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MARSHALL DENNEHEY

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

Jeffrey P. Bates, Esq.

Key Points:

- Judicial estoppel only requires that the party "successfully obtained a benefit by assertion of the position that she now seeks to dispute."
- Expert testimony and closing arguments are sufficient for the purposes of application of judicial estoppel.
- Judicial estoppel applied even though different guardians had been appointed for minor-plaintiff in two different state actions.

In *N.T. by and through Barrett v. Children's Hospital of Philadelphia*, 308 A.3d 1284 (Pa. Super. 2024), mom was pregnant with twins and was diagnosed with twin-to-twin transfusion syndrome (TTTS). This is a condition where abnormal communicating blood vessels in the placenta allow blood to circulate between fetuses, jeopardizing the survival of both. Mom lived in North Carolina and was referred to CHOP for possible selective laser photocoagulation of communicating vessels treatment (SLPVC). CHOP concluded that mom was not a candidate for the treatment based on ultrasounds interpreted by a Hospital of the University of Pennsylvania (HUP) radiologist.

Mom then went to Ohio to consult with Dr. Crombleholme, who performed the SLPVC at Cincinnati Children's Hospital. Mom subsequently delivered her twins, and one had severe neurological deficits, while her sister was born healthy.

In 2011, the plaintiff initiated suit in the Philadelphia Court of Common Pleas against CHOP, the HUP radiologist, and Dr. Crombleholme. The claims were that Dr. Crombleholme improperly performed the procedure, that CHOP did not properly train Dr. Crombleholme while he was at CHOP, and that CHOP and the HUP radiologist had misdiagnosed the condition. In 2012, the Philadelphia Court dismissed the claims against Dr. Crombleholme due to lack of personal jurisdiction.

In 2013, the plaintiff started an action in Ohio against Dr. Crombleholme, seeking damages for the same injuries stated in the 2011 Philadelphia action. Therein, it was claimed that Dr. Crombleholme was liable for those injuries as a result of negligently performing the SLPVC.

In 2016, a new action was filed on the minor-plaintiff's behalf in Philadelphia against the CHOP and HUP defendants. At the same time, over the objections of the defendants, the 2011 action filed in Philadelphia was dismissed. In the 2016 action, the plaintiff sought damages for the same injures stated in the Ohio action. The complaint stated that the CHOP defendants

misdiagnosed the condition of the fetuses and negligently failed to treat the TTTS. The complaint further stated that the HUP defendants misinterpreted the ultrasounds, and the CHOP defendants relied on that misinterpretation in their decision to not perform the SLPVC. Counsel for the minor-plaintiff was the same in the Ohio action and both Pennsylvania actions.

The Ohio action went to trial in 2017, and shortly before trial, the plaintiff amended her complaint to allege Dr. Crombleholme caused her injuries by "blind firing" the laser during the SLPVC, rather than firing at the vessels in the placenta to which it should have been directed. Further, the plaintiff claimed Dr. Crombleholme then made efforts to conceal the fact that the injuries were caused by his SLPVC. During the Ohio trial, the court ruled that there could be no reference to the pending Pennsylvania actions.

At the Ohio trial, the minor-plaintiff's expert testified that her injuries were caused by firing the laser at healthy tissue during the SLPVC, damaging 30% of the placenta that was nourishing the minor-plaintiff. As a result, the minor-plaintiff's injuries were hypoxic in nature and not caused by TTTS. The expert also testified that the minor-plaintiff's brain was normal and uninjured prior to the SLPVC, and that, had the SLPVC been performed properly, she would have been born uninjured.

At the close of the Ohio trial, while the jury was deliberating, the case settled for $7 million. The settlement agreement stated that it did not apply to the claims against CHOP and HUP. Following settlement of the Ohio action, the Pennsylvania defendants were allowed to file amended answers, raising the affirmative defense of judicial estoppel. The defendants then filed motions to dismiss all claims because the plaintiff was judicially estopped from proceeding with her claims based on the resolution of the Ohio actions. These motions to dismiss were granted, and the plaintiff appealed.

On appeal, the Pennsylvania Superior Court wrote that judicial estoppel is an equitable doctrine to allow the courts to prevent litigants from "playing fast and loose with the judicial system by adopting whatever position suits the moment." It bars a party from asserting inconsistent positions. The defendants pointed out that, in the Pennsylvania action, the plaintiff stated that the cause of the injury was the failure of the CHOP and HUP defendants to perform the SLPVC when she arrived, and the twelve-day delay between that arrival and the performance of the SLPVC in Ohio caused her brain damage. The defendants continued by pointing out this position was completely contrary to the position taken by the plaintiff in the Ohio action, namely that the minor-plaintiff suffered no brain damaged from the TTTS and that the sole cause of her injury was the negligent performance of the SLPVC in Ohio. The appellate court agreed that these positions were inconsistent and affirmed the granting of the motions to dismiss.

The plaintiff asserted that judicial estoppel did not apply. She argued: (1) judicial estoppel requires the "successful maintenance of an inconsistent position," and a settlement, rather than determination by a court or jury, does not satisfy this element; (2) the expert testimony and argument of counsel are not a basis for judicial estoppel; and (3) the plaintiffs in the Ohio and Pennsylvania actions were not the same.

The Superior Court handily dismissed all three assertions by the plaintiff. With regard to the first argument, the court found that judicial estoppel only requires that the party "successfully obtained a benefit by assertion of the position that she now seeks to dispute and does not require that the issues have been actually litigated to a conclusion or determined by a court or other decision maker on the merits." In *N.T. v. CHOP*, the appellate court found that this was clearly true because the minor-plaintiff obtained a $7 million settlement in Ohio by asserting Dr. Cromleholme was the sole cause of the injury. The claim that Dr. Crombleholme was the sole cause of the injury was irreconcilably inconsistent with the claims in the Pennsylvania action.

The second and third of the plaintiff's arguments were easier to address. The appellate court found that

expert testimony and closing arguments are sufficient for the purposes of judicial estoppel—to prevent the abuse of the judicial process by taking inconsistent positions before the courts. The final argument, that the plaintiffs were not the same simply because different guardians had been appointed for the minor-plaintiff in the two different state actions, held no water because the real party in interest was the minor-plaintiff, who was the same in both actions.

The moral of the story is choose your battles well, as you may only live one day to fight. ◆

Jeff is in our Philadelphia, Pennsylvania office.

Welcome to Our New Lateral Shareholder!

John P. Mueller, Esq.
Professional Liability
Mount Laurel, NJ

Employment law attorney **John P. Mueller** has joined Marshall Dennehey's Mount Laurel, NJ office as a Shareholder in the firm's Employment Law Practice Group. He most recently was a name partner in a regional law firm focused on employment and commercial litigation matters.

"We are thrilled to welcome someone with John's depth of experience to our practice group and the firm," said **Craig S. Hudson**, Director of Marshall Dennehey's Professional Liability Department and a member of the firm's Executive Committee. "He understands the complexities of ever-evolving employment and labor laws, has trial experience, and is admitted to practice in three states. We anticipate our clients will greatly benefit from the experience and knowledge he brings to the position."



Experts in Defense: Delaware Superior Court Agrees that Expert Witnesses Must Opine Beyond Mere Speculation to Meet Basic Causation Requirements and the Opinion Must Be Unequivocal

Thomas J. Marcoz, Jr., Esq., Bradley J. Goewert, Esq., and Lisa L. Maeyer, Esq.

Key Points:

- Expert medical testimony must be offered unequivocally to support causation in medical negligence cases.
- Counsel cannot bolster the expert testimony required to establish causation through argument—expert testimony alone must lay this ground.
- Summary judgment in favor of the defense is proper where the plaintiff fails to offer an unequivocal expert opinion with reason able medical probability regarding negligence or causation.

Marshall Dennehey's health care defense attorneys in the Wilmington, Delaware, office recently succeeded in arguing a motion for summary judgment in the Delaware Superior Court. In *Trott v. Cessna*, 2024 WL 658859 (Del. Super. Feb. 16, 2024), the court held that unequivocal expert medical testimony must be offered with reasonable medical probability or certainty to connect a defendant-nurse's negligence to the plaintiff's injury.

The plaintiff alleged that the defendant-nurse failed to provide him with proper and timely medical care and treatment and in such a manner that amounted to negligence and breaching the standard of care. However, upon the defense's motion raising the insufficiency of expert opinions, the court found that the plaintiff failed to offer the necessary opinion to establish causation between the defendant-nurse's failings and the plaintiff's injury. Specifically, the plaintiff alleged that there was a delay in treating him for stroke symptoms and that, as a result, he was permanently disabled. The issue as to causation was whether the timing of the nurse's involvement would have made any impact on the plaintiff's outcome, even if the symptoms had been reported, as the plaintiff suggests should have occurred.

A plaintiff bears the burden of presenting unequivocal expert medical testimony on two fronts—deviation from the applicable standard of care and causation between the alleged wrongful conduct and the alleged injury. Specifically, "a jury is not permitted to connect

the dots between a bare allegation of medical negligence and an injury." *Trott*, 2024 WL 658859, at *17.

The *Trott* court held that while the plaintiff satisfied the first requirement of establishing a deviation from the standard of care, he failed to offer sufficient expert medical opinion that any alleged violation proximately caused his alleged injury. Specifically, the plaintiff's nursing expert adequately opined about a failure to adhere to the applicable standard of care. However, his expert neurosurgeon testified that "he could not opine that the nurse's deviations from the standard of care more likely than not changed the outcome" of the plaintiff's injury. *Id.* at *21.

The defense argued in their motion for summary judgment that the plaintiff's lack of a sufficient expert opinion related to causation, as indicated by the expert's report, deposition and supplemental report, was sufficient grounds to dismiss the claims against their defendant-nurse. In fact, it was clear that the plaintiff's standard of care experts had conflicting opinions, and the plaintiff had only one causation expert, who affirmatively testified that he would not opine that there was any connection between the defendant-nurse's care and the plaintiff's alleged injury.

The plaintiff responded that, because his doctor-expert's testimony on the causation issue was equivocal, this established an issue of material fact. However, the Delaware Superior Court disagreed, stating that the plaintiff's expert's equivocation amounted to speculation at best, which was insufficient to meet the standard required by Delaware Code Title 18 Section 6853(e) to establish causation through expert medical testimony. This decision reaffirms the importance of unequivocal expert testimony being offered based on a reasonable degree of medical probability or certainty. ◆

Tom, Brad and Lisa work in our Wilmington, Deleware, office.

Commonwealth Court Paves the Way for Workers' Compensation Fee Agreements Pertaining to Prospective Medical Benefits by Declaring the Same "Per Se Reasonable"

Alana M. Staniszewski, Esq.

Key Points:

- A 20% Fee Agreement applicable to all workers' compensation benefits, indemnity and medical, is per se reasonable and enforceable, regardless of whether the medical expenses have been incurred or will be incurred in the future.
- A health care provider is prohibited from billing an injured worker to recoup the 20% fee on medical bills paid to claimant's counsel.
- Pennsylvania jurisprudence is silent on whether a health care provider may file a fee review against the employer or insurer, seeking to recoup the 20% fee reduction on its medical bills.

In Patrice *Williams v. City of Philadelphia (WCAB),* 312 A.3d 976 (Pa. Cmwlth. 2024), the Pennsylvania Commonwealth Court further expanded opportunities for claimants' attorneys to obtain fees in workers' compensation matters. Expanding upon its jurisprudence permitting attorney's fees as a percentage of past due medical benefits in *Neves v. WCAB (American Airlines),* 232 A.3d 996 (Pa. Cmlwth. 2020) (*en banc*), the court's latest decision also permits attorney's fees as a percentage of future medical benefits.

The claimant, Patrice Williams, sustained a work injury on March 4, 2021, within the course of her employment as a correctional officer. She entered into a 20% fee agreement with her counsel, permitting a 20% fee to be taken from all workers' compensation benefits paid to her—indemnity and medical. The workers' compensation judge approved the fee agreement pursuant to wage loss, but denied it with respect to the medical benefits. The Workers' Compensation Appeal Board affirmed the workers' compensation judge's decision, noting that, because the claimant's future medical bills are unknown and speculative, she did not have sufficient understanding of the actual amount she could potentially be required to reimburse to her medical providers. As such, they could not affirm an attorney's fee request that included 20% of future, unknown medical expenses. The claimant appealed the Board's decision to the Commonwealth Court.

The Commonwealth Court reversed and remanded the Board's decision with instructions to approve the entirety of the fee agreement, including the fee on prospective medicals. The court noted that its decision in *Neves* and its rule regarding fee agreements on medical benefits is broad and not limited to only those medical expenses that have been actually incurred or billed. The court emphasized that very few claimants

(if any) would be able to have a complete understanding of their future medical treatment at the time they retain counsel and that to restrict the fee agreement to merely indemnity because of this is untenable. Furthermore, the court emphasized that Ms. Williams, similar to the claimant in *Neves*, testified as to her understanding of the fee agreement and its potential risks.

However, the court minimized the potential risks claimants could face by entering into a medical fee agreement and dismissed concerns that Ms. Williams would be responsible for payment to providers for the 20% taken by counsel. The court cited to Section 306(f.1)(7) of the Pennsylvania Workers' Compensation Act, which prohibits "balance billing," or health care providers billing a claimant for *any* costs related to care provided under the Act and any difference between the provider's charge and the amount paid.

Notably, in less explicit language than the court used to discuss the claimant's rights pertaining to "balance billing," the court appeared to imply that, while a provider can file a fee review to seek an additional amount on the gross amount billed, a fee review is not an appropriate vehicle to seek the 20% difference paid to claimant's counsel. However, given the court's less than unequivocal language, this issue remains unresolved and a subject for courts to address in the future.

What is unequivocal is the court's conclusion that "[a] 20% counsel fee agreement applicable to all workers' compensation benefits received by a claimant is per se reasonable."

The court's decision has practical implications. If the claimant's bar were to take advantage of this decision and revise its typical counsel fee agreements to include a fee on medical benefits, providers will face a 20% decrease in their reimbursement rate. If health care providers are then unable to recoup the 20% difference from the injured workers, or even employers and insurers (though that remains to be seen), this decision could result in increased fee review litigation as health care providers seek to make up for the 20% loss by increasing reimbursements on the gross amount billed. Furthermore, this decrease in providers' reimbursement rates will not prove to serve the quality or quantity of care for injured workers.

This decision could also affect the procedural posture of workers' compensation claims. It may no longer be in claimant's counsel's interest to settle a claim quickly or close to the onset of litigation if they have a financial interest in the medical billing associated with the claim. And while this case permits claimant's counsel the opportunity to obtain a fee on indemnity only cases, it does not resolve the issue as to how the providers will recoup that fee. As such, employers and insurers, and their counsel, should prepare to face additional fee review litigation until the court specifically addresses a provider's vehicle (if any) to recoup the payment, as well as increased medical bill costs should the court not permit recoupment. ◆

Alana works in our Pittsburgh, Pennsylvania, office.

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

Renee D. Severino, Esq.

Key Points:

- Asbestosis claims are usually considered to be on the lower end of settlements for asbestos law cases.
- A verdict of $25 million was returned by a jury in Philadelphia, where the last asbestosis case verdict was $957,000.
- Plaintiff's oxygen dependence likely factored into verdict amount—a factor that should be weighed in future asbestosis claims.

It's not a secret that many cases don't go to trial. We have reached an era of practicing law where it's easier to settle, to negotiate, to compromise, rather than go to trial. Pre-trial settlements and dismissals make life easier on both plaintiff and defense counsel, especially in the world of asbestos, where there can be dozens of defendants.

There are some asbestos cases that go to trial, but those are few and far between, especially in Pennsylvania. While trial dates and conciliations are scheduled, the majority of asbestos cases simply resolve, with all defendants either being dismissed or paying a settlement. (For frame of reference, there have been two asbestos trials in Allegheny County and three asbestos trials in Philadelphia County within the last five years).

Determining the value of a case depends on the disease process itself. For those not involved in asbestos law, there are three main diseases that usually crop up—mesothelioma, lung cancer, and asbestosis. The mesothelioma claims are valued the highest, then lung cancer, and then asbestosis cases. Whether someone was a heavy smoker or not can influence the value of a lung cancer claim. Obviously, there are nuances with every case. Some of these nuances for asbestos cases include the type of job the plaintiff performed, other comorbidities he or she may have had, age, and how long he or she worked at a facility. However, the important context to take away from this scale is that asbestosis claims are near the lower end of the settlement hierarchy.

With that in mind, we turn to the case of Richard Daciw. Mr. Daciw filed suit in the Philadelphia County Court of Common Pleas on May 2, 2019. Fifty-five entities were sued in the initial complaint, with an additional defendant added in an amended complaint.

Mr. Daciw was 76 years old. He alleged asbestos exposure from serving in the Navy as a fireman and shipfitter from 1965 to 1969; as a maintenance mechanic at Jeffries Processors in Philadelphia from 1969 to 1972; as a pipefitter and welder for Domino Sugar in Philadelphia from 1972 to 1983; as a welder at Allied Chemical for several months in 1983; and, in various maintenance roles at Smith Kline from

1983 to 2004.

Mr. Daciw was diagnosed with asbestosis by a treating pulmonologist in January of 2019. He had shortness of breath and difficulty breathing with activity. He also had chronic obstructive pulmonary disease and diabetes. An important medical note for Mr. Daciw was that he had become oxygen dependent due to his breathing troubles.

Mr. Daciw was deposed for several days and provided lengthy testimony about the products he worked with over his career. He identified various brands of gaskets, packing, pumps, valves, turbines, boilers, and cement as the products and equipment that allegedly exposed him to asbestos. Based upon Mr. Daciw's deposition testimony and his identification of these products, the case proceeded in the usual fashion—dismissals and settlements. However, not all defendants reached one of those resolutions.

John Crane, Inc., was the lone defendant in this instance who took this case to trial. As an asbestosis case, it was a likely thought that the risk should have been minimal. However, the results of trial would prove that the risk was anything but minimal.

Trial began on December 12, 2022, before Judge Ann Butchart. It would end on December 22, 2022, when the jury handed down a $25 million verdict. *Richard Daciw, et al. v. John Crane Inc., et al.,* 2022 WL 18232642 (C.P. Phila. Dec. 19, 2022). Richard Daciw was awarded $15 million in damages, and his wife, Winifred Daciw, was awarded $10 million in a loss of consortium claim. While John Crane, Inc., was the sole defendant trying the case, there were an additional 19 defendants on the verdict sheet. Twelve of these non-party entities were found to have no liability for Mr. Daciw's disease. John Crane, Inc., was found to be liable for asbestos exposure to Mr. Daciw and his subsequent asbestosis. Seven non-party entities were also found to be liable. The verdict sheet did not include how the $25 million would be apportioned.

The last asbestosis case that went to trial in Philadelphia County had a verdict of $957,000. In fact, the last mesothelioma case that went to trial there had a verdict of about $3.8 million. That is a difference of *$21 million* for a disease process that is considered by most asbestos attorneys to create higher-value settlements for plaintiffs. While it's impossible to know the full thought process, it is extremely likely that Mr. Daciw's physical state—oxygen dependence—induced sympathy from the jury.

With this most recent verdict, the usual approach to asbestosis cases needs to be taken with a grain of salt in Pennsylvania. While yes, the majority of asbestosis cases will probably continue to settle within usual ranges, attorneys and carriers alike need to be aware of the possibility that a push to trial could create a huge payday for a plaintiff, especially one with a health situation similar to Richard Daciw. A complete approach overhaul isn't necessary, but a little awareness will go a long way when it comes to asbestosis cases. ◆

Renee works in our Pittsburgh, Pennsylvania, office.

Can Felons Pursue Damages Against Their Providers for Their Criminal Conduct? The Pennsylvania Supreme Court Says No

Nicole E. Tanana, Esq.

Key Points:

- Pennsylvania Supreme Court recently evaluated the no felony conviction recovery rule.
- No felony conviction recovery rule bars medical malpractice and indemnification claims brought against murderer's medical providers.

Recently, the Pennsylvania Supreme Court evaluated the no felony conviction recovery rule in the context of a quadruple murderer. In *DiNardo v. Kohler, et al.,* 304 A.3d 1187 (Pa. 2023), the Pennsylvania Supreme Court held that the no felony conviction recovery rule barred medical malpractice and indemnification claims brought against murderer's medical providers.

Cosmo DiNardo, who suffers from various mental health illnesses and conditions, including bipolar disorder, schizophrenia, and schizoaffective disorder, confessed to killing four individuals and pleaded guilty to four counts of first-degree murder. Subsequently, DiNardo, through an agent, filed a complaint against his treating psychiatrist and mental health care providers, alleging that his criminal conduct was the result of his psychiatrist's grossly negligent treatment.

DiNardo sought compensatory damages, indemnification for judgments levied against him by his victims' families, and counsel fees. As to compensatory damages, DiNardo sought recovery for "severe emotional distress and physical pain" for: (1) living with the knowledge that he murdered four individuals; (2) knowing his family's businesses suffered irreparable harm due to his actions; (3) knowing his family will bear the costs of litigation and judgement due to the murders; and (4) knowing he will spend the rest of his life in state prison.

Mr. DiNardo's providers filed preliminary objections to his complaint, seeking to have the complaint dismissed as a whole. The trial court sustained the preliminary objections as to DiNardo's request for indemnification and counsel fees, but overruled the preliminary objections as to DiNardo's medical malpractice claims. The Pennsylvania Superior Court affirmed the trial court's ruling as to DiNardo's request for indemnification and counsel fees, reversed the trial court's ruling on his medical malpractice claims, and dismissed the complaint in its entirety. The Pennsylvania Supreme Court granted allowance of appeal with respect to the following issue: "Does the 'no felony conviction recovery' rule preclude the award of any civil damages or relief where [DiNardo] alleges that [he] would not benefit or profit from his own criminal acts, but rather would be compensated for alleged malpractice

relating to the crimes for which he pleaded guilty to?"

The no felony conviction recovery rule is a common law principle, that a person should not be permitted to benefit from their own wrongdoing. The Pennsylvania Supreme started with the well-established premise that psychiatrists and psychologist are subject to liability for malpractice or professional negligence, including negligence related to treatment or lack thereof. However, the court then acknowledged that case law "firmly establishes" that persons convicted of serious crimes must bear the losses stemming from their criminal actions and public policy will not permit the responsibility for these losses to be shifted to others. Highlighting decisions from outside the Commonwealth, the court noted that other state courts routinely bar plaintiffs from seeking damages sustained as a result of their own criminal conduct, and courts are "virtually unanimous" in rejecting a patient's attempt to shift responsibility for their criminal actions onto their psychiatrist or other healthcare providers.

There are several public policies which are the basis for the no felony conviction recovery rule. The bedrock public policy is that injuries that arise from volitional criminal conduct should not provide a basis for a recovery in a civil action based in tort. The Supreme Court stated that allowing such a civil action would impact the criminal justice system and the public's perception thereof, as the goal of finality and allocation of responsibility would be undercut by allowing such a civil action. The court also recognized the potential detrimental effects on the practice of psychiatric medicine, stating:

> Allowing the recovery of damages from a mental healthcare provider for a patient's criminal conduct could undermine trust between the patient and psychiatrist; encourage psychiatrists to refuse to treat, or avoid treating, certain patients; spur institutionalization and excessive medication out of concern for financial liability should patients be released from care and commit crimes; and would not respect the difficulty mental healthcare professionals face in predicting whether an individual poses a risk of violence.

Finally, the court acknowledged that such civil actions would have a financial impact by potentially increasing health care costs if medical providers "became "guarantors" of the financial costs of the crimes committed by their patients.

With all of these public policies considerations in mind, the court held that the no felony conviction recovery rule bars an individual from maintaining a tort action for damages that are sustained as the direct result of his volitional serious criminal acts and prohibits the person from recovering for losses which flowed from such acts. Regardless of whether the damages sought are considered profit, compensation, or a benefit, a criminal is barred from recovering damages that flowed from his criminal conduct.

This ruling creates another avenue for seeking dismissal of a plaintiff's claims against a medical provider, particularly mental health professionals, at the preliminary objection stage of a proceeding. Further, the court's consideration of the various public policy considerations may lead to the creation of additional novel arguments based on the same or similar public policy considerations, which may provide another avenue to seek the dismissal of a health care provider. ◆

Nicole works in our Scranton, Pennsylvania, office.

Splitting the Road: Navigating Uninsured Motorist Coverage of Divorced Spouses

Kathleen A. Carlson, Esq.

Key Points:

- In Florida, a divorced or separated spouse of an auto insurance policyholder may be entitled to uninsured or underinsured motorist (UM) benefits under their former spouse's auto policy.
- The issue arises when the spouses divorce (or separate) and establish separate residences but do not remove the divorced or separated person from the policy.
- Result will be heavily dependent on the facts and terms of the policy.

Is the divorced or separated spouse of an auto insurance policyholder entitled to uninsured or underinsured motorist (UM) benefits under their former spouse's auto policy? Surprisingly, maybe.

Often an insurance policy issued to married spouses will list a single individual as the named insured and the other spouse as another insured or operator. An issue arises when the spouses divorce (or separate) and establish separate residences but that person is not removed from the policy. Certainly, the carrier did not intend for one personal auto policy to apply to multiple households. The policyholder is likely not even aware of the potential consequence.

When separation or divorce is not reported to the carrier, the carrier has no way of independently knowing. As a result, insurers may continue affording UM coverage to the divorced spouse, believing they are still a member of the policyholder's household. The carrier's first notice of the divorce/separation may not even occur until the case is in suit and discovery is underway.

Availability of UM coverage for the divorced or separated spouse is heavily dependent on facts and the terms of the policy. So, it is important to determine if the individuals and autos are covered.

Outside of the named insured policyholder, for example, UM coverage may be afforded to a permissive user, resident relative, or household member. This policy language is important, as it is possible for a divorced or separated spouse to be considered a household member of the policyholder. This is because exclusory policy terms, such as "resident relative" or "household member," must be construed as liberally as could reasonably be permitted under common use to give effect to the intentions of the parties and the purposes of insurance. *Row v. United Services Auto. Ass'n,* 474 So. 2d 348, 349 (Fla. 1st DCA 1985).

The test to determine if an individual is a member of the household is physical absence with no intent to return to the household. *Sanders v. Wausau Underwriters Ins. Co.,* 392 So. 2d 343, 344 (Fla. 5th

DCA 1981). Most of the Florida case law applying this residency/intent test is in the context of adult children and children of divorced parents, but is it easy to see the parallels if applied to a separated spouse? In *American Security Insurance Co. v. Van Hoose,* 416 So. 2d 1273 (Fla. 5th DCA 1982), the court held that a father and daughter were not members of the same household, even though the father provided a substantial amount of financial support to the daughter, but she lived in a different home. Importantly, the court recognized that a joint-household is not established just because one household is dependent on the other for support.

Outside of Florida, the same residency/intent standard has been applied to separated and divorced spouses. Although other state law is not binding on Florida, the out-of-state courts' analyses demonstrate that the common theme throughout the case law concerning divorced spouses turns on residency and the parties' intent to return to the relationship/household.

In some states, it is well-established law that a divorced spouse who does not reside with the policyholder is not a member of the policyholding spouse's household. *See e.g., Crews v. Allstate Ins. Co.,* 373 S.E.2d 782 (Ga. App. 1998); *Johnson v. Payne,* 549 N.E. 2d 48 (Ind. App. 1 Dist. 1990). Similarly, in cases where the spouses are separated and not yet legally divorced, courts in many states consider the physical residency and the status of the relationship. *See, e.g., Ledet v. Leighton,* 736 So.2d 854 (La. Ct. App. 3d Cir. 1999); *United Services Auto. Ass'n v. Akers,* 729 P.2d 495 (Nev. 1986); *Wall v. Heritage Mut. Ins. Co.,* 446 N.W.2d 75 (Wis. Ct. App. 1989); *GEICO Casualty Company v. Collins,* 371 P.3d 729 (Colo. App. 2016).

However, even if the former spouse is not a household member, there is still the potential for coverage under the policy depending on the vehicle occupied when the loss occurred. If the vehicle is listed on the policy, coverage may extend to the divorced spouse as a permissive user of the vehicle. In this instance, it is important for the carrier to determine if the vehicle garaging and residential information is accurate.

If a divorced spouse who resides outside of the policyholder's home owns the vehicle and that vehicle is not listed on the policy, there may not be coverage to the divorced spouse. Similarly, if a divorced/separated spouse is traveling in a ride-share vehicle, like Uber or Lyft, it may be excluded by a covered or owned auto provision.

These situations are heavily dependent on specific facts and policy language. This issue can be easily overlooked. Once the carrier learns the former spouse is divorced from the policyholder, the carrier should gather the facts to evaluate the situation and potentially seek judicial clarification on the matter through a declaratory action or other appropriate filing. ◆

Kathleen works in our Jacksonville, Florida, office.

The Attorney as a Knight: Upholding Duties to the Law and Clients

Taha K. Onal, Esq.

Key Points:

- Pennsylvania Superior Court recently examined a wrongful use claim.
- Attorneys are not liable for wrongful use as long as they believe that there is a chance, however slight, that their clients' claims will be successful.
- Attorneys may also safely act upon the facts stated by their clients.

The Pennsylvania Superior Court celebrated the new year with a primer on wrongful use claims. In a recent decision, *Bauer v. Damon,* 2024 WL 277816 (Pa. Super. Jan. 25, 2024), the Superior Court analyzed a claim of wrongful use of civil proceedings under the Dragonetti Act. The plaintiffs claimed that the defendants lacked probable cause and acted with improper purpose in initiating and continuing a debt collection against them. The trial court stated that it had a difficult time ascertaining the nature of the plaintiffs' claims of error and held that those claims had been pled with such vagueness as to warrant waiver. On appeal, the Superior Court refused to find waiver but did affirm the trial court's decision.

In the underlying action, the plaintiff, Berks Transfer, Inc., brought claims of breach of contract, unjust enrichment, and fraud against Keystone Waste Disposal, LLC. The plaintiff further named Keystone's individual owners, as well as a company owned by one of the owners, as defendants. The trial court held that the relationships between the individual defendants and Keystone had been complicated enough to justify inclusion in the underlying action, despite the plaintiffs' protests to the contrary.

The plaintiffs alleged that the underlying defendants added the individual owners as defendants purely for leverage, as those owners did not own Keystone at the relevant time. However, the plaintiffs did not allege that the defendants knew or should have known this at the time.

What constitutes a wrongful use claim? Attorneys are not liable for wrongful use as long as they believe that there is a chance, however slight, that their clients' claims will be successful. Attorneys may also safely act upon the facts stated by their clients. Otherwise, effective advocacy would be difficult indeed.

One defendant argued that he could not be liable for wrongful use because he was a defendant in the underlying action, rather than a plaintiff. The Superior Court did not address this argument, but the point is

an interesting one. Considering that Dragonetti claims may involve a tangled web of parties as a matter of course, it would be illuminating to see how Pennsylvania courts address similar questions.

An attorney defendant for Berks Transfer also requested attorneys' fees in this action, arguing that it could not have been liable for wrongful use because it was not involved in the underlying action. Superior Court precedent states that a Dragonetti claim may not be maintained by one who is not an original party to the underlying action. Because the instant appeal was allegedly frivolous, the attorney defendant claimed a right to attorneys' fees under the Pennsylvania Rules of Appellate Procedure. The Superior Court held that the instant appeal did not meet the required standard, even though the plaintiffs failed to allege a sustainable wrongful use claim. This distinction—the space between a failure to state a claim and the claim itself being frivolous—is an important one.

An attorney may provide fierce advocacy for his clients in pursuit of a less-than ironclad claim without committing wrongful use. Similarly, an attorney's appeal may fail to state a claim without necessitating an award of attorneys' fees. Attorneys must use their best judgment in order to uphold their duties to the law, the courts, and their clients. In other words, they must balance their duties in accordance with the standards of their profession while pursuing their clients' interest. If duties to the law represent his suit of armor, protecting the legal system from vexatious conduct, then duties to a client represent his sword, championing his client's rights and interests in the courtroom. An effective attorney requires both to succeed.

It should be noted that a Dragonetti claim requires that a person take part in the procurement, initiation, or continuation of civil proceedings in a grossly negligent matter or without probable cause and *primarily* for an improper purpose. While this Superior Court decision does not break from established precedent, it is an effective case study of wrongful use claims. Gross negligence is a high standard to meet, requiring the lack of even the slightest diligence or care, a reckless disregard of a legal duty and of the consequences to others. Ideally, most attorneys acting in any reasonable capacity would not meet that standard. Of course, this is not always the case—professional liability actions persist.

This case also highlights the importance of proper pleadings. Attorneys must take care to state claims that are plausible on their face if they are to effectively fight for their clients. Otherwise, they risk riding out into battle unarmed. As we move through this new year, attorneys should take note of these lessons. ◆

Taha is an associate in our Philadelphia, Pennsylvania, office.

Waiting on a Workers' Compensation Lien Reimbursement in New Jersey? You May Have to Wait a Little Longer. Section 40 and the Timeline for Satisfaction

Adam J. Huber, Esq.

Key Points:

- The New Jersey workers' compensation statute and applicable case law protects employers' worker's compensation lien rights against an injured worker's third-party recovery.
- An employer can perfect its lien by providing notice to the third party that there is a worker's compensation action; Perfecting the lien obligates the third party to inquire about and satisfy the statutory portion of the employer's lien prior to paying the third-party proceeds to the injured party.
- The statute does not require either the third party or the injured worker to make payment on its lien immediately following payment of third-party proceeds, rather, this obligation waits until the lien amount is set.

In *New Jersey Transit Corp. v. Darshelle Joseph,* 2024 WL 1172784 (NJ Super. App. Div. Mar 19, 2024), the New Jersey Appellate Division addressed a court order denying an employer's application for satisfaction of a workers' compensation lien. The Division found that an employer cannot recover on its workers' compensation lien until that amount is set. The Appellate Division's decision impacts an employer's timely right to compensation of their lien under Section 40 of the New Jersey workers' compensation statute.

Darshelle Joseph was involved in a compensable work injury on October 23, 2019. Mr. Joseph later filed a workers' compensation, claim alleging permanent disability. Mr. Joseph also filed a third-party action against the alleged responsible party in the underlying incident.

New Jersey Transit's carrier sent a letter to Mr. Joseph dated November 11, 2019, informing him of its right to recover on money paid as a result his workers' compensation claim. The carrier also requested that Mr. Joseph notify them whether he retained counsel to represent him in his third-party action.

The carrier ultimately paid a total of $7,112.90 in workers' compensation benefits as a result of Mr. Joseph's work injury. Mr. Joseph resolved his third-party claim in December 2021 for $14,000. Mr. Joseph's attorney in the third-party action disbursed the settlement minus the attorney fee of $4,661.63 and $15.10 for costs. Mr. Joseph's net was $4,676.73. The workers' compensation case remains unresolved.

Following the third-party resolution, New Jersey Transit filed a verified complaint and order to show cause seeking reimbursement of its worker's compensation lien. The parties argued their respective points, and the court subsequently denied New Jersey Transit's request as premature. New Jersey Transit appealed that decision, and the Appellate Division took the appeal.

The Appellate Division recited the relevant parts of Section 40 of the New Jersey workers' compensation statute. It noted that in the event of an injured worker's third-party recovery, the employer shall be entitled to recover if the amount the injured worker obtains from the third-party action is equivalent to or greater than the workers' compensation lien and on the amount that exceeds the attorney fee on the third-party action and the costs associated with that action. The Division also noted that the statute provided that, if the employer provides notice of its workers' compensation lien to the third party prior to third-party payment on a suit, the third party then has the duty to inquire prior to making any payment of the amount of the workers' compensation lien and the obligation for payment.

New Jersey Transit argued that it was entitled to reimbursement on its statutory workers' compensation lien immediately upon the third-party action being resolved. It further argued that this is required regardless of the status of the workers' compensation action in question.

The Division noted that Section 40 of the statute, which covers third-party recovery, was enacted to guard against double-recovery. Section 40 provides a statutory lien in favor of an employer that attaches against an injured worker's third-party recovery. This right to reimbursement depends on an injured worker realizing recovery on a third-party action. The Division also noted that while the statute outlines when and under what conditions an employer can recover on its lien, the statute does not provide a specific timeline on when this recovery takes place. However, it notes that the amount of the employer's lien cannot be determined until the workers' compensation benefits paid is finalized.

The Division went on to discuss that, if the employer perfected its lien and notified the third party regarding the workers' compensation lien, then the third party, as outlined above, would be obligated to satisfy this portion of the lien prior to making payment on the third-party action. The Division reinforced the section of the statute wherein workers' compensation liens attach the third-party recovery. However, the Division cited case law supporting that notice of and perfection of the lien is not required in order to attach Section 40 lien rights to a injured worker's third-party recovery. Perfecting the lien obligates the third party to consider the employer's lien and make payment on that lien prior to making third-party payment to the injured party.

However, none of this requires either the third party or the injured worker to satisfy the employer's Section 40 lien rights immediately following recovery on its third-party action. In fact, the parties are unable to know the extent of the employer's lien amount until that amount is finalized. Regardless, the Division reinforced that the employer's right to third-party recovery enjoys great protection. The Division, therefore, remanded the case back the trial court so steps could be taken to reinforce the employer's lien rights either via a third-party fund being held by the court or deposited into an attorney trust account until such time that the workers' compensation action is resolved.

This case reinforces the employer's right to recovery on its workers' compensation lien against an injured worker's third-party recovery if that recovery is equal to or greater than the workers' compensation lien. This decision also provides guidance to an employer regarding its right to recovery in the event the lien is perfected or not. ◆

Adam works in our Mount Laurel, New Jersey, office.

ON THE PULSE

Practicing Law in "The Heart of It All"

David E. Williamson, Esq.

The state of Ohio refers to itself as "The Heart of It All" because of its central location—highlighting the fact that approximately half the population of the United States is located within 500 miles of the state capital in Columbus, which is roughly half a day's drive. In that same vein, the Cincinnati office of Marshall Dennehey offers a geographic advantage to the firm, the ability to provide service to clients in multiple jurisdictions which are just a short distance from a central location.

The Cincinnati office sits in the middle of the tri-state area of Ohio, Kentucky, and Indiana. The physical office is in the business district of downtown Cincinnati, across the street from Paycor Stadium (Cincinnati Bengals), a few blocks from Great American Ballpark (Cincinnati Reds), a few blocks from crossing the Ohio River into Kentucky, and a short drive west to Indiana.

The office is the firm's westernmost location, our "southern Ohio" office, with Cleveland being the "northern Ohio" office. These two offices are able to service any client's needs throughout the entire state of Ohio, and we have the ability to defend cases in both state and federal courts throughout the state.

The Cincinnati office also represents clients on a statewide basis throughout the Commonwealth of Kentucky. There are multiple lawyers in the office who are able to defend cases in all state and federal courts throughout the entirety of the Commonwealth of Kentucky. We are excited about the prospects of our office's ability to expand our firm's presence in the Commonwealth as we continue to add lawyers to our roster. And the office also has the ability to handle cases in the state of Indiana.

Cincinnati is one of the firm's newer offices, opening in May 2014, and is celebrating its tenth anniversary this year! It was opened by Ray Freudiger and the late Sam Casolari, and our attorneys have represented clients since that time in both casualty and professional liability matters. Although it is one of the firm's smaller offices, it has seen recent growth, and there are opportunities and aspirations for further growth in both numbers and geographic coverage.

The strength of the Cincinnati office is its diverse ability to handle a wide range of cases across the multiple jurisdictions listed above, including: general liability; professional liability; automobile liability; insurance services (coverage and bad faith litigation); commercial litigation; insurance agent and broker liability; premises liability; product liability; fraud/special investigation; real estate E&O liability; trucking and transportation liability; catastrophic injury; public entity and civil rights litigation; school leaders' liability; architectural, engineering and construction defect litigation; hospitality and liquor liability; and health care liability. And the list goes on.

The lawyers in Cincinnati take pride in their strong work ethic and willingness to do whatever is necessary to deliver excellent results for our clients. They are well-suited to determine the needs of any particular case, work together to determine the lawyer and staffing who are best-equipped to handle each case, develop a plan for a successful result, and then work to achieve that result.

The Cincinnati office has been growing and aspires to additional growth. We added a new associate in the professional liability department within the last year, and we are actively looking to add another associate, as our case volume has shown a steady increase. We continue to strive to further grow our office by spreading the word to lawyers in our geographic market that Marshall Dennehey has the best business model for lawyers who do what we do—defend lawsuits. Onward and upward!

We welcome you to visit us if you are in the area. We will be sure to treat you to our local delicacies: Graeter's ice cream (universally regarded as some of the best there is, if not the best) and Skyline Chili (we will let you make your own assessment). We think they are both worth the drive, if you are lucky enough to be part of the population who can make it here in less than half a day. ◆

David is the managing shareholder of our Cincinnati office.

Marshall Dennehey Named to BTI Consulting's Client Service A-Team 2024

Read more about it ***here***!

ON THE PULSE

Disciplinary Board Representation Practice Group: Trust the Process

Josh J.T. Byrne, Esq.

While everyone likes surprises, not all surprises are well-liked, and this is especially true if you receive notification from a state disciplinary board that your actions have been reported as violating the code of conduct governing your profession. Should you receive notification from a disciplinary board, court, or agency that you are being reported or investigated for potential violations of the code of conduct governing your profession, turn to Marshall Dennehey.

Our attorneys are well-versed in the procedures and process of defending attorneys and professionals from allegations of ethics violations, and we understand the delicate balance between vigorously contesting discipline and accepting responsibility for errors that is required in this area of practice.

We defend and advise all manner of licensed professionals facing potential professional discipline before the disciplinary boards, courts, and/or agencies in Pennsylvania, Ohio, New York, New Jersey, Connecticut, Delaware, and Florida.

In addition to lawyers and judges, we represent accountants, realtors, property managers, medical professionals, and more. As a trusted leader in this area of law, clients can rely on the depth of our experience defending these matters, combined with our physical office presence in each of the above jurisdictions.

In Pennsylvania, shareholders, Alesia Sulock, Aaron Moore, Jay Rothman, and myself, primarily handle disciplinary board cases in the eastern part of the state, while shareholder, Scott Eberle, handles matters in the west. Additional shareholders overseeing and managing this litigation are Andrew Marchese in Florida; Howard Mankoff and Will Waldron in New Jersey; and Nicholas Chrysanthem in New York.

Our ability to collaborate on legal strategy and coordinate defense efforts between our respective offices allows our clients to realize significant cost-savings. We facilitate timely outcomes in disciplinary matters so that our clients can continue their professional activities with minimal interruption. Our goal is to effectively advocate for clients throughout the disciplinary process, while also being cognizant of the clients' cost and time expenditures.

We are regularly able to achieve outcomes in disciplinary matters which prevent the allegations from becoming public, either succeeding in having claims dismissed at the pre-complaint stage or achieving private discipline. Recent results we have obtained on behalf of clients include the dismissal of an ethics grievance; dismissal of a disciplinary complaint involving IOLTA funds; the successful representation of an attorney at the center of an ethics investigation; the negotiation of a private reprimand for a client; and more.

We welcome the opportunity to work with you in addressing any disciplinary matters that you may be faced with. We will strive to ensure that your options are understood and your interests are protected as we navigate the process together. ◆

Josh works in our Philadelphia, Pennsylvania, office.

ON THE PULSE

Recent Appellate Victories

Walter Kawalec (Mount Laurel, NJ) succeeded in obtaining a reversal by a panel of the New Jersey Superior Court, Appellate Division, on an interlocutory appeal. We sought review of an order granting discovery sanctions and denying reconsideration of that sanction's order. The plaintiff claimed to have been injured in a hole in the parking lot at his work. His employer leased the location under a triple-net lease, which placed on the employer full responsibility for property maintenance and repair. The plaintiff sought in discovery to obtain tax return documents from the owner, among additional documents, which he hoped in vain would demonstrate some retained duty by the owner. When the plaintiff was dissatisfied with the answers to the discovery requests, he sought sanctions, which the trial judge granted. We successfully argued that this was an abuse of discretion (as was the denial of reconsideration) because the tax documents had to be first reviewed in camera; because we had fully answered the plaintiff's discovery requests, although he was dissatisfied with the answers; and because the production of other documents merely needed a confidentiality agreement. The Appellate Division reversed the sanction order and remanded for further proceedings. *Moore v. RE Associates, LLC*, 2024 WL 1161734 (App. Div. Mar. 19, 2024)

Walter Kawalec (Mount Laurel, NJ) obtained an affirmance by a panel of the New Jersey Superior Court, Appellate Division, of the dismissal of a complaint, seeking insurance coverage for damage to an in-ground swimming pool after a storm. The plaintiffs had sought coverage for damage to their roof and the partial collapse of the pool. The carrier's engineering inspection disclosed that the cause of the pool collapse was excessive hydrostatic pressure from the rainfall during the storm. The claim for the pool was therefore denied because the policy did not provide coverage for damage caused by ground water. The carrier paid on the claim for the roof damage in October 2020. Because the policy contained a provision requiring that suit must be brought within 12 months of the loss (although tolled during the coverage investigation), the carrier sought to dismiss the plaintiffs' subsequent compliant, which alleged breach of contract and bad faith for the denial of the pool claim because it was brought more than 12 months after the carrier disclaimed coverage for the pool damage. The Appellate Division affirmed the dismissal of the claim as time barred, rejecting the plaintiff's arguments for extending the time to file the complaint. *Drevs v. Metro. Pro. & Cas. Ins. Co.,* 2024 WL 1461740 (App. Div. Apr. 4, 2024).

Kimberly Berman (Fort Lauderdale, FL) succeeded in obtaining a per curiam affirmance in the Fifth District Court of Appeal of an order declaring the children dependent due to their father's drug use and overdose in front of his children. Kimberly served as pro bono counsel for the statewide Guardian ad Litem program and represented the interests of the child as part of the Defending Best Interests Project. *S.M. v. Dep't of Children & Families*, 5D23-3142 (Fla. 5th DCA Feb. 1, 2024).

Kimberly Berman (Fort Lauderdale, FL) succeeded in convincing the Fifth District Court of Appeal to quash an amended discovery order to compel a church to identify church members and produce membership lists in a suit for exploitation, theft, conversion, declaratory relief, and other causes of action brought by a church member against the church. The court agreed with Kimberly's arguments that the trial court's order was

ON THE PULSE

Recent Appellate Victories (cont.)

deficient in that it failed to address the church's claims of associational privilege under the First Amendment and that there was a disputed issue below as it related to the incorporation status of the church. *St. Paul's Catholic Church v. Hilt,* 380 So.3d 1270 (Fla. 5th DCA Mar. 1, 2024).

Audrey Copeland (King of Prussia, PA) persuaded the Third Circuit to affirm the Pennsylvania district court's grant of summary judgment as to various claims by the plaintiff, a former chief deputy sheriff, alleging retaliation and discrimination based upon sex, political beliefs and the First Amendment, in favor of our firm's clients. Because the plaintiff failed to allege causation and to show that reconsideration was warranted, the district court's dismissal of her First Amendment claim and denial of her motion for reconsideration were affirmed. The Third Circuit affirmed the district court's disposition of the remaining claims because, even assuming the plaintiff established a prima facie case, the defendants provided a legitimate reason for her termination, which the plaintiff failed to show was pretextual. *Fritz v. County of Westmoreland, et al,* 2024 WL 808970 (3d Cir. Feb. 27, 2024)

Ralph Bocchino and **Shane Haselbarth** (both of Philadelphia, PA) were successful in obtaining an order to move a very volatile case out of Philadelphia. This was a sexual assault case where, at first, the venue appeared prima facie good for Philadelphia until Ralph and Shane did a deep dive into the service and found one defendant (the one holding the case in the city) was never served and could not be found. As a result, the case is being transferred to Lackawanna County. **Ralph** and **Shane** were also successful in obtaining an order to move a case out of Philadelphia. This case was a wrongful death and survival action that was filed in Lackawanna County for discovery before a complaint was filed inPhiladelphia. The plaintiff had sustained very severe injuries in a head-on car crash with a tractor trailer that led to his death. Shane filed a motion to consolidate and transfer the case based on Rule 213, which Judge Bright of the Philadelphia County Court of Common Pleas granted.

Elizabeth Driscoll (New York, NY) secured a victory in the New York Appellate Division, First Department. Following oral arguments, the court unanimously affirmed the lower court's decision, which denied a medical provider's Article 75 petition to vacate a master arbitration award. The court held that the Supreme Court correctly denied the petition to vacate the master arbitration award, as neither the lower arbitration award nor the master arbitration award were irrational and neither contained errors of law or fact. ◆

Walter Kawalec | Kimberly Berman | Audrey Copeland | Ralph Bocchino
Shane Haselbarth | Elizabeth Driscoll

ON THE PULSE

Defense Verdicts and Successful Litigation Results

CASUALTY DEPARTMENT

Benjamin Goshko and **Seth Schwartz** (both of Philadelphia, PA) were successful in having two consolidated cases transferred from Philadelphia County to Cumberland County. The cases concerned two alleged falls by construction workers at a construction site in Mechanicsburg, Cumberland County. Our clients are located in Lancaster County. The only codefendant is located in Philadelphia County. We filed preliminary objections as to venue, arguing that the codefendant Contractors was a "phantom" defendant, likely the plaintiffs' statutorily immune employer, and that the plaintiffs had vexatiously named the codefendant merely to obtain venue in Philadelphia County. The plaintiffs opposed our preliminary objections, arguing they had taken a default judgment against the codefendant so it could not avail itself of any immunity. The court was convinced by our arguments. This ruling cuts against the current trend giving broad deference to plaintiffs on venue issues.

Matthew Gray (Melville, NY) successfully defended and secured dismissal of a New York no-fault arbitration matter. The applicant, a major medical provider, filed an arbitration matter in the total amount of $95,172.11, claiming our client owed it for the claimant's unpaid medical bills following a major motor vehicle accident. The claimant had been involved in the motor vehicle accident and sought payment for medical treatment for a series of treatments rendered post-accident. Counsel for the medical provider argued that the medical billing was never properly or timely denied, and, therefore, contended that payment of the claims was overdue. However, Matthew successfully argued at the arbitration hearing that the applicant's client failed to submit the medical billing in the requisite statutory timeframe. After arguments were heard, the arbitrator ruled in our client's favor, thereby dismissing the matter based on the applicant's total failure to timely and properly submit the requisite medical billing, saving our client on the entire demand amount, plus any potential incurred interest, costs, and attorney's fees.

Frank Madia and **Terrance Hill** (both of Orlando, FL) obtained a summary judgment on behalf of a large national retailer in a case in which the plaintiff slipped and fell on the premises. An employee had clocked out and was in the process of gathering his personal belongings from the front-end counter when he allegedly created a dangerous condition by dropping his "personal jug" of iced tea on the floor. Represented by Morgan & Morgan, the plaintiff was seeking damages for alleged injuries to her back, neck, and left knee. She had a significant, pre-existing component for all of her injuries and underwent left knee arthroscopic surgery to repair a torn meniscus along with a steroid injection. We argued that the retailer was not vicariously liable for the acts of the employee, who was "off the clock" at the time he dropped his "personal jug" of iced tea on the floor. The court held that "off duty employment" is a question of law since there was no genuine dispute of material fact as to whether the employee was "acting within the scope of his employment" at the time the alleged dangerous condition was created. A trial was set for April 2024, and the plaintiff's last demand was $650,000 before summary judgment was granted. ▸

ON THE PULSE

Defense Verdicts and Successful Litigation Results (cont.)

Fabrice Michel (New York, NY) obtained summary judgment in favor of his client in a third-party action involving a 2017 fire that began in our client's restaurant and spread to an adjacent bakery, causing significant property damage. Through a subrogation action, our client settled with the bakery's carrier in 2019. In exchange, the bakery's carrier agreed to indemnify our client "against any and all future claims brought by the bakery for uninsured losses." Following settlement, the bakery brought suit against our client's landlord for uninsured losses. The landlord then filed a third-party action against our client and the bakery's carrier. We filed for summary judgment against the bakery's carrier seeking defense and indemnification pursuant to the 2019 settlement agreement. The bakery's carrier opposed our motion, arguing the settlement agreement's indemnity provision only applied to claims made by the bakery against our client and since our client's landlord—and not the bakery—brought the direct action against our client, we were not entitled to indemnification or defense. The court was convinced by our arguments and held that the bakery's carrier's interpretation of the "Indemnity" provision as limiting the breadth of its obligations to indemnify was unpersuasive and uncompelling.

Christopher Power (Melville, NY) obtained a directed verdict from a Suffolk County judge on a slip and fall case against a restaurant located within a Saks Fifth Avenue store. It was raining on the date of the accident. The plaintiff alleged that she opened the door to the restaurant, took four steps inside, and slipped and fell on water that she claimed workers brought in from outside. The plaintiff had a laminectomy as a result of her fall. After the plaintiff's deposition, Saks Fifth Avenue discovered a surveillance film showing the plaintiff taking one step into the restaurant and slipping and falling. The film was shown to the jury. At the close of the plaintiff's case, Chris moved for a directed verdict, arguing the plaintiff failed to establish actual or constructive notice. The plaintiff testified at trial that she did not notice any water on the floor when she entered the restaurant. She could not testify that she knew workers brought the water into the restaurant. Chris further argued there was no constructive notice since the plaintiff could not testify if there was even, in fact, a wet area on the floor or how long it had been there. The judge granted Chris's motion, dismissed the case and dismissed the jury. ◆

Benjamin Goshko | Seth Schwartz | Matthew Gray | Frank Madia
Terrance Hill | Fabrice Michel | Christopher Power

ON THE PULSE

Defense Verdicts and Successful Litigation Results (cont.)

HEALTH CARE DEPARTMENT

David Tomeo, Victoria Pepe and paralegal **Karen Kankula** (all of Roseland, NJ) obtained a dismissal in the Superior Court of New Jersey on personal jurisdiction grounds. This was a multi-count complaint brought by a New Jersey-based medical laboratory against our client, an Arizona company which provides both medical services and health insurance to Arizona residents. The plaintiff argued that our client was amenable to suit in this state, asserting that our client had business interactions with the laboratory in New Jersey. In opposition, we were able to establish that, not only was such an assertion untrue, but also that any claims sent by the plaintiff to our client for testing services would have been processed in Arizona and that our client did not have any contacts—much less the constitutionally mandated minimum contacts—necessary for personal jurisdiction in New Jersey. In addition, finding that the plaintiff did not conduct any due diligence before filing suit and did not make any attempt to take jurisdictional discovery while the motion was pending, the court dismissed the action with prejudice in New Jersey, despite the plaintiff's argument that a dismissal without prejudice was appropriate, thus leaving to the courts of Arizona whether such a dismissal has preclusive effect in any suit brought there under these facts. ◆

David Tomeo | Victoria Pepe | Karen Kankula

ON THE PULSE

Defense Verdicts and Successful Litigation Results (cont.)

PROFESSIONAL LIABILITY DEPARTMENT

David Blake (Mount Laurel, NJ) obtained a hard fought defense verdict in a contentious fire loss case involving a total fire loss at a duplex owned by a single mother. The investigation revealed that the named insured did not reside in the home and, instead, rented the two units. Her story about residency shifted, to the point where she was being untruthful. The claim denial included application misrepresentations and issues related to the fact that the insured property did not meet the definition of a "residence premises," as the evidence supported she did not reside there. Ultimately, the court decided that the property did meet the "residence premises" definition. David was left to try the case based on material misrepresentations and tasked with convincing the New Jersey jury that a single mother, who paid her premium and suffered an accidental total fire loss, should be precluded from recovery because of misrepresentations relative to residency (which she continued to deny throughout trial). The jury disregarded the sympathetic plaintiff, believed the insured lied during the investigation and applied New Jersey insurance law on material misrepresentations as instructed by the court. The plaintiff had turned down $150K prior to trial.

John Gonzales (Philadelphia, PA), **Ashley Toth** (Mount Laurel, NJ) and paralegal **Dawn Duffin** (Philadelphia, PA) received a defense verdict in a Title VII/Section 1983 sexual harassment case against a municipality that was heard in the U.S. District Court for the Eastern District of Pennsylvania. The plaintiff alleged that she was subjected to a hostile work environment by a City official, and that the City failed to take appropriate remedial measures. The jury concluded that plaintiff failed to prove that she was sexually harassed after deliberating for just over an hour.

Allison Krupp (Harrisburg, PA) received a jury verdict in a breach of contract/statutory bad faith action that arose under a legal malpractice policy issued to a law firm by our insurance company client. The plaintiffs settled a malpractice claim set forth against them without our client's knowledge or consent. The insurance company then denied coverage for that claim, and the plaintiffs filed suit. Because the case included a bad faith claim, if the plaintiffs prevailed on both counts, the damages could have been seven figures or more. We took the case to trial before Judge Patrick in Philadelphia County. The jury returned a verdict on the breach of contract claim, finding that the plaintiffs failed to establish their damages by a preponderance of the evidence. The judge then dismissed the statutory bad faith claim. It is unclear at this point whether the plaintiffs will appeal. This was the first case this client has taken to trial as a defendant in its decades-long history.

Christopher Reeser and **Coryn Hubbert** (Harrisburg, PA) obtained summary judgment and dismissal of nine claims brought by an individual employer against two former employees and their new place of employment. The plaintiff, who owned an insurance business and a tax preparation business, alleged claims of breach of contract, breach of the duty of loyalty, tortious interference, violations of the Pennsylvania Uniform Trade Secrets Act, and other related claims against two former employees, one at-will and one independent contractor, and their new employer. The plaintiff was imprisoned for violations of insurance fraud and barred

ON THE PULSE

Defense Verdicts and Successful Litigation Results (cont.)

from continued participation in the business of insurance. While imprisoned, one defendant, an at-will insurance underwriter employee, sent a letter to the business's customers informing them that the plaintiff was no longer legally allowed to participate in the business of insurance. The plaintiff also alleged that the other individual defendant, a tax preparer and independent contractor, misappropriated trade secret information by taking a customer list with him to his new employer. Chris and Coryn argued on a summary judgment motion that the plaintiff lacked a trade secret interest over the customer list because the list was not a product of any special work on the part of the plaintiff's company, nor was it confidential. Chris and Coryn further argued that the plaintiff's remaining claims must be dismissed because the statements made in the insurance employee's letter were truthful—the plaintiff was no longer legally allowed to participate in the business of insurance—and the plaintiff, as an individual, lacked standing to bring a direct claim against the defendants on behalf of his business. The trial judge agreed and dismissed all of the plaintiff's claims against the three defendants, with prejudice, noting that the plaintiff's claims against all three defendants were meritless.

Ashley Toth and **Michelle Michael** (both of Mount Laurel, NJ) successfully defended a New Jersey state university in an employment discrimination case, obtaining a "no cause" verdict in a jury trial in Atlantic County, New Jersey. The plaintiff alleged she was terminated from her position as director of the university's performing arts center due to her age, gender, and/or in retaliation for reporting internal complaints of age/gender discrimination. She sought back pay, front pay, emotional distress, attorney fees, punitive damages, and costs. We argued that the plaintiff was not terminated for discriminatory/retaliatory reasons but, instead, was terminated as a result of mandatory COVID-19 closures necessitated by Executive Orders. Ultimately, the jury returned a verdict of "no cause" in favor of the university on all counts.

John Mueller (Mount Laurel, NJ) successfully obtained a partial motion to dismiss, resulting in the dismissal of the plaintiff's New Jersey Wage Payment Law (WPL) and promissory estoppel claims. This case was heard in the Superior Court of New Jersey, Essex County. John represented an IT consulting firm that was sued by a former consultant for $800,000 in unpaid revenue from our client's business development program that was conveyed in a pre-employment offer letter. John successfully argued that payments under the business development plan were not "wages" under the WPL and that the promissory estoppel claim failed in light of a written agreement. The dismissal of the WPL claim (with prejudice) was especially critical since it was also directed at the individual defendant CEO and contained provisions for treble damages and attorney's fees.

Jack Slimm and **Arthur Wheeler** (both of Mount Laurel, NJ) successfully defended an appeal in a complex series of legal malpractice actions arising out of an $11 million investment in an illegal venture in Brazil. The Appellate Division affirmed the trial court's order and opinion, which found that the plaintiff's economic loss expert had offered a net opinion in connection with what plaintiff would have earned from the illegal venture in Brazil. We established the plaintiff's knowledge of that illegality, which had been demonstrated in the previous legal malpractice action. Accordingly, the plaintiff's expert report was barred in the first legal malpractice action, the doctrine of collateral estoppel applied, and the Appellate Division affirmed the trial court's order, which barred the expert report in the second legal malpractice action. In addition, the Appellate Division agreed

ON THE PULSE

Defense Verdicts and Successful Litigation Results (cont.)

with our argument that the claims, in any event, were barred under the Doctrine of Invited Error because the plaintiff's fraud claims were based on the illegality of business operations in Brazil. The court found that profits derived from the illegal venture are worthless and cannot form the basis for a claim.

Jillian Dinehart (Cleveland, OH) won summary judgment in favor of her client, a former suburban mayor, after seven years of protracted litigation. The plaintiffs, a former police chief and lieutenant, sued the mayor, the City and the acting police chief for defamation following a press conference regarding possible criminal activity by the former police chief and lieutenant for alleged improprieties in their criminal investigation against the mayor. As background, in 2016, Jillian's client was arrested for domestic violence, but the criminal case was ultimately dismissed for lack of evidence and sealed. In 2017, after the police chief and lieutenant left their positions, the City found documents regarding the sealed charges against the mayor in their offices. This spurred an internal investigation into the police investigation into the mayor. The internal investigation found that there were significant deficiencies in the criminal investigation and that the former police chief and lieutenant likely obstructed justice as a result of these deficiencies. The outside prosecutor found that, although there was probable cause for an arrest, there likely was not enough evidence for a conviction. Because of the ongoing mayoral campaign at that time, the criminal charges and internal investigation were the subject of several public records requests. On the eve of releasing those public records, the City gave a press conference announcing that the former police chief's and lieutenant's investigation into Jillian's client was improper and possibly criminal. After the press conference, the police chief and lieutenant sued the mayor, the acting police chief, and the City for defamation and related claims. The court dismissed the action at summary judgment on both procedural grounds and on the merits, finding that none of the comments made in the press conference were false or disparaging. ◆

David Blake | John Gonzales | Dawn Duffin | Allison Krupp | Christopher Reeser | Coryn Hubbert | Ashley Toth
Michelle Michael | John Mueller | Jack Slimm | Aruthur Wheeler | Jillian Dinehart

ON THE PULSE

Defense Verdicts and Successful Litigation Results (cont.)

WORKERS' COMPENSATION DEPARTMENT

Benjamin Durstein (Wilmington, DE) was successful before the Delaware Supreme Court in a workers' compensation case where the court affirmed the decisions of the Industrial Accident Board (IAB) and the Superior Court. The court held that the employer correctly paid for ketamine infusion treatment in accordance with the Delaware Fee Schedule. As Ben argued, it was the claimant's burden—not the IAB's or the employer's—to present evidence regarding the adequacy of the billing codes utilized. The court directed the claimant to the Workers' Compensation Oversight Panel as the correct forum to address whether the Fee Schedule amount payable for treatment constitutes reasonable compensation.

Tony Natale (King of Prussia, PA) successfully prosecuted a termination petition on behalf of an international trucking company. The claimant suffered an underlying head injury with post-concussion syndrome after having an epileptic seizure while driving a company vehicle. Having been diagnosed with epilepsy after the accident, the claimant could never again possess a CDL license. He therefore doubled down on the theory that he was totally disabled due to his work-related head injury. After having the claimant examined by a neurologist, it was determined that he had fully recovered from the head injury. The claimant stood firm to the contrary and presented competing neurological testimony. When Tony cross-examined the claimant, two sets of "treating doctors" were established. First, the claimant identified his "legal doctors" and then his "primary care" specialists. When the claimant was forced by motion to the court to produce his primary care specialists' records, it was demonstrated that they contradicted the claimant's "legal doctor's" opinions. The court then issued a determination terminating the claimant's right to all ongoing benefits.

Michele Punturi (Philadelphia, PA) successfully prosecuted a termination petition for a delivery truck service company that involved a low back injury. Michele's evidence consisted of the cross-examination of the claimant and the testimony of a Board Certified orthopedic surgeon, who obtained an extensive history from the claimant, reviewed medical records/diagnostic study films, including an MRI of the lumbar spine, and completed a comprehensive physical examination. The defense expert opined the MRI failed to reveal any acute or post traumatic findings, that the claimant only sustained soft tissue lumbar sprain/contusion, and that no objective findings had been revealed during examination. The judge found the defense expert opinions were well supported and terminated all liability.

Rachel Ramsay-Lowe (Roseland, NJ) filed a successful motion to dismiss for lack of jurisdiction in New Jersey for a medical provider application. Rachel established that the medical provider was paid in accordance with the New York Fee Schedule, and she provided a court order from the New York workers' compensation board indicating that the bill must be paid in accordance with the New York Medical Fee schedule. Rachel argued that the court must honor the order from another state based on the full faith and credit clause since the order does not conflict with New Jersey workers' compensation law and the matter was already decided by another jurisdiction.

ON THE PULSE

Defense Verdicts and Successful Litigation Results (cont.)

Michael Sebastian (Scranton, PA) successfully defended against a claimant's petition alleging a low back injury. The MRI was normal, but the claimant had a positive EMG for radiculopathy. The claimant's expert testified that the injury consisted of low back pain with left leg radiculopathy, most likely at L4-5 and possible at L5-S1. During cross examination, this expert agreed that the claimant recovered from the lumbar strain. The defense expert initially issued a report finding that, based upon the EMG, the claimant sustained a lumbar strain with radiculopathy even though the MRI was normal. Michael had Dr. Noble, who is board certified in EMG studies, review the EMG report. He opined that one cannot diagnosis radiculopathy based upon the non-specific findings in the EMG and the findings support four levels of radiculopathy, which was impossible. Dr. Noble also disagreed with the claimant's expert that the claimant suffered a traction injury. Based upon Dr. Noble's report, our expert changed his opinion, now indicating that the claimant only sustained a lumbar strain and had fully recovered from the work injury. The workers' compensation judge found our expert credible, he awarded the claimant some indemnity benefits based upon his expert testimony and terminated the claimant's benefits, finding that the claimant only sustained a lumbar strain and had fully recovered. ◆

Benjamin Durstein | Tony Natale | Michele Punturi | Rachel Ramsay-Lowe | Michael Sebastian

ON THE PULSE

Other Notable Achievements

RECOGNITION

Stephanie Andrade (Fort Lauderdale, FL) has been selected by The Florida Bar Young Lawyers Division (YLD) as one of the top "36 Under Thirty-Six" lawyers in the state. The professionalism award was bestowed upon 36 honorees, all under the age of 36, who were vetted through a rigorous review and selection process. According to the YLD, recipients display the highest standards of professionalism and ethics, "their character and integrity remain unwavering, and their dedication to raising the bar in the legal profession is unmatched." Stephanie is a member of the firm's Casualty Department where she represents local and national clients in a variety of civil litigation matters.

Melanie Foreman (Philadelphia, PA) has been elected to the Board of Philadelphia Legal Assistance (PLA). PLA is dedicated to enforcing and protecting the rights of individuals and families by providing accessible, creative and high-quality legal assistance, and working collaboratively for systemic change. Melanie is also a board member of its sister organization, Community Legal Services (CLS), and co-chairs the CLS/PLA Development Committee.

Congratulations to **Michael Turner** (Philadelphia, PA) on being inducted as a Fellow into the International Academy of Trial Lawyers. The Academy's purpose is to cultivate the science of jurisprudence, promote reforms in the law, facilitate the administration of justice and elevate the standards of integrity, honor and courtesy in the legal profession. Membership in the Academy is highly selective and offered only to lawyers who have demonstrated skill and ability in jury trials, trials before the court, and in appellate practice, and to those who have attained the highest level of advocacy.

Congratulations to **Kacey Wiedt** (Harrisburg, PA) on his selection to the *Central Penn Business Journal's* 2024 Power List for Law! The honorees are some of the Central Pennsylvania region's most significant, influential, and respected leaders in their fields, as chosen by the CPBJ's editorial leadership team and readers. Learn more **here**. ◆

ON THE PULSE

Other Notable Achievements (cont.)

PUBLISHED ARTICLES

Kimberly Berman and **Gabrielle Wright** (both of Fort Lauderdale, FL) authored the article, "Where Are We Now? Punitive Damages Claims in Fla. 2 Years Post-Interlocutory Review Rule Change," which appeared in the *Daily Business Review*. Read the article **here**.

Dana Gittleman's and **Tim Ventura's** (both of Philadelphia, PA) article "Words Matter: Shielding Against UTPCPL Claims With Subjective Verbiage" was published on March 14 on PLUSBlog.com. You can read their article **here**.

Dana Gittleman also authored the article "Pennsylvania Strengthens Application of One-Year Statute of Repose Under Pennsylvania Home Inspection Law," appearing in the April 30, 2024, issue of PLUSBlog.com. You can read her article **here**.

Writing for *CLM Magazine*, **Jessica Wojcik Gordon** (Mount Laurel, NJ) and Michelle Leighton, AIC, partner and national claim advocacy & consulting leader at Conner Strong & Buckelew. Jessica and Michelle dive into the rise of artificial intelligence and its impact on workers' compensation claims handling. Read their article **here**.

Estelle McGrath's (Pittsburgh, PA) article "Lessons from Accountant's Age Discrimination Suit" was published in the Spring 2024 issue of the *Pennsylvania CPA Journal*. You can read her article **here**.

Jack Slimm's and **Jeremy Zacharias'** (both of Mount Laurel, NJ) article "Strategic Defenses to Appellate Malpractice Claims" was published on PLUSBlog.com on April 19, 2024. Read their article **here**.

Alesia Sulock and **Josh J.T. Byrne** (both of Philadelphia) published two articles recently. Their article "Risk Management in the Practice of Law" was published on February 27 on AttorneyProtective.com, which you can read **here**. On March 21, their) article "Restricting Restrictions: When Attorney Employment Agreements Run Afoul of the Rules of Professional Conduct," was published in *The Legal Intelligencer*. You can read this article **here**.

Ashley Toth (Mount Laurel, NJ) authored "Best Practices for Service Animals in the Workplace," which appeared in the *New Jersey Law Journal's Employment Law Supplement*. You can read the article **here**.

ON THE PULSE

Other Notable Achievements (cont.)

SPEAKING ENGAGEMENTS

Jack Slimm and **Jeremy Zacharias** presented at the Camden County Bar Association Civil Practice Update hosted by the Civil Practice Committee. Jack provided an update regarding recent civil cases in New Jersey, and Jeremy moderated the seminar, which included Judge Steven Polansky, the Civil Division Manager, and various practitioners in New Jersey.

Mohamed Bakry (Philadelphia, PA) was a featured speaker at the 2024 Federation of Defense & Corporate Counsel (FDCC) Winter Meeting in St. Petersburg, Florida. Mohamed, who also served as a host of the conference, was joined in a panel to discuss trending issues in leadership.

Mohamed Bakry and **Christina Gonzales** (both of Philadelphia) spoke at the 2024 DRI Life, Health, Disability, and ERISA Seminar in Philadelphia. Their panel delved into the intricacies of modern law firms and their clients in a thought-provoking dialogue, unveiling the art of integrating innovative methodologies with well-established practices in order to cultivate diverse, high-performing teams.

Heather Byrer Carbone and **Linda Wagner Farrell** (both of Jacksonville, FL) presented the webcast, “Motions to Dismiss and Motions for Summary Final Order,” for the The Florida Bar Workers’ Compensation Section.

Buck Buchanan, **Jessica Wachstein**, **Jeremy Zacharias**, and **Zac Ottoson** hosted the Rutgers Law Minority Student Program (MSP) for an interviewing skills workshop held in our Philadelphia office. The program featured a panel presentation regarding strategies for maximizing summer clerkship interviews, as well as how to succeed during a summer clerkship program. The event was the second in a series of events the firm is hosting in collaboration with the Rutgers SP program.

Josh J.T. Byrne (Philadelphia, PA) co-presented at the Montgomery Bar Association Women in the Law Committee’s seminar “The Importance of Civility in the Law.” This program provided attendees with the tools and information they need to ensure they are practicing with civility, responsibility, and professionalism while also avoiding ethical issues as they navigate cases with challenging opposing counsel, parties, and others.

ON THE PULSE

Other Notable Achievements (cont.)

Our Securities and Investments Professional Liability Practice Group took center stage at the Independent Broker Dealer Consortium, LLC 2024 Annual Risk Management Conference. **Samuel Cohen** (Philadelphia, PA), chair of the practice group, joined a panel to discuss protecting customers; **Gerard Kowalski** (Philadelphia, PA) explained the new expungement rule; and **Ryan Friel** (Philadelphia, PA) explored the differences between advisors and registered reps, and the types of claims each face.

James Cole (Philadelphia, PA) co-presented "This Is Jeopardy!!! Unfair Claims Practices" at the Property & Liability Resource Bureau's 2024 Claims Conference in Boston. He also presented "Untying Tangle Titles – How Property Insurance Drives Fraud" at the 2024 Pennsylvania Insurance Fraud Conference. This annual conference is hosted by the International Association of Special Investigation Units' Delaware Valley and Greater Pittsburgh Chapters and the Commonwealth of Pennsylvania's Insurance Fraud Prevention Authority.

Jack Delany (Philadelphia, PA) was a featured speaker at the 2024 Federation of Defense & Corporate Counsel (FDCC) Winter Meeting in St. Petersburg, Florida. Jack and fellow speakers addressed how challenges, problems, and even disasters at trial can be transformed into opportunities and, ultimately, successful outcomes for clients.

Elizabeth Ferguson (Jacksonville, FL) co-presented "The Ethics Escape Room: Finding the Way Out of Insurance Dilemmas" at CLM's Annual Conference in San Francisco, CA. Elizabeth also moderated a panel entitled "Views from the Bench: Complex Construction Litigation – Trials and the Run-Up" at The Florida Bar Real Property, Probate and Trust Law Section's Construction Law Institute in Orlando, Florida. She also spoke on "Design Liability" at the Construction Review Course that runs alongside the CLI.

Robert Fitzgerald (Mount Laurel, NJ) was a panelist for a presentation at the New Jersey Self Insurers' Association Annual Conference in Atlantic City. Bob joined a group of industry professionals to discuss hot topics in workers' compensation.

Ray Freudiger (Cincinnati, OH) gave a presentation to members of Housing and Development Law Institute (HDLI) General Counsel Forum on "The Challenges in Administering Sect 8 Project Based Vouchers." Joining Ray in the presentation was the CEO and General Counsel for Dayton Metropolitan Housing Authority. They discussed the jury defense verdict we won in federal court which was upheld by the 6th Circuit Court of Appeals.

John Hare (Philadelphia, PA) presented the annual Appellate Review seminar for the Pennsylvania Coalition for Civil Justice Reform. ▶

ON THE PULSE

Other Notable Achievements (cont.)

Kevin Hexstall (Philadelphia, PA) was a featured speaker at the Perrin Conferences asbestos conference. Kevin was part of a panel that presented "The Top Emerging Trends in Asbestos Litigation." Kevin and panelists addressed filing trends, hot and emerging jurisdictions, and defense-plaintiff coordination.

Rachel Insalaco (Scranton, PA) presented at the National Business Institute's CLE, "Pennsylvania Police Liability Claims: A Primer." Rachel's presentation addressed qualified, absolute, and state tort immunity implications in cases concerning police departments.

Matthew Keris (Scranton, PA) participated in the following presentations:

- At the National Medical Professional Liability Association's Dental Workshop in Savannah, Georgia, Matt presented "The New Liability Target: Forensic Patient Record Interactions."
- At the American Legal Connections webinar, he presented "Voir Dire of an EMR/Audit Trail Expert."
- At the DRI IRT Meeting in Chicago, IL, he was co-moderator of a roundtable on Social Inflation.
- At the Hospital Insurance Forum Annual Meeting in Scottsdale, AZ, he co-presented "Advice for the Efficient Integration of AI Into Medicine."
- At the AALNC (American Association of Legal Nurse Consultants) Annual Forum, he presented "Artificial Intelligence in Healthcare."
- At the American Association of Legal Nurse Consultants annual Forum, held this year in Pittsburgh, PA, he presented "Artificial Intelligence in Healthcare: An Introduction."

Michael Packer (Fort Lauderdale, FL) was a featured speaker at the ALM/Property Casualty 360 Complex Claims & Litigation Forum in Las Vegas. In "Under Oath: What Claims Professionals Need to Know to Conduct an Effective EUO," Mike focused on the most effective ways to prepare for and efficiently conduct Examinations Under Oath in both the personal lines and commercial lines context.

Jeffrey Rapattoni (Philadelphia, PA) presented an Ethics session at the Rocky Mountain Association of Special Investigators Annual Insurance Fraud Conference.

ON THE PULSE

Other Notable Achievements (cont.)

Bradley Remick (Philadelphia, PA) and his son, Griffin Remick, presented a product liability update at the Dispute Resolution Institute's annual Personal Injury Potpourri CLE.

Andrea Rock (Philadelphia, PA) was a panelist for a webinar hosted by the Workers' Compensation Section of the Philadelphia Bar Association. In "Got Pain? How to Recognize and Assess Pain Including the Identification of Pain Generators in Work Injuries and Novel Treatment Options," the panelists discussed the issues with pain generators, treatment options and their interaction in workers' compensation litigation.

In Season 2 of his podcast with the Professional Liability Underwriting Society, **David Shannon** (Philadelphia, PA) chatted with guest Stephen Ramey about the cybersecurity landscape for 2024. David and Stephen reflected on the persisting threat of ransomware and citing prevalent groups like LockBit, ALPHV/BlackCat, and Akira. **Listen now**!

Anthony Williott and **Paul Krepps** (both of Pittsburgh, PA) participated in a Mock Trial as a part of the American Association of Legal Nurse Consultants annual Forum. Paul participated in an exercise that demonstrated to Legal Nurse Consultants how an expert witness is prepared for deposition and trial by an attorney. Additionally, he served as the "judge" for the mock trial. In the trial, Tony defended the interests of "Hometown Hospital" in a case that involved the failure to timely diagnose sepsis in a patient. The case was designed to highlight the role of the Legal Nurse Consultant in medical malpractice cases.

Jeremy Zacharias (Mount Laurel, PA) participated in a panel discussion for Drexel University's LeBow College of Business to prospective students joining the legal profession. Jeremy spoke about factors to consider in applying to law school, private practice, as well as strategies to effectively maximize law school performance. Jeremy is a recurring speaker at both Rutgers Law and Drexel University on professionals and topics, including ethics, the Rules of Professional Conduct, and the business of law.

Lary Zucker, **Sara Mazzolla** (both of Mount Laurel, NJ) and **Alicia Caridi** (Tampa, FL) presented a legal roundtable at the Roller Skating Association International's annual convention. ◆

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