$6.5 MILLION Brain Injury
Defense Verdict
Ryan Ryan Deluca LLP
Stamford, CT

$368K Civil Negligence
Defense Verdict
Ahlers & Cooney, P.C.,
Des Moines, IA

$11 MILLION Contract Exclusion
Defense Judgment
Meagher & Geer, P.L.L.P.
Minneapolis, MN

Wrongful Termination Suits
Three Defense Verdicts
Sulloway & Hollis, PLLC
Concord, NH

$17 MILLION Pollution Exclusion
Summary Judgment
Sutterfield & Webb, LLC
New Orleans, LA

$4.5 MILLION Healthcare Case
Defense Verdict
Norman, Wood, Kendrick & Turner
Birmingham, AL

$2-$4 MILLION Med-Mal Claim
Directed Verdict
Cranfill Sumner & Hartzog LLP
Raleigh, NC

$350K PhD Testing Attacked Under ADA
Defense Judgment
Wright, Constable & Skeen, LLP
Baltimore, MD

$750K Church Van Accident
Defense Verdict
Molod Spitz, & DeSantis, P.C.
New York, NY

$20 MILLION Malicious Prosecution
Defense Judgment
Keller Landsberg PA
Ft. Lauderdale, FL

Constitutional Claims–Police K-9
Defense Verdict
Bunnell & Woulfe P.A.
Ft. Lauderdale, FL

Timber Destruction
Directed Verdict
Richardson, Plowden & Robinson, P.A.
Columbia, SC

Defamation Case
Defense Dismissal
Hodes, Pessin & Katz, P.A.
Baltimore, MD

Pharmaceutical Accutane Litigation
Two Defense Verdicts
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
Ridgeland, MS

$1 MILLION Product Liability
Defense Verdict
Campbell Campbell Edwards & Conroy, P.C.
Boston, MA

Wrongful Death & Negligence
Defense Dismissal
Zimmer Kunz, PLLC
Pittsburgh, PA.

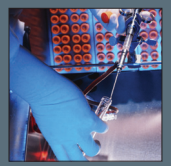
$54 MILLION Commercial Real Estate Development
Dispute Award
Snow Christensen & Martineau
Salt Lake City, UT

$10 MILLION Commercial Dispute
Defense Judgment
Burnham Brown
Oakland, CA

Class Action Deceptive Trade Practices
Defense Dismissal
Hodes, Pessin & Katz, P.A.
Baltimore, MD

$731K Land Development /Construction Case
Defense Verdict
Wright, Constable & Skeen, LLP
Baltimore, MD

Premises Liability and Negligence
Dismissal and Sanctions
Manning & Kass, Ellrod, Ramirez, Trester, LLP
Los Angeles, CA



Pharmaceutical Cases
Two Defense Verdicts
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
Ridgeland, MS

Railroad Tax Case
Supreme Court Reversal
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
Memphis, TN

CASE DETAILS ON www.harmonie.org

$1.5 MILLION FMLA Employment Issues
Defense Verdict
Ryan Ryan Deluca LLP
Stamford, CT

Police Excessive Force
Defense Verdict
Pitzer Snodgrass, P.C.
St. Louis, MO

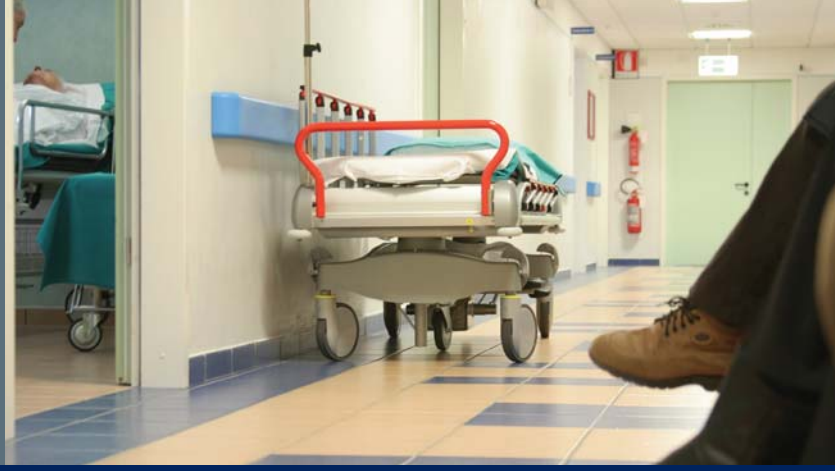
ATV Accident
Defense Judgment
Hirst Applegate, LLP
Cheyenne, WY

Construction Defect Coverage
Defense Verdict
Norman, Wood, Kendrick & Turner
Birmingham, AL

COUNSEL: **Michael T. Ryan**
FIRM: **Ryan Ryan Deluca LLP**
HEADQUARTERS: **Stamford, CT**

BRAIN INJURY

This was a personal injury action in which the plaintiff, a 14 year old boy, allegedly sustained a severe concussion, transient global amnesia, cognitive impairments, memory deficits, impairments in reasoning, memory and processing, as well as impairments in higher level executive function as a result of a head injury which occurred on the defendant's premises. The injury occurred when the plaintiff tried to jump over a low fence on the property. He didn't clear the fence and fell, hitting his forehead on the ground. He claimed that the fence was a dangerous condition, that the defendant failed to properly monitor and supervise the plaintiff, failed to properly instruct and warn the plaintiff, and failed to provide proper and timely medical treatment. After a two week trial, the jury returned a defendant's verdict, finding the plaintiff had not proved that the defendant was negligent. In closing argument, plaintiff argued for $6.5 million in damages. The defendant was able to preclude plaintiff's liability expert and succeeded in getting the court to charge out the claim for loss of earning capacity. The defendant also asked the court to charge out the claim for failure to provide medical treatment and in response the plaintiff withdrew the claim. On the day the case was given to the jury, an article appeared in a local newspaper concerning a recent $10 million verdict in a traumatic brain injury case in the neighboring judicial district. ■



COUNSEL: **Thomas A. Kendrick and W. M. Bains Fleming, III**
FIRM: **Norman, Wood, Kendrick & Turner**
HEADQUARTERS: **Birmingham, AL**

HEALTHCARE CASE

The plaintiff, a health care provider that treated eating disorders, filed suit against two defendants – a managed care company and another eating disorder treatment center. The managed care company administered a provider network for psychiatric services on behalf of a major health insurance company under a capitation arrangement. The managed care company contracted with an eating disorder treatment center – run by its sister company – which, prior to the plaintiff's opening, operated the only partial hospitalization program for eating disorders in the state of Alabama. The plaintiff's treatment center was excluded from the provider network.

The plaintiff claimed the defendants were guilty of tortious interference with business relations, fraud, defamation, breach of contract, and conspiracy. The fraud claims were disposed of through a motion to dismiss, while the defamation and breach of contract claims were dismissed on motions for summary judgment. The remaining claims of tortious interference with business relations and conspiracy went to trial.

The case was tried for five days before a Jefferson County jury, and the plaintiff claimed $1,500,000 in compensatory damages for lost profits and $3,000,000 in punitive damages. The jury deliberated for four and a half hours and returned its unanimous verdict in favor of the defendants. Both defendants were represented by Thomas A. Kendrick and W. M. Bains Fleming, III of Norman, Wood, Kendrick & Turner. ■

COUNSEL: **James R. Sutterfield**
FIRM: **Sutterfield & Webb, LLC**
HEADQUARTERS: **New Orleans, LA**

POLLUTION EXCLUSION

This coverage dispute arose out an allision of an insured vessel with a wellhead located in the navigable waters of Louisiana resulting in destruction of the wellhead equipment and a pollution incident where more than 7,000 barrels of crude oil spewed into the body of water. Coverage litigation involving the insurers' declaratory judgment action and the insured's claim for coverage, damages and bad faith, was filed in parallel to litigation between the insured, the well owner, and the U.S. for damages, clean-up and natural resources damage under the Oil Pollution Act of 1990. Ultimately the insured settled the claims by the well owner and the U.S. for a little more than $17 million, which it sought to have its insurers pay. Sutterfield & Webb represented New York Marine and General Insurance Company ("NYMAGIC") and Federal Insurance Company ("Federal") providing two layers of Bumbershoot liability insurance containing a time-element pollution buy-back provision which would potentially override the absolute pollution exclusion of the policy itself.

The buy-back provision, which would reinstate otherwise excluded pollution coverage, required among other things that the "occurrence" become known to the insured within 72 hours after its commencement and that the "occurrence' be reported in writing to the insurers within 30 days after having become known to their insured. The policies defined "occurrence" as "an event…which unintentionally cause[d]… property damage during the policy period."

The insured contended that it did not learn of its involvement in the incident for some 34 days because of the dishonesty of its captain and crew who fled the scene and then lied about it. The insured simultaneously argued that it was aware of the incident within seventy-two (72) hours after its commencement because another of its vessels discovered the pollution within hours of the allision. Accordingly, it asserted that it had complied with the 72-hour knowledge requirement. The insured also argues that the 30-day reporting requirement was a notice provision which, under Louisiana law, would be excused absent proof of prejudice.

After several hearings and repeated briefing by order of the court, the district court granted Summary Judgment to NYMAGIC and Federal on the pollution claims, agreeing that the event which caused the pollution incident was the insured vessel striking the wellhead, not merely knowledge that something had struck it. In order to fulfill the 72-hour requirement, the insured would have had to know that its vessel was involved, not just that there was a pollution incident. The district court further agreed with us that even if the insured was deemed to have knowledge of the "occurrence" by virtue of the knowledge of the captain of its alliding vessel, the insured did not provide written notice of the "occurrence" to NYMAGIC and Federal within 30 days of its occurrence. The Court further ruled that without triggering the buy-back coverage by complying with all of its requirements, the assured had no pollution coverage such that a delayed notice clause of the main policy would not serve to excuse the failure to report. A full copy of the decision can be found in Westlaw or Lexis. ■

COUNSEL: **Andrew T. Tice**
FIRM: **Ahlers & Cooney, P.C.**
HEADQUARTERS: **Des Moines, IA**

CIVIL NEGLIGENCE

Plaintiff brought suit against Defendant for alleged storm water drainage under theories of nuisance, negligence, and trespass. Defendant had undergone a construction project to renovate and expand its building, which required a redesign of its storm water detention system. Plaintiff alleged the storm water detention system had been negligently designed and constructed, and that while the storm water detention system was being re-constructed her neighboring property had been flooded by water overflowing from the Defendant's system filling the house's basement with mud, silt, and water, destroying windows, and damaging a retaining wall. Plaintiff further alleged that water continued to overflow the Defendant's system over the next three years and through the time of trial such that her property had become worthless.

Plaintiff vacated the property before the Defendant's construction and had been attempting to sell the property over the time of alleged overflow events. During this time, Plaintiff had an agreement to sell which failed to close when the buyer and buyer's lender viewed an alleged overflow event shortly before closing. Defendant denied liability and brought third-party claims against its construction companies including the engineers, architects, and general contractor. Before trial, Defendant obtained summary judgment upon Plaintiff's claims for trespass and punitive damages. Plaintiff later voluntarily dismissed the negligence claim. At trial, Plaintiff sought $368,719 in damages on the nuisance claim as well as attorney's fees, expert fees, and costs. Plaintiff called her neighbors, real estate agent (expert), general contractor (expert), and a landscape architect (expert) to establish a nuisance and resultant damages. Defendant successfully excluded and limited Plaintiff's claims and evidence, and after a two-week trial the jury returned a defense verdict finding Plaintiff had failed to establish a nuisance and rejecting Plaintiff's claims for damages. ■

COUNSEL: **Salvatore J. DeSantis**
FIRM: **Molod Spitz, & DeSantis**
HEADQUARTERS: **New York, NY**

CHURCH VAN ACCIDENT

In this two vehicle collision case, the firm obtained a defense verdict for an insured of Church Mutual. The case involved defeating the plaintiff's motion for summary judgment, winning the interlocutory appeal of that decision, and finally trying the case to overcome the fact that the defendant had a stop sign against them. The key to the success was obtaining an accident reconstruction expert where the plaintiff simply relied upon an assumption of clear liability. The defendants in the case were a church volunteer, the operator of the van, and the Church that owned the vehicle. The accident occurred at the intersection Bayside Avenue and 146th Street. The 34 year old plaintiff suffered significant injuries including a posterior lumbar Laminectomy & Disectomy at L5 –S1 with Posterolateral Fusion. Plaintiff never returned to work. The demand was $750,000 through and including the trial. While the jury was out a $675,000/$250,000 high/low settlement agreement was reached. The jury deliberated for one hour and returned with a defense verdict. The high/low agreement prevents any further appeals in the matter. ■

COUNSEL: **David Keller and Wendy Stein**
FIRM: **Keller Landsberg PA**
HEADQUARTERS: **Fort Lauderdale, FL**

MALICIOUS PROSECUTION

In March of 2006, Plaintiffs Andrew Sutter and Andrew Dinda were arrested and charged along with Sutter's company, Total Fleet Solutions, with various crimes relating to their business practices servicing the rental car industry by acquiring and processing property damage insurance claims. While a number of potential criminal violations were not pursued by local state prosecutors, the Statewide Prosecutor filed and pursued charges of insurance fraud, communications fraud, and an organized scheme to defraud outlined in a 23 Count Information. However, in 2007, the Statewide Prosecutor's charges were dismissed based on a Court determination that Florida's insurance fraud statute was unconstitutionally vague as applied. The State appealed, but the dismissal was affirmed.

Following the favorable resolution of all criminal charges in their favor, the Plaintiffs, Sutter, Dinda and Total Fleet, sued NICB and State Farm for malicious prosecution, and Total Fleet also sued for tortious interference with business relationships, based on the pursuit of the criminal investigation and the initiation of charges, claiming that NICB and State Farm ignored exculpatory evidence and urged prosecution despite evidence which they claimed indicated their conduct did not violate Florida criminal statutes. Based on expert testimony presented by their accounting expert, the Plaintiffs sought damages in excess of $20 million as compensation for the loss of Total Fleet's business and individual damages to Sutter and Dinda. The Court had also granted Plaintiffs' Leave to Amend their Complaint to incorporate a claim for punitive damages in addition to any potential compensatory award.

The Harmonie firm Keller Landsberg PA, and its members David Keller and Wendy Stein, obtained final summary judgment in favor of NICB on all counts after establishing in discovery overwhelming and undisputed evidence that there was an abundance of probable cause to pursue both the investigation and ultimately the criminal charges which were filed. The Court also granted summary judgment for State Farm on all counts. NICB and State Farm are currently moving to tax costs. The Plaintiffs have appealed. ■

COUNSEL: **Brian S. Goodman and Alexandra P. Moylan**
FIRM: **Hodes, Pessin & Katz, P.A.**
HEADQUARTERS: **Baltimore, MD**

DEFAMATION CASE

Plaintiff, Reverend Deloris Prioleau, filed this action against Bishop Adam Richardson alleging defamation, intentional infliction of emotional distress and false light invasion of privacy. The Complaint centered on an alleged statement made by Bishop Richardson at the African Methodist Episcopal (AME) Church's annual conference. Specifically, Plaintiff averred that, during the roll call, the Bishop stated he was referring Plaintiff to the Committee on Ministerial Efficiency as a result of the lawsuits that she had filed against the Conference.

Firm filed a Motion to Dismiss the Complaint arguing that civil courts lack subject matter jurisdiction over the issues raised in the Plaintiff's Complaint based upon the Free Exercise and Establishment clauses of the First Amendment. Additionally, the firm contended that the entirety of the Plaintiff's Complaint failed to state a cause of action for which relief could be granted.

The Court agreed with the Motion and dismissed the Plaintiff's Complaint with prejudice. The Court issued a 14 page Memorandum Opinion detailing the legal basis for its ruling. Specifically, the trial court held that civil courts lack subject matter jurisdiction over the issues raised in the Plaintiff's Complaint; because consideration of the Plaintiff's claims would require review of church policies and procedures, and would run afoul of the First Amendment.

The Court based its decision on the Maryland Court of Special Appeals' decision in Bourne v. Center on Children, Inc., 154 Md. App. 42 (2003)(holding that civil courts lack subject matter jurisdiction over the claims presented and affirming the lower court's decision to grant summary judgment to the defendants on the basis of lack of subject matter jurisdiction). In this case, the Court found that Reverend Prioleau's claims were akin to those of the plaintiffs in Bourne, and would require that the finder of fact to determine the following issues: (1) whether the church uses the Committee on Ministerial Efficiency solely for review of individuals accused of criminal or immoral acts; (2) whether a suit against the district is considered an act of immorality under church doctrine; (3) whether a false announcement to the congregation that an individual will undergo review is an internal church matter, and; (4) whether a church can use this procedure in deciding who gets to represent it in matters of faith as part of its clergy. The Court concluded, "[c]onsideration of these issues would require this Court to venture into considerations of religious tenants which would not be permissible under the First Amendment pursuant to precedent set in Bourne."

For the foregoing reasons, the Court determined that it lacked subject matter jurisdiction to consider the Plaintiff's claims of defamation, intentional infliction of emotional distress and false light invasion of privacy, and ordered that the Complaint be dismissed in its entirety. ■

COUNSEL: **Orlando R. Richmond Sr. and Mark A. Dreher**
FIRM: **Butler, Snow, O'Mara, Stevens & Cannada, PLLC**
HEADQUARTERS: **Ridgeland, MS**

PHARMACEUTICAL ACCUTANE LITIGATION

Members of Butler Snow's Product Liability Group and Pharmaceutical Medical Device and Healthcare Industry Team recently obtained two defense verdicts in Atlantic City, New Jersey, for Hoffmann-La Roche, Inc. in a trial involving the drug Accutane. The plaintiffs claimed that Accutane caused them to develop inflammatory bowel disease and that Roche inadequately warned of the risks. After a six week trial, the verdicts were the first defense verdicts in the consolidated Accutane proceedings in New Jersey state court. ■

COUNSEL: **John Lund and Kara Pettit**
FIRM: **Snow Christensen & Martineau**
HEADQUARTERS: **Salt Lake City, UT**

COMMERCIAL REAL ESTATE DEVELOPMENT

After years of contentious litigation and eight weeks of jury trial, John Lund and Kara Pettit secured one of the largest jury verdicts ever awarded in the State of Utah. The dispute centered on delayed development at the Canyons, a world-class mountain resort in Park City, Utah. The Canyons bought the resort in the mid-1990s from Wolf Mountain and began adding lifts and runs. The arrangement provided for a 200 year long lease of the underlying land with Wolf Mountain as the landlord and the Canyons as the tenant but with the development rights to the land belonging to the Canyons. The Canyons also worked with the government and numerous other landowners to put in place a master development plan for a village and golf course at the base of the ski mountain. That plan provided the Canyons with the right to develop 5 million square feet of lodges, condominiums and retail spaces at the base of the ski resort. These development opportunities became increasingly valuable as the ski mountain was improved. By the mid-2000s the demand for such development parcels was also very high. All parties except Wolf Mountain were ready and indeed anxious to move forward with various land transfers that would have made the whole plan a reality. However Wolf Mountain refused to cooperate and instead began attempting to oust the Canyons and keep the improved resort and development rights for itself. This caused years of delay in the development path at the resort and, most importantly for the damage case, a loss of the opportunity to have sold development parcels and begun construction of new lodges and condominiums in the mid-2000s before the economic collapse.

The jury considered breach of contact claims but also claims of breach of the implied covenant of good faith and fair dealing and claims of intentional interference with economic relations. At the conclusion of the case, the jury found Wolf Mountain liable on all such claims as asserted by the Canyons. The jury also sided fully with the Canyons as to damages and awarded $54,437,000 in contract and tort damages. The jury also rejected counterclaims against Canyons that could have cost the company the loss of its $300 million investment in improving the resort which is now the largest ski resort in the state of Utah. In a second but related case that was tried alongside the main case, Lund and Pettit also defeated claims of waste and breach of contract filed by a sheep rancher whose land is used in the winter for skiing. The jury verdict represents the successful culmination of eighteen separate actions filed in four states, involving nine pretrial appeals. For nearly five years, the team remained focused on driving the case to trial in the face of countless motions and appeals, including belated attempts to compel arbitration, to remove the cases to federal court, and motions to disqualify three judges. ■

COUNSEL: **Gregory Brown, Derek Lim and Rohit Sabnis**
FIRM: **Burnham Brown**
HEADQUARTERS: **Oakland, CA**

COMMERCIAL DISPUTE

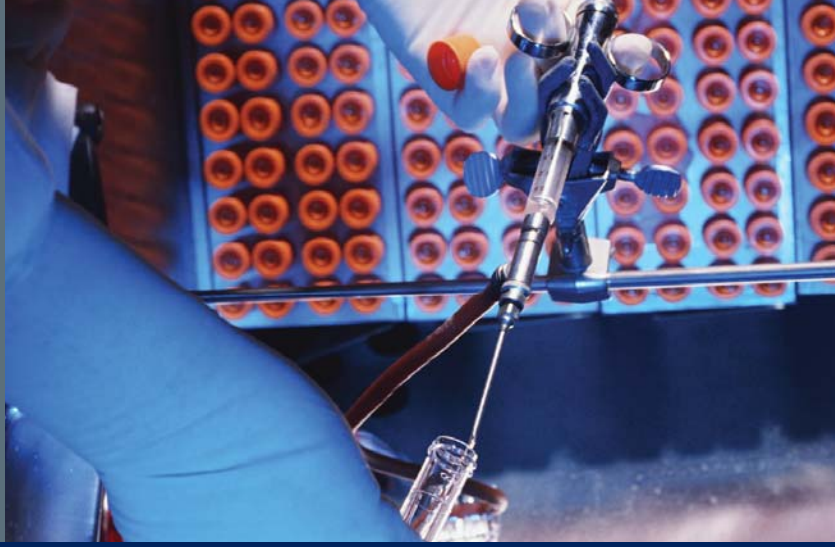
Burnham Brown defense team obtained summary judgment in favor of a member of a Limited Liability Company ("LLC") in litigation involving damages alleged to exceed $10,000,000. The plaintiff, a Chinese manufacturer, claimed that the defendant LLC, a designer and supplier of lighting products, was liable to it for Breach of Contract and Goods Sold and Delivered. In response, the LLC filed a counter-claim generally asserting that the products provided to it by the Chinese manufacturer were inadequate. In addition to making claims against the LLC, the Chinese manufacturer's complaint asserted that the Court should pierce the corporate veil such that the LLC's individual members could be held personally liable for the actions of the LLC. In attempting to support this theory of "alter ego" liability, plaintiff argued, primarily, that the LLC was undercapitalized due to the bad faith actions of its members. Burnham Brown's motion for summary judgment, brought on behalf of one of the LLC's members, presented evidence demonstrating that the LLC was formed and conducted its business for legitimate purposes well in advance of the parties' dispute, that it was adequately capitalized and that its members properly complied with all corporate formalities required of a California LLC. Plaintiff opposed the motion by submitting evidence that allegedly showed the LLC's members put their own interests ahead of the LLC in conducting the company's business. In response, Burnham Brown's attorneys successfully persuaded the Court to exclude certain plaintiff's evidence as inadmissible and demonstrated that the remainder was not sufficient to create a disputed issue of fact. The Court granted judgment in favor of the LLC's member thus rendering his personal assets unavailable to satisfy any claim of the Chinese manufacturer. ■

COUNSEL: **Brian T Moss**
FIRM: **Manning & Kass, Ellrod, Ramirez, Trester LLP**
HEADQUARTERS: **Los Angeles, CA**

PREMISES LIABILITY AND NEGLIGENCE

Claim #1: A department store customer allegedly left an $80,000 piece of jewelry in the dressing room, then reported it missing, and filed a lawsuit claiming theft and bailor/bailee causes of action, among others. After continuing to pursue her claim and lawsuit, Defense brought a motion for sanctions under California Code of Civil Procedure section 128.7 against the Plaintiff and counsel for filing an unmeritorious and frivolous action. The court ordered sanctions of $25,000 against the plaintiff and her counsel. Plaintiff ultimately dismissed the case with prejudice and wrote Defendant a personal check for $20,000.

Claim #2: Two department store customers collided at the base of an escalator. Plaintiff brought a claim for premises liability and negligence. The videotape footage of that collision showed no valid claim against the store, yet plaintiff pursued the lawsuit. Again, Defense brought a 128.7 motion against Plaintiff and counsel for sanctions due to filing an unmeritorious suit. The court in this case ordered $17,000 in sanctions. This plaintiff also ultimately dismissed the case with prejudice and plaintiff's counsel wrote Defendant a check for $12,500. ■



COUNSEL: **Christy Jones (lead), Adam Spicer, Chad Hutchinson and Liz Moccaldi**
FIRM: **Butler, Snow, O'Mara, Stevens & Cannada, PLLC**
HEADQUARTERS: **Ridgeland, MS**

PHARMACEUTICAL CASES

Members of Butler Snow's Pharmaceutical Medical Device and Healthcare Industry Team helped secure two defense verdicts for Johnson & Johnson Pharmaceutical Research Development, LLC and Ortho-McNeil Janssen Pharmaceuticals, Inc. in products liability cases involving the fluoroquinolone antibiotic, Levaquin. The plaintiffs filed suit against Johnson & Johnson and Ortho-McNeil claiming the drug caused their Achilles tendon injuries and that the label inadequately warned of the association between tendon injuries and fluoroquinolones. After six weeks of trial in the Superior Court of New Jersey (Atlantic City), the jury returned a defense verdict on October 14, 2011, for Johnson & Johnson and Ortho-McNeil as to both plaintiffs. ■

COUNSEL: **Charles E. Spevacek, Michael McNamee and Katie Giedt**
FIRM: **Meagher & Geer, P.L.L.P.**
HEADQUARTERS: **Minneapolis, MN**

CONTRACT EXCLUSION

Facing a $11 million copyright infringement claim, PetroNet LLC, a technology company, sought defense and indemnity from its liability insurer, Hartford Casualty Ins. Co., represented by Meagher & Geer, P.L.L.P.

Although the underlying suit did not include a claim for breach of contract, the fact allegations were grounded in PetroNet's alleged breach of its contract obligation to hold claimant's proprietary and confidential information in the strictest confidence. The court agreed with Meagher & Geer's argument that the lawsuit's claims were not covered, applying the policy's breach of contract exclusion. The court also held that the claim did not fall within the grant of coverage because the claimant had not alleged that PetroNet had infringed the claimant's computer code in any "advertisement." The complaint alleged only that PetroNet had stolen and sold copyrighted materials.

Aside from the sum of money at stake, the significance of the ruling is twofold. First, this is one of a very small number of cases nationwide that have applied the contract exclusion to bar coverage where the claimant has not asserted a breach of contract claim or cause of action. Second, the court's opinion underscores that alleged improper conduct, even copyright infringement, must be part of the insured's advertising in order to fall within the scope of the advertising injury coverage, something that many policyholders ask courts to overlook. ■

COUNSEL: **Peter J. Dunne**
FIRM: **Pitzer Snodgrass, P.C.**
HEADQUARTERS: **St. Louis, MO**

POLICE EXCESSIVE FORCE

The case arose out of the mistaken arrest of a passenger motorist. Mrs. Edna Ramsey was a passenger in a truck that was operated by her husband Arnett Ramsey. The truck was a replacement vehicle for a truck Mr. Ramsey owned that had been stolen a month earlier. The vehicle was pulled over by City of Normandy Police Officer Tim Conner because it displayed auto dealer's "drive away" license plates. When he was asked for his insurance card, Mr. Ramsey mistakenly gave Officer Conner the insurance card for the stolen truck, not the new truck, and when Officer Conner ran the information on the insurance card, the truck came back as stolen.

Both Mr. and Mrs. Ramsey were ordered out of the truck by Officer Conner and Mrs. Ramsey was handcuffed behind her back. She testified she suffered severe shoulder pain when her arms were wrenched behind her as she was handcuffed. She was diagnosed has having sustained a torn rotator cuff tendon as the result of being handcuffed. She sued the City of Normandy and Officer Conner for excessive force.

The United States District Court entered Summary Judgment in favor of the City of Normandy but denied MSJ for Officer Conner. The case was tried on plaintiff's theory that Officer Conner used excessive and unnecessary force when he wrenched Mrs. Ramsey's arms behind her back in the act of handcuffing. Officer Conner argued that he handcuffed Mrs. Ramsey in the usual way and that it was both reasonable and necessary to handcuff Mrs. Ramsey in the course of investigating the felony traffic stop. The jury agreed and returned a verdict in favor of Officer Conner. Following the verdict, the Plaintiff's attorney withdrew and Plaintiff is pursuing an appeal of the verdict pro se. ■

COUNSEL: **Chuck Deluca**
FIRM: **Ryan Ryan Deluca LLP**
HEADQUARTERS: **Stamford, CT**

FMLA EMPLOYMENT ISSUES

Firm represented Metro-North Railroad in this case. The case began when a Metro-North employee claimed that his supervisor retaliated against him after he applied to take leave under the Family and Medical Leave Act (FMLA) for the birth of a child. The employee alleged that his supervisor called him names and belittled him for using FMLA, abolished his job and impeded his ability to transfer, resulting in an alleged constructive discharge. Metro-North counseled the supervisor not to engage in unprofessional conduct, but determined that the conduct at issue did not rise to retaliation. The supervisor did not intend to dissuade this particular employee, or any employee, from using FMLA, nor did the supervisor or Metro-North take any adverse actions against the employee in connection with his use of FMLA leave.

While the FMLA claim was pending, the employee committed suicide. His widow was named administratrix of the estate and pursued the lawsuit on the employee's behalf. In addition to claiming FMLA retaliation, the widow also sought to recover damages for emotional distress the employee allegedly suffered and alleged that the FMLA retaliation caused her husband to later commit suicide. The widow also sought to recover damages for her husband's death under the Federal Employers' Liability Act. Metro-North denied that it retaliated against the employee, that it intentionally inflicted emotional distress upon him, or that it caused the employee to take his own life. After a ten day trial, the firm obtained a defense verdict on each of the plaintiff's claims. ■

COUNSEL: **John Martin and Regan Toups**
FIRM: **Cranfill Sumner & Hartzog LLP**
HEADQUARTERS: **Raleigh, NC**

MED-MAL CLAIM

This case involved a minor Plaintiff who suffered from a congenital heart defect. She presented to the Defendant hospital with renal failure. After receiving treatment, she was transferred to a different facility. While in route, the minor Plaintiff arrested, and she suffered permanent brain damage. Plaintiffs asserted direct claims against the Defendant hospital claiming the hospital staff failed to provide adequate care and treatment to the minor Plaintiff as well as agency claims against the hospital alleging the emergency room doctor who treated the minor Plaintiff was its agent. After Plaintiffs' nursing expert was deposed, Defendants filed a Motion for Summary Judgment arguing the expert failed to provide any opinions that the nursing staff's actions caused injury to the minor Plaintiff. The Motion was granted. After additional discovery on the agency claim was completed, the Defendants filed a second Motion for Summary Judgment arguing the ER doctor was not an actual or apparent agent. The judge denied the Defendant's Motion as to the actual agency claim but allowed the apparent agency claim to proceed to trial. After a week of trial, and at the close of Plaintiff's evidence, Defense counsel moved for a Directed Verdict arguing that the Plaintiffs failed to offer sufficient evidence that the doctor was its agent. The evidence showed that Plaintiff signed thirteen consent forms over a period of several years which stated that the doctors were not employees or agents of the hospital. A Directed Verdict as to the final claim was granted. The damages presented by Plaintiffs' counsel during discovery included a Life Care Plan that ranged from approximately $2,000,000.00 - $4,000,000.00. ■

COUNSEL: **Edward Kaplan, Irvin Gordon and Derek Lick**
FIRM: **Sulloway & Hollis, PLLC**
HEADQUARTERS: **Concord, NH**

WRONGFUL TERMINATION SUITS

Sulloway & Hollis trial attorneys successfully defended three wrongful termination cases in row in the last three months of 2011. All three cases were brought against well-respected community-based health care or behavioral health care providers and all garnered media attention.

In the first case, the plaintiff was a licensed social worker responsible for overseeing a team of therapists who provided mental health services to children and families. The plaintiff claimed she was wrongfully terminated. She also made a claim of intentional infliction of emotional distress against two of her superiors. She asked for nearly $200,000 in damages. Defense counsel responded that the termination was proper because of the employee's failure to keep proper time records and because of the employee's improper use of the employer's credit card for grocery purchases unrelated to work. The defense was made more difficult because one other employee (who was not terminated) had been found to have used the credit card on one occasion for items that were arguably not work related. After a four-day trial, the jury returned a defense verdict on both claims.

In the second case, the plaintiff, who was an office manager in a hospital, claimed she was wrongfully terminated because she "reported a system-wide problem" with the way staff was inputting data into key medical forms. The plaintiff's economic expert testified that the plaintiff was entitled to "back pay" and "front pay" totaling more than $800,000. In defense of the claim, defense counsel asserted that employment was terminated because the employee made excessive and inappropriate personal use of the employer's email systems, including the receipt and forwarding of emails containing inappropriate and unprofessional language (including profanity) and photos (including photos that were arguably pornography). Here, the defense counsel had to explain why the plaintiff was terminated when other employees who were also found have received and forwarded inappropriate emails were not. After a four-day trial, the jury returned a defense verdict.

In the third case, a radiological technologist at another hospital sought damages of $500,000 claiming that he was wrongfully terminated, that the hospital violated the State's Whistleblower Protection Act, and that the hospital and two co-workers defamed him. Essentially, the plaintiff claimed that he was "singled out" for discipline and termination because he reported shortcomings in patient care provided by certain nurses. After obtaining summary judgment on the Whistleblower and defamation claims and on all claims against the two individual defendants, the case went to a jury trial on the wrongful termination claim against the hospital. The jury returned a defense verdict. ■

COUNSEL: **Monte Fried, James Constable and Mollie G. Caplis**
FIRM: **Wright, Constable & Skeen, LLP**
HEADQUARTERS: **Baltimore, MD**

PHD TESTING ATTACKED UNDER ADA

Plaintiff, who had an attention deficit disorder and trouble concentrating and remembering information, brought suit against a private college which had applied its Two-Time Fail Rule and dismissed her from its Ph.D. Program after she twice failed three of the six comprehensive essay examinations, even though she had successfully completed all of her pre-comprehensive examination course work. Plaintiff contended that the College had discriminated against her in violation of the Americans with Disabilities Act and the Rehabilitation Act because the first time she took those examinations which she failed, the College had not reasonably accommodated her disability by providing a "solitary testing environment." For this reason, she additionally asserted that she should have been allowed to take the failed examinations a third time. She also sought $350,000 in damages.

In addition to the monetary claim, the College was concerned that being required to modify its requirements and allow the Plaintiff to take her comprehensive examinations a third time would lower the College's program standards. The College mounted a vigorous defense. Documents and affidavits were collected by Defense Counsel to support an extensive Summary Judgment Motion arguing that the Plaintiff was, in fact, reasonably accommodated, that she was not "otherwise qualified" to continue in the Ph.D. program, and that dispensing with the Two Time Fail Rule was not required under the law. After reviewing the materials and arguments provided by the parties, the Federal District Court upheld the Plaintiff's dismissal from the Ph.D. program and issued a lengthy Memorandum Opinion granting Summary Judgment in favor of the College.

The Court held that the Plaintiff had been more than reasonably accommodated by the College when taking her examinations, noting that she was afforded a multitude of accommodations, including extra time and different days on which to take the several parts of the examination; extra tutoring; and study guides to assist her in preparing for the exams. It also held that the testing environment about which the Plaintiff complained was essentially a quiet/solitary environment, that she herself had expressed satisfaction and appreciation about her testing conditions, and that the Plaintiff complained about them only after she received a failing grade.

Most importantly, the Court held that having failed the examinations twice despite being reasonably accommodated, the Plaintiff was not "otherwise qualified" to remain in the Program since she could not meet its requirements under the Two Time Fail Rule. The Court agreed with Defense Counsel and expressly held that the College was not required under the law to accommodate the Plaintiff and waive the Two Time Fail Rule, agreeing that requiring such an accommodation would fundamentally alter and lower the Program's standards and its overall value to those candidates who earn a Ph.D. degree. In short, the College was not required to pay any monies to the Plaintiff, and the College's Ph.D. Program and requirements remained intact. ■

COUNSEL: **Richard T. Woulfe, Louis Reinstein**
FIRM: **Bunnell & Woulfe P.A.**
HEADQUARTERS: **Ft. Lauderdale, FL**

CONSTITUTIONAL CLAIMS - POLICE K-9

The case arose following a stop by a Broward County Sheriff's Office deputy after observing Mr. Dennis Baker driving the wrong way on a deserted street in the early morning hours. Upon pulling him over and the deputy engaging Mr. Baker, a BOLO was issued for his vehicle and a person matching Mr. Baker's description involving a theft at a convenience store around the corner. Mr. Baker heard the BOLO and a struggle ensued with the deputy. The deputy was forced to use his Taser, but Mr. Baker fought it off and led deputies on a high speed chase through the city. After flipping his truck, Mr. Baker fled on foot and hid in the back seat of a vehicle until a Sheriff's Office K-9 located him. Mr. Baker then ignored the K-9 warnings and the dog was sent in to retrieve Mr. Baker. This took only seconds and Mr. Baker was then apprehended and taken to the hospital for his injuries. Mr. Baker sued three deputies for excessive force and for failure to intervene.

The United States District Court entered Summary Judgment in favor of one of the deputies, but denied summary judgment for the other two involving the use of the K-9. The case was tried on plaintiff's theory that the K-9 was allowed to maul the plaintiff and allowed to bite the plaintiff for longer than necessary to apprehend him. The deputy K-9 handler argued that if the K-9 was allowed to bite the plaintiff for as long as the plaintiff said it was biting him, the plaintiff's leg would have been bitten down to the tendons and bone. The pictures and medical testimony confirmed this and the jury agreed returning a verdict in favor of the deputies. ■

COUNSEL: **Steven J. Pugh and Jocelyn T. Newman**
FIRM: **Richardson Plowden & Robinson, P.A.**
HEADQUARTERS: **Columbia, SC**

TIMBER DESTRUCTION

Landowner Plaintiffs filed an action in 2008 against a utility company alleging trespass, conversion, and violation of a timber statute, seeking in excess of $5,000,000 in damages after a utility company contractor cut down approximately 175 mature cedar trees in order to erect larger utility poles to provide for new construction in the area. The Plaintiffs' property, "Cedar Lane Farm," was named for the trees which had been planted more than seventy years ago.

After several days of trial, the Court granted a directed verdict in favor of the utility company finding that the trees were actually within a right-of-way which had been condemned by the highway department approximately forty years ago. ■

COUNSEL: **James M. Campbell and Michelle I. Schaffer**
FIRM: **Campbell Campbell Edwards & Conroy, P.C.**
HEADQUARTERS: **Boston, MA**

PRODUCT LIABILITY

Defense counsel successfully defended a motor vehicle manufacturer in a third-party action brought by a used car dealership that was defending an action brought by plaintiff claiming that the driver's seat-heater in the used vehicle was defective and caused her to sustain 2nd and 3rd degree burns on her buttocks and thighs. Several months after having purchased the vehicle from the used-car dealership, the plaintiff used the seat-heater for the first time. Due to a pre-existing medical condition which caused diminished sensation in her lower extremities, she was unable to feel that she was being burned until several hours later, at which time she discovered blisters on her skin. When she was diagnosed with 2nd and 3rd degree burns, she sued the used-car dealer for pain and suffering and permanent scarring. The used-car dealership claimed that the vehicle was not defective, but if anyone was at fault, it was not them but the manufacturer and sued the manufacturer in a claim of contribution. Defense successfully showed that there was no evidence to establish that the seat-heater in this used vehicle was in the same condition as when it was sold by the manufacturer. Moreover, since neither the plaintiff nor the used car dealer had disassembled the seat to inspect the seat heater components, neither was able to establish a defect in the components attributable to the manufacturer. ■

COUNSEL: **Joseph W. Selep, Dara A. DeCourcy and Joseph F. Butcher**
FIRM: **Zimmer Kunz, PLLC**
HEADQUARTERS: **Pittsburgh, PA**

WRONGFUL DEATH AND NEGLIGENCE

Plaintiff was the administrator of the estate of a man who committed suicide. The decedent was a man in his late thirties at the time of his death. He had claimed to have been molested as a boy by a Roman Catholic priest who was convicted of molesting another boy. When informed of the decedent's claim, the Diocese of Pittsburgh provided financial assistance to the decedent, paying for in-patient and out-patient therapy for him. After a year of treatment, decedent attempted suicide a second time. After paying for therapy for a year and a half, Diocesan officials informed decedent's family that it would make a final payment of $75,000. Plaintiff alleged that the decision not to fund treatment indefinitely caused decedent's third, successful suicide attempt.

The rule of law is that one who voluntarily undertakes to provide assistance to another is not required to continue those services. The volunteer may discontinue assistance at any time for any reason, unless by giving the aid and then discontinuing it, he has put the other in a worse position than he was in before the volunteer attempted to aid the other. The Diocese and Bishop moved to dismiss the complaint for failure to state a cause of action, for the absence of a duty owed by them in undertaking to pay for therapy, where Plaintiff had not alleged and could not have proved that the Diocese placed the decedent in a worse position than before the Diocese began to pay for treatment. The Court of Common Pleas agreed. Plaintiff's subsequent appeal to the Pennsylvania Superior Court yielded a published decision affirming the lower court's dismissal of the suit. The Diocese had not placed decedent in a worse position than he was in before the Diocese undertook to pay for treatment. Therefore, the appellate court ruled, the Diocese was free to discontinue that service, without liability. ■

COUNSEL: **Jim McBride, Steve Goodwin, and Forrest Hinton**
FIRM: **Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.**
HEADQUARTERS: **Memphis, TN**

RAILROAD TAX CASE

Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. 11501, prohibits state and local tax discrimination against railroads. Jim McBride, Steve Goodwin, and Forrest Hinton represented CSX Transportation, Inc. ("CSXT") in a challenge under Section 306 to imposition of sales and use taxes on CSXT's purchase and use of diesel fuel for locomotives, when interstate motor carriers, the railroads' chief competitors, did not pay sales and use tax on the purchase and use of diesel fuel for their truck fleets. The federal district court dismissed the case based on an Eleventh Circuit precedent holding that railroads could not state a claim for discriminatory taxation on the ground that the interstate motor carriers were exempt from the tax. After the Eleventh Circuit denied the appeal, we, along with Carter Phillips of the Sidley Austin firm in Washington, successfully sought a writ of certiorari. In CSX Transportation, Inc. v Alabama Department of Revenue, No. 09-520 (February 22, 2011), the United States Supreme Court reversed the lower courts and remanded the case to the district court for trial, holding that the railroads could state a claim for discrimination based on the disparate treatment of motor carriers. This was a significant victory for CSXT and the entire railroad industry, as railroads are often targeted by state and local governments for onerous taxes. ■

COUNSEL: **Howard S. Stevens and Jason R. Potter**
FIRM: **Wright, Constable & Skeen, LLP**
HEADQUARTERS: **Baltimore, MD**

LAND DEVELOPMENT/ CONSTRUCTION CASE

Plaintiff, a general contractor, filed a claim under certain payment bonds posted by the Defendant commercial surety in conjunction with the development of a property in Anne Arundel County, Maryland. The Plaintiff sued for payment of $731,000 for work that it claimed it performed on the subject property and which was not paid by the Developer/land owner. Defendant surety contended that the work that was performed, including a claim for lost profit, was not the type of work covered by the payment bonds in question and defended the case on that basis.

The case proceeded to trial in September 2011, and after a day and a half of testimony and evidence, the Plaintiff closed its case. The Court then, on the arguments of the Defendant, granted judgment in favor of the defense, and the Plaintiff recovered nothing. ■

COUNSEL: **Brian S. Goodman and Alexandra P. Moylan**
FIRM: **Hodes, Pessin & Katz, P.A.**
HEADQUARTERS: **Baltimore, MD**

CLASS ACTION DECEPTIVE TRADE PRACTICES

Plaintiff in this case filed a three count Complaint against Defendant Doctors Groover, Christie & Merritt, P.C. ("GCM"), a radiology group, alleging violations of the Maryland Health Maintenance Organizations Act ("HMO Act"), the Maryland Consumer Protection Act and unjust enrichment. The Complaint was based upon an invoice concerning charges incurred for radiological imaging after payment was denied by Plaintiff's insurance carrier. The Complaint was filed as a class action.

Prior to class certification, firm filed a Motion to Dismiss the Complaint on behalf of GCM, which was granted by the trial court. The trial court held that (1) the State's HMO Act provided only an administrative remedy, and not a private cause of action; (2) GCM, a professional medical practitioner, was expressly exempt from the Consumer Protection Act, and, further, did not engage in deceptive or misleading trade practices; and (3) the Defendant was not unjustly enriched, as any monies paid on his behalf had been refunded.

The trial court permitted Plaintiff to file an Amended Complaint, in which the Plaintiff again alleged violations of the State's Consumer Protection Act and unjust enrichment. The trial court dismissed the Plaintiff's Amended Complaint pursuant to a second Motion to Dismiss filed on behalf of GCM, this time with prejudice. ■

COUNSEL: **Richard Mincer and Mandy Good**
FIRM: **Hirst Applegate, LLP**
HEADQUARTERS: **Cheyenne, WY**

ATV ACCIDENT

This personal injury case arose out of a tractor-trailer/ATV accident. Plaintiffs were riding their ATVs down a two-lane, Wyoming highway when one of the client trucking company's drivers attempted to pass the ATVs. Plaintiffs alleged that the Defendant driver saw an oncoming car and swerved back into the right hand travel lane, hitting the ATVs in the process and knocking them off the road. Medical specials totaled over $260,000 and plaintiffs also sought various other past, present and future damages. They also alleged various direct negligence claims against the client company. Both parties' experts examined the ATVs and the tractor trailer involved and determined that there was no contact between the tractor trailer and the ATVs. Plaintiffs and their expert then changed their story and claimed that a wind vortex caused by the passing tractor-trailer blew the ATVs off the road.

Defense counsel persuaded the Plaintiffs to drop their punitive damage and direct negligence claims. Defense counsel then filed a motion for summary judgment arguing that because there was no contact between the vehicles and because Plaintiffs' expert failed to explain how a wind gust could have blown the ATVs off the road, there was no evidence to support Plaintiffs' negligence claim. The Court agreed that the driver breached no duty to Plaintiffs. In fact, the Court held that the driver of a tractor-trailer traveling on a state highway at "the proper speed" does not breach a duty of reasonable care because he fails to mitigate the wind effect of his vehicle. The Court ruled from the bench in favor of Hirst Applegate's client. ■

COUNSEL: **Kile Turner and William McKenzie**
FIRM: **Norman, Wood, Kendrick & Turner**
HEADQUARTERS: **Birmingham, AL**

CONSTRUCTION DEFECT COVERAGE

Defense firm successfully represented Amerisure Ins. Co. in a construction defect coverage case, having summary judgment in their favor affirmed by the Alabama Supreme Court in Town & Country Ford, LLC v. Amerisure. The case involved the construction of a large sales and service facility for a local Ford dealership. After completion of the facility by Amerisure's insured general contractor, the building began to experience several significant problems. The owner's filed suit and obtained a $650,100 verdict. Amerisure refused to indemnify, arguing that defective construction was not an "occurrence" under the Amerisure policy. Both parties filed motions for summary judgment in this hotly contested area of the law. The trial court granted Amerisure's motion, despite the plaintiff being one of the most prominent businesses in this economically depressed venue. On appeal, the Alabama Supreme Court affirmed the trial court, holding that damage to defective work was not an "occurrence" under a CGL, and any portion of the verdict related to the repair and/or replacement of defective work was not covered under the Amerisure policy. ■

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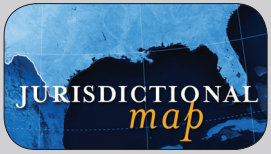

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