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LITIGATION UPDATE

May, 2021

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COVERAGE

"FOUR CORNERS" AND DUTY TO DEFEND

Erie Insurance Exchange v. Moore, 228 A.3d 258 (Pa. 2020)

McCutcheon shot and killed his wife and later shot and killed himself. In between, he engaged in a struggle with Moore during which his gun discharged, causing injury to Moore. Moore sued McCutcheon's estate, alleging that McCutcheon negligently allowed the gun to be discharged. Erie was McCutcheon's insurer. Citing the "four corners" doctrine, a narrowly divided Supreme Court confirms that Erie owes at least a duty to defend despite the "accident" and "expected or intended" language in its policies. The dissent notes that fact allegations, not negligence labels, determine whether or not coverage is triggered.

"FOUR CORNERS" AND EXTRINSIC EVIDENCE

Kiely v. Phila. Contributionship, 206 A.3d 1140 (Pa. Super. 2019)

Kiely hired Parkin to provide home aid services to Feinstein. Feinstein allegedly assaulted Parkin who then sued for assault and other intentional torts. Feinstein tendered defense to Contributionship which denied coverage under Homeowner's and Umbrella policies based on absence of an "occurrence" (defined as an "accident") and, in the alternative, based on policy exclusions for intentionally caused harm and for claims by employees. In a DJ Action, Kiley on behalf of Feinstein alleged that Contributionship before denying coverage had to investigate Feinstein's mental status to determine if she was even competent to commit intentional torts. Under the "four corners" rule, no such investigation is required. Coverage, including a duty to defend, is determined solely by reference to allegations of the underlying complaint, free from any extrinsic allegations or evidence. Coverage was properly denied.

"FOUR CORNERS," "ACCIDENT," AND *KVAERNER*

Sapa Extrusions v. Liberty Mutual, 939 F.3d 243 (3rd Cir. 2019)

Sapa manufactured coated aluminum extrusions incorporated into Marvin windows. When those component parts developed problems in finished products, leading to consumer complaints, Marvin settled the consumer claims but sued Sapa for providing inadequate products. Sapa tendered Marvin's suit to its CGL carriers, most with "occurrence" defined as an accident. For those policies, the court, after applying the "four corners" rule for coverage trigger, found no "occurrence" and thus no coverage. Other policies used "expected or intended" language when defining "occurrence" which the court predicted the PA Supreme Court would find ambiguous. For those policies, the court remanded for further consideration, policy by policy.

KVAERNER AND DAMAGE TO OTHER PROPERTY

PMA v. Pottstown Industrial, 215 A.3d 1010 (Pa. Super. 2019)

PMA insured Pottstown. Pottstown leased property to Pride Group and also performed roof repairs at the property. After roof leaks caused damage to Pride Group's inventory, Pride Group sued Pottstown. In a DJ Action, PMA, citing *Kvaerner*, sought to deny coverage to Pottstown since the claim for damages arose out of Pottstown's improper performance of contractual obligations. The Superior Court rules that Pride Group's complaint stated an "occurrence," and thus triggered coverage, because it alleged damage to property other than to Pottstown's work.

RESERVATION OF RIGHTS

Selective Way Insurance v. MAK Services, 232 A.3d 762 (Pa. Super. 2020)

MAK, whose exclusive business was snow and ice removal, used Dunn as its insurance broker to obtain liability coverage from Selective. Selective had an exclusion for claims related to snow and ice removal. When a snow and ice removal BI claim was presented, Selective issued a broad Reservation of Rights, provided a defense, and later filed a DJ Action to deny coverage. A Reservation of Rights must be timely and must fairly inform the insured of coverage issues. Here, the R of R was timely but lacked any specificity, thus barring Selective from later raising the snow and ice exclusion.

TWO STEP PAYMENT ON REPLACEMENT COST POLICY

Kurach v. Truck Insurance, 235 A.3d 1106 (Pa. 2020)

Kurach purchased a residential replacement cost policy from Truck Insurance which provided for a two step payment process with only ACV paid until repairs were made. By definition, ACV did not include, unless actually incurred, general contractor overhead and fees. No statute, regulation, or precedent prohibited Truck's ACV definition, so policy language was enforced as written. Since Kurach did not undertake repairs or incur general contractor overhead or expenses, he was entitled to recover only ACV.

"BUSINESS PURSUITS" EXCLUSION AND *QUI TAM* ACTION

Nationwide v. Arnold, 214 A.3d 688 (Pa. Super. 2019)

Arnold brought an unsuccessful *qui tam (i.e.,* False Claims Act) suit against CMC, his employer, which thereafter filed a Dragonetti suit against him. Nationwide, Arnold's umbrella insurer, raised the "business pursuits" exclusion in the policy. For Arnold's activity to fall within the exclusion, Nationwide had to show continuity of work conduct and a profit motive. CMC, however, alleged that Arnold acted outside the course of his employment in pursuing the *qui tam* suit. Arnold's employment by CMC was not enough to meet the "work conduct" part of the test.

BERG BAD FAITH CLAIM FINALLY OVER

Berg v. Nationwide, 235 A.3d 1223 (Pa. 2020)

An evenly divided Supreme Court lets stand Superior Court's reversals (see *Berg v. Nationwide*, 44 A.3d 1164 (Pa. Super. 2012)(*Berg I*) and 189 A.3d 1030 (Pa. Super. 2018)(*Berg II*)) related to Berg's bad faith claims arising out of a property damage claim from a 1996 auto accident. Berg's $21,000,000 verdict is vacated.

UM/UIM

INCREASING UM/UIM LIMITS REQUIRES NEW STACKING WAIVERS

Barnard v. Travelers Home & Marine, 216 A.3d 1045 (Pa. 2019)

Barnard bought a Travelers policy for two vehicles with $50,000 non-stacked UM/UIM. She later increased coverage for each vehicle to $100,000 but did not sign new stacking waivers. Since increasing limits qualifies as a "purchase" of coverage under Section 1738(c) of the MVFRL, new stacking waivers were required, absent which stacking applied.

ADDING VEHICLES REQUIRES NEW STACKING WAIVERS

Kline v. Travelers, 223 A.3d 677 (Pa. Super. 2019), appeal denied, 237 A.3d 388 (Pa. 2020)

Kline bought Nationwide coverage for a single vehicle with $50,000/$100,000 UM/UIM, stacking waived. Several years later he added a second vehicle and then several years after that added a third vehicle but on neither occasion was offered or signed another stacking waiver. Kline's policy Declarations over the years all reflected non-stacked UM/UIM. Kline's mother, a relative resident in his household, also bought Nationwide coverage, $100,000/$300,000 UM/UIM, stacked. After an accident, Kline sought $150,000 stacked coverage on his policy plus $100,000 from his mother's policy. Nationwide paid $50,000 on Kline's policy but denied stacking. Nationwide denied payment from Kline's mother's policy, citing its "household vehicle" exclusion. As for Kline's policy, the Superior Court, citing its own *Pergolese v. Standard Fire* and *Bumbarger v. Peerless Indemnity* decisions, holds that adding the second and third vehicles constituted new purchases of coverage requiring new waivers of stacking, absent which UM/UIM coverage is stacked, entitling Kline to up to $150,000. As for Kline's mother's policy, the Superior Court, citing *Gallagher v. GEICO*, finds the "household exclusion" unenforceable, entitling Kline to up to an additional $100,000. Because *Gallagher*'s construction of the MVFRL was the first pronouncement on the issue, it did not announce a new rule of law and thus could be applied retroactively to open cases where the issue had been preserved.

NEW STACKING WAIVER WHEN SUBTRACTING A VEHICLE

Franks v. State Farm, – A.3d – (Pa. Super. 2020), withdrawn with *en banc* reargument granted.

Franks insured two vehicles with State Farm with proper waiver of UIM stacking. Franks added a third vehicle and again properly waived UIM stacking. Franks still later subtracted a vehicle but State Farm did not request another signed waiver. The Superior Court, in a now withdrawn opinion, rules that removal of a vehicle, similar to addition of a vehicle, constitutes a new purchase of insurance and thus requires new signed stacking waivers, absent which coverage defaults to stacked.

STACKING WAIVER APPLIES TO INSUREDS, NOT GUESTS

Erie Insurance Exchange v. King, 246 A.3d 332 (Pa. Super. 2021)

King owned a truck insured by Sentry with a corporate named insured. King and Labar, occupying King's truck, were injured by a UM driver. King and Labar received UM benefits from Sentry, then sought further UM benefits from Erie under a policy issued to King and Labar's mother. Even though Erie's coverage was non-stacked, stacking was not at issue since under *Generette* King and Labar were "guests," not "insureds" on the Sentry policy. Still, Erie validly denied UM benefits due to the "household exclusion" in the policy. King owned the truck but did not insure it with Erie, triggering the exclusion for both claims.

ONLY RELATIVE RESIDENT IN HOUSEHOLD STACKS

Grix v. Progressive Specialty, 227 A.3d 400 (Pa. Super. 2020)(Non-precedential decision), appeal granted, 240 A.3d 612 (Pa. 2020)

Grix insured five vehicles with Progressive with stacked UM/UIM coverage. Six weeks before her fatal accident, daughter Naomi leased an apartment, always slept there, but still visited the family home, had some meals there, received mail there, and kept personal belongings there. Naomi was a named driver on the policy. Determining "resident in the household" status is fact intensive. Here, Naomi moved out of the family home with no intention of resuming residence there and thus was not a Class I claimant entitled to stack.

COVERAGE TERMS APPLICABLE IN POLICY REFORMATION SUIT

Matthews v. Erie Insurance, 244 A.3d 844 (Pa. Super. 2021)

Matthews, occupying an Ion Construction vehicle insured by Erie, sought in Phila CCP to reform Erie's policy to provide UIM coverage. A DJ Action was already pending in Bucks CCP on the same issue. Erie's standard UIM endorsement, had it been on the policy, would have set venue in Bucks CCP. The trial court exercises discretion to transfer the case to Bucks and the Superior Court affirms.

MVFRL

FIRST PARTY BENEFIT COVERAGE FOR PTSD

Evans v. Travelers, 226 A.3d 96 (Pa. Super. 2019)

Evans car collided with a tractor-trailer, causing physical injuries to her head and neck. She was later also diagnosed with PTSD, for which Travelers, her auto carrier, denied payment, citing *Zerr v. Erie Insurance*. The Superior Court reverses summary judgment for Travelers. Depositions and medical records were inconclusive as to whether the PTSD was caused solely by the accident (and thus under *Zerr* not covered) or at least in part by the admitted physical injuries (and thus under *Zerr* covered). Remanded for trial.

COST CONTAINMENT AND FUTURE MEDICAL EXPENSES

Farese v. Robinson, 222 A.3d 1173 (Pa. Super. 2019), appeal denied, 2020 Pa. LEXIS 227

In a trial with stipulated liability, Farese's medical experts projected future medical expenses at $900,000. Robinson contended that MVFRL Section 1797 "cost containment" should apply to reduce that amount of damages. The Superior Court disagrees, holding that Section 1797 does not apply to future medical expenses.

UNLISTED RESIDENT DRIVER EXCLUSION VALID

Safe Auto v. Oriental-Guillermo, 214 A.3d 1257 (Pa. 2019)

Dixon drove a car insured by Safe Auto and owned by named insured, live-in boyfriend Oriental-Guillermo. After an accident, a passenger in the other car sued Dixon. Safe Auto denied coverage under an Unlisted Resident Driver Exclusion which excluded coverage for drivers who lived with Oriental-Guillermo, were not related to him, and were not specifically listed on the policy. The MVFRL at 75 Pa.C.S.A. 1786(f) places the burden of providing financial responsibility on the owner of a vehicle, not on an insurer. Oriental-Guillermo could have met that burden by listing Dixon on the Safe Auto policy or by assuring she had her own coverage. The exclusion is valid and judgment for Safe Auto was affirmed.

POLICY LANGUAGE REQUIRING IME IN FPB CLAIM VOID

Sayles v. Allstate, 219 A.3d 1110 (Pa. 2019)

The Supreme Court, answering a certified question from the Third Circuit, opines that policy language requiring FPB claimants to submit to physical exams as often as and by whom carriers select is void as conflicting with the MVFRL and as violative of public policy. At Section 1796(a), the MVFRL provides for mental or physical exams only by court order upon motion for good cause shown. In *Fleming v. CNA*, the Superior Court had enforced such an insurance policy provision but noted that the "against public policy" issue was not raised. The issue *was* raised by Sayles.

UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

BURDEN OF PROOF UNDER THE CATCH-ALL PROVISION

Gregg v. Ameriprise Financial, 245 A.3d 637 (Pa. 2021)

Gregg sued Ameriprise for deceptive practices in the sale of financial products. At issue on appeal was Gregg's UTPCPL claim, in particular the burden of proof under the catch-all provision which bars "engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding." Ameriprise argued that its defense verdicts on negligent and fraudulent misrepresentation claims necessarily barred the UTPCPL claim. The trial court, Superior Court, and Supreme Court disagree, holding that the catch-all provision imposes strict liability for deceptive conduct, in no way dependent upon proof of the actor's state of mind.

TREBLE DAMAGES AND ATTORNEY FEES

Richards v. Ameriprise, 217 A.3d 854 (Pa. Super. 2019)

Richards sued Ameriprise under various theories related to purchase of whole life insurance followed by demands for premiums in excess of contracted levels. The appeal involved calculation of damages under the UTPCPL. The trial court found a UTPCPL violation, awarded damages, and also awarded treble damages and attorney fees. In a case justifying statutory treble damages, the final award is triple the original amount, not the original amount *plus* triple the original amount. With regard to attorney fees, the amount and hourly rate are within discretion of the trial court and can include fees for appellate work but should not include charges for work lifted from other fee petitions or work to have an appellate opinion published**.**

UTPCPL NOT APPLICABLE TO CLAIMS HANDLING

Wenk v. State Farm, 228 A.3d 540 (Pa. Super. 2020), appeal denied, 242 A.3d 309 (Pa. 2020)

Wenk sued State Farm (homeowner's carrier) and FireDEX (contractor) under various theories for allegedly botched repair work on his home. The Superior Court affirms some trial results, reverses others, and remands for further proceedings. Of note, the Superior Court dismisses Wenk's UTPCPL claim against State Farm since the UTPCPL, though applicable to sale of insurance policies, does not apply to handling of insurance claims, the exclusive statutory remedy for which is the Unfair Insurance Practices Act.

EVIDENCE

"ATTORNEY EYES ONLY" DISCOVERY

Cabot Oil v. Speer, 241 A.3d 1191 (Pa. Super. 2020)

Cabot brought Wrongful Use of Civil Proceedings (i.e., Dragonetti) claims against attorneys who initiated successive nuisance suits without factual or legal merit. In discovery related to punitive damages, Cabot sought the attorneys' tax returns which the lower court ordered on an "attorney eyes only" basis, i.e., the returns could not even be shared with clients without court permission. The Superior Court affirms, noting the proper balancing of competing interests. The Superior Court also notes that spouses and law partners might have intervened to protect their interests but failed to do so.

"ATTORNEY EYES ONLY" DISCOVERY

CLL Acad. v. Acad. House, 231 A.3d 884 (Pa. Super. 2020)

CLL operated the parking facility at Academy House and was involved in two suits with the condo association: defending one for the cost of structural repairs and prosecuting the other for commercial disparagement. In discovery, CLL sought documents for which the association claimed privilege. A Discovery Master ordered disclosure, the association sought reconsideration through *ex parte* argument, CLL objected absent "attorney eyes only" unredacted exchange of documents, which the trial court ordered. On appeal, the Superior Court reverses. "Attorney eyes only" is a concept best reserved for commercial disputes involving confidential business information and trade secrets. To determine legal privileges, *in camera* review by a court is required.

NEED FOR INTERPRETER

City of Phila v. Pien, 224 A.3d 71 (Pa. Cmwlth. 2019), appeal denied, 236 A.3d 1037 (Pa. 2020)

L&I issued Fire Code violations to Pien which she did not remediate. City brought an enforcement action but Pien did not answer the complaint. Pien attended an initial hearing *pro se* and interacted with counsel and the court. A second hearing was postponed so Pien could have a Mandarin interpreter. At a third hearing, Pien, still *pro se*, had an interpreter but the court entered orders against her which were eventually appealed by counsel, in part on denial of due process grounds due to lack of an interpreter at the original hearing or in translating the complaint. The trial judge, who believed Pien understood English well enough to understand the proceedings, did not abuse his discretion by entering orders based on testimony Pien gave before she had a translator. In addition, Pien never requested a translator for the complaint and did not prove how having a translator would have made a difference.

CHILD COMPETENT TO TESTIFY

Commonwealth v. Saez, 225 A.3d 169 (Pa. Super. 2019), appeal denied, 234 A.3d 407 (Pa. 2020)

Saez, convicted of sex crimes involving his nine year old step-daughter, argued on appeal that the court improperly allowed prosecution testimony from his six year old biological daughter about similar conduct against her when she was four. In particular, Saez alleged his biological daughter was not competent to testify since she could not state her birth date and did not even understand the meaning of "oath." As a general rule, PA presumes every person to be a competent witness. For children under fourteen, however, the court should inquire (a "Tender Years" hearing) to confirm competency, which the court did here. A party challenging competency of a minor witness must prove by clear and convincing evidence that the witness lacks the minimal capacity to communicate, to observe an event and accurately recall that observation, and to understand the necessity to speak the truth. The examples raised by Saez were age appropriate and no bar to competency.

DEAD MAN'S ACT STILL ALIVE

Jones v. Plumer, 226 A.3d 1037 (Pa. Super. 2020), appeal denied, 237 A.3d 407 (Pa. 2020)

Jones, a tenant, fell down a stairway the landlord allegedly knew was defective. The landlord died before suit. His administratrix sought summary judgment because Jones, the only witness to the event, was incompetent to testify on causation under 42 Pa.C.S.A. 5930, the Dead Man's Act, under which "where any party to a thing . . . is dead . . . and his right thereto or therein has passed . . . to a party . . . who represents his interest . . . any surviving or remaining party to such thing . . . shall [not] be a competent witness to any matter occurring before the death of said party." While taking depositions or sending interrogatories may waive Dead Man's Act protection, simple exchange of settlement position letters, uncompelled by court process or order, will not.

COLLATERAL SOURCE RULE APPLIES TO DEFENDANT, NOT PLAINTIFF

Nazarak v. Waite, 216 A.3d 1093 (Pa. Super. 2019)

Nazarak, in the course of employment, sued Waite for motor vehicle accident injuries. At trial, Nazarak produced evidence of WC payments, a resulting lien, and an eventual WC compromise and release, all over Waite's "collateral source" objections. Waite claimed that the WC evidence improperly caused the jury to believe that medical causation and resulting disability were beyond dispute. The "collateral source" rule prevents a benefit to an alleged wrongdoer merely because plaintiff's injures were covered by some collateral source. Here, *plaintiff* proved the collateral source so the rule was not triggered. The $750,000 award was affirmed**.**

"ANTICIPATION OF LITIGATION" PROTECTION

Virnelson v. Johnson Matthey, – A.3d – (Pa. Super. 2021)

Five days after Virnelson was killed at work, JMI hired a consultant to determine the cause of the accident. At a later date Virnelson's estate hired counsel and filed suit. The estate sought to discover the consultant's report, which JMI resisted, claiming "anticipation of litigation" protection. After an evidentiary hearing, the trial court held that the consultant was hired for a business purpose, i.e., to investigate root causes of the accident to prevent future similar accidents. Future litigation is always possible but that is not enough without contemporaneous evidence to trigger "anticipation of litigation" protection. Subsequent statements that the relationship was confidential do not have retroactive effect. The Superior Court affirms.

ATTORNEY WORK PRODUCT DOCTRINE NOT WAIVED

BouSamra v. Excela Health, 210 A.3d 967 (Pa. 2019)

After contractual network negotiations failed, Excela ordered multiple peer reviews of BouSamra's cardiac surgery techniques. Before publicly releasing the adverse peer review results, Excela sought assistance from a PR firm and legal advice from outside counsel. Excela's in-house counsel shared outside counsel's legal advice with the PR firm. BouSamra sought that legal advice email through discovery in the underlying action for defamation. The trial court, Superior Court, and Supreme Court rule that the attorney-client privilege was waived by disclosure of the attorney-client communication to the PR firm, a third party. Neither the trial court nor the Superior Court addressed the attorney work product doctrine where disclosure does not drive the waiver analysis. Instead, work product protection is waived only when the work product is shared with an adversary or is otherwise disclosed in a manner which significantly increases the likelihood that an adversary will obtain it. Since the test for waiver is of necessity fact specific, the case was remanded for fact findings and application of the new waiver test for attorney work product.

ATTORNEY WORK PRODUCT PROTECTION

Newsuan v. Republic Services, 213 A.3d 279 (Pa. Super. 2019)

Newsuan, injured while working at a recycling center, sued Republic and sought to identify and interview Republic employees present at her accident. Corporate counsel for Republic had already interviewed the employees and offered to serve as their counsel. Citing attorney-client privilege and the attorney work product, corporate counsel refused Newsuan's discovery requests. Because the witnesses had not sought the legal representation offered by Republic, and did not, in fact, need representation, and because corporate counsel failed to advise of and obtain waivers for potential conflicts between witnesses and Republic, no attorney-client privilege existed and Newsuan was free to contact the witnesses. Corporate counsel's notes and other work product, however, fell within attorney work product and need not be disclosed.

NO LEARNED TREATISE EXCEPTION TO HEARSAY RULE

Charlton v. Troy, 236 A.3d 22 (Pa. Super. 2020), appeal denied, 2021 Pa. LEXIS 1343

During a medical malpractice trial, plaintiff counsel used a textbook to cross-examine the defendant physician even though the witness was not familiar with the textbook and no expert had testified it was authoritative or reliable. Counsel then just read portions of the textbook into evidence. The Superior Court reverses the $40,258,000 verdict. PA does not recognize the "learned treatise" exception to the hearsay rule, limiting use of such materials to cross-examination of an expert witness but only when the materials are deemed authoritative by the witness or other experts in the field.

BUSINESS RECORDS EXCEPTIONS TO RULE AGAINST HEARSAY

Bayview Loan Servicing v. Wicker, 206 A.3d 474 (Pa. 2019)

Wicker obtained a mortgage loan from Countrywide which assigned its rights to Bank of America which instituted a foreclosure action and then assigned its rights to Bayview. At trial, Bayview, over Wicker's hearsay objections, presented its litigation manager to authenticate Bayview/Bank of America records relevant to the mortgage and default. The records were clearly hearsay, so the issue was whether Pa.R.E. 803(6) business records exception applied, in particular to Bank of America records which Bayview had not even created. The Supreme Court declines to adopt either Wicker's request for a bright line rule forbidding authentication of third parties' documents or the Federal court automatic incorporation doctrine, instead deferring to a trial court's determination of whether evidence justifies a presumption of trustworthiness, which here was established by Bayview's witness.

WRONGFUL DEATH AND SURVIVAL DAMAGES

McMichael v. McMichael, 241 A.3d 582 (Pa. 2020)

Husband was killed by a felled tree. Wife and Estate pursued wrongful death and survival actions, respectively. A jury awards survival damages but no wrongful death damages, results the trial court refuses to disturb. The Superior Court awards a new trial limited to wrongful death damages. At the original trial, Wife offered no lay or expert evidence as to the economic value of services Husband had performed**.** She did, however, testify to her decades long personal relationship with Husband**.** The Supreme Court awards a new trial limited to non-economic wrongful death damages since a zero award could not be reconciled with the evidence. As for economic damages, the jury was free to award zero absent evidence of the value of lost services.

TORT

LANDOWNER DUTIES TO INDEPENDENT CONTRACTOR

Abney v. American Expo, 224 A.3d 794 (Pa. Super. 2019)(Non-precedential decision)

Abney was injured when entering a dark trailer backed into the Expo Center. As an employee of an independent contractor at the site, he was a business invitee. When an owner of land delivers temporary possession of a portion of the premises to an independent contractor, it owes no duty with respect to obviously dangerous conditions, such duty arising only when the landowner has superior knowledge placing it in a better position to appreciate a risk. The Superior Court affirms summary judgment for defendants.

SIDEWALK PEDESTRIANS ARE LICENSEES, NOT INVITEES

Kaminski v. Sosmetal Products, 207 A.3d 426 (Pa. Cmwlth. 2019), appeal denied, 217 A.3d 810 (Pa. 2019)

Kaminski fell on a public sidewalk abutting Sosmetal's property, allegedly due to a defective condition about which Sosmetal knew or should have known. At trial, Kaminski unsuccessfully sought invitee status which would have placed a higher burden on Sosmetal to avoid such accidents. Pedestrians on public sidewalks, however, are licensees, not invitees. A possessor of land can be liable to licensees for a condition of the land only if (1) it knows or has reason to know of the condition, realizes that the condition poses an unreasonable risk of harm to licensees, and expects that licensees will not discover the danger, and (2) it fails to fix the condition or warn the licensees, and (3) licensees do not know or have reason to know of the condition and risk.

IN PARI DELICTO BARS NEGLIGENCE ACTION

Albert v. Sheeley's Drug Store, 234 A.3d 820 (Pa. Super. 2020), appeal granted, 243 A.3d 1293 (Pa. 2021)

Albert overdosed on Fentanyl improperly obtained from Sheeley's by a friend. Under the *in pari delicto* doctrine, no court will lend aid to a party who grounds his action on his own illegal or immoral acts. Here, Albert conspired with his friend to obtain Fentanyl, the unauthorized possession of which constituted a crime. The Superior Court affirms summary judgment for the pharmacy.

FALSE ARREST AND FALSE IMPRISONMENT

Braswell v. Wollard, 243 A.3d 973 (Pa. Super. 2020)

Braswell (customer) and Wollard (cashier) disagreed on the amount of change due after a purchase. Braswell took the amount he claimed, called the police, but left before the police arrived. The police accepted Wollard's version of events, arrested Braswell, and kept him in custody before dropping all charges four months later. Braswell sued Wollard for false arrest, false imprisonment, malicious prosecution, and defamation. The court granted summary judgment for Wollard. The Superior Court reverses. Although Wollard did not take Braswell into custody, she could still be liable for false arrest or false imprisonment if she knowingly gave false, incomplete, or misleading information to police resulting in Braswell's arrest and detention.

DEFAMATION RELATED TO INSURANCE CLAIM

Burns v. Cooper, 244 A.3d 1231 (Pa. Super. 2020), appeal denied, 2021 Pa. LEXIS 1461

Burns claimed to her insurer that valuable items were stolen from her parked vehicle. Her estranged husband told the insurer he did not believe the incident occurred, he doubted that Burns even owned property she described as stolen, and that Burns was a liar who could not be trusted. On Burns suit against her spouse for defamation and tortious interference with contract, a jury awarded compensatory and punitive damages, a result the Superior Court affirms. To support a damage claim, Burns testified to taking off work, with lost income, and to incurring legal fees defending her insurer's fraud investigation.

DEFAMATION IN REPORT OF MENTAL HEALTH ISSUES

Forbes v. King Shooters Supply, 230 A.3d 1181 (Pa. Super. 2020), appeal denied, 240 A.3d 115 (Pa. 2020)

Forbes bought a gun from King Shooters and later returned to the store when she could not unload the firearm. Store personnel, concerned about her behavior, notified police, suggesting that Forbes was in need of psychiatric intervention. Forbes was then admitted to a psychiatric institution for 13 days, allegedly without her permission. She sued King Shooters for defamation. The Superior Court affirms judgment on the pleadings for King Shooters, noting that reports to police or mental health officials regarding initiating involuntary commitment proceedings are absolutely privileged, even if false or malicious.

STOP SIGN VIOLATION WAIVES RIGHT OF WAY GENERAL RULE

Matthews v. Batroney, 220 A.3d 601 (Pa. Super. 2019), appeal denied, 229 A.3d 237 (Pa. 2020)

Bicyclist Matthews admittedly did not stop at the stop sign on 19th Street. Batroney stopped for her stop sign on Cherry Street and then entered the intersection, colliding with Matthews. Matthews claimed that Batroney as the operator of the vehicle on the left should have yielded to him as operator of the vehicle on the right. In a case of apparent first impression, the Superior Court holds that violation of the stop sign law waives application of the right of way law.

STADIUM LIABILITY FOR RESTROOM ATTACK

Pearson v. Phila. Eagles, 220 A.3d 1154 (Pa. Super. 2019), appeal denied, 227 A.3d 311 (Pa. 2020)

Pearson, sporting a Cowboys jersey, went to a Cowboys/Eagles game at the Linc. At halftime, he was attacked by Eagles fans in a crowded restroom, stripped of his jersey, and thrown to the ground, suffering a broken ankle. Pearson sued, claiming Eagles should have provided better security. The Superior Court vacates Pearson's $700,000 judgment. A possessor of land must protect business invitees from injury due to its failure to maintain premises in a safe condition, including protection against criminal acts of third persons. Places of general public resort are also places where what men can do, they might. While Eagles had a security plan, it did not place security personnel in bathrooms. Pearson did not establish that Eagles' security plan was inadequately designed or implemented. "A business invitee cannot expect a possessor of land to defeat all the designs of felonry."

PER CAPITA DAMAGE APPORTIONMENT IN ASBESTOS CASES

Roverano v. John Crane, Inc., 226 A.3d 526 (Pa. 2020)

Roverano obtained a verdict in an asbestos case against two named defendants. Roverano had previously settled with other defendants and also still had potential claims against non-party bankruptcy trusts. The Supreme Court rules that in such strict liability asbestos cases, apportionment of liability is on a per capita basis and that the jury may also consider the liability of both named party and non-party bankruptcy trusts.

FAIR SHARE ACT

Spencer v. Johnson, – A.3d – (Pa. Super. 2021)

Cleveland, driving a car owned by PJB, struck Spencer, a negligence-free pedestrian. PJB had entrusted the car to Tina, its employee and Cleveland's spouse. Spencer brought negligence claims against Cleveland, Tina, and PJB and also alleged that PJB was vicariously liable for Tina's conduct. A jury returned a $13,000,000 award and apportioned liability Cleveland 36%, Tina 19%, and PJB 45%. At issue was whether the Fair Share Act applied and, if so, whether Spencer could aggregate the Tina and PJB shares so as to trigger joint and several liability. A two judge Superior Court panel rules that the Fair Share Act does not apply at all to negligence-free plaintiffs so all defendants were jointly and severally liable for the award. A Petition for Rehearing is pending.

COST TO REPAIR DISPROPORTIONATE TO FAIR MARKET VALUE

Woullard v. Sanner Concrete, 241 A.3d 1200 (Pa. Super. 2020)

Woullard hired several contractors to perform work on his house, then alleged work was defective, then sued for $273,000 in repairs to a house with a $528,000 market value. When the cost of repair is grossly disproportionate on its face to the market value of the property, the injured party is required to prove diminution in value of the property such that cost of repair, if awarded, will not result in a windfall. Where the cost of repair is *not* grossly disproportionate on its face, defendants bear the burden of proving a windfall. Since different contractors contributed to the alleged loss here, the "grossly disproportionate" test is applied contractor by contractor, not in the aggregate, thus placing the burden on the defendants.

"PERSONAL ANIMUS" EXCEPTION TO WC IMMUNITY

Grabowski v. Carelink Community Support, 230 A.3d 465 (Pa. Super. 2020)

Grabowski, a counselor at a mental health facility, suffered injuries when suddenly and without known reason was attacked by a patient. Grabowski received WC benefits and later through a C&R Agreement settled all WC claims. She then sued her employer for negligence, alleging the "personal animus" exception removed her claim from WC, depriving the employer of immunity. The Superior Court affirms judgment on the pleadings for Carelink. Passive receipt of WC benefits does not bar a negligence claim but here Grabowski sought approval of a C&R Agreement, invoking WC jurisdiction and receiving a ruling that her injuries fell within WC. In addition, Grabowski had the burden of establishing the "personal animus" exception which does not arise when, as here, an employee is the innocent victim of a sudden attack for unknown reasons.

GENERAL VERDICT ABSENT SPECIAL JURY INTERROGATORIES

Shiflett v. Lehigh Valley Health, 217 A.3d 225 (Pa. 2019)

After knee surgery, Shiflett fell in the post-surgery unit, suffering injury. She sued the hospital for both vicarious and corporate liability for not preventing her fall. After the statute of limitations, Shiflett amended the complaint to add allegations that a nurse failed to report her complaints, thus increasing her risk for further injury. A jury returned a general verdict of $4,200,000, but the trial court awarded a new trial since the late claim involving the nurse should have been barred. The Supreme Court reverses. The hospital failed to request special jury interrogatories which could have provided clarification as to how or whether damages were split between the different causes of action. Absent that clarification, the "general verdict" rule applies, making the hospital liable for the full amount.

STATUTE OF LIMITATIONS

CONTINUING TRESPASS

Caruso-Long v. Reccek, 243 A.3d 234 (Pa. Super. 2020)

Caruso-Long complained that trees on Reccek's property caused damage to his property over a period of many years. His suit in trespass, nuisance, and negligence was dismissed on statute of limitations grounds. On appeal, Caruso-Long argued the trees constituted a continuing rather than permanent trespass and nuisance. To decide this, courts must consider a variety of factors, including the character of the thing producing injury, whether the consequences of the trespass will continue indefinitely, and whether past and future damages may be predictably ascertained. Here, the Superior Court notes that trespassing trees create a continuing cause of action, thus permitting a succession of actions based on continuing infractions.

LEGAL MALPRACTICE

Clark v. Stover, 242 A.3d 1253 (Pa. 2020)

Clark brought professional liability claims against attorney Stover beyond either a two year tort or four year contract statute of limitations. On appeal, Clark asked the Supreme Court to adopt the continuous representation rule under which the statute of limitations does not start to run until after representation ends. The Supreme Court declines, deferring to the legislature for any such rule.

DAMAGES IN CLAIM AGAINST INSURANCE BROKER

Kelly v. Carman Corp., 229 A.3d 634 (Pa. Super. 2020)

After an accident with a drunk driver, Kelly brought a Dram Shop action against Princeton Tavern. Princeton submitted the suit to Carman, its insurance broker, which failed to timely report the claim to State National, the insurer, which resulted in a default judgment in the Dram Shop case, which caused a later denial of coverage. At the Dram Shop trial, the parties stipulated to a $5,000,000 damage award, with Princeton assigning to Kelly its rights against Carman for negligence and breach of contract. In the suit against Carman, the court dismissed the negligence claim as time barred and on the contract claim ruled that the stipulated $5,000,000 award was not binding on Carman. The Superior Court affirms. The statute of limitations on a negligence claim against Carman started to run when the default was entered – which constitutes damage -- not when State National eventually denied coverage. As for the stipulated damages in the Dram Shop case, Carman had the right to challenge damages since the judgment in the underlying case is not automatically set as the damages in the E&O action.

PROCEDURE

WAIVER OF RIGHT TO ARBITRATE

DiDonato v. Ski Shawnee, 242 A.3d 312 (Pa. Super. 2020)

J.D., a minor, was killed in a skiing accident at Shawnee as part of her Blair Academy student activities. Her Administratrix sued Shawnee and Academy. Academy unsuccessfully removed to Federal court and then on remand challenged venue. Only after rulings on those issues did Academy raise arbitration provisions in J.D.'s enrollment contract. The Superior Court notes that PA public policy favors arbitration and that the mere filing of a complaint or answer, absent prejudice to other parties, will not justify waiver of the right to arbitrate. Here, however, Academy delayed raising arbitration for a year while it accepted judicial process and sought favorable rulings and discovery. Academy waived any right to arbitration.

ARBITRATION AGREEMENT NOT SIGNED BY AUTHORIZED AGENT

McIlwain v. Saber Healthcare, 208 A.3d 478 (Pa. Super. 2019)

Franks, suffering from schizophrenia and dementia, was admitted to Saber where he eventually died after a fall. At Franks' admission, McIlwain, who had an out of state Temporary Conservator order, signed an arbitration agreement for claims by Frank against Saber. Because the TC order was not properly transferred to PA, the issue was whether McIlwain was otherwise Franks' authorized agent when signing the agreement. An agent cannot simply by her own words invest herself with apparent authority. Such authority must emanate from the action of the principal, not the agent. Here, Franks was incapable of either conferring such authority on McIlwain or of misleading Saber on agency issues.

APPEAL PERIOD IN DECLARATORY JUDGMENT ACTION

Affordable Outdoor, LLC v. Tri-Outdoor, Inc., 210 A.3d 270 (Pa. Super. 2019)

Affordable purchased property, assuming it also acquired billboards on the property. Tri-Outdoor, which had been using the billboards, claimed that it either owned the billboards by adverse possession or in any event had a surviving leasehold interest. Affordable sued for damages, equitable relief, and a declaration of ownership, though its Complaint was not styled a "Declaratory Judgment Action." Tri-Outdoor counterclaimed for damages. The trial court ruled in favor of Affordable, Tri-Outdoor filed unsuccessful post-trial motions, later praeciped to enter judgment, then filed an appeal within thirty days of the praecipe. The trial court recommended that the appeal be quashed, citing precedent that in DJ matters the appeal period starts to run on the date post trial motions are denied, since no later entry of judgment is even required. The Superior Court notes that an "appeal trap" used to exist but was eliminated when Pa.R.A.P. 341 was amended. A party is not required to appeal within thirty days from an order denying post-trial motions where that order disposes of both DJ and non-DJ claims.

CROSSCLAIM SURVIVES SETTLEMENT OF PLAINTIFF CLAIMS

Bollard & Associates v. PA Associates, 223 A.3d 698 (Pa. Super. 2019), appeal denied, 240 A.3d 114 (Pa. 2020)

Bollard sued PA and its former attorney Rosin in Montgomery County to set aside some property transfers. PA crossclaimed against Rosin for contribution and indemnity. PA and Rosin settled with Bollard with the stipulation that the crossclaim remained open. PA also filed a separate legal malpractice action against Rosin in Philadelphia County. The court in Montgomery County, citing both the Bollard settlement and the separate legal malpractice suit, dismissed the PA crossclaim. Discontinuance of plaintiff's claims does not, absent agreement, dismiss counterclaims or crossclaims. Nor did the doctrine of *lis pendens*, or pendency of a prior action, justify dismissal of the crossclaim absent a showing that the causes of action and relief sought were identical in the crossclaim and the separate legal malpractice case.

TRIAL JUDGE RETIRES, SUPERIOR COURT DECIDES BASED ON RECORD

Dolan v. Hurd Millwork, 219 A.3d 253 (Pa. Super. 2019)(Non-precedential decision)

At a non-jury trial by homeowner against contractor for defective construction, the court awarded $500,000 plus delay damages. The trial court opinion was inadequate for appellate review so the case was remanded for a supplemental opinion on specific issues. Upon learning the trial judge had retired, the Superior Court ordered a new trial. At *Dolan v. Hurd*, 195 A.3d 169 (Pa. 2018), the Supreme Court disagreed, instructing the Superior Court to review the record for legal errors and, as for fact issues, to determine whether competent evidence supported findings in favor of the verdict holder. On remand, the Superior Court affirmed the trial court award.

FAILURE TO GIVE NEGLIGENCE *PER SE* CHARGE HARMLESS ERROR

Grove v. Port Authority, 218 A.3d 877 (Pa. 2019)

Port Authority bus struck pedestrian Grove, causing a leg amputation. A witness claimed that Grove, not within a crosswalk, stepped into the path of the bus. Port Authority requested, and the trial court denied, a jury instruction on Grove's negligence *per se* based on duties of pedestrians under the Vehicle Code. Since the jury in any event still found Grove comparatively negligent, failure to give the negligence *per se* charge, admittedly an error, was nonetheless harmless. Port Authority's appeal was denied.

STANDARD OF APPELLATE REVIEW OF TRIAL COURT DENIAL OF JNOV

Menkowitz v. Peerless Publishing, 211 A.3d 797 (Pa. 2019)

Menkowitz sued Peerless for a 1997 article stating he had been suspended by a hospital and that his "sudden absence from the hospital has spawned rampant rumors of professional misconduct regarding his treatment of an older female patient." Menkowitz *had* been suspended, his brusque manner *had* upset an elderly female patient, and rumors *were* in fact rampant. Menkowitz, however, claimed that the article was either defamation *per se* or defamation by innuendo by falsely insinuating sexual misconduct. The jury awarded Menkowitz $1,000,000 in compensatory and $1,000,000 in punitive damages. The trial court confirmed the compensatory award but vacated the punitive award. The Superior Court *en banc* vacated the compensatory award as well. The Supreme Court reverses, reinstating the compensatory award and remanding for the Superior Court to consider the punitive damage appeal. The Superior Court was obliged to review denial of JNOV on the compensatory award on an "abuse of discretion" basis, scouring the record not for reasons to disagree, but for evidence supporting the verdict, which it failed to do.

JUDGE PRESENT DURING JURY VOIR DIRE

Trigg v. Children's Hospital, 229 A.3d 260 (Pa. 2020)

Neither the calendar control judge nor the trial judge were present during jury voir dire, a process which was instead managed by a court clerk. A judge was on call to address any disputed challenges for cause. The Superior Court found this procedural flawed and awarded a new trial. The Supreme Court reverses, finding the issue waived under well established requirements for issue preservation.

VENUE

VENUE FOR INTERNET DEFAMATION CLAIMS

Fox v. Smith, 211 A.3d 862 (Pa. Super. 2019), appeal granted, 222 A.3d 383 (Pa. 2020)

Fox and Smith were candidates in the 2017 Chester Heights (in Delaware County) mayoral election eventually won by Smith. Fox sued Smith (in Philadelphia County) for internet defamation based on allegedly false statements that Fox had a criminal record. In an apparent case of first impression, the Superior Court holds that a plaintiff may file a defamation action in any county where an internet posting causes the requisite harm to reputation, i.e., when an internet communication is read by a third party the plaintiff knows personally who understands the communication to be harmful to plaintiff's reputation.

VENUE BASED ON REGULARLY CONDUCTING BUSINESS

Hangey v. Husqvarna Group, – A.3d – (Pa. Super. 2021)

Hangey sued lawnmower manufacturer Husqvarna ("HPP") in Phila CCP for an accident occurring in Wayne County with equipment purchased from a retailer in Bucks County. The trial court transferred venue to Bucks County. Whether a corporation "regularly" conducts business in a county so as to permit venue is determined through a "quality-quantity" analysis. "Quality" refers to acts directly furthering or essential to corporate objects, clearly met here. "Quantity" refers to acts sufficiently continuous to be considered habitual, which the trial court found lacking since Phila sales represented only .005% of HPP sales. The Superior Court reverses. Percentage of sales of a multi-billion dollar company is not an accurate gauge of activity. More telling is the local sales office and a history of local sales.

WAIVER OF LIABILITY

NO WAIVER OF CLAIMS BASED ON GROSS NEGLIGENCE OR RECKLESSNESS

Feleccia v. Lackawanna College, 215 A.3d 3 (Pa. 2019)

Plaintiffs suffered injuries while participating in College's football practice, having previously signed waivers barring suits against College for injuries arising out of athletic activities. The waivers did not reference negligence by College. College originally intended to provide "Athletic Trainers" (a defined term under the Medical Practice Act, requiring certification) at practice but instead hired individuals who failed the certification test, thereafter referring to them as "First Responders" (an undefined term, not requiring certification). Plaintiffs sued College and its employees for negligent, grossly negligent, and reckless conduct, including failure to provide "Athletic Trainers" at practice. The trial court granted College summary judgment based on the waivers and on assumption of risk. The Supreme Court reverses. Having undertaken to provide licensed "Athletic Trainers," College may have failed to do so and thus may have increased plaintiffs' risk of harm, fact issues preventing summary judgment. The waivers, though not specifically referencing "negligence," were adequate to bar negligence claims. As a matter of public policy, however, such waivers could not bar claims based on gross negligence or recklessness. Gross negligence has been "consistently recognized as involving something more than ordinary negligence, and is generally described as 'want of even scant care' and an 'extreme departure' from ordinary care." The case was remanded for trial.

COORDINATE JURISDICTION RULE AND WAIVER OF LIABILITY

Valentino v. Phila. Triathlon, 209 A.3d 941 (Pa. 2019)

Valentino electronically registered for a triathlon, a process which included an electronically executed liability waiver form. He drowned in the Schuylkill during the first portion of the race. Valentino's widow sued the race organizer which prevailed on a second motion for summary judgment. Valentino claimed that the coordinate jurisdiction rule barred this result since a first motion for summary judgment had been denied by a different judge. The Superior Court *en banc* rules "the completion of discovery and the development of a more complete record" qualified as an exception to coordinate jurisdiction. Further, while noting that a decedent may not compromise a wrongful death claimant's right of action without consent, the wrongful death claimant nevertheless remains subject to substantive defenses, including, in this case, waiver of liability. On further appeal, the Supreme Court was evenly divided on the waiver of liability issue, thus affirming the Superior Court and upholding summary judgment.

ATTORNEYS

ATTORNEY FEES FROM SUCCEEDING COUNSEL

Spector Gadon & Rosen v. Rudinski Orzo & Lynch, 231 A.3d 923 (Pa. Super. 2020)

SGR represented Hazleton against Shell Energy subject to a written fee agreement which provided for fee payment out of any recovery. Hazleton discharged SGR, hired ROL, settled the case, making no payment to SGR. ROL was aware of, but did not protect SGR's fee claim when it made distribution to Hazleton. SGR sued Hazleton for its fees, obtained a judgment, but could not collect. SGR sued ROL for the fees on a conversion theory. Absent an agreement, a prior attorney (here, SGR) has no claim against a succeeding attorney (here, ROL) for unpaid fees.

ATTORNEY SANCTIONED FOR CLIENT'S DISCOVERY RESPONSES

Farrell v. Farrell, 218 A.3d 485 (Pa. Super. 2019), appeal denied, 227 A.3d 870 (Pa. 2020)

Farrell, acting *pro se*, typed responses to document requests and sent them to Lerch, her attorney, who forwarded them, unedited, to the opposing party. Lerch then also filed late discovery requests on the eve of a Master's Hearing. The court found Lerch, not her client, in contempt of an earlier discovery order and imposed monetary sanctions. The Superior Court affirms. Though the original discovery order did not name her, Lerch could still be in contempt of court for permitting her client to prepare obviously inadequate responses, for failing to bring the responses into compliance, and for pursuing late discovery in bad faith.

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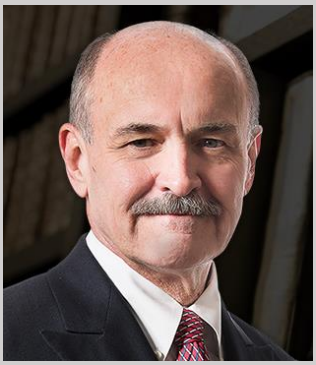

Michael P. McKenna

Managing Partner
General Counsel

Practice Areas

Professional Liability Litigation
Insurance Litigation
Fire and Property Insurance/Subrogation
Insurance Contracts and Coverages
Uninsured/Underinsured Motorist Law

Bar Admissions

Pennsylvania

Education

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Michael McKenna has been a partner in Margolis Edelstein since 1983 and has served as the firm's Managing Partner since 1995. Before joining Margolis Edelstein in 1982, Michael was Assistant General Counsel for the Pennsylvania Manufacturers' Association Insurance Company. He handles files, publishes, and speaks on a broad array of insurance and tort topics.

As Managing Partner, Michael oversees all operations in a firm which has grown during his tenure from two to nine offices.

Michael has tried hundreds of jury, non-jury, and UM/UIM arbitration trials with subject matter ranging from auto to premises to fire to products to insurance coverage. He has appeared pro hac vice in Delaware, Kentucky, Maryland, New Jersey, New York, and Puerto Rico. He has also defended or prosecuted appeals before the Pennsylvania Commonwealth Court, Superior Court, and Supreme Court and before the Third Circuit Court of Appeals.

In addition to frequent speaking engagements before insurance industry groups, Michael also publishes, annotates, and updates the Pennsylvania Motor Vehicle Financial Responsibility Law Booklet, a comprehensive guide to auto law in the Commonwealth.

Honors

AV *Martindale-Hubbell* Peer Review Rated
Selected for Inclusion in Pennsylvania Super Lawyers
Recipient of Philadelphia Bar Foundation Crystal Award for Commitment to Equal Access to Justice

Court Admissions

U.S. Court of Appeals, Third Circuit
U.S. District Court, Eastern District of Pennsylvania
U.S. District Court, Middle District of Pennsylvania

Professional Affiliations

- Federation of Defense & Corporate Counsel
- Pennsylvania Bar Association
- Philadelphia Bar Association
- Pennsylvania Defense Institute
- Defense Research Institute
- Philadelphia Association of Defense Counsel
- Philadelphia Bar Foundation Hamilton Circle Life Fellow

Speaking Engagements and Presentations

- Pennsylvania Unfair Insurance Practices Act and Regulations, PAMIC, Harrisburg, PA
- Employer's Liability Insurance: A Port Depending on the Storm, Risk and Insurance Management Society, Dallas, TX
- Insurance Coverage for Underground Storage Tanks, PAMIC, Lancaster, PA
- Annual Presentation of Litigation Update to Pennsylvania Association of Mutual Insurance Companies, 1984 to present

Articles and Publications

- Pennsylvania Motor Vehicle Financial Responsibility Law Booklet
- Annual Litigation Update

Representative Matters

- Represented the plaintiff insurer in *Penn National v. St. John*, establishing that "first manifestation" trigger for CGL coverage against property damage claims applies even when exposure, manifestation of harm, and discovery of cause extend over multiple policy periods, thus rejecting extension of the *J.H. France* asbestosis multiple or continuous trigger of coverage. The favorable Chester County trial result was upheld in the Superior Court and thereafter in the Supreme Court.
- Represented the plaintiff insurer in *Nationwide v. Tambone*, establishing the validity and applicability of its personal auto policy livery exclusion where the named insured's son, living elsewhere, occasionally used the covered auto to transport casual acquaintances for pocket money. The favorable Chester County trial result was upheld in the Superior Court, the Supreme Court thereafter denying a Petition for Allowance of Appeal.
- Represented prime defendant The Sheraton Corporation, the original owner and designer of the subject hotel, in the *San Juan Dupont Plaza Fire Litigation* in Puerto Rico, described by the Second Circuit Court of Appeals as a "litigatory monster" involving 264 separate lawsuits with 2,400 plaintiffs seeking total damages of over $1,800,000,000 for 98 deaths and over 140 severe burn injuries.
- Represented prime defendant Halprin Supply in the *One Meridian Plaza Fire Litigation* in Philadelphia against claims by the building owners, the owners of surrounding damaged buildings and businesses, and the estates of three firefighters killed in a blaze which destroyed this 38 story high-rise office building.
- Represented prime defendant Trident Mechanical Systems in the *Central Synagogue Fire Litigation* in Federal Court in Manhattan against claims of extensive damage to this historically certified building, the oldest extant synagogue in the United States, obtaining a defense verdict following a six week trial.