plaintiffs' motions for summary judgment on liability and the defendants' corresponding motions for leave to amend their answers to assert counterclaims for fraud against the plaintiffs based on allegations that the accident was staged/intentionally caused by the plaintiffs.

With respect to the motions for summary judgment on liability, the Second and First Department both found issues of fact resulting in the plaintiffs not being entitled to summary judgment on liability. In *Gimenez*, the Second Department found that the defendants raised issues of fact as to the existence of a non-negligent explanation for the alleged accident and whether the plaintiffs staged the accident. In *Anguisaca-Morales*, the First Department found there were issues of fact as to whether the plaintiff intentionally fell and was the sole proximate cause of his alleged accident.

Turning to the respective motions for leave to amend their answers filed by the defendants in *Gimenez* and *Anguisaca-Morales*, the defendants in both actions submitted proposed amended answers that asserted similar allegations of fraud in support of their respective counterclaims, including that: 1) the respective plaintiffs staged/intentionally caused the accidents; 2) that the respective plaintiffs knowingly made false representations against the respective defendants; and 3) that the respective defendants suffered damages as a result, consisting of incurring investigation and legal costs and fees. In both cases, the Second and First Department also reviewed evidence that they respectively determined had been sufficient to raise a question of fact as to whether the respective plaintiffs intentionally caused their accidents.

However, despite the above similarities, the reasonings in these decisions regarding the respective defendants' entitlement to leave to amend their answers diverged. In *Gimenez*, the Second Department held that the defendants **were** entitled to leave to amend their answer because the allegations asserted in their proposed amended answer were sufficient on their face to plead a counterclaim for fraud. However, in *Anguisaca-Morales*, the First Department held that the defendants **were not** entitled to leave to amend their answer because their proposed amended answer failed to sufficiently plead a counterclaim for fraud. In doing so, the First Department held that the counterclaim asserted in defendants' proposed amended answer was premised on unproven allegations and the defendants failed to plead justifiable reliance or resulting damages.

Thus, based on the Second Department's decision in *Gimenez*, a defendant in an action venued in any of the lower courts in the ten counties that comprise the Second Department (Kings, Queens, Richmond, Nassau, Suffolk, Westchester, Dutchess, Orange, Rockland, and Putnam) **is** entitled to leave to amend its answer to assert a counterclaim for fraud against a plaintiff in an action based on mere allegations that the plaintiff staged and/or intentionally caused the accident at issue.

Conversely, pursuant to the First Department's decision in *Anguisaca-Morales*, a defendant in an action venued in any of the lower courts in the two counties that comprise the First Department (New York and Bronx) **is not** entitled to leave to amend its answer to assert a counterclaim for fraud against a plaintiff based on similar allegations. Even when the defendants submits evidence that that the plaintiff intentionally caused the accident that is sufficient to defeat a motion for summary judgment on liability. Instead, in order to be entitled to leave to amend its answer to assert a counterclaim for fraud against the plaintiff in a matter venued in the First Department, a defendant is effectively required to make a *prima facie* demonstration that the plaintiff staged/intentionally caused the accident and that the defendant sustained damages. In doing so, the damages must be in addition to what the defendant incurred in relation to investigating and litigating the plaintiff's claims.

The decisions in *Gimenez* and *Anguisaca-Morales* have not yet been cited in any subsequent decisions involving cases where the plaintiff allegedly staged/intentionally caused the accident. Instead, these decisions have only been discussed in multiple decisions by one judge in the New York Supreme Court, Kings County, in cases that do not involve allegations of staged accidents. This judge has inserted identical language in five decisions that appear to be a concerted attempt to limit the application of *Gimenez* to cases where there is "concrete evidence" that the accident was staged. ◆

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Forum Non Conveniens: It Really Has Little To Do With Convenience

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Key Points:

- In evaluating a challenge for *forum non conveniens*, deference must be given to plaintiff's choice of forum.
- "Congested centers of litigation" alone are not a reason to transfer a case to another forum.
- When a defendant is incorporated in the chosen forum, that forum has a legitimate interest in adjudicating disputes involving its corporate entities.

Codified at 42 Pa.C.S. § 5322(e), the Pennsylvania doctrine of *forum non conveniens* allows a court to stay or dismiss a matter in whole or in part where it "finds that in the interest of substantial justice the matter should be heard in another forum." In evaluating a challenge for *forum non conveniens*, deference must be given to plaintiff's choice forum, "but somewhat to a lesser degree when plaintiff's residence and place of injury are located somewhere else." *See McConnell v. B. Braun Medical, Inc.,* 221 A.3d 221, 227-228 (Pa. Super. 2019).

The Pennsylvania Superior Court's March 25, 2026, opinion in *Duxbury v. Reconstructive Orthopedic Associates II, P.C. d/b/a/ The Rothman Institute of New Jersey, et al.*, 354 A.3d 551 (Pa. Super. 2026) illustrates just how the application of *forum non conveniens* does not necessarily lead to the forum that the facts and everyday considerations may suggest is "convenient."

The Duxburys filed their medical negligence case in Philadelphia County, Pennsylvania, against Reconstructive Orthopedic Associates II, P.C. (ROA), Atlantic Surgery Care (ASC), and Dr. Alyson Axelrod, who was employed by ROA and The Rothman Institute of New Jersey (RINJ). Notably, the Duxburys are New Jersey residents and the medical care giving rise to their claim was rendered at locations in New Jersey. ROA is a New Jersey corporation with its principal place of business in Philadelphia. ROA also maintained its principal place of business in Philadelphia, and Dr. Axelrod was licensed to practice medicine in Pennsylvania and New Jersey.

The medical defendants filed a motion to dismiss pursuant to 42 Pa.C.S. § 5322(e) and *forum non conveniens*. The trial court permitted discovery as to the forum issue. Finding "weighty reasons" in support of dismissal, the trial court granted the motion and directed the Duxburys to refile their claim in New Jersey. The trial court found the following factors as "weighty reasons" justifying dismissal: (1) the injuries were sustained in New Jersey; (2) treatment was rendered in New Jersey; (3) relevant medical providers were residents of New Jersey; (4) defendants' witnesses resided in New Jersey, with the exception of one; and (5) the relevant medical records were located in New Jersey.

On appeal, the Duxburys argued that the trial court erred in its application of existing precedent regarding *forum non conveniens*, and that a consideration of ▸

the facts under a correct application of the law did not support transfer of the action to New Jersey. The Superior Court agreed, reasoning that the trial court had not conducted the full analysis set forth in *McConnell*, in finding "weighty reasons" alone enough to justify its decision to dismiss the plaintiff's action with directions to refile it in New Jersey.

McConnell explains that the determination of "weighty reasons" overcomes the deference afforded to a plaintiff's choice of forum. To make this determination the trial court must examine both the private and public interest factors involved in the case. *McConnell*, 221 A.3d at 227-228. The "private factors" include:

> The relative ease of access to sources of proof; availability of compulsory process for attendance for unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of the premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious, and inexpensive.
>
> The public factors to be considered include:
>
> Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. There is an appropriateness, too, in having the trial … in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself.

The Superior Court reiterated that it is the burden of the moving party (i.e. the appellees/medical defendants) to establish that Pennsylvania is a less convenient forum than another available forum. The appellate court found that the trial court committed an error of law in failing to consider the circumstances linking the case to Pennsylvania as well, and to determine whether Pennsylvania was an inconvenient forum, not simply that New Jersey was more convenient for appellees.

Regarding the private factors, the Superior Court noted that Dr. Axelrod's proximity to Philadelphia, and concerns about her commute into town were not grounds to dismiss for inconvenience. The appellate court also found that the trial court gave no consideration to whether any witness would not or could not travel to Pennsylvania. Additionally, the court reasoned that the sources of proof—the medical records—while located in New Jersey, likely could just as easily be produced in Pennsylvania. Addressing the medical defendants' principal place of business in Philadelphia as an "address," the court "recognized that that for foreign defendants with corporate offices in Pennsylvania," in terms of convenience for those defendants, that forum state seems as good as any other. *McConnell*, 221 A.3d at 230; *see also Wright v. Aventis Pasteur, Inc.*, 905 A.2d 544, 551 (Pa. Super. 2006).

Though the trial court failed to consider any public factors, the Superior Court did first find error in the trial court's focus on Philadelphia as opposed to the state of Pennsylvania. The court then determined that "congested centers of litigation" alone are not a reason to transfer a case to another forum. Second, the court emphasized that "when a defendant is incorporated in the chosen forum, that forum has a legitimate interest in adjudicating disputes involving its corporate entitles." Finally, the Superior Court found that the medical defendants provided medical care in Pennsylvania and New Jersey, and Dr. Axelrod was licensed to provide medical care in Pennsylvania and New Jersey. As to the question of what state's law would apply, the parties agreed that New Jersey law would, and there was no showing that the Philadelphia trial judge would be incapable of applying it. The Superior Court concluded that the medical defendants failed to provide sufficient evidence of public factors to support overriding the Duxbury's choice of forum.

What litigants can learn from the *Duxbury* opinion is that "convenience" in considering a plaintiff's choice of forum for litigation is not necessarily a matter of ease, little trouble, or less effort. ◆

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Highly Specific:

Supreme Court Reiterates Exacting Standard for Clearly Established Constitutional Rights

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Key Points:

- The United States Supreme Court continues to underscore the need for specific precedent to find a constitutional right "clearly established" for the purpose of qualified immunity.
- To satisfy this standard, courts generally need to identify a prior case where an officer acting under similar circumstances was held to have violated the Constitution.
- Clearly established rights cannot rest on broad or generalized propositions; they must be defined with a high degree of specificity.

In the past decade, the United States Supreme Court strengthened qualified immunity protections for government actors in 42 U.S.C. § 1983 cases. Building on its 2015 decision in *Mullenix v. Luna*, the Supreme Court has increasingly emphasized the demanding nature of the "clearly established" prong. Under this framework, precedent must define constitutional rights with a high degree of specificity, such that every reasonable official is on notice of what conduct is unlawful. In *Zorn v. Linton*, 607 U.S. __, 146 S. Ct. 926 (2026), the Supreme Court reaffirmed this exacting standard.

The case arose from a January 8, 2015, protest at a Vermont Statehouse, where approximately 200 individuals participated in a nonviolent sit-in. The plaintiff, Shela Linton, was among these protestors. At approximately 8:00 p.m., 29 protestors, including Linton, remained seated on the Statehouse floor with their arms linked. Law enforcement informed them that the Statehouse was closed, instructed them to leave, and warned that refusal would result in arrest for trespassing. When the protestors declined to comply, officers began arresting and removing them individually. Protestors who refused to comply thereafter were lifted and escorted, dragged, or carried out of the Statehouse chamber.

After removing sixteen protestors, the defendant, Sergeant Zorn, approached Linton and asked her to stand. Linton refused, remaining seated with her arms interlocked with the other protestors. After several seconds, Sergeant Zorn and a second officer took hold of Linton's arms and separated her from the group. Sergeant Zorn then placed Linton's left hand behind her back in a rear wristlock and twisted her arm. As Linton cried in pain, Sergeant Zorn repeatedly asked her to stand. Linton refused to stand and verbally reinforced this refusal. In response, Sergeant Zorn warned Linton that he would ask her one more time to stand up prior to using more pain compliance. Linton again refused to stand, and Sergeant Zorn applied pressure to her wrist and lifted her. Linton screamed, briefly stood, and then fell back to the floor after jerking her arms. Sergeant Zorn and two other officers ultimately carried her out of the building.

Linton subsequently brought a Section 1983 claim, alleging Sergeant Zorn used excessive force in violation of the Fourth Amendment. The District Court granted summary judgment to Sergeant Zorn, concluding it was not clearly established that lifting Linton while applying wrist pressure violated her Fourth Amendment rights. The Second Circuit ▸

reversed, relying on its decision in *Amnesty America v. West Hartford* for the proposition that the "gratuitous" use of pain compliance techniques against passively resisting protestors constitutes clearly established excessive force.

The Supreme Court reversed, finding that the Second Circuit contravened the principles of a clearly established right by relying on *Amnesty America* as dispositive. The Court explained that government officials are shielded by immunity unless existing precedent places the constitutional question "beyond debate," such that it is sufficiently clear that every reasonable official is on notice of what conduct is unlawful. This generally requires a court to identify a prior case where an officer acting under similar circumstances was found to have violated the constitution. Said case must further define the constitutional right with a high degree of specificity. According to the Court, *Amnesty America* did not meet these requirements.

The Supreme Court identified three principal flaws in the Second Circuit's analysis. First, *Amnesty America* involved a wide variety of alleged uses of force against passively resisting protestors, ranging from ramming a protestor's head into the wall to using rear wristlocks to lift protestors up, and did not definitively hold that any of those actions violated the Fourth Amendment. Instead, the *Amnesty* court remanded the case because a reasonable jury could have found either excessive force or reasonable conduct, which is insufficient to define a clearly established right.

Second, the conduct in *Amnesty America* differed in a key respect: there was no indication that officers warned protestors before using force. In contrast, Sergeant Zorn repeatedly warned Linton and gave her an opportunity to comply. The Court reasoned that a reasonable officer could not have interpreted *Amnesty America* to establish "that using a routine wristlock to move a resistant protester after warning her, without more, violates the Constitution."

Third, the Second Circuit relied on an overly general principle: "that the gratuitous use of pain compliance techniques—such as a rear-wristlock—on a protestor who is passively resisting arrest constitutes excessive force." The Supreme Court emphasized that such generalizations are insufficient. Even if that principle was established by *Anmesty America*, it lacked the high degree of specificity necessary to clearly define what conduct is prohibited, particularly because it failed to delineate when force becomes "gratuitous."

Although brief, the Supreme Court's opinion reinforces the stringent requirements for clearly established law. To overcome qualified immunity, there must be precedent that: (1) squarely governs the specific conduct at issue and places the constitutional question beyond debate; (2) is not materially distinguishable from the facts of the case; and (3) defines the right with a high degree of specificity rather than at a general level. Absent these elements, qualified immunity will shield government officials from liability. ◆

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PA Supreme Court Narrows Sexual Abuse Exception to Governmental Immunity

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Key Points:

- **Stronger immunity defense**: The ruling provides a clear basis to dismiss negligence claims against insured public entities in adult sexual abuse cases, reducing defense costs and settlement pressure.
- **Risk differentiation by age**: Defense strategies can more confidently separate minor-victim claims (higher exposure under the exception) from adult-victim claims (generally immune).
- **Focus remains on prevention**: While immunity helps limit financial liability, good training, screening, supervision, and reporting protocols are still essential to reduce incidents and defend against any claims that do proceed.
- **Legislative monitoring needed**: The General Assembly could expand the exception in the future. Insurers should track any bills that attempt to broaden liability for adult victims in public settings.

Case Overview

A recent decision from Pennsylvania's highest court has important implications for municipalities, prisons, school districts, and the insurance professionals who cover them. On March 26, 2026, the Pennsylvania Supreme Court ruled that a 2019 exception to governmental immunity for sexual abuse claims applies **only when the victim was under 18 years old at the time of the incident**.

The case, *City of Philadelphia v. J.S.*, 320 A.3d 1234 (Pa. 2026), involved serious allegations from an adult inmate who claimed he was sexually assaulted by multiple prison employees shortly after arriving at the Curran-Fromhold Correctional Facility in Philadelphia. He sued the City of Philadelphia, arguing the city was negligent in training, screening, and supervising its staff, and in protecting inmates from harm. The central legal question was whether the city could be held liable under the sexual abuse exception added to the Political Subdivision Tort Claims Act (PSTCA) in 2019.

Pennsylvania's Supreme Court answered clearly: **No**. Since the plaintiff was an adult, the exception did not apply, and the city remained protected by governmental immunity.

Understanding Governmental Immunity

Pennsylvania law provides broad protection to local governments and public agencies against most negligence lawsuits. This shield, known as governmental immunity, helps protect taxpayer dollars from wide-ranging claims that could deplete public budgets. The legislature has created only a few narrow exceptions where liability is allowed. *See 42 Pa.C.S. § 8542(b), et seq*. In 2019, lawmakers added one such exception for sexual abuse, 42 Pa.C.S. § 8542(b)(9), which permits claims against a local agency if its negligence contributed to conduct that qualifies as one of several serious sexual offenses. However, the exception specifically refers to offenses listed ▸

in a statute (42 Pa.C.S. § 5551(7)) that eliminates the statute of limitations for those crimes **only if the victim was a minor**.

The Supreme Court examined the exact language of the law and concluded that the age requirement is an essential part of the exception, not an optional detail that can be overlooked. Writing for the majority, Justice McCaffery emphasized that governmental immunity is the general rule and exceptions must be interpreted strictly and narrowly. The Court also reviewed the legislative history, noting that the 2019 changes were primarily motivated by high-profile cases involving childhood sexual abuse in institutions. A proposal to remove the age limit did not pass. As a result, even serious allegations involving adult victims do not open the door to negligence claims against the public entity itself.

What the Ruling Means in Practice

This ruling has broad implications beyond just prisons. It applies to municipalities, counties, school districts, and any other local public agencies covered by the PSTCA. For cities and counties, the decision means that negligence claims arising from alleged sexual abuse of adult residents, employees, or visitors are typically protected by immunity. In school settings, while claims involving the sexual abuse of students who are still minors can proceed if negligence by the district is adequately shown, claims involving adult students, staff members, or visitors are generally barred. This ultimately provides a solid basis for dismissing negligence claims early in litigation, which can help control legal costs and reduce settlement pressure.

Individual employees may still face personal liability for intentional or criminal acts, but the public agency and its insurance coverage are largely shielded in these adult-victim scenarios.
The Court's decision aligns with several earlier rulings from both Pennsylvania and federal courts, creating consistent guidance across jurisdictions

Looking Ahead

Critically, this decision does not mean public entities bear zero responsibility. Public agencies must still investigate serious allegations of sexual abuse thoroughly, report them properly to law enforcement, and support victims where appropriate. Individual wrongdoers can, and should, face criminal charges and personal civil liability.
However, for public agencies and the insurance policies that protect them, the ruling significantly limits exposure in a major category of cases. Insurance professionals should immediately review pending claims involving adult plaintiffs and governmental insureds. Early motions to dismiss or preliminary objections based on immunity will likely succeed more often now.

The Pennsylvania Supreme Court has sent a clear and forceful message: governmental immunity still carries real weight, and the 2019 sexual abuse exception remains narrower than some hoped or feared. For municipalities, counties, schools, prisons, and their insurers, this clarity delivers valuable protection in an area where claims frequently become emotionally charged and financially significant. By preserving the traditional limits on municipal liability, the Court reinforces that any broadening of exposure must come directly from the legislature—not through expansive court interpretations. ◆

Don’t Waive Goodbye to Your Section 40 Lien Rights

William J. Murphy, Esq.

Key Points:

- Under NJ workers’ compensation law, employers can assert a lien upon third-party actions for any medical and indemnity benefits paid.
- The employers are free to compromise or waive this lien.
- The Appellate Division found that a carrier cashing a check for less than the full lien amount, but accompanied by a letter stating this payment was full and final payment of the lien, constituted an agreement to waive the remainder of the lien.

A chief concern of the workers’ compensation system in New Jersey has always been prevention of double recovery, in which an injured worker would obtain a “windfall” by receiving compensation from both a workers’ compensation claim and a third-party suit. In order to avoid this, the Workers’ Compensation Act provides the respondent with a lien against third-party proceeds. Known as the “Section 40 lien,” the respondent can assert a lien based on the medical and indemnity benefits it has issued for the workers’ compensation claim. The lien can be collected upon two-thirds of the third-party recovery, minus $750.00 for the costs of suit.

As with most liens, a Section 40 lien can be negotiated. Employers will sometimes agree to compromise or, in some cases, even waive the lien.

In the recent unpublished case of *Tomaselli v. Petco*, 2026 WL 585448 (N.J. Super. App. Div. April 3, 2026), the Appellate Division addressed a dispute as to whether an employer’s Section 40 lien had been compromised.

In the case, the petitioner was employed as a store manager at Petco (insured by Sedgwick). On December 23, 2017, he was collecting shopping carts in the store’s parking lot when a car backed into him, causing injuries to his lower back. Since the petitioner was injured by a third-party tortfeasor in the course of his employment, he filed both a workers’ compensation claim against Petco and a suit against the driver.

The third-party suit ended with a settlement of $85,000 in underinsured motorist (UIM) benefits and $15,000 in third-party settlement.

At the time of resolution of the civil claim, Sedgwick had paid a total of $177,084.30 in benefits ($90,351.50 in medical and $86,732.80 in indemnity). This amount was not exhaustive, as the petitioner was still undergoing treatment and the costs would continue to increase. At that point, Sedgwick was entitled to recoup over $65,000.00 from the third-party settlement. However, in the spirit of compromise, they sent the petitioner a letter indicating that they ▶

would accept $33,333.33 from the UIM award and $15,000.00 from the third-party settlement.

The petitioner's lawyer sent a check to Sedgwick for $33,333.33 with a letter stating the check "represents full and final payment of any outstanding worker's compensation lien, in connection with the above-referenced claim." The check was cashed by the carrier.

The workers' compensation matter subsequently went to trial and ended with a judgment from the judge of compensation finding a percentage of permanent disability and further concluding that Sedgwick's acceptance of the check for $33,333.33 with the aforementioned letter constituted an agreement to resolve the lien for only that amount. On appeal, Sedgwick argued that the mere act of cashing a check did not constitute a waiver of its Section 40 lien rights.

The Appellate Division ruled that it did. They stated that Sedgwick was clearly aware of its rights to recover the full amount allowable under their Section 40 lien, and that "[b]y accepting and endorsing the check, Sedgwick clearly and unequivocally conveyed its intent to accept $33,333.33 as full and final payment of any outstanding workers' compensation lien."

While this is an unpublished opinion and therefore not binding, it will likely have persuasive authority for judges of compensation going forward.

The impact of this case is significant. At most corporations, the high volume of checks received in the mail are sorted, endorsed, and deposited by an accounts receivable department or comparable business unit. However, in this opinion, the Appellate Division is ascribing significant decision-making authority to the action of one who is likely not a corporate officer, but a clerk.

What are some actions that carriers can take to safeguard their Section 40 liens and prevent an unintentional waiver of same?

The first is to enact policies requiring supervisory approval before any check pertaining to a Section 40 lien repayment is deposited. Systems should be enacted which will lead to any check pertaining to Section 40 lien repayment being flagged, and requiring a supervisor to review and approve before it is deposited.

- If there is no language on the check or accompanying paperwork indicating anything about "full and final" or "resolution" or "waiver" or any other terms to that effect, the check can be deposited without issue.

- If there is such language, consultation should be made with the workers' compensation adjuster, defense counsel, or another designated party that can verify the full amount of the carrier's Section 40 lien and determine whether any negotiated amounts have been agreed to by the carrier.

    - If the check with such language is in the full amount (or the negotiated amount, if applicable), the check can then be deposited.

    - If the check is for a lesser amount, it should be immediately sent back with a letter copying all pertinent parties, stating that the carrier is entitled to (state the full dollar amount of entitlement) and does not agree to accept a lesser amount. The carrier should then ask the addressee to advise whether they will be re-sending the proper amount or whether further legal action will be required.

A second suggestion would be to designate that such checks need to be sent to defense counsel. This would task the carrier's legal team with the job of verifying that endorsement of the checks does not unintentionally cause a waiver of lien rights. After review, the defense counsel can then pass the check on to the carrier or send back to the addressee, as the situation requires.

A third cautionary step would be to issue a notice to petitioner's attorney, indicating that the carrier is asserting its full lien rights under N.J.S.A. 35:15-40 and that going forward, the carrier does not consent to any compromise of its full entitlement unless noted in a formal agreement signed by both parties. While the service of this document by itself would be helpful, it would be optimal for it to be signed by petitioner's attorney. Since the carrier is normally asked to produce a ledger showing the amount of ▸

its Section 40 lien, petitioner's attorney should be told that production of the requested ledger will only be made upon receipt of the notice with their (the attorney's) signature.

The *Tomaselli* opinion has exposed a vulnerability in respondent's rights to assert their full Section 40 liens they are entitled to under law. The carriers are entitled to recoup monies spent on medical and indemnity benefits. They should act with great care to ensure that entitlement isn't lost through error. ◆

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When Immunity Ends:

What *Galette v. NJ Transit* Means for Liability Exposure

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Key Points:

- The U.S. Supreme Court ruled that New Jersey Transit Corporation is not an arm of the state and cannot claim interstate sovereign immunity.
- Plaintiffs can now sue NJ Transit in the state where an accident occurs, expanding litigation venues.
- Forum selection risk increases, including plaintiff-friendly jurisdictions.
- Expect higher defense costs and broader exposure in multi-state incidents.

The United States Supreme Court's decision in *Galette v. New Jersey Transit Corporation*, 607 U.S.(2026), marks a significant shift in how liability exposure is assessed for public transportation entities operating across state lines. In a unanimous ruling issued just last month, the Court held that NJ Transit does not qualify as an "arm of the state" for purposes of sovereign immunity. As a result, it can be sued in courts outside New Jersey.

This ruling has substantial consequences, particularly for insurers, risk managers, and defense counsel handling casualty and liability claims. Sovereign immunity is a tool used to protect states and certain state entities from being sued without consent, especially in federal or out-of-state courts. Historically, organizations tied to state governments have used this doctrine to limit where they can be sued.

Galette arose from separate accidents involving NJ Transit buses outside New Jersey state lines. One of the central cases involved Cedric Galette, who was injured in 2018, in Philadelphia, when a vehicle he occupied was struck by an NJ Transit bus. He filed suit in Pennsylvania. NJ Transit argued that, as an arm of the State of New Jersey, it could not be sued in another state's courts. Lower courts rejected that position, and the issue ultimately reached the Supreme Court.

The Supreme Court unanimously affirmed the decisions of the lower courts. Writing for the majority, Justice Sonia Sotomayor emphasized that sovereign immunity protects the state itself, not every entity it creates. The key question the Court addressed in its opinion was whether the state structured the entity as legally separate from the state itself. In this case, the answer was yes. In simpler terms, the Court found that NJ Transit should not be treated the same as the State of New Jersey when it comes to lawsuits. This decision has broader implications for how liability risk is evaluated across a range of public and quasi-public entities.

Several factors informed the Court's decision. First, the Court found that NJ Transit is a separate corporate entity with the power to sue and be sued, enter contracts, and hold property. Second, the Court found that it is financially independent: its debts and ▶

liabilities are not obligations of the State of New Jersey. Third, although the state exercises oversight, the Court found that this oversight did not override NJ Transit's legal separateness. Taken together, the Court reasoned, these characteristics placed NJ Transit squarely outside the scope of sovereign immunity.

This decision carries immediate implications for casualty and insurance professionals. Most importantly, it expands litigation exposure; plaintiffs are no longer limited to suing NJ Transit in New Jersey. Instead, they may bring claims in the state where an accident occurs. This increases the likelihood of cases being filed in jurisdictions with more favorable laws, higher jury awards, or procedural advantages for plaintiffs, and creates uncertainty in claims handling. Insurers will now be required to account for variability in legal standards, jury behavior, and damages depending on where a case is filed. What might have been a predictable exposure in one jurisdiction can become far less certain in another.

The decision in *Galette* will also lead to an increased risk of forum shopping. Plaintiffs may strategically choose venues they believe will offer better outcomes, particularly in high-value bodily injury cases, complicating defense strategy and affecting every aspect of a case from early evaluation to settlement posture.

The Court's reasoning is not limited to NJ Transit: it signals that other quasi-public entities, like regional transportation authorities or public utilities, may face similar challenges if they attempt to use sovereign immunity as a shield to lawsuits. Courts will look closely at how an entity is structured, including its financial independence and legal status, rather than relying on labels or general affiliations with a state.

For insurers, this decision raises important underwriting and risk assessment questions. Entities previously viewed as benefiting from immunity protections may now present broader and more complex exposure. Policy terms, limits, and pricing may need to be revisited to respond to an increased risk landscape.

The *Galette* opinion also holds cost implications for insurers and defense counsel. Defending cases in a variety of jurisdictions typically increases costs, as the need for local counsel and varied procedural rules are factors that now must be considered. In jurisdictions known for higher verdicts, indemnity exposure may rise as well. These factors are particularly relevant in matters involving bodily injury, mass transit incidents, and multi-party accidents.

In response to *Galette*, insurers and defense teams should place greater emphasis on early case strategy. Determining where a case may be filed and whether venue can be challenged will be critical issues to tackle early on. Coverage for public or quasi-public entities should take into consideration the possibility of multi-state exposure, increased defense obligations, and the potential for higher verdicts depending on the jurisdiction.

The broader significance of *Galette* lies in its message: courts are willing to scrutinize claims of sovereign immunity and will not extend protections automatically. Entities that operate with a degree of independence, even if those entities are publicly created, may be treated more like private actors for liability purposes.

For insurance professionals, the takeaway is straightforward: assumptions about immunity-based defenses should be revisited. Organizations that were once considered relatively insulated by sovereign immunity can now face expanded exposure, more complex litigation, and higher costs. In an environment where jurisdiction can significantly influence outcomes, *Galette* underscores the importance of anticipating not just whether a claim will be filed, but where it will be litigated. ◆

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PA Superior Court Upholds Household Vehicle Exclusion in Favor of Erie When Stacking Was Not Implicated

Christin L. Kochel, Esq.

Key Points:

- A household vehicle exclusion was upheld under an Erie Policy when the estate of deceased insureds sought UIM coverage when the insureds were occupying a motorcycle owned by the insureds, but the motorcycle was not covered by Erie's Policy.
- The PA Superior Court distinguished *Gallagher v. GEICO*, in which Gallagher, unlike the Erie insured, *had* recovered UM/UIM, thus rendering the "household exclusion" an impermissible waiver of stacking. Here, with no UIM recovery from any source, the issue of stacking, much less impermissible waiver of stacking, never arose.
- In sum, the household vehicle exclusion is a valid exclusion when stacking is not implicated.

In the Pennsylvania Superior Court case of *Erie Ins. Exchange v. Estate of Kennedy,* 350 A.3d 219 (Pa. Super. 2025), the court upheld Erie's denial of coverage under the household vehicle exclusion in the Erie Policy when the insureds were occupying a motorcycle not covered under the policy.

Dennis and Elissa Kennedy, Erie insureds, died in a single-vehicle motorcycle accident, with Dennis driving. Dennis insured the motorcycle with Progressive, which paid its liability limits to Elissa, after which Elissa sought household stacked Erie UIM coverage. Erie denied coverage under its "household exclusion" applicable to vehicles owned by insureds, but not covered by Erie's policy.

The trial court granted judgment in favor of Erie on the ground that such benefits were barred by an exclusion applicable when an insured has suffered damages while occupying a vehicle owned by a relative and not covered under the policy, i.e. the household vehicle exclusion. Finding that the exclusion was valid, the PA Superior Court affirmed.

The court found the facts of the case and policy exclusion analogous to the case of *Erie Ins. Exchange v. Mione*, 289 A.3d 524 (Pa. 2023). In *Mione*, a motorcyclist was injured in an accident with another vehicle whose driver was both at fault and underinsured. The motorcyclist's insurance policy did not include UM/UIM coverage. However, the motorcyclist had two household policies covering other vehicles, including stacked UM/UIM coverage, as well a household vehicle exclusion. UM/UIM benefits were therefore denied, and the motorcyclist argued that the exclusion was invalid because it did not comport with the statutory waiver requirements of Section 1738. The PA Supreme Court rejected the argument, explaining that UM/UIM coverage could not be procured in the "first instance" under the motorcyclist's household policies as "[F]or a household vehicle exclusion to ▸

be acting as an impermissible *de facto* waiver of stacking, ***the insured must have received UM/UIM coverage under some other policy first,*** or else is not implicated at all." The motorcyclist had not received any UM/UIM benefits under his own motorcycle policy, so there was nothing for the UM/UIM benefits of the household policies to "stack on" to, and as such, Section 1738 was not implicated.

The court also distinguished the case from *Gallagher v. Geico*, 201 A.3d 131 (Pa. 2009), in which a motorcyclist was injured in an accident caused by another driver who was underinsured. The motorcyclist had purchased two policies, each of which provided stacked UM/UIM benefits. The first policy covered only the motorcycle; the second covered two automobiles, while also containing a "household exclusion," which precluded UM/UIM benefits. The PA Supreme Court held that the exclusion was invalid because the resulting waiver of UM/UIM coverage did not comport with the statutory requirements of Section 1738. The court distinguished the Kennedy's case from *Gallagher* as the Kennedy's were attempting to stack UM/UIM coverages from (a) the Progressive Motorcycle Policy under which Dennis Kennedy was the only insured, and (b) the Erie Policy under which Dennis Kennedy and Elissa J. Kennedy were the insureds. Crucially, the court found that the party from whom the right to stack UM/UIM benefits under the Erie policy was derived (Elissa J. Kennedy) was *not* an insured under the motorcycle policy. In other words, no one paid for Elissa J. Kennedy to receive UM/UIM benefits under the motorcycle policy, so that policy afforded her no contractual right to such coverage in the first instance. The court further reasoned that the "miscellaneous vehicle" exclusion in the Erie Policy was valid because the insured, Elissa J. Kennedy, had not first received UM/UIM coverage under Dennis Kennedy's Motorcycle Policy.

In conclusion, the Court found *Gallagher* inapposite, and *Mione* compelled the affirmance of the trial court's ruling upholding Erie's denial of coverage pursuant to the household vehicle exclusion. ◆

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The Enforceability of Online Arbitration Agreements Remains Unresolved in Pennsylvania, But the Pennsylvania Superior Court has Provided Substantive Guidance on the Issue

Keanna A. Seabrooks, Esq.

Key Points:

- The Pennsylvania Supreme Court confirms that an order compelling arbitration is not immediately appealable as collateral orders.
- The outcome of *Chilutti II* has generally left the substantive enforceability issues with browsewrap agreements unresolved in Pennsylvania.
- Until this issue is resolved by the Pennsylvania courts, companies operating in the Commonwealth should strive to ensure that their registration websites and/or application screens conspicuously present arbitration agreements in manners which ensure their users and consumers assent to the terms of the agreements by following the standards set forth in *Chilutti I*.

Browsewrap agreements have been defined as agreements "'in which a website offers terms that are disclosed only through a hyperlink and the user supposedly manifests assent to those terms simply by continuing to use the website,' and typically do not require an electronic signature." *See*, *Cobb v. Tesla, Inc.*, 2026 WL 458470, at *1 n. 2 (Pa. Super. Feb. 18, 2026) (citation omitted). They are largely regarded as the "if you keep using this, you agree to everything buried in this link" terms embedded into almost every online agreement consumers and users sign before proceeding with purchases of goods and/or services. While consumers are generally aware of them, many almost never click on the link, nor read them in their entirety. This leaves many consumers and users ignorant of the terms and impact of such agreements. However, one's ignorance of the otherwise neatly-tucked-away terms rarely renders them unenforceable.

The issue of the enforceability of browsewrap agreements has been up for debate for some time in many jurisdictions, including Pennsylvania. Indeed, Pennsylvania had a brief grip on this issue for a period in time. Specifically, in 2023, an *en banc* Superior Court set forth heightened standards for companies to meet in order to secure assent and enforce browsewrap arbitration agreements. *See Chilutti v. Uber Techs., Inc.*, 300 A.3d 430 (Pa.Super. 2023) (en banc) ("*Chilutti I*")

Chilutti I involved a husband and wife who sued Uber and its subsidiaries after the wife, a wheelchair bound passenger using Uber's rideshare service, fell, struck her head, and lost consciousness due to her uber driver failing to provide a seatbelt and making an aggressive turn during the trip. The Chilutti's filed a negligence lawsuit against Uber and its subsidiaries. In response, the defendants moved to compel ▸

arbitration, arguing that "the couple's conduct on the company's website and application — when they registered for the ridesharing service — signified that they agreed to be bound by the mandatory arbitration provision found in the hyperlinked terms and conditions." The trial court granted the defendants' petition and stayed the proceedings pending the results of arbitration, and the Chilutti's appealed.

On appeal, the Superior Court addressed two issues. First, it addressed the issue of whether it had jurisdiction to hear the appeal. A divided Superior Court determined that it did, with its basis for the holding being that the order from which the Chilutti's appealed was a collateral order.

Next, the Superior Court set out to address the merits of the Chilutti's substantive claim. The Superior Court concluded that the parties lacked a valid agreement to arbitrate. Its rationale was that Uber's website and application did not provide reasonably conspicuous notice of the terms to the Chiluttis. In reaching this decision, the *en banc* Superior Court held that browsewrap arbitration agreements are enforceable in Pennsylvania only if the registration website and application screens explicitly inform consumers that they are waiving the right to a jury trial, the registration process cannot be completed until the consumer is fully informed of this waiver, and, when the agreement is available via hyperlink, the waiver appears at the top of the first page of the terms in bold, capitalized text.

Since the ruling, Pennsylvania courts have applied *Chilutti I* to determine if browsewrap agreements are enforceable. For instance, the Allegheny County Court of Common Pleas invoked *Chilutti I* to reject an agreement that lacked an express jury-trial waiver on the assent screen. *See Miller v. Festival Fun Parks, LLC*, 92 WDA 2025 (C.P. Alleg. Cnty. Mar. 24, 2025). Similarly, the Superior Court has held that notice which failed to explicitly state the consumer was waiving a jury-trial right did not "me[e]t the strict burden set forth by our *en banc* Court in *Chilutti I*." *Pierce v. FloatMe Corp.*, 348 A.3d 1077, 1088 (Pa. Super. 2025).

While the issue of enforceability of browsewrap agreements appeared to have been resolved by *Chilutti I*, Pennsylvania courts' grip on this issue has been slackened by the Pennsylvania Supreme Court's January 21, 2026, opinion in *Chilutti II*. *See Chilutti v. Uber Techs., Inc.*, 349 A.3d 826 (Pa. 2026) ("*Chilutti II*"). Therein, the Supreme Court did not address the merits of the Chiluttis' substantive claim, but rather the issue of whether the Superior Court had appellate jurisdiction to immediately review the orders staying litigation pending arbitration. The Court ultimately vacated the *en banc* opinion on jurisdictional grounds, holding that the Superior Court did not have appellate jurisdiction because the trial court's order from which the Chiluttis appealed did not qualify as a collateral order and, thus, the Superior Court erred in holding to the contrary *and* lacked jurisdiction to entertain the merits" of the Chiluttis' substantive claim.

As such, *Chilutti II* has rendered *Chilutti I* nonbinding, and the issue of enforceability of online arbitration agreements remains unresolved. However, in light of the fact the Supreme Court did not address or comment on the merits of the Chiluttis' appeal, *Chilutti I* is still meaningful. Specifically, it provides guidance as to the standards a company should strive to meet to ensure they have obtained users' assent so that they are able to enforce online arbitration agreements. Additionally, it may serve as persuasive authority in judges' evaluations of petitions and/or motions to compel browsewrap arbitration agreements until this particular issue is properly put before our appellate courts. ◆

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ON THE PULSE

Mount Laurel Office:

A Cornerstone of Defense Litigation in South Jersey for Over 40 Years

Sharon A. Campbell Suplee, Esq.

Marshall Dennehey established its first office in southern New Jersey in 1984. Since that time, the "South Jersey" office, now located in Mount Laurel, has grown to be the second largest Marshall Dennehey office outside of Philadelphia. With 56 attorneys and approximately 75 support staff, this office fully services our clients across the spectrum of defense litigation in South Jersey. As one of the largest law offices primarily dedicated to South Jersey, we are able to provide our clients an unparalleled depth of experience and knowledge, reinforced by long-standing relationships with the local bar and bench.

The success of this office is based upon many factors, not the least of which is the depth of talent and experience we offer our clients. Our office is composed of many long-time residents of New Jersey, and we have the benefit of being staffed by individuals who have dedicated their careers to Marshall Dennehey, having worked for the firm for over 20, and in some cases, over 30 years. Our office administrator, Sheila Stanley, has been with the firm for 40 years and is an invaluable leader. Coupled with the broad-based resources and experience of the firm, we are able to provide our clients with the highest level of defense litigation support in areas including professional liability, health care liability, casualty, and workers' compensation.

The Mount Laurel Casualty Group makes up the largest group of attorneys in our office. Supervised by Barbara Davis, this group includes accomplished, long-time shareholders and trial attorneys who handle cases across the casualty spectrum. They are supported by a skilled group of associates who routinely sit second chair and otherwise support trial counsel at every level. Jeffrey Rapattoni, Assistant Director of the firm's Casualty Department, serves as Chair of both the SIU/Fraud Litigation Group and the PIP Litigation Group. Our attorneys offer our clients aggressive and specialized knowledge evidenced by their record of success.

Our professional liability group, the second largest in the firm behind Philadelphia, handles a broad range of matters, from architectural, engineering, and construction defect litigation, to real estate liability, public entity and civil rights litigation, and employment law. Our PL group is supervised by Matthew Behr, and is anchored by seasoned litigators and talented associates.

The Mount Laurel Worker's Compensation Group is led by Bob Fitzgerald, who has been with the firm for 25 years. He leads a successful team of attorneys who are well known within the worker's compensation bench and bar in South Jersey, and their longevity and high regard within the community affords our clients the highest level of service.

Our Health Care Group is led by Lynne Nahmani, who has been with the firm since law school -- over 35 years. The Health Care Group defends and routinely tries cases including medical malpractice, hospital/acute care malpractice, long term care litigation, nursing malpractice, dental malpractice, allied health professionals malpractice, and professional board matters, among others.

Collaboration has always been a cornerstone of the culture of Marshall Dennehey, and this is nowhere more evident than in the Mount Laurel office. While our attorneys generally practice within their groups, the benefit of having a broad base of litigators allows us to work as a cross-functional team when needed. This provides our clients with the benefits of diverse expertise and collaboration, and provides our attorneys with mutual resources at their fingertips. In addition, it allows for our attorneys to continue to learn from each other and work together to continue to lead the market in South Jersey. ◆

ON THE PULSE

Profile of the Insurance Services – Coverage and Bad Faith Litigation Practice Group

Todd J. Leon, Esq. and Michael Packer, Esq.

The Insurance Services – Coverage and Bad Faith Litigation Practice Group delivers comprehensive, end-to-end litigation and advisory services to national and global insurance carriers. While the group is deeply experienced in coverage and bad faith litigation, its capabilities extend well beyond traditional legal defense. Through its broader Insurance Services practice, the firm has built a dynamic suite of innovative, client-focused solutions tailored to the evolving needs of insurers operating in complex and high-risk environments.

With attorneys present in jurisdictions spanning from Florida to New York, the practice group approaches each matter with a strategic, solutions-oriented mindset. Its attorneys focus not only on resolving disputes, but on proactively managing risk by developing creative strategies to control exposure, avoid litigation where possible, and transfer risk effectively. In doing so, the group remains mindful of the broader business implications for its clients, including the protection of brand integrity and competitive positioning within the insurance industry.

The group's experience encompasses the full spectrum of insurance products, including commercial, personal property, and casualty policies, professional liability coverage, health and life insurance, and workers' compensation policies. This breadth allows the team to provide nuanced, industry-specific counsel across a wide array of coverage issues and claims scenarios.

Leadership within the practice group reflects both geographic reach and subject-matter depth. Todd Leon, who has offices in Philadelphia and Mount Laurel, serves as the Northeast head, with Allison Krupp of the Camp Hill office serving as vice-chair. Michael Packer, based in Fort Lauderdale, oversees operations in the Southeast, with Danielle Robinson, also of Fort Lauderdale, as the vice chair. Together, they guide a team of approximately 20 attorneys who provide consistent, coordinated legal services across jurisdictions. The Southeast team, in particular, brings a sophisticated understanding of the unique legal and regulatory challenges associated with Florida's insurance landscape. Across all offices, attorneys are supported by a strong network of associates, paralegals, and professional staff, enabling the group to efficiently manage even the most complex coverage disputes, including first-party property and automobile litigation. The group also benefits from the leadership and insights of Jim Cole, the former group chair, who is now the Director of the firm's Professional Liability Department.

The practice group has a proven track record of successfully representing insurers in both state and federal courts in first-party and bad faith litigation and in providing opinions on coverage issues in jurisdictions around the country. Its attorneys are well-versed in the intricacies of institutional discovery, including corporate designee, apex, and employee depositions, as well as the litigation tactics often employed by plaintiffs to drive settlement pressure. By offering strategic guidance at every stage – both pre-litigation and during active disputes – the group helps clients evaluate coverage positions, mitigate risk, and make informed decisions about resolution or trial. When litigation is unavoidable, the firm's seasoned trial attorneys are prepared to vigorously defend even the most complex and high-exposure matters.

Beyond litigation, the group offers a wide array of services designed to support insurers' operational and strategic objectives. These include coverage consultation, coordinating counsel services, catastrophe (CAT) operation coverage strategies,

and specialized support for first-party property and automobile claims. The team also provides SIU and fraud-related investigation and litigation services, indemnification and risk transfer strategies, and comprehensive bad faith evaluation and defense. Additional offerings include policy language review, representation before administrative and insurance departments, claims practices consultation, and institutional discovery support. The group also works closely with clients to develop best practices, internal guidelines, and customized training and educational programs tailored to the full range of insurance products.

With 19 offices across Pennsylvania, New Jersey, New York, Delaware, Florida, Ohio, and Connecticut, and an active presence in neighboring jurisdictions such as Maryland, West Virginia, and Kentucky, the Insurance Services Practice Group is positioned to provide seamless, regional, and national support. Its integrated approach ensures that clients receive not only skilled legal representation but also practical, forward-looking guidance designed to meet the demands of today's insurance landscape. ◆

Welcome to our New Shareholders!

Andrew Norfleet
Professional Liability | Harrisburg

Daniel Bennett
Casualty | Wilmington

Alexander Mueller
Professional Liability | New York City

Maria Granaudo
Health Care | Wilmington

Thomas Glassman
Casualty | Cincinnati

Casey Coyle
Professional Liability | Harrisburg/Philadelphia

ON THE PULSE

Recent Appellate Victories

Shane Haselbarth (Philadelphia) succeeded in obtaining summary judgment in a federal district court and an affirmance on appeal to the Third Circuit in a police shooting case resulting in a fatality. Dispatch relayed news of a 911 call for a stabbing, and two police officers approached the scene. Multiple bystanders informed them that the suspect had a gun, and the officers converged toward him. With the benefit of a body-mounted camera recording, the officers ordered the suspect to drop his gun. He did so, and the officers ordered him to step away from the gun, but the suspect inexplicably reached down and picked up the gun again. The officers held their fire and ordered him again to drop his gun—until the suspect raised his gun and aimed it in the direction of one officer and the suspect's mother, whom the suspect had brutally stabbed (leading to the 911 call from the suspect's terrorized sister). Since the suspect aimed his gun at his mother and/or the police officer, the officers used deadly force against him, and only did so when the suspect repeatedly raised his gun as though to shoot it. The district court held that the police officers' conduct violated no clearly established right under the Fourth Amendment despite the suspect's death from gunshot wounds. On appeal, the Third Circuit went further and held that the police officers' conduct did not violate any right at all under the Fourth Amendment. Their use of deadly force, while tragic, was wholly reasonable given the facts and circumstances which they encountered on the night in question.

Carol VanderWoude (Philadelphia) succeeded in obtaining reversal of a trial court's order overruling preliminary objections as to venue. The plaintiff filed suit in the Philadelphia County Court of Common Pleas alleging negligence for injuries sustained in a car accident. The accident occurred in Lebanon County between the plaintiff's vehicle and a school bus driven by an employee of the defendant transportation company. The corporate defendant provided transportation services to school districts in Lebanon and Lancaster Counties, and had no clients in Philadelphia County. The trial court overruled the preliminary objections to venue, reasoning the act of transporting students into Philadelphia for approximately two-dozen field trips during the pertinent school-year satisfied the quality-quantity venue analysis. The Superior Court agreed with the arguments raised on appeal, and held that the field trips simply aided in the corporate defendant's main purpose of providing transportation services as directed by its clients located outside Philadelphia County and that those field trips were not conducted regularly enough to satisfy the quantity portion of the venue analysis.

Kimberly Berman (Fort Lauderdale) and **Jonathan Kanov** (Fort Lauderdale) succeeded in obtaining an affirmance by the Fourth District Court of Appeal of a final judgment entered in favor of Marshall Dennehey's clients, a law firm and managing lawyer. The law firm and lawyer issued an opinion letter on behalf of his clients as part of a commercial loan transaction for $7.5 million. After the client defaulted on the loan, the plaintiffs, sophisticated lenders, sued 20 different named defendants involved in the transaction. They sued the law firm and lawyer for negligent misrepresentation and breach of fiduciary duty for its role in issuing the third-party opinion letter. The trial court granted summary judgment in the law firm and lawyer's favor, finding in an arm's length transaction, there was no duty owed to nonclients. The lender appealed, phrasing the issue as a pure legal question of an attorney's professional responsibility: "When an attorney issues an opinion letter – (i) knowing that the letter is attendant to a transaction in which a non-client party to that transaction

will necessarily rely on the letter (as a condition precedent to the transaction); and (ii) invites reliance on the letter without qualification—does that attorney owe any duty of care to the intended non-client recipient?" After oral argument, the Fourth District rejected the lender's arguments attempting to extend a duty in these circumstances and affirmed the final judgment.

Kimberly Berman (Fort Lauderdale) and **Dante Rohr** (Orlando) succeeded in obtaining an affirmance by the Second District Court of Appeal of a final judgment on a cross-claim for defense and indemnity in a construction defect matter for Marshall Dennehey's client, a window and door subcontractor. The plaintiffs were residential homeowners who sued the general contractor for construction defects following the construction of their luxury home. They also sued the window and door subcontractor for negligent misrepresentation in its recommendation to install windows and doors manufactured by a German manufacturer. The general contractor filed a cross claim against the window and door subcontractor and third-party claims against the other subcontractors involved in the construction for defense and indemnification. During litigation, the case was referred to nonbinding arbitration, where the arbitrator found that the general contractor was not negligent, but that it breached the contract and warranties. The arbitrator also found there was no negligent misrepresentation on behalf of the window and door subcontractor. The arbitrator awarded the plaintiffs $3.1 million in damages. The general contractor moved for trial *de novo* on the cross claim and third-party claims only, accepting the $3.1 million award entered against it. Thereafter, the window and door subcontractor moved for summary judgment on the cross claim, asserting there was no obligation to defend or indemnify based on the express terms of the indemnification clause in the subcontract. The court granted summary judgment in the window and door subcontractor's favor. After oral argument, the Second District Court of Appeal affirmed the final judgment in the window and door subcontractor's favor.

Patricia McDonagh (Roseland) succeeded in obtaining an affirmance by the Appellate Division of the Supreme Court of New York, First Department, of an order granting summary judgment to Marshall Dennehey's client, a building owner. Plaintiffs brought suit against the building owner after allegedly sustaining injuries when ceiling tiles fell onto them. The First Department held that defendant established that it was an out-of-possession landlord with no course of conduct of making repairs after the tenant assumed possession and control of the premises. The court further held that plaintiffs failed to raise a triable issue of fact in opposition and improperly made arguments for the first time on appeal.

Walter Kawalec (Mt. Laurel) succeeded in obtaining an affirmance from the New Jersey Appellate Division of a directed verdict in a medical malpractice action. The plaintiff's decedent was a patient in our client's nursing home and suffered from dysphagia, or difficulty swallowing. As a result, he was on a mechanically soft diet along with moderate supervision by the nursing staff. Plaintiff's nursing expert opined that this level of supervision required the nurse to be in the room or at least the doorway when the decedent ate. The decedent was fed an appropriate meal of eggs for his breakfast, but choked on the meal while the nurse was outside the room, and eventually died as a result. The Appellate Division agreed with our argument that because the plaintiff's experts only established a breach of the standard of care, and the cause of death, but did not establish proximate causation between the breach and the decedent's death, a directed verdict was warranted and the case was properly dismissed. ◆

**Results do not guarantee a similar result.*

ON THE PULSE

Other Notable Achievements

THOUGHT LEADERSHIP

Michael Salvati (Philadelphia) was a featured speaker in the A.M. Best podcast, "The Misuse Defense: Strategic Approaches to Defending Product Liability Claims for Insurers." Mike joined a panel of industry experts to discuss the evidentiary and strategic considerations behind a successful misuse defense. The program is available **here** (must register to listen). ◆

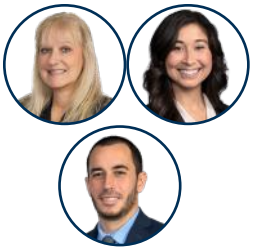
SPEAKING ENGAGEMENTS

Brad Remick (Philadelphia) served as a panelist for a Pennsylvania Defense Institute webinar on Recent Product Liability Pretrial and Trial Experience in Pennsylvania (State and Federal Courts). The program offered a 2026 update on key developments in Pennsylvania product liability law, highlighting significant appellate decisions, evolving jury instruction issues, and procedural trends shaping trial practice.

Sara Mazzolla (Roseland) participated on a panel where she shared her insights at the NAFDMA International Agritourism Association Convention & Expo. She kicked things off on February 8 with "Safety and Legal Prep," a session focused on proactive strategies for keeping agritourism operations protected. On February 9, Sara continued with "I'm Getting Sued. Now What?," a dynamic walkthrough of what businesses should expect and how to respond when faced with a claim.

Suzanne Tighe (Scranton) presented to over 200 attendees at PBI's Joint & Several Liability 2026 Virtual Seminar on February 12. In her session, "Negotiation, Settlement and Release," Suzanne offered guidance on effective approaches to settlement negotiations, release drafting, and risk management in complex multi-party matters, and walked participants through techniques for reaching fair, enforceable resolutions with greater efficiency.

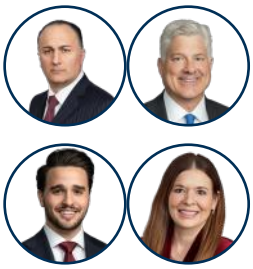
Elizabeth Ferguson (Jacksonville) spoke on the topic of Design Professional Liability at the Florida Bar Real Property, Probate, and Trust Law Section's Advanced Construction Law & Certification Review Course. This course prepares attorneys for board certification, covering topics from construction insurance to contract and form documents. Learn more about the course **here**.



Trish Monahan (Pittsburgh), **Brielle Winkler** (Mt. Laurel), and **Brad Haas** (Pittsburgh) delivered a virtual presentation for AAA titled Defense Litigation: Key Concepts and Current Developments. Topics covered included special damages evaluation, recent litigation developments, Pennsylvania specific bodily injury defenses, early claim evaluation, UIM/bad faith issues, coverage considerations, New Jersey auto claims, and psych/concussion cases. These topics were developed in coordination with AAA to address current trends and challenges facing their claims teams. ▶

John Hare (Philadelphia) moderated a panel discussion at Temple Law School in which leading Pennsylvania judges addressed the origins and importance of judicial independence in the United States. The discussion was cohosted by the Pennsylvania Commission on Judicial Independence, of which John is a member, the American Constitution Society, and the Women's Law Caucus.

On April 1, **Chris Conrad** (Harrisburg) co-presented on a panel that included Middle District of PA Chief Judge, Matthew Brann, on Civil Rights Litigation as part of "The Courts and the Community: An Educational Series for the Public," sponsored by Dickinson College.



Jeff Rapattoni, **James H. Cole**, **Alec DelConte** (all Philadelphia), and **Allison Krupp** (Harrisburg) spoke at the 2026 Pennsylvania Association of Mutual Insurance Companies (PAMIC) Claims Summit on April 8th. Jeff's session "Civil Rico and Insurance Fraud – A National Perspective" highlighted the rise of mass RICO filings and the key cases, trends, and risks shaping their impact. Jim and Alec co-presented "Condominium Conundrum (Acts, Liability, & HO-6 and HOA master policies)," reflecting on the issues insurers encounter in navigating claims arising out of HO-6 and HOA policies. Lastly, Allision led "e-Bikes and e-Vehicles" with two other speakers, tackling the legislation pertaining to this growing form of transportation.

James H. Cole (Philadelphia), Director of our Professional Liability Department, presented four sessions at the Property & Liability Resource Bureau (PLRB) Annual Claims Conference in National Harbor, Maryland. Jim kicked things off with "Unfair Claims Practices: This is Jeopardy!," an interactive exploration of the Model Unfair Claims Practices Act (MUCPA) presented in a game-show format, followed by "Liar, Liar, Your House is on Fire," a session focused on common insurance fraud issues with an emphasis on property damage.

On April 9, **Peggy Bush** (Orlando) presented "Current Issues Faced by the Transportation Industry and Trends in Transportation Litigation," to the International Association of Defense Counsel (IADC) Corporate Counsel Committee via webinar. **Ethan Collins** (Orlando) assisted Peggy tremendously with research for the presentation.

On April 12, **Victoria Scanlon** (Scranton) was a faculty presenter at the 2026 American Roentgen Ray Society (ARRS) Annual Meeting in Pittsburgh. She participated in the "Resident Symposium: Producing Quality Reports," focusing her presentation on "How to Write a Great Report: Malpractice Lawyer's Perspective." Vicky, the only attorney presenter for this two-hour segment, was joined by several health care professionals including diagnostic radiologists, an interventional radiologist, an internal medicine physician, and a radiologist turned AI entrepreneur expert. ◆

PUBLISHED WORKS

Brad Haas (Pittsburgh) authored the article, "Paul Miller's Law: Direct and Punitive Transportation Exposure," published in CLM Magazine. ◆

RECOGNITION

Michele Punturi (Philadelphia) was one of four finalists nationwide for the 2026 CLM Professional of the Year Award in the Outside Counsel category. This prestigious national recognition honors an attorney who demonstrates exceptional commitment to claims and litigation management through thought leadership, mentorship, innovative practices, and meaningful contributions to the CLM community.

Our attorneys **Rob Williams** (Jacksonville), **Terrence Hill** (Orlando), **Kimberly Berman** (Ft. Lauderdale), **Harris Kirsch** (Ft. Lauderdale), and **AC Nash** (Ft. Lauderdale) attended the National Retail and Restaurant Defense Association Annual Conference in Amelia Island, FL, this week, where they connected with clients, colleagues, and industry leaders across the retail and restaurant space.

As Coach for Widener University Delaware Law School's Moot Court Team, **Joshua W. Brownlie** (Philadelphia) led the team to victory at the 41st Annual Jerome Prince Memorial Evidence Moot Court Competition at Brooklyn Law School, one of the nation's premier appellate advocacy competitions. Competing against 36 law schools from across the country — including Drexel, Villanova, NYU, and Yale — the team rose to the top to secure the national title. Adding to the achievement, student, Jayden Velazquez, was named Top Oralist out of all competitors. Josh also serves as an adjunct professor at the law school. Learn more about the competition **here**. ◆

Featured Conversations

Key Takeaways from A.M. Best's Webinar on the Misuse Defense in Product Liability Claims, Featuring Michael Salvati

Michael Salvati, shareholder in our Philadelphia office, was a panelist for the April A.M. Best webinar, "The Misuse Defense: Strategic Approaches to Defending Product Liability Claims for Insurers." During the program, Michael and his fellow panelists offered practical, jurisdiction-specific guidance on how misuse and failure-to-warn theories intersect in modern product liability litigation. Michael emphasized the unique challenges these claims present—particularly in states like Pennsylvania, where evidentiary rules diverge sharply from those applied in many other jurisdictions.

Failure to Warn as the "Flip Side" of Misuse

Salvati explained that failure-to-warn allegations often arise as a direct counter to a misuse defense. As he noted, "If our misuse defense is that the ▸

plaintiff didn't use a product properly or safely, then the failure to warn claim is that we didn't tell them how to use it properly."

He emphasized that these claims can stem from either the absence of warnings or criticisms of existing warnings, such as insufficient specificity or lack of clarity about risks.

Pennsylvania's Unique Evidentiary Landscape

One of Salvati's most notable points was the stark difference in how Pennsylvania treats evidence of compliance with industry standards. He highlighted that Pennsylvania is "one of the only states…where that evidence is not admissible" in strict liability cases.

Manufacturers cannot rely on compliance with ANSI, UL, ISO, or even federal safety standards to defend the product against a strict liability claim—because the focus is solely on the product itself, not the manufacturer's conduct. Salvati acknowledged the challenge this creates for defense counsel and clients who expect such compliance to carry weight.

Understanding the Three Defect Theories

Salvati also walked through the three primary defect theories recognized in many jurisdictions:

- **Design defect** – a flaw in the product's intended design
- **Manufacturing defect** – a deviation affecting a specific unit
- **Failure to warn** – inadequate instructions or warnings

He noted that warnings claims are increasingly significant and sometimes stand alone when design or manufacturing theories are weak. As he put it, plaintiffs often default to warnings claims because "the default position seems to be, 'If I got hurt, there must be something wrong.'"

Warranties and State-by-State Variations

Salvati addressed how breach-of-warranty claims fit into the broader framework, explaining that implied warranties—such as merchantability—often overlap with strict liability in Pennsylvania. He emphasized the importance of understanding local nuances, as warranty law and admissibility rules vary widely across states.

Looking Ahead: The Growing Importance of Warnings

In his closing remarks, Salvati stressed that warnings should never be treated as an afterthought in product liability defense. He observed that warnings-only claims are becoming more common and urged manufacturers and insurers to continually evaluate the clarity and completeness of their instructions and warnings. ◆

His takeaway:

" We should always be talking about what are the instructions that come with our products…to bolster a misuse defense."

*Listen to the complete webinar **here**.*

ON THE PULSE

Defense Verdicts and Successful Litigation Results


CASUALTY DEPARTMENT

Daniel D. Krebbs, with support from **Osama Samad** and **Paul Bryant** (all of Philadelphia) secured an outstanding trial result in a Delaware County motor vehicle case where plaintiffs claimed significant injuries from a rear end collision, treated for months, underwent nerve blocks and ablations, and each presented life care plans exceeding $500,000. Their last demand was $98,500 per plaintiff, and they accused the carrier of bad faith failure to settle within limits. During opening statements, the jury audibly reacted when informed that plaintiffs' medical expert had been paid $1.5 million in 2024 by plaintiffs' counsel. Liability and causation were admitted, so the trial focused solely on damages. The jury initially returned a zero damages verdict before being instructed to deliberate further. Ten minutes later, they awarded $500 to each plaintiff — a resounding defense win.


Allison Snyder and **Mark Wellman** (both of New York) successfully obtained a reversal of summary judgment in the First Department Appellate Division. The plaintiff, an employee of a concrete subtractor, fell from the top of a container when he was attempting to attach a tarp over debris, sustaining numerous injuries to his spine. The container was located on the street in front of the construction site and was approximately four feet above street level. Our client, the general contractor, retained the plaintiff's employer and the construction manager – a third-party defendant. The plaintiff moved for summary judgment and we moved to dismiss all claims. Additionally, we asked the court to grant conditional summary judgment, dismissing all other labor law claims. We submitted evidence that the plaintiff was observed tarping the container on the street level, along with witnesses who viewed others tarping from the street level as well. We argued that the plaintiff did not need to work at a height and chose to do so at his own peril, and was the sole proximate cause of his accident. The court concluded that the accident was gravity related and he was not provided with proper fall protection. The court also denied our application for conditional indemnification against the construction manager based on a "negligence" trigger in the contract. On appeal, the First Department agreed with our position, finding there was evidence that the plaintiff chose to work at an elevated area, revising the trial court decision finding issues of fact for a jury. More importantly, the court granted our motion for conditional contractual indemnity against the construction manager, finding that there was no mention of negligence in the contract language and that, as a result of the scope of the indemnity provision, the third-party defendant was required to indemnify our client in the event the plaintiff were to be successful at trial. We were successfully able to obtain a risk transfer from our client to the subcontractor and its carrier.


Michael Salvati and **Dylan Smith** (both Philadelphia) won summary judgment on behalf of his client, in a premises liability action in the Eastern District of Pennsylvania. The plaintiff allegedly broke her leg after falling on an icy walking path outside our ▸

client's community center. Mike argued that the plaintiff's claims were barred by a liability waiver she had signed when applying for membership. The plaintiff denied that she signed the waiver. The court ordered targeted discovery and each side retained a handwriting expert. The Judge ultimately found that the defense had persuasively established that the signature was genuine, and the plaintiff's unsupported denials did not create a "genuine dispute" to defeat summary judgment.

Barbara Davis and **Amy Fox** (both of Mount Laurel) won summary judgment for their clients relying on the principals of *Stewart* and *Lucheiko*, arguing a residential homeowner owes no duty to a municipal right of way. The plaintiff, a mail carrier, claimed to have injured her foot on uneven pavement in the municipal right of way as she was delivering mail to the defendant/third-party plaintiff. The property is a subdivision and the defendant/third-party plaintiff filed a claim against our clients, named as third-party defendants, alleging the area of the fall abutted our client's portion of the property. The plaintiff claimed that the position of the mailbox created a dangerous condition. The court reasoned that case law protects residential homeowners by limiting duty to maintain municipal right of ways (such as sidewalks and streets) only to those occasions where a homeowner affirmatively acts to repair, install, or maintain the area. Therefore, a homeowner would only be liable if they would have taken specific acts to cause the condition. There was no expert report opining as to what caused the alleged dangerous condition, only opining that a dangerous condition existed that was not repaired. There was no evidence or allegation that the mailbox was installed by either our clients or the defendant/third-party plaintiff. The court found that the mailbox had been in place before either our clients or the defendant/third-party plaintiffs purchased their homes, and neither took any affirmative action to repair, install, or maintain the pavement in the municipal right of way; nor was there evidence that the mailboxes were moved by our clients. Summary judgment was awarded to both our clients and the defendant/third-party plaintiffs.

Sean Reeves (Jacksonville) obtained summary judgment on behalf of a funeral home in a case alleging mishandling of a decedent's remains, interference with rights to remains, and intentional infliction of emotional distress. Sean demonstrated that the client's actions in facilitating the burial were not willful, wanton, intentional, or malicious, and that the conduct did not rise to the level of "outrageous" behavior required to sustain the claims. The court granted summary judgment in favor of the funeral home.

Matthew Gray (Melville) was successful in having a pair of New York No-Fault (PIP) actions discontinued after multi-year dispute. The plaintiff, a major medical provider, filed dual suits in Richmond County Civil court, claiming our client owed for the claimant's unpaid medical bills. The claimant had been involved in a motor vehicle accident and sought payment for medical treatment arguing that since the billing was never paid by the insurer, it was due in full – despite the fact that a cognizable link between our client and the supposed date of loss did not exist. While there were evidentiary issues in our client's case, our arguments and position were strong. After many years of negotiations and arguments, and prior to the completion of motion practice and/or a trial, the plaintiff's counsel acquiesced to a full discontinuance of the matters, without prejudice. Thereby, our client was absolved from any fiscal liability in this action.

Michele Krengel and **Ashley Stasak** (both of King of Prussia) were successfully granted a motion for judgment in a slip-and-fall matter in Chester County, Pennsylvania. The matter stemmed from a 2023 slip and fall by the plaintiff, who was working as an ▸

independent contractor nurse in an office where the co-defendant physicians care surgical center operated. Upon resolution of the plaintiff's workers' compensation claim, the plaintiff sued various other parties, including our client, who held the mortgage for the premises where the fall occurred. Despite repeated attempts at dismissal, the plaintiff refused to stipulate out our client, likely because they were still engaged in preliminary objections as to service on the co-defendant. We filed a motion for judgment on the pleadings, given that the pleadings were closed as to our client, which the judge granted. The trial team was assisted by administrative assistant **Brenda Darden.**

HEALTH CARE DEPARTMENT

Justin Johnson and **Nataliana Guida** (both of Roseland) obtained a unanimous verdict on behalf of our clients in a medical malpractice matter in Bergen County, New Jersey. The plaintiff, a seven-year-old girl, presented with a sacral aneurysmal bone cyst (ABC), which destroyed the sacral bone, causing compression on her lower lumbar and sacral nerve roots. After surgery, the plaintiff was unable to control her bladder and bowels, along with losing sensation in her sex organs. Expert witnesses presented by the plaintiff alleged that our clients' transected the lower and sacral nerve roots during surgery by negligently placing a suture, cinching the nerves. Our clients, along with several additional experts, denied placing any suture, arguing that the nerves were not transected, but injured by the necessary manipulation of such nerves during the course of tumor removal – a known and accepted complication of that surgery. After deliberation, the jury delivered a verdict in favor of our clients.

Lynne Nahmani (Mount Laurel) and **Justin Johnson** (Roseland) successfully had a directed verdict affirmed in Gloucester County Superior Court. The decedent, a 72-year-old man, was a resident at a rehabilitation center where he received treatment for encephalopathy, obesity, DM, HTN, UTI, respiratory failure, and dysphagia, and was provided assistance with activities of daily life, including eating. The plaintiffs alleged that the decedent's care plan was not met when he was eating alone in his room and choked, requiring emergency efforts. The patient never regained consciousness and passed away two days later in the hospital. A directed verdict for our client was entered on 10/12/2023. The plaintiff appealed and the appellate court affirmed the decision, opining on the requisite causation required under both negligence and the Resident Rights Act Statute in New Jersey. The trial team was assisted by **Walt Kawalec** on appeal and paralegal **Dana Fiorelli**.

Justin Johnson, **Ryan Gannon**, and **Heather LaBombardi** (all of Roseland) successfully obtained a no-cause jury verdict in a 13-day wrongful death trial. The decedent, a 59-year-old man, was admitted to the emergency room on February 15, 2019, with complaints of abdominal pain, decreased appetite, and constipation, despite the use of laxatives. The patient did not complain of any nausea, vomiting, or diarrhea. He had a significant medical history including diabetes, hypertension, prior coronary artery stenting, morbid obesity (with past gastric bypass surgery), longstanding ventral hernia, and back pain. A CT scan revealed multiple hernias and a potential closed-loop bowel obstruction, leading to a surgery consultation. Our client, an emergency general surgeon, interpreted that the patient did not have a closed loop or any significant obstruction and recommended non-surgical management. The patient was approved to have clear liquids, and had a vomiting incident shortly after, but ▸

our client was not notified. The patient was returned to NPO status, and after improving overnight, he was returned to "clears" and additional medical and renal consults were ordered. Our client did not receive any communications from the residents/nurses of any changes in the patient's condition. On February 18, 2019, two rapid responses were called due to increased heart rate and vomiting. It is believed that the vomiting resulted in aspiration, causing sepsis, ultimately leading to the patient's death. During the trial, the plaintiff's sole medical expert highlighted imaging on the wrong hernia, which called into question all of his opinions in the case. We made key objections related to the expert testimony, limiting what the allegations were and preventing new allegations from being made. After approximately two and a half hours of deliberating, the jury returned a no-cause verdict. The trial team was assisted by paralegal **Elina Sheldon.**

Gary Samms (King of Prussia), with instrumental support from David McColloch (King of Prussia) and paralegal **Narcy Farnen** (Philadelphia), obtained a defense verdict on behalf of a major Philadelphia healthcare provider after a contentious six-day trial. After undergoing a kidney transplant, a patient suffered complications in post-operative care and died a day after the surgery. The plaintiffs were critical of the post-operative care, claiming that the physicians failed to take the patient back to the operating room in light of post-op bleeding. The hospital and physicians maintained that the post-procedure complications were related to previously unknown liver issues that resulted in liver failure/liver shock that created an unstable condition and prevented re-operation. While the family presented a very sympathetic case, Gary was able to prove, through the science and medicine, that the doctors acted appropriately and did not cause the woman's passing.

Gary Samms successfully defended an anesthesiologist and pain management physician in a complex medical malpractice matter involving extra-articular facet joint injections which allegedly led to cauda equina syndrome, urinary and fecal incontinence, ED, and other serious complications. After six days, a Delaware County jury found on behalf of the physicians. Experts were acquired in the fields of anesthesiology, pain management, neurosurgery, neurology, neuroradiology, and urology. The defense verdict was dependent on successfully relaying the subtle and complex issues in the medical care and the nerves considering the patient's past medical history, as well as the medications used in the procedure. Plaintiffs were critical of ten different aspects of the doctor's procedure, but with expert testimony and cross examination, Gary and his team were able to prevail. Instrumental to the defense were David McColloch (King of Prussia) and **Nancy Farnen** (Philadelphia).

PROFESSIONAL LIABILITY DEPARTMENT

Michele P. Frisbie (King of Prussia) secured a dismissal with prejudice in a Magisterial District Court matter involving breach of duty allegations against members of a homeowners' association board. The pro se plaintiff claimed the board officers violated the Pennsylvania Uniform Planned Community Act by failing to properly notice and conduct meetings, perform annual audits, and manage community funds. Michele successfully argued that the plaintiff's claims were derivative in nature and therefore outside the jurisdiction of the Magisterial District Judge, resulting in dismissal without the need for testimony or evidence.

Carolin Pacheco (Orlando) successfully obtained an involuntary dismissal in a condominium association case in Marion County, Florida. The plaintiff unit owner brought a declaratory action against a fellow unit owner for alleged failure to comply with the condominium association governing documents. The plaintiff claimed that the defendant made unauthorized changes to the common elements of his unit without first procuring written approval from the association. The plaintiff sought relief, including an injunction to return the unit common elements to its original state or provide proof of approval per the association governing documents. The defendant alleged that any changes to the common elements of his unit were made with the approval of the board, and any evidence of it was the responsibility of the association. The defendant claimed a myriad of defenses including, but not limited to, selective enforcement and waiver and estoppel. The defendant unit owner filed a third-party declaratory action against the association for damages including indemnification and statutory attorney's fees and costs. We argued that the plaintiff failed to establish that any alterations to the common elements were performed, failed to establish that any changes were unapproved, and as the plaintiff could not prove their case, the defendant unit owner could not hold the association responsible for any damages or breach of statutory duty. The court agreed and the case was dismissed.

Andrew Norfleet and **Jennifer Ruth** (both of Harrisburg) were successfully granted a motion of dismissal in a wrongful death case in Harrisburg, Pennsylvania. The case involved two individuals who were were involved in a boating accident in April 2023, resulting in the death of one of the individuals. The plaintiffs brought their claims in Federal court, alleging violation of their Fourteenth Amendment rights under the state-created danger doctrine. In addition, they filed a *Monell* Municipal Liability claim, along with state claims including negligence, survival, and wrongful death. We filed a motion to dismiss on behalf of the City of Harrisburg, which was granted, with prejudice, on the federal claims. The court dismissed the state claims, without prejudice, deciding not to exercise jurisdiction. Due to the federal claims being dismissed, with prejudice, the plaintiffs are limited only to their state claims, decreasing our client's exposure from several million dollars to a maximum of $500,000. The trial team was assisted by paralegal **Kelly Mazer** and administrative assistant **Aimee Paukovits** (also from Harrisburg).

Len Leicht (Roseland) successfully defended a state division and individual supervisor in an employment discrimination case. Plaintiff alleged disability discrimination, hostile work environment, failure to accommodate, and retaliation under the New Jersey Law Against Discrimination (NJLAD). The trial court granted summary judgment and Plaintiff appealed. The Appellate Division affirmed the dismissal, holding that the plaintiff's claims were either time barred or unsupported by specific, actionable evidence. The court further found the division engaged in good faith interactive dialogue, provided extensive accommodations, and that the lower court was correct in concluding there was no viable cause of action against either Defendant.

Jack Slimm (Mt. Laurel) successfully defended the Board of Trustees of the Ocean Club in Atlantic City, New Jersey, against plaintiff's claims of a fraudulent 2024 board election. While the court acknowledged some frustration by plaintiffs, the record did not establish that the election was fraudulent, unfair, or illegal so as to nullify the result and warrant injunctive relief. The court ruled that plaintiffs failed to show concrete, systemic deprivation of voting rights or violation of statutory election protections that would permit overturning the results or impose the specific prospective rules they ▸

proposed. Thus, the declaratory relief sought by the plaintiffs was denied. The court upheld and confirmed the 2024 election, denied plaintiff's request for a new election, and ruled that the current board seats are not to be disturbed.

Will McPartland and **Rachel Insalaco** (both of Scranton) successfully obtained summary judgment in a litigation matter in Luzerne County, Pennsylvania. The plaintiff had purchased a takeout pizza shop and bar in Kingston Borough, which went out of business not long after. He asserted due process and equal protection claims, a *Monell* claim, state common law claims, and a civil conspiracy claim against Kingston Borough and two of its police officers, alleging that they improperly targeted his establishment based on the racial makeup of its clientele and ownership. The plaintiff alleged that their improper conduct intimidated his patrons and forced the closure of his business. We argued, and the court agreed, that the plaintiff had offered no evidence to support these allegations, as all evidence obtained during discovery supported that Kingston Borough police officers only reported to the property on limited occasions to address legitimate calls for assistance and verified zoning and/or occupancy violations.

Elizabeth Guariglia and **Mark Wellman** (both of New York) were successfully granted a motion to compel acceptance of a late answer in a liability matter. The plaintiff suffered injuries after a locker fell on her while she was putting her things away, or taking them out, at the premises owned by our client. The plaintiff rejected our answer after it was eight months late, but never filed a default motion. We filed a motion to compel acceptance of our late answer. In opposition, the plaintiff filed a cross motion for default, citing cases from the judge that was presiding over this case, where he had granted default judgments when the defendants had been less than eight months late in answering. We argued that in those cases, the plaintiff had already moved for default, along with highlighting case law that shows that, if it can be proven that the delay in answering was due to the insurance carrier's fault or taking time to appoint counsel, then a delayed answer is acceptable. We had an affidavit from the insured and our insurance adjustor. Our motion was granted, and the answer was deemed timely served.

Mark Kozlowski and **Jake Gilboy** (both of Scranton) obtain Rule 12(b)(6) dismissal of state and federal claims against a municipality. The plaintiff filed a complaint bringing claims against a municipal police department and an individual officer following the plaintiff's arrest. The complaint alleged federal *Monell* claims for excessive force, failure to train, and state-created danger, along with state law claims for assault and battery, negligent infliction of emotional distress, and loss of consortium. Following a Rule 12 motion and supportive briefing, the court issued an order and accompanying opinion wherein the court granted our Rule 12 motion to dismiss the plaintiff's complaint against the department and officer, dismissing all of the claims in their entirety, without prejudice. Although the court did grant the plaintiff leave to amend as to the insured defendants, no amended complaint was filed.

Dante Rohr (Orlando) obtained a $1,499,000 verdict in a construction defect case, approximately $1 million less than what the plaintiff asked for. Our client, a stucco subcontractor, installed the stucco and lath in six buildings in a 22-building townhome community in Maitland, Florida, in 2007. The plaintiff originally sued the developer, general contractor, and all subcontractors, but our client had gone out of business in 2013, so service was made on the Secretary of State and a default entered. Our motion to vacate the default was denied on the basis that the carrier waited too long to assign ▸

counsel after receipt of notice of the default. Additionally, our motion for leave to disclose experts past the date in the CMO was denied as untimely. The plaintiff settled its claims with all defendants except our client. The plaintiff presented an engineering expert and a cost of repair estimate. In a critical cross-examination, we were able to present to the jury opinions with regard to other trade contractors, that their work was deficient, needed to be replaced, and caused damage to the building envelope. The plaintiff's cost of repair estimated that the total cost of repairs was $2,426,935, which the plaintiff asked the jury for at closing. We argued that the plaintiff did not present any credible evidence of damages, other trades were the cause of damages within their scope, our client was not a substantial contributing cause of damage, and they should only find such damages against our client as would be just. After an hour and a half of deliberation, the jury returned with the lower verdict.

Ray Freudiger (Cincinnati) and **Audrey Copeland** (King of Prussia) successfully had summary judgment affirmed in favor of their client in a matter involving the First Amendment. Our client enacted rules governing the placement and nature of billboards within its boundaries. The plaintiff's signs were subject to various requirements, including restrictions on size, location, and spacing. One restriction was that variable message outdoor advertising signs were not permitted. The plaintiff sued, raising various arguments against our client's ordinance under the First Amendment. The district court granted summary judgment to our client. The Sixth Circuit reversed, holding that one portion of the ordinance governing "public service" signs was an invalid content-based restriction on speech, remanding the case to the district court to determine whether the unconstitutional public service exemption was severable from the rest of the ordinance. The district court found the provision severable, and that the remainder of the ordinance satisfied intermediate scrutiny, granting summary judgment in favor or our client once again. The plaintiffs appealed, and it was held that our client had not forfeited their argument that the public service exemption was severable. Additionally, we argued that when applying the *Geiger* test, the public service exemption could be severed from the remainder of the ordinance, which satisfied intermediate level scrutiny. The court agreed, affirming the decision of the district court.

Jeremy Zacharias and **Zipporah Ridley** (both of Mount Laurel) obtained an order of dismissal in a case wherein the plaintiff alleged malpractice against various attorneys for exercising the rights under a judgment creditor. In the underlying family law matter, the plaintiff was sanctioned by the court for failure to follow orders and filing frivolous claims. The attorneys in this case obtained sanctions against the plaintiff, and these sanctions were reduced to valid judgments. We argued that the litigation privilege insulated the attorneys from the claims and that the plaintiff was estopped from using the Federal Bankruptcy Court as an appellate court for the State Court, which was barred by the Rooker-Feldman doctrine.

Jeremy and **Zipporah** also obtained summary judgment on behalf of a resort city in a case alleging voice misappropriation for the use of the plaintiff's voice on the tram car. The tram car, which has been in operation for over 55 years, has the iconic slogan, "watch the tram car, please," on loop to warn pedestrians of the impending vehicle. We argued that the plaintiff claims were barred by the statute of limitations and that she had consented to the use of her voice for over five decades.

Jeremy and **Zipporah** also obtained summary judgment in an insurance producer malpractice matter wherein it was alleged that an insurance agent obtained a policy without the requested coverage. In granting summary judgment, the court reasoned that the plaintiff had a history of non-payment of policy premiums, leading to cancellation of the policy. There was a policy in place that would have covered the claimed loss, but the plaintiff failed to pay the policy premium. The court also focused on the lack of expert report in this case to support the plaintiff's claims.

Kim House (Philadelphia) achieved a significant appellate victory in the Pennsylvania Superior Court that reversed the trial court's decision and remanded the case for reinstatement of the jury verdict, which was originally won by Gary Samms (King of Prussia/Philadelphia). At trial, the jury returned a defense verdict finding that the defendant's negligence was not a cause of the plaintiff's injuries. The trial judge granted the plaintiff's post-trial motions and ordered a new trial solely on the issue of damages. The Superior Court found that the trial court abused its discretion in finding that causation was not disputed and that the jury's finding of no causation was against the weight of the evidence. Kim authored the appellate brief and delivered the oral argument that secured the reversal. The underlying medical malpractice case involved claims seeking more than $5 million in damages, where Gary successfully demonstrated that the plaintiff's alleged serious eye injuries—including a detached retina and macular hole—were unrelated to the care provided by an orthopedic and physical therapy practice, exposing critical flaws in the plaintiff's case.

WORKERS' COMPENSATION DEPARTMENT

Perry Merlo (Harrisburg) successfully obtained a defense decision in a workers' compensation matter. The claimant alleged she was wrongfully terminated due to a workplace injury, and filed a claim petition demanding $95,000. During testimony, it was revealed that the claimant did not report her alleged work injury until after the employer terminated her for falsifying her time records. Additionally, five employer witnesses testified that the claimant never reported a work injury and was working her full-duty job until she was fired for cause. Ultimately, the Workers' Compensation Judge dismissed the claim petition.

Tony Natale (King of Prussia) obtained a defense verdict in a workers' compensation matter in Montgomery County, Pennsylvania. The claimant filed a claim petition alleging a complex tear of the medial meniscus in the knee after being injured walking down a hallway in the police station. We argued that a medical condition arising during employment is not necessarily related to employment itself. We presented medical evidence from an orthopedic surgeon who found no mechanism of injury other than the claimant being present at the job when symptoms began. Additionally, we presented video evidence of the incident taking place, which the court analyzed, finding no evidence of physical injury. The court concluded that injuries that arise at work are not necessarily work related – a defense verdict that will change the landscape of law.

Tony was also successful in having a workers' compensation claim petition denied and dismissed. The claimant alleged a work injury after her chair exploded due to her body habitus, causing her to fall to the ground. She claimed to have sustained various injuries and periods of disability. During a critical cross examination, the claimant's medical expert admitted that there was no evidence of a work-related injury in the ▸

medical records generated nearly one year following the incident. Additionally, the expert admitted that the claimant was capable of full-work duty. The court had no choice but to deny and dismiss the claim petition, forming a complete defense verdict.

Tony was also successfully granted a termination petition in a workers' compensation matter in Berks County, Pennsylvania. The claimant sustained an ankle injury while working with her employer, and she was relegated to modified duty. She worked up to near full-duty capacity. However, she alleged that she could not walk up the stairs as a permanent restriction. We presented medical expert onions from a podiatric surgeon, who determined the claimant to be fully recovered, casting serious doubt on the claimant's self-imposed permanent restriction of walking up the stairs. We filed a termination petition, which the court granted, holding that the claimant was not credible, finding that a preponderance of evidence supported a full recovery.

Tony was also successful in being granted a termination petition before the Pittsburgh Bureau of Workers Compensation. The claimant sustained injuries to the wrist and elbows, for which he received consistent treatment and surgery. Upon completion of post-surgical care, the claimant alleged that he was not fully recovered from the injuries, expressing severe pain in his thumb. We filed a termination petition based on the opinions of a Board-certified orthopedic surgeon who highlighted that the claimant recovered from original injuries, and the thumb joint injuries were due to arthritis that had no causal connection to the work injury. The court agreed with our argument, granting a full recovery.

Tony had a claim petition dismissed before the Venango County, PA Workers' Compensation Bureau. The claimant alleged a stretching injury to his lower back while working on a circuit board for an electronics company, claiming he was debilitated to the point that he could not walk. During a crucial cross-examination, the claimant's orthopedic surgeon admitted that he had the wrong date of injury, the wrong mechanism of injury, and the diagnostic MRI and EMG refuted every work-related diagnosis in his chart. The court returned a complete defense verdict, denying and dismissing the claim petition.

Tony successfully had a workers' compensation claim petition denied and dismissed. The claimant filed a claim petition alleging a foot injury with specific loss while working with a mushroom dispensary. The petition was filed within days of the expiration of the relevant statute of limitations. The claimant failed to provide discovery, appear for an independent medical exam, or appear for a defense-scheduled deposition. During the hearing, an explosive oral argument was made in support of the motion to dismiss the claim. The claimant's attorney argued that the "humanitarian nature" of the Act allowed the case to move forward. A resounding rattling of Supreme Court case law put that argument to rest. The claim petition was dismissed and a full defense verdict was awarded, despite the humanitarian nature of the Act.

Tony has also successfully obtained a full defense verdict in a workers' compensation matter in Philadelphia. The claimant sustained a work-related abdominal hernia while working for the employer dismantling a stage. Five months later, while undergoing physical therapy, he alleged new injuries to his neck and back related to the PT. He filed a review/claim petition, where claimant testimony and orthopedic experts from both sides were presented. On cross-examination of the claimant, he admitted that no pain was felt during therapy to his neck or back, he did not remember injuring his ▶

neck or back during therapy, and did not experience any neck and back pain until later in the evening. The court ruled that there was no evidence of any neck or back injury, denying and dismissing the petition.

Michele Punturi (Philadelphia) was successful in having a termination petition granted in a workers' compensation matter in Philadelphia. The matter involved a long-term housekeeping aide of a well-known local hospital, who sustained an injury to the lower back in October 2024. The claimant had a prior injury to her knee in May 2022, and then to both knees in December 2025. The claimant's treatment following the October 2024 incident included x-rays, an MRI, an EMG, and treatment with an orthopedic specialist, chiropractor, and pain management specialist. All of the providers documented ongoing complaints of pain with radiation, difficulty sitting and standing for more than 20 to 25 minutes, and only being able to walk between two to three blocks. We presented the diagnostic study films and a medical expert who emphasized that the findings of the claimant's doctors did not correlate to the mechanism of the work injury or any post-traumatic findings. In addition, while the claimant's providers diagnosed radiculopathy, objective findings did not exist to support that ongoing diagnosis, and the claimant's subjective complaints were inconsistent with the physical exam. The diagnostic studies failed to demonstrate findings of, but not limited to, any acute disc herniations. We filed a termination petition, which was ultimately granted. This decision will result in substantial recoupment of payments of both indemnity and medical benefits throughout the course of litigation via a Supersedeas Fund Recovery.

Eric Thompson (Wilmington) successfully had a workers' compensation claim denied before the Delaware Department of Labor Industrial Accident Board. The claimant had a history of respiratory illnesses which she alleged were managed through treatment until she was assigned to work in a specific building by the employer. She alleged that her symptoms became worse as a result of working in the building. The employer had a mold study performed, which showed the existence of mold in various places in the building, but that the mold concentrations were less than those in the external ambient air. Nevertheless, the claimant alleged the mold exposure from the building exacerbated her respiratory conditions. The Industrial Accident Board found our expert to be more credible than the claimant's, who argued that an employer is strictly liable for exacerbations of conditions of its employees even if it does not know about them. Following a two-day hearing, the board found that the claimant failed to meet her burden of establishing more likely than not that her respiratory conditions were caused by exposure to mold in the building, denying her petition for compensation due.

Andrew Maffet (Harrisburg) was successful in obtaining denial of a workers' compensation claim in which $165,000 had been demanded to settle. The claimant filed two claim petitions. One alleged a work injury involving his cervical spine in September 2022, while the other complained of a work injury to the lumbar spine in May 2024. The petitions sought payment of full disability benefits from September 2022 to November 2023, partial disability benefits from November 2023 to May 2024, total disability benefits from May 2024 and ongoing, medical bills, and counsel feels. The judge denied the petitions and the claimant was not awarded any workers' compensation benefits, litigation costs, or attorney fees.

Andrew also successfully had a claim petition dismissed in a workers' compensation matter, awarding $0.00 in benefits to the claimant. The claimant filed a petition, alleging a work injury on April 15, 2025. We filed a motion to dismiss, which the judge ▸

granted, concluding that an employee/employer relationship was not established after February 20, 2025, because the claimant unilaterally misrepresented her identity to obtain continued employment.

Kacey Wiedt (Harrisburg) and **Alana Staniszewski** (Pittsburgh) obtained a defense verdict, successfully having claim and penalty petitions denied and dismissed. The claimant alleged a work injury when she tripped over a pallet and fell onto her left knee during the course and scope of her employment. The claimant delayed treatment, first seeking treatment approximately one month after the incident at work. We presented employer witnesses and evidence, establishing that the claimant's orthopedic issues, including knee surgery, were unrelated to the fall at work. The court agreed, finding that the claimant did not have any symptoms following the incident and that the medical expert we presented showed that the claimant only sustained a contusion to the knee following the incident at work.

Michele Punturi (Philadelphia) and **Alana Staniszewski** (Pittsburgh) successfully had a termination petition granted in a Pennsylvania workers' compensation case. The claimant suffered a minor head injury, with some features consistent with a minor concussion. The claimant was a Marine who served in the Iraq war from 2003 to 2005, during which he suffered a head injury. Additionally, the claimant had a history of headaches and psychogenic non-epileptic seizures dating back to his childhood. We secured the pre-existing medical records, which supported the significant pre-existing history leading up to the minor head injury. We presented a Board-certified neurologist who testified that there was no evidence of any ongoing neurological deficits based on a review of medical records and diagnostic film studies. Additionally, surveillance evidence covering multiple months demonstrated the claimant being active and unimpaired. The judge found that the claimant's pre-existing conditions accounted for his ongoing complaints, along with a lack of causal relationship. This decision will result in a substantial recoupment of payments of indemnity benefits and medical throughout the course of the litigation via Supersedeas Fund recovery. ◆

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Vlada Tasich
Litigation: Product Liability
Pennsylvania

"

John Hare is highly responsive and extremely sophisticated. He is excellent all round.

"

Kimberly Berman is deeply committed to her work and to achieving excellent results for her clients.

"

Vlada Tasich is a brilliant litigator who consistently provides numerous strategic options with risk and cost analysis.

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