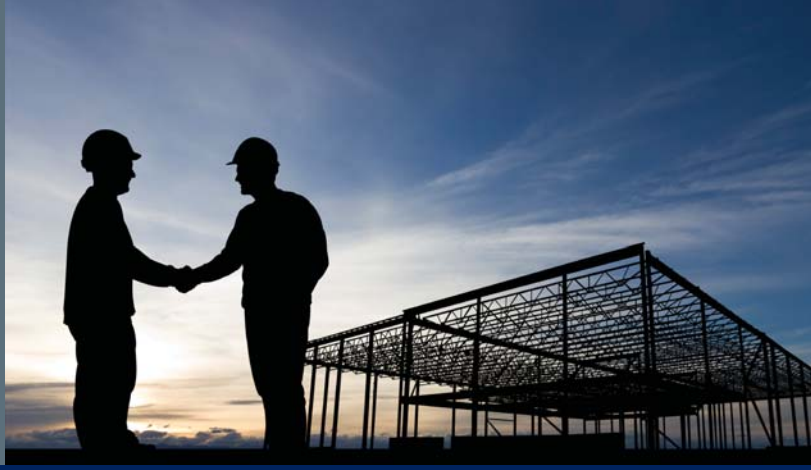


COUNSEL: **Salvatore J. DeSantis**
FIRM: **Molod Spitz & DeSantis, P.C.**
HEADQUARTERS: **New York, NY**

CONSTRUCTION WORKSITE INJURY/ LABOR LAW

Plaintiff, an employee of a concrete company, fell while getting off a dump truck after breaking up some concrete in the bed of a truck. The concrete company was hired by the defendant to rip up the sidewalk so that it could install a bus shelter. While plaintiff was coming down from the truck, he fell from 8 feet according to the plaintiff, but only from 3-4 feet according to other witnesses. Plaintiff claimed violations of New York's Labor Law, Sections 240(1) and 241(6). The jury rendered a defense verdict by finding that there was no Labor Law Section 240(1) violation, and although there was a violation of Labor Law Section 241(6), that violation was not a proximate cause of the plaintiff's injuries. The plaintiff's demand to settle was $1.4 million. The injuries involved a fractured wrist with surgery and a fractured ankle. ■

COUNSEL: **Richard P. Campbell, Kurt Gerstner and Richard L. Campbell**
FIRM: **Campbell Campbell Edwards & Conroy P.C.**
HEADQUARTERS: **Boston, MA**

TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION, BREACH OF FRANCHISE DEALER STATUTES

On the eve of a scheduled hearing before the Board of Selectmen for the Town of Natick, MA, regarding the issuance of a license to sell new motor vehicles, the Massachusetts State Automobile Dealer Association (MSADA) brought a lawsuit against Tesla Motors, Inc. and Tesla Motors MA, Inc., claiming that the innovative electric vehicle manufacturer's high-end Gallery at the Natick Mall violated state franchise dealer statutes and that Tesla's direct sales and distribution strategy through its own retail stores was illegal. Tesla maintained that its facility at the Natick Mall was an upscale Gallery where visitors could see the Tesla S model, learn about electric vehicles, and purchase accessories. Tesla was applying for a license to sell new Tesla S models at a separate facility located in a different part of Natick where it would faithfully comply with all Massachusetts laws governing the sale of new vehicles.

The MSADA asked the court for a temporary restraining order and preliminary injunction that would have effectively shut down the Natick Mall Gallery by prohibiting Tesla from doing "anything other than an unstaffed display of a locked automobile." To secure an injunction in MA, the MSADA had to demonstrate a likelihood of success on the merits and irreparable harm. The injunction was denied. The court held that the franchise dealer statutes at the core of the MSADA's claims applied only to automobile manufacturers and their affiliated dealers and not to unrelated manufacturers like Tesla. The court ruled that the MSADA lacked standing to bring the lawsuit. Tesla Motors, Inc. and Tesla Motors MA, Inc. have since moved to dismiss the lawsuit with prejudice.

In a second victory for the company, the Natick Board of Selectmen subsequently voted to issue a license to Tesla. Coupled with the MSADA's failure to secure an injunction, Tesla will now begin selling its Tesla S model to Massachusetts consumers. ■

COUNSEL: **George N Stewart and Dan Krauth**
FIRM: **Zimmer Kunz, PLLC**
HEADQUARTERS: **Pittsburgh, PA and Morgantown, WV**

DEFAMATION AND TORTIOUS INTERFERENCE COUNTERCLAIM

The plaintiffs, prominent husband and wife personal injury West Virginia trial lawyers, brought suit against their financial adviser and his employer, one of the world's largest financial services companies, after suffering 7-figure losses in the 2008 stock market crash, asserting that their financial advisor had disregarded their investment directions and otherwise placed their sizeable portfolio in unsuitable risky investments, specifically municipal bond mutual funds, which plaintiffs' experts characterized as " junk bonds." The claims ultimately made their way into the FINRA (Financial Industry Regulatory Authority) arbitration jurisdiction, at which point the financial advisor and financial services company filed a counterclaim for defamation and tortious interference with prospective and existing business relationships, along with a claim for punitive damages, asserting the said plaintiffs published defamatory statements in taking out large advertisements harming the financial advisor's professional reputation by expressly naming him in the said advertisements, and also in statements made to individuals who called the plaintiffs at their law firms in response to the advertisements. Additionally, the defamation claim was based on the allegations of fraud and forgery set forth in the complaint that the FINRA panel ruled was not subject to litigation privilege because the state court judge had dismissed same for having been filed improperly despite plaintiffs having signed hundreds of arbitration provisions.

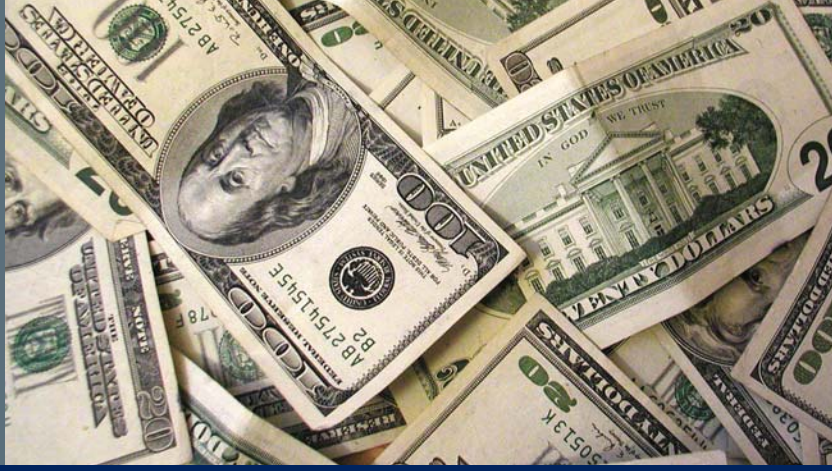
During the four week trial, the counterclaim plaintiffs sought damages of $10 million, including $2 million in actual economic losses. The defense team was hired just months before trial after discovery had closed. The plaintiffs had submitted the counterclaim to their homeowners, personal umbrella and law firm liability carriers, all of whom had denied coverage. At trial, the defamation defense vigorously opposed all elements of the defamation and tortious interference claims as well as attacked the credibility of any claimed harm to reputation or economic losses. In 2012, the FINRA panel awarded $1,000 to the financial advisor on the defamation claim against the husband plaintiff only, and found for the plaintiffs on all tortious interference claims. The financial services company and its advisor sought $450,000 in legal and expert witness fees as "prevailing party." The panel found for the defense on this claim as well and awarded no fees to the counterclaimants. ■

COUNSEL: **Gary Snodgrass and Derek Ruzicka**
FIRM: **Pitzer Snodgrass, P.C.**
HEADQUARTERS: **St. Louis, MO**

CONSTRUCTION WORKSITE PERSONAL INJURY

Plaintiff, a wallpaper hanger on a multi-employer construction site, claimed injury to his knee after slipping and falling in glue placed on the floor by the Defendant floor-laying company's employee. The carpet company was the only defendant. Plaintiff asserted he was attempting to access a materials staging area, entrance to which required him to travel down a corridor in which the floor-layer was working. At the beginning of this corridor, the floor-layer had placed a caution post with caution tape draped from the top, as well as his open toolbox and a carpet dolly. The floor-layer attempted to string caution tape from the post to a freshly painted wall, but was instructed not to do so by the project superintendent, an employee of the general contractor. The plaintiff and his coworker, a trial witness, maintained that the caution post was not at the beginning of the corridor but, instead, pushed against a wall as though it had been stowed. Plaintiff alleged that the flooring contractor was negligent in that it failed to warn or barricade the floor-layer's hazardous work area. He claimed he sustained a cartilage injury in his knee, underwent three separate surgeries, and was unable to work as a wallpaper hanger for the rest of his life. Through discovery, it was learned that the plaintiff underwent treatment on the same knee at issue a mere three months prior to the fall in question and that MRI scans were performs as part of assessment of the same. Additional MRIs were performed on the plaintiff's knee four months after the incident. The two sets of films were closely scrutinized and a major issue at trial.

At trial, the plaintiff asked for approximately $1.2 million in damages, including future wage of loss of $700,000. The defendant denied liability, causation, and the extent of alleged damages and put on evidence that, as recent as one month prior to trial, the plaintiff had been deer hunting. Defendant also presented expert testimony from a radiologist that the plaintiff's alleged knee injury was pre-existing and that the post-incident condition depicted in MRI films from four months after the occurrence was a "natural progression" of disease, rather than the result of the slip and fall. After a seven day trial, the jury returned a unanimous verdict in favor of the defendant, assessing 100% fault to the plaintiff. ■



COUNSEL: **Andrew Leff**
FIRM: **Spile, Leff & Goor, LLP**
HEADQUARTERS: **Los Angeles, CA**

BREACH OF PROFESSIONAL RESPONSIBILITY AND FIDUCIARY DUTIES CLAIM BY BUYERS/BROKERS AGAINST ESCROW COMPANY

Plaintiff, the buyers of a $6.5 million property, also served as their own real estate brokers. In their capacity as real estate brokers, they issued a demand to escrow to pay them their commission of over $400,000. They cited a provision in the purchase agreement which specified their right to said commission. When escrow received conflicting instructions from the listing broker, escrow refused to release any of the commission absent joint escrow instructions. Ultimately, the matter between the brokers and the escrow company became extremely contentious and the buyers/brokers made a $2.5 million demand to the escrow company (approximately a million of which was their attorney fees). Pursuant to instructions from its insurance carrier, escrow made an offer to settle for $200,000 and was rejected. After a three week trial, the court ruled that escrow was correct in not releasing the funds, and ordered the plaintiffs to pay escrow all of its attorney fees and costs. ■

COUNSEL: **Lynne Jones Blain with Walter Greenough of Schiff Hardin**
FIRM: **Harman Claytor Corrigan & Wellman, P.C.**
HEADQUARTERS: **Richmond, VA**

PRODUCT LIABILITY CLAIM BY CHILD AGAINST MANUFACTURER OF CHILD RESTRAINT

Plaintiff, a six year old girl, sued the manufacturer of the child restraint system she was seated in at the time of a car accident, seeking $20 million in damages. Plaintiff alleged that the child restraint system lacked both deep side wings and sufficient padding on the side wings, the lack of which caused the child restraint system to be unsafe. Plaintiff was a passenger in her parents' vehicle stopped at a stoplight when it was rear-ended at 45 mph by a texting driver. As a result of the collision, the plaintiff suffered a devastating injury to the left side of her skull and her brain. There was very little dispute over the damages. The defense of the case focused on the product and the alleged defects.

This was truly a battle of the experts. Between the two parties, eight experts were called to comment on the accident itself, the design of the car seat and the cause of the devastating injuries suffered by the plaintiff. Plaintiff claimed that without deeper side wings and additional padding the seat was defective. Defendants responded that seat met or exceeded all available standards established by the federal government for child restraints; that the plaintiff's parents could have purchased a car seat with deep, padded side wings (at an increased cost) and that the plaintiff's injuries did not result from a collision with the leading of the wing of the car seat but instead were caused by her unrestrained father flying backwards and colliding with her head.

After a nine day trial, the case was submitted to the jury which returned a defense verdict. The case is now on appeal to the Fourth Circuit with argument scheduled for late January. The appeal focuses on the instructions and the admissibility of federal standards as some evidence of a lack of defect. ■

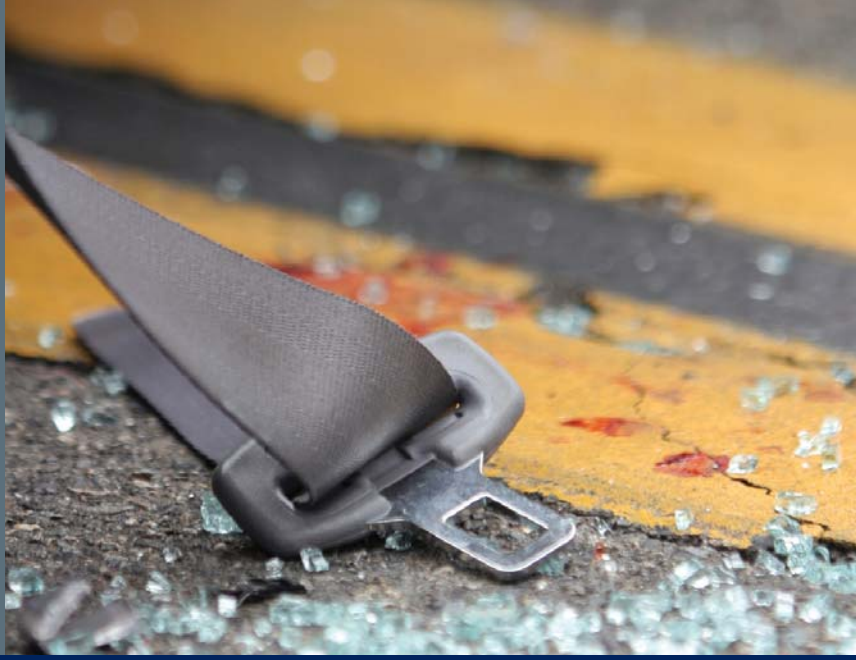
COUNSEL: **Elizabeth S. Skilling, John M. Claytor, and Robert F. Friedman**
FIRM: **Harman Claytor Corrigan & Wellman, P.C.**
HEADQUARTERS: **Richmond, VA**

BAD FAITH FAILURE TO SETTLE WITHIN POLICY LIMITS ACTION AGAINST PRIMARY INSURER

Plaintiff, an excess insurer, sued the defendant primary insurer for bad faith, seeking $2 million in damages. Plaintiff alleged that the defendant insurer acted in bad faith when it failed to accept either of two time-limited, non-negotiable demands for the limits of the primary policy. The underlying plaintiff, a partner in a prominent Washington DC law firm, suffered a head injury when his bicycle collided with a pickup truck operated by the insured. Although there was some question about the underlying plaintiff's potential contributory negligence, the defendant never seriously questioned liability. The insured possessed a primary liability policy with $1 million limits and an excess policy with $20 million limits. At the time the $1 million demands were made, the underlying plaintiff's medical specials presented were in the $35,000 range, but there were questions about whether the underlying plaintiff had actually suffered a traumatic brain injury. In addition, although lost wage and earning capacity claims had been asserted in connection with the demands, plaintiff had not quantified these claims and there were questions about whether the plaintiff had suffered any wage or earning capacity loss. After the accident, the underlying plaintiff had continued to work at the law firm for nearly two years, but claimed to have difficulty performing his job. Although his tax returns showed that his income had actually increased, plaintiff claimed that the increase in his income after the accident was a result of revenue generated prior to the accident. Mediation had been scheduled and it was anticipated by both plaintiff's counsel and defense counsel in the underlying case that the matter would settle well within the primary policy limits at the mediation.

Leading up to the scheduled mediation, the underlying plaintiff had withdrawn his lost earning capacity claim. Just weeks before the scheduled mediation, however, plaintiff unexpectedly resigned from his position, fired his counsel, obtained new counsel, cancelled the mediation, non-suited his case, and re-filed suit to include a significant lost earning capacity claim. It was also discovered in this time period that the underlying defense expert's IME was less favorable to the underlying defendant than had initially been anticipated. Ultimately, the case settled for $3 million, $2 million of which was contributed by the excess insurer. The excess insurer filed the bad faith action against the primary insurer to recoup its $2 million contribution, claiming that the primary insurer acted in bad faith when it failed to accept the prior $1 million demands. In the bad faith action, the plaintiff excess insurer argued that that defendant primary insurer had acted in bad faith in refusing each of the non-negotiable demands to settle the case. Defendant primary insurer argued that it acted reasonably in refusing the $1 million at the times they were made given the information it had available to it at the time each demand was made, arguing that the claim only rose in value after plaintiff's drastic and unforeseeable decision to quit his job and reassert a significant loss of earning capacity claim.

After cross-motions for summary judgment were denied, the case was tried and after a three day trial, the jury returned a defense verdict in favor of the primary insurer. Plaintiff did not appeal. ■



COUNSEL: **Jim Pattillo**
FIRM: **Norman, Wood, Kendrick & Turner**
HEADQUARTERS: **Birmingham, AL**

AUTOMOTIVE LIABILITY, PERMANENT INJURY

Plaintiff was rear ended by the defendant in a multi-vehicle accident and claimed a permanent neck injury which was supported by medical testimony from her treating physician. She was charged over $28,000 in medical expenses. The Court (improperly) allowed opinion testimony from the investigating officer that placed fault on the defendant. Defense argued contributory negligence on the part of the plaintiff which is a complete bar to recovery in Alabama. An independent witness who did not see the accident but felt an impact to his rear and heard screeching tires was offered to support the inference that the plaintiff struck the vehicle in front of her prior to being struck by the defendant. The jury returned a complete defense verdict. ■

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

CONSTRUCTION DEFECT/COVERAGE ISSUE

Suit considered whether defective construction is an "occurrence" under a CGL. Plaintiff obtained a $651,000 verdict against Amerisure's insured for the defective construction of a multiple-million dollar dealership facility. Although Amerisure provided a defense because the allegations triggered the duty to defend, defense determined that only $600 of the $651,000 verdict was covered. After the trial, plaintiff sought to collect the entire judgment from Amerisure under the direct action statute. The trial court granted summary judgment to Amerisure, finding that defective work itself was not an "occurrence." The Alabama Supreme Court affirmed, but remanded the case for the trial court to determine the amount of resulting damages. A new judge heard the remand trial, and awarded more than $600,000 including interest to plaintiff. The Alabama Supreme Court asked for briefs, and cut the award to $600 as suggested by defense. Plaintiff's motion to reconsider was denied. This case is the first time the Alabama Supreme Court has addressed the issue of defective construction since before the 1986 changes to the standard CGL policy. Further, this case was set in a very plaintiff-friendly venue, with a popular, locally owned business as the plaintiff, with several construction associations filing amicus briefs opposing Amerisure's position. The case was briefed to the Alabama Supreme Court four separate times on various issues. ■

COUNSEL: **LeAnn W. Nealey and Donna Brown Jacobs**
FIRM: **Butler, Snow, O'Mara, Stevens & Cannada, PLLC**
HEADQUARTERS: **Ridgeland, MS**

MS SUPREME COURT RULES IN RETAIL "ON PREMISES CRIME" AGAINST SHOPPER

Defense obtained a favorable decision from the Mississippi Supreme Court reversing a $2.5 Million judgment against a major grocery retailer. This premises liability case involved a woman who was beaten in a purse snatching on the store premises. Clarifying the scope of a business owner's duty of care, the Court found as a matter of law that, in the context of the retailer's more than three million customer visits over the course of three years, the four incidences of criminal activity the customer presented were insufficient to establish the requisite atmosphere of violence on the retailer's parking lot. Additionally, the fact that crime occurred throughout the I-55 corridor within which the store was located, absent sufficient evidence of criminal activity on the retailer's property, or near enough to pose a danger to the retailer's customers, was insufficient to establish liability. The Court also held that the evidence was insufficient to find that the assailant's attack on the customer was a foreseeable consequence of not having an armed guard in the parking lot, and thus the retailer had no duty to provided armed security in its lot. ■

COUNSEL: **Orlando "Rod" Richmond**
FIRM: **Butler, Snow, O'Mara, Stevens & Cannada, PLLC**
HEADQUARTERS: **Ridgeland, MS**

INADEQUATE WARNING AND INJURIES IN CONNECTION WITH A PHARMACEUTICAL PRODUCT

Defense, on behalf of Hoffmann-La Roche, in a consolidated trial of four plaintiffs, and following an eight week trial involving allegations of an inadequate warning and injuries in connection with a pharmaceutical product, obtained a full defense verdict. Similar result occurred last year, when a team of lawyers, including Orlando "Rod" Richmond, William Gage, Mark Dreher, Ashley Nader, Rae Hopkins, Marie Russell and Sandra Patton, prevailed in two of three claims consolidated for trial. ■

COUNSEL: **Paul Cassisa and Kari Sutherland**
FIRM: **Butler, Snow, O'Mara, Stevens & Cannada, PLLC**
HEADQUARTERS: **Ridgeland, MS**

REMOVAL OF AUTOMOTIVE PRODUCT LIABILITY ACTION, DIVERSITY JURISDICTION, CASE DISMISSAL

Plaintiffs brought a product liability action in state court against the vehicle manufacturer and tried to defeat federal diversity jurisdiction by asserting numerous claims against the in-state dealership that sold the vehicle. The case was removed to federal court. The court dismissed the dealership holding that it had been improperly joined as a defendant. On appeal, defense successfully argued that the plaintiffs failed to establish a possibility of recovery against the dealership on their claims for negligence, negligent misrepresentation, and breach of express and implied warranties. Persuaded that the plaintiffs had failed to show the dealership was anything other than an innocent seller, the Fifth Circuit affirmed the district court's decision dismissing the claims against the dealership and denied the plaintiffs' motion to remand the case to state court. ■

COUNSEL: **Chad Hutchinson and John Dollarhide**
FIRM: **Butler, Snow, O'Mara, Stevens & Cannada, PLLC**
HEADQUARTERS: **Ridgeland, MS**

INADEQUATE WARNING AND INJURIES IN RETAIL TRUCK STOP BLEACH EXPOSURE

Plaintiff sued alleging a truck stop operator was negligent by failing to warn the plaintiff that the restroom had been cleaned with bleach. The plaintiff failed to designate a medical expert to testify that his skin lesions were caused by bleach exposure, relying instead on his own testimony and the principle of res ipsa loquitur to prove negligence. The court granted summary judgment holding that the plaintiff's injuries required expert medical testimony and therefore that res ipsa loquitur did not apply. The plaintiff appealed to the Fifth Circuit Court of Appeals. In a per curiam opinion, the Fifth Circuit affirmed the summary judgment, following the District Court's reasoning. ■

COUNSEL: **Perry Schneider and Tim Daily**
FIRM: **Milodragovich, Dale & Steinbrenner, P.C.**
HEADQUARTERS: **Missoula, MT**

VEHICULAR-PEDESTRIAN ACCIDENT

Plaintiff sued for damages as a result of a vehicular-pedestrian accident. Defendant stopped at a gas station to fill up the company truck he was driving belonging to his employer and co-defendant Missoula Saws. The parties stipulated that defendant was in the course and scope of his employment and that his employer had vicarious liability.

The jury viewed the surveillance video that captured the scene of defendant pulling away from the pump and turning left to exit the gas station, intending to pass the store's entrance, and striking plaintiff who had exited the store and was returning to her vehicle at the pump island. Defendant testified that he never saw her until it was too late to stop. He also acknowledged that he felt he was "at fault" for the accident.

Plaintiff testified that she exited the store and saw defendant's vehicle approaching slowly. She assumed he saw her and proceeded toward her car. She testified that defendant sped up just before impact. Plaintiff testified she still suffers from debilitating chronic back pain, major depression, and post-traumatic stress disorder as a result of the accident. The Plaintiff submitted $35,000 in medical bills from the accident. Medical testimony of her treating doctors (neurologist, psychiatrist, and neuropsychologist) and loss testimony of her economist was shown the jury through preservation video depositions. In addition, Plaintiff also put on testimony of several family members, friends, and former co-workers describing the differences in Plaintiff before and after the accident. The Plaintiff requested the jury award $1.1 to $1.3 million in damages.

The defendants conceded that plaintiff suffered three broken ribs and a partial L3 compression fracture as a result of the accident but put on evidence that these injuries should have physically resolved without incident. The Defendants' neurologist and neuropsychologist performed IME's and testified as to their findings. Defendants' life care planner testified as to his evaluation of plaintiff's needs going forward.

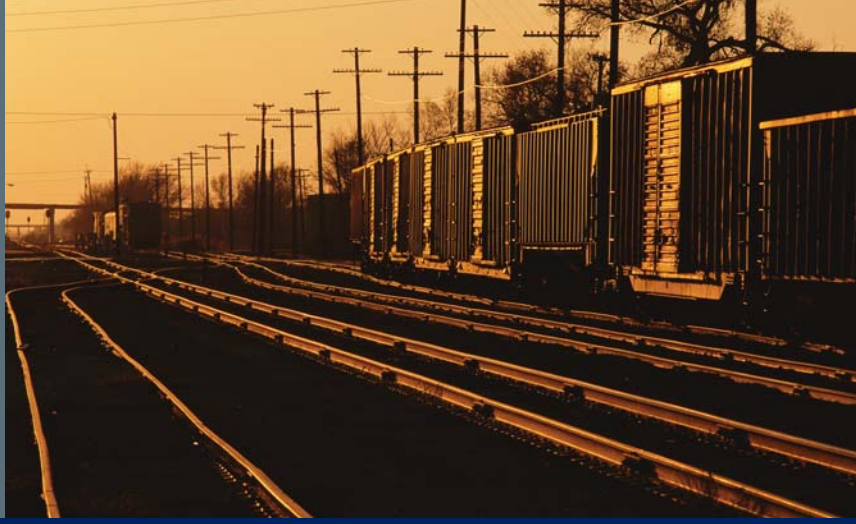
The defendants contended they were entitled to an apportionment for the Plaintiff's pre-existing mental and physical conditions. Defendant's medical experts opined that in their pre-trial expert disclosure to a percentage in the 0-25% range for plaintiff's current condition was related to the accident. They were not allowed to state the percentage allocations due to objection by the plaintiff, but the Court did allow use of quantitative terms such as "insignificant, mild, or minor" in describing the causal relationship. In spite of the plaintiff's objection, the Judge ultimately ruled that the defendants had met their burden to get an apportionment instruction and allowed it on the verdict form.

In the end, the issue was moot. The jury did not apportion the verdict for Plaintiff's pre-existing injuries. After deliberation of about two hours, the jury returned a verdict awarding $100,000 to the plaintiff and apportioned 50/50 for the Plaintiff's comparative negligence. The jury's verdict was less than the Defendants' offer of judgment of $150,000. ■

COUNSEL: **Greg Brown and Melissa Horst**
FIRM: **Burnham Brown**
HEADQUARTERS: **Oakland, CA**

PRODUCT LIABILITY FIRE

Manufacturer of gas absorption refrigerator was sued in a serious burn and property damage case. The defendants hold a large market share of mobile refrigerators sold for installation in recreational vehicles and marine applications. Plaintiffs contended that the refrigerator in their RV, parked in their driveway, leaked and released combustible hydrogen and ammonia refrigerant resulting in an immense fire causing severe and disfiguring burns to one of the homeowners, complete destruction of their high-end RV, and fire damage to their home and contents. Using three different scientific approaches to causation, i.e.: Fire Cause and Origin, Forensic Engineering, and Metallurgy, defense convinced the jury that the refrigerator did not fail in the manner alleged by plaintiffs' experts and was not a substantial factor in causing this tragic fire. The defense utilized successful dispositive motions, attacks upon the pleadings, and motions in limine to defeat alter ego theories against the parent corporation of the manufacturer and preclude the introduction of the clients' long history of voluntary recalls of some of their refrigerators on the basis that plaintiffs' experts could not establish sufficient similarity between past refrigerator fires and recalls and the actual events that occurred on the night of the fire involving the refrigerator in the plaintiffs' RV. Plaintiffs' burn injuries and related claims were also excluded upon summary judgment on the basis that the severely burned plaintiff assumed the risk of those injuries when he repeatedly entered his burning garage to rescue his other motor vehicles. ■



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

RAILROAD INJURED EMPLOYEE, FELA

A railroad employee sued for on the job injuries alleging negligence by the railroad. The plaintiff brought two FELA suits which were consolidated for trial. The plaintiff received electric shocks while working in a train repair shop on two different occasions and claimed left-side hemiparesis, brain injury, cognitive deterioration and facial nerve injuries, all resulting in an inability to work or care for himself. The plaintiff's economic damage model included a significant life care plan and lost earning capacity component approaching $15 million. The pretrial demand on the case was $16 million.

There were numerous experts called during the trial of the case by both sides including electrical experts, economists, neurologists and neuropsychologists. During the course of the trial, the demand dropped to $6.5 million. The jury deliberated for approximately one hour before returning a defense verdict on both cases finding that the railroad was not negligent. ■

COUNSEL: **Michael E. Brown and Louis J. Britton**
FIRM: **Kightlinger & Gray, LLP**
HEADQUARTERS: **Indianapolis, IN**

ACCOUNTING MALPRACTICE

This case involves a dispute between three cousins who were the owners of a closely held family carwash business. The business had a long standing buyout agreement which was triggered by, among other things, if one of the owners ceased to be an employee of the corporation. The defendants in the case had terminated the Plaintiff's employment and triggered a buy out of his interest in the company. The buyout agreement specified that the payment for the Plaintiff's shares would be based on an annual determination of the stock's value signed off on by the three owners. When that provision was triggered by the termination of the plaintiff's employment, the previously agreed value was used to buyout the interest of the plaintiff.

That valuation had traditionally been prepared on an annual basis by the company's CPA. Each year it was presented to the owners for their confirmation by their signatures on the annual valuation. The plaintiff contended that he had received approximately $6 million dollars less than he should have received as a result of the valuation being unjustifiably low even though he had himself executed the confirmation of value when it was presented to him.

The defense of the CPA was successful in having them dismissed from the case after the plaintiff's evidence was presented on the grounds that the plaintiff had failed to present any evidence that the CPA's valuation was performed in a manner below the standard of care despite the testimony of a greater value by an expert retained by the plaintiff. The defense was successful in convincing the court of the distinction between a difference in valuation opinion and the failure of the formulation of that opinion to comply with recognized methods for business valuation. In essence, the CPA could not be liable for the opinion she formed if it was formed in a manner consistent with the methodology typically used to arrive at such valuations; otherwise, she would be liable for simply having a different opinion. ■

COUNSEL: **Scott Salmon and Cassandra Meyer**
FIRM: **The Cavanagh Law Firm, P.A.**
HEADQUARTERS: **Phoenix, AZ**

RETAIL RSD/CRPS PERSONAL INJURY

Plaintiff claimed that she was injured at a Costco Warehouse when an empty pallet jack struck the side of her foot. Plaintiff argued that the employee pulling the pallet jack ran into her while making a "u-turn" and failed to warn her of his presence. Plaintiff alleged the injury resulted in the development of reflex sympathetic dystrophy (RSD), also known as complex regional pain syndrome (CRPS). Plaintiff claimed that the RSD began in the affected foot and worsened over the years by spreading throughout her body. In addition to a past medical expense and lost wages claim, Plaintiff's counsel requested a future spinal cord stimulator cost of care treatment plan in the amount of $1.7 million and a $2.1 million future Ketamine therapy program. Plaintiff also requested $267,513.00 in future lost wages.

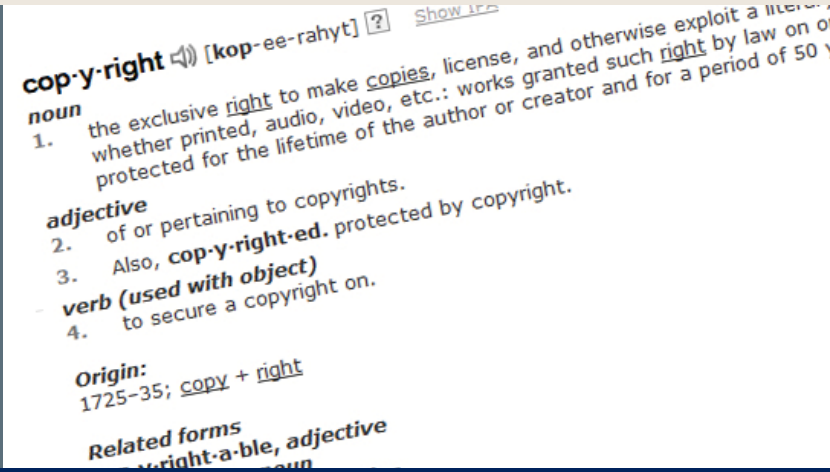
Defense argued that Plaintiff stepped into the pallet jack while reading her shopping list and that the accident happened due to Plaintiff's inattention and that a warning was unnecessary. Defense presented neurological expert testimony that proved Plaintiff did not have the hallmark sign of RSD/CRPS, allodynia. Defense's expert opined that Plaintiff had vasomotor instability that was wholly unrelated to RSD/CRPS. The expert also opined that Plaintiff's symptoms were psychogenic and that Plaintiff was motivated by secondary gain. Defense presented the videotape of the IME taken by Plaintiff's counsel to establish that Plaintiff did not have the signs of RSD/CRPS and also presented surveillance footage of Plaintiff taken shortly before the trial. Defense discredited Plaintiff's expert's testimony by presenting evidence that Plaintiff had no loss of earning capacity claim because she had been continuously employed at the same place where she worked at the time of the incident. Defense proved that Plaintiff's claim for a spinal cord stimulator was speculative because she had not undergone the psychological evaluation or treatment protocol necessary to determine whether she was even a candidate for a spinal cord stimulator. Defense also established the speculative nature of Plaintiff's Ketamine therapy program by proving that Plaintiff had never even spoken to her doctor about whether she would even consider undergoing Ketamine therapy, which is a highly controversial, non-FDA approved treatment.

The case was tried to a jury in a two and a half week trial. The jury was out 45 minutes and returned a unanimous verdict in favor of the defense. ■

COUNSEL: **Mike Stoberski and Chris Richardson**
FIRM: **Olson, Cannon, Gormley, Angulo & Stoberski**
HEADQUARTERS: **Las Vegas, NV**

COPYRIGHT INFRINGEMENT AND APPEAL

This case involves alleged copyright infringement and a dispute over the Fair Use Doctrine. The Center for Intercultural Organizing ("CIO") educates its members on national issues involving immigration. After posting an article on its website from a Las Vegas Review Journal newspaper story, an entity named Righthaven filed suit without warning, claiming ownership of the copyrights to the story, and alleging improper use by CIO. Righthaven had been filing numerous similar suits against individuals and entities posting articles from the Review Journal's newspaper. Defense successfully obtained summary judgment and the Federal District Court Judge found that the posting of the story was not an infringement and was protected under the Fair Use Doctrine. After Righthaven's appeal to the Ninth Circuit, a Nevada Federal District Court Judge in another case found that Righthaven could not prove it had exclusive ownership of the copyrighted material, and only partially owned the copyrights upon which it was suing. A Motion to Dismiss the Appeal pointing out that Righthaven lacked any standing to sue CIO or appeal the District Court's decision was granted by the Ninth Circuit, and the costs incurred in defending Righthaven's appeal were awarded to CIO. ■



COUNSEL: **S. Crocker Bennett and David Pocius**
FIRM: **Paul Frank + Collins P.C.**
HEADQUARTERS: **Burlington, VT**

MEDICAL MALPRACTICE

Plaintiffs alleged that the defendant physicians and the defendant medical center were negligent in their care of the plaintiff mother during labor and delivery. As a result of the defendants' negligence in failing to deliver the infant by Cesarean section, the plaintiff alleged that she sustained a fourth degree tear, the repair of which broke down, requiring a secondary repair. The plaintiff alleged that she sustained permanent injury as a result of the incident. The defendants denied the allegations of negligence and maintained that there was no deviation from acceptable standards of care in their treatment of the plaintiff mother.

The 41-year-old female plaintiff came under the care of the defendant physicians and the defendant medical center for the birth of her child. During the labor and delivery, the plaintiff sustained a fourth degree tear which was repaired. The plaintiff alleged that several days after the birth, the repair broke down, necessitating the plaintiff to undergo a second repair. The plaintiff alleged that as a result of the incident, she has sustained permanent incontinence of stool and gas.

The plaintiffs' suit alleged that defendants were negligent in failing to perform a Cesarean section delivery of the infant. The plaintiff further contended that they were negligent in their repair of the tear, and administration of enemas to treat fecal impaction which resulted in a breakdown of the tear repair and incontinence. The plaintiff's husband brought a suit for loss of consortium. The defendants contended that there was no medical reason to deliver the baby by Cesarean section, that they were not negligent in treating the plaintiff's fecal impaction with an enema, and that the enema was not the cause of the tear breakdown.

The matter was tried over a period of five days. At the conclusion of the trial, the jury deliberated for two hours and 20 minutes before returning its unanimous verdict in favor of the defendants and against the plaintiff. ■

COUNSEL: **Richard Boyette and Meghan Knight**
FIRM: **Cranfill Sumner & Hartzog LLP**
HEADQUARTERS: **Raleigh, NC**

PRODUCT LIABILITY, ECONOMIC LOSS RULE, UNFAIR TRADE PRACTICE, INJUNCTIVE RELIEF

Court of Appeals affirmed dismissal of a putative class action asserting claims against a major building materials manufacturer. The decision is significant to product manufacturers as it confirms the application of the economic loss rule to bar tort claims by downstream consumers against product manufacturers who have extended express warranties to consumers of their products, and further holds that an allegation of a knowing sale of a defective product is just another way to allege a breach warranty claim and does not support a claim under the NC unfair trade practice statute. The Court affirmed the district court's dismissal of plaintiffs' claims, which included a negligence claim; a claim under NC's Unfair and Deceptive Trade Practices Act; and a declaratory relief claim concerning the product's alleged latent defects and its warranty. ■

COUNSEL: **Mike Hutchens and Lenae Pederson**
FIRM: **Meagher & Geer, PLLP**
HEADQUARTERS: **Minneapolis, MN**

ENGINEERING MALPRACTICE

Ten years after the defendant engineering firm had redesigned and updated the highway at the county's request plaintiff lost control of his vehicle and crossed the centerline before going into the ditch on the opposite side of the road. He sideswiped a telephone pole, which caused his airbag to deploy. He then struck a concrete retaining wall, whereupon he sustained a severe spinal cord injury which rendered him quadriplegic. He was not wearing his seatbelt, which is admissible evidence in certain jurisdictions.

Plaintiffs' theory was that the engineers should not have allowed the retaining wall to remain in that location. The wall was supporting a farmer's driveway adjacent to a cattle pass that went under the highway. Plaintiffs' engineering expert testified that the design did not meet the applicable standards. Plaintiffs' attorneys also argued that this was a "two impact" case, or a successive torts case. Their biomechanical engineer argued that the plaintiff's airbag would have prevented him from sustaining any serious injury, had it not been triggered upon the first impact with a telephone pole. He also was of the original opinion that even if the plaintiff had been wearing a seatbelt, he could have sustained similar injuries. Neither of those opinions was successfully delivered as testimony in front of the jury. The plaintiffs' expert gave up these positions after unsuccessfully trying to defend them in a discovery deposition.

The engineering firm and its experts testified that the engineering met the design standards that it was directed to use by its client, the county. The defense also argued that the accident was entirely the plaintiff's fault, and that his injuries would have been completely prevented if he had been wearing his seatbelt.

The plaintiffs' attorney argued for damages of $15 million to $20 million. The jury returned a verdict finding that the plaintiff was 100% for causing the accident, and that a seatbelt would have prevented 100% of his injuries. ■

COUNSEL: **Earl K. Cantwell**
FIRM: **Hurwitz & Fine, P.C.**
HEADQUARTERS: **Buffalo, NY**

CORPORATE LEASE, PERSONAL FINANCIAL LIABILITY, "PIERCING THE CORPORATE VEIL"

A medical practice operating as a professional corporation entered into a 10 year lease for office space. Physician number one gave notice of withdrawal, received substantial items of medical and office equipment in settlement of debts owed to him by the medical practice, and departed to establish his practice in another state. Physician number two marshaled receivables and assets, paid off certain corporate creditors, moved to another medical practice, and closed the medical office with 7 years remaining on the lease.

The landlord, who had not been paid, sued the professional corporation for breach of the lease, and the physicians individually on theories of fraudulent conveyance and "piercing the corporate veil". Damages sought were approximately $500,000 consisting of lost rent and common area charges for the 7 years remaining on the lease term, repayment of realtor's commissions, interest, and attorneys' fees.

After a nine day bench trial, the court issued a defense verdict on claims asserted against Physician number one and further granted partial award of attorneys' fees against the plaintiff as a "prevailing party" in the litigation under one of the lease provisions. ■

COUNSEL: **Robert C. Jarosh and Kara L. Ellsbury**
FIRM: **Hirst Applegate, LLP**
HEADQUARTERS: **Cheyenne, WY**

WRONGFUL TERMINATION

Former superintendent of a large school district filed suit against the school district and its board of trustees individually alleging that he was wrongfully terminated and that defendants failed to provide him with the procedural due process to which he was entitled under the US Constitution. Plaintiff claimed he was fired or constructively discharged in breach of his employment contract and that he did not receive sufficient pre-termination due process. Defendants alleged that Plaintiff voluntarily retired from his employment and that no process was therefore due. Alternatively, Defendants claimed that if Plaintiff was fired or constructively discharged, good cause existed and Plaintiff was afforded all of the due process to which he was entitled. The Court denied Defendants' motion for summary judgment and motion for judgment as a matter of law. After a week-long trial in federal court, the jury determined that Plaintiff was constructively discharged, but that Defendants had cause to discharge Plaintiff. The jury also concluded that Defendants afforded Plaintiff sufficient due process. As a result, judgment was entered on behalf of the school district and its board of trustees. ■

COUNSEL: **Richard T. Woulfe and John A. Campbell**
FIRM: **Bunnell & Woulfe, P.A.**
HEADQUARTERS: **Ft. Lauderdale, FL**

MEDICAL MALPRACTICE/ORTHOPAEDIC SURGERY-INFECTIOUS DISEASE

Debra Leon, age 58, and her husband Jose Leon sued Palmetto General Hospital and Palmetto Pathology Services, P.A., in Miami, Florida. They alleged the Hospital and the Pathology group, who had an exclusive contract with the Hospital to provide pathology services to its patients, were negligent in failing to provide a copy of the final pathology results to the ordering physician, Jose Jaen, M.D., an orthopaedic surgeon. Ms. Leon had a right hip aspiration outpatient procedure done on November 24, 2008. The final report of November 27, 2008, was abnormal with a finding of 3+ MRSA from the analysis of the material aspirated from the patient's hip three days earlier. This was ordered because Dr. Jaen believed she might have an infection in her hip following a right hip replacement surgical procedure of October 20, 2008. The additional claim against the pathology group was that the ordering physician should have been called by the pathologist because an infection found in an otherwise sterile site within the hip joint is a critical finding requiring direct physician to physician contact.

Dr. Jaen did not follow-up on the study and did not receive the final results until March 25, 2009, when they were faxed from the Hospital. She underwent an explantation of the prosthesis on April 1, 2009, received six to eight weeks of IV antibiotics and a new hip prosthesis was put into her right hip on June 8, 2009. She claims that due to the weakness she had in her right leg following all these procedures that she fell in February 2010 and tore three of the four main tendons in her right shoulder requiring an extensive surgical procedure to repair her right shoulder in May 2010.

Ms. Leon had incurred $450,000 in past medical expenses and she was unable to return to her job as a registered nurse supervisor which paid her $57,000.00 a year. The life care plan for future losses was $1.3 million.

The Hospital settled prior to the start of the trial. The pathology group's defenses included not only that they did nothing that deviated from the standard of care, but also asserted that the patient never had an infection in her hip at all and that the orthopaedic surgeon, Jose Jaen, M.D., was the sole negligent healthcare provider.

Plaintiffs presented Dr. Howard Robin, a pathologist from Southern California, Jose Jaen, M.D., treating orthopaedic surgeon, Jaime Campos, M.D., the treating infectious disease physician, and Robert Freedman, M.D., an infectious disease physician from Aventura, Florida, all testified for the plaintiffs on the issues of negligence and causation.

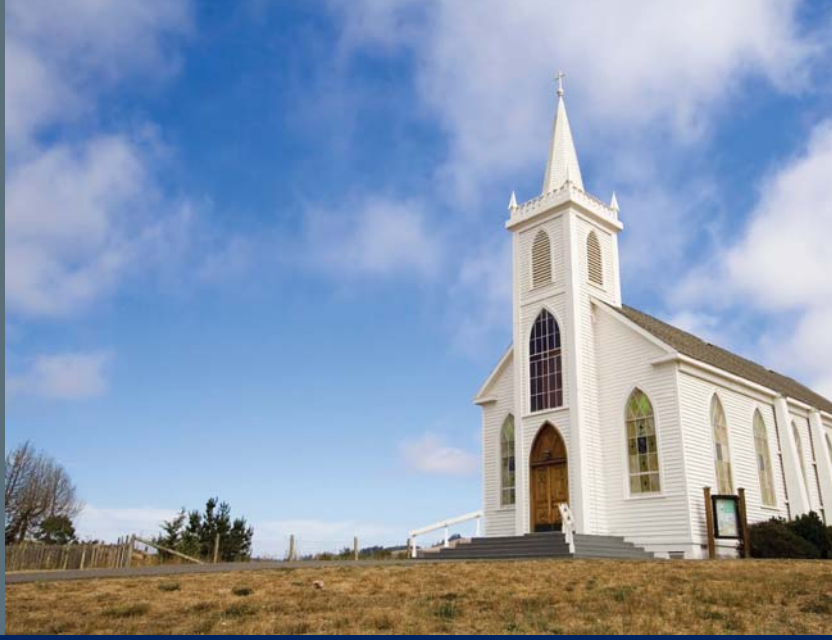
Ro Baltayan, Ph.D., from Atlanta, Georgia, and Biff Pettingill, an economist from West Palm Beach, Florida, testified on damages regarding the future life care plans and economics reducing the future damages to present money value. Alan Pierce, M.D., a pathologist from Fort Lauderdale, Alan Routman, M.D., an orthopaedic surgeon from Fort Lauderdale, Peter Livingston, M.D., a radiologist from Hollywood and Larry Bush, M.D., an infectious disease physician from Atlantis, Florida, all testified on behalf of the Defendant.

The jury was asked for total damages of $3.15 million. After just under three hours of deliberations, the jury returned a verdict finding the pathology group was without fault. ■

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

BREACH OF CONTRACT, ESTOPPEL, REASONABLE EXPECTATIONS, BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

Defense won on Plaintiff's appeal to the Wyoming Supreme Court challenging the district court's grant of summary judgment in favor of an insurer. Plaintiff was injured in a motorcycle accident caused by a third-party driver. Plaintiff settled for the third party's policy limits of $25,000. Plaintiff then made a claim under the uninsured motorist provision of his insurance policy. Plaintiff filed suit against the insurer claiming, among other things, that the insurer was bound by Plaintiff's insurance agent's alleged representation that the policy would also provide underinsured motorist coverage. Defense filed a motion for summary judgment on all claims, arguing that: a) Wyoming's uninsured motorist statutes unambiguously do not require underinsured motorist coverage; b) the policy unambiguously did not include underinsured motorist coverage; c) the agent did not have actual or apparent authority to change the terms of the policy, in light of policy language preventing him from doing so; and d) Plaintiff's failure to read the policy was a defense to Plaintiff's claims. The district court granted summary judgment in favor of defense, and Plaintiff appealed. The Wyoming Supreme Court affirmed. The Court's holdings included the determination that Plaintiff's failure to read the policy was a defense to Plaintiff's negligence and contract claims and barred the application of the doctrines of promissory estoppel and reasonable expectations. ■



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

FREEDOM OF RELIGION, FIRST AMENDMENT AND ECCLESIASTICAL AND MINISTERIAL EXCEPTION DOCTRINES

Plaintiff, a member of the clergy at a local church, filed a tort suit against the Bishop of the church alleging defamation, intentional infliction of emotional distress and false light invasion of privacy based upon a statement attributed to Defendant. The trial court found that consideration of Plaintiff's claims would require review of church policies and procedures and would run afoul of the First Amendment. As such, the trial court granted Defendant's motion to dismiss the Complaint for lack of subject matter jurisdiction. Plaintiff appealed the lower court's decision to Maryland intermediate appellate court, the Court of Special Appeals. On appeal, the Court of Special Appeals affirmed the lower court's decision. ■

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

PHYSICIAN BILLING AND CONSUMER PROTECTION ACT

Plaintiff brought a class action lawsuit against a radiologist group claiming violations of the Maryland Health Maintenance Organization Act ("HMO Act") and the Maryland Consumer Protection Act. Plaintiff's allegations were based upon an invoice sent to him by Defendant for medical services provided. Plaintiff alleged the invoice violated the HMO Act's prohibition against balance billing and constituted a deceptive trade act. The trial court granted Defendant's Motion to Dismiss, and Plaintiff appealed to Maryland's intermediate appellate court, the Court of Special Appeals.

The intermediate appellate court issued a published opinion affirming the trial court's ruling. The Court held that no private cause of action exists against physicians for violations of the HMO Act, as there are other remedies provided in the Act to address Plaintiff's complaints. The Court also found that the Consumer Protection Act does not apply to physicians because of the statutory exemption for the professional services of medical practitioners.

Plaintiff filed a petition for certiorari to Maryland highest appellate court, the Court of Appeals. Additionally the Consumer Protection Division of the Office of the Attorney General of Maryland requested permission to file an "amicus curiae" brief. The petition and the Attorney General's motion were granted by the Court. The case will come before the Court of Appeals in April 2013. ■

COUNSEL: **Bradley M. Jones (argued) and Anthony J. Alt**
FIRM: **Meagher & Geer**
HEADQUARTERS: **Minneapolis, MN**

INSURANCE COVERAGE

Main holding: The pollution exclusion bars coverage, even though the insured is not the original polluter.

The Seventh Circuit held that Scottsdale Indemnity Co. and National Casualty Co. have no duty to defend or indemnify the Village of Crestwood, Illinois, regarding claims that it supplied its residents with polluted water for more than twenty years, even though the Village was not the original polluter of the water. The decision is important in delineating the scope of the pollution exclusion, a contentious issue with significant implications for insurers and insureds. Some jurisdictions apply the broad, plain language of the pollution exclusion; others narrow the exclusion so that it has effect only in those situations involving "traditional environmental pollution." The Seventh Circuit held that even in a jurisdiction such as Illinois, which requires the narrower "traditional environmental pollution" interpretation, the exclusion is not so narrow as to bar coverage only for the original polluter or to claims where environmental clean-up costs could have been or were incurred.

The insurance-coverage dispute arose out of allegations that the Village delivered tap water contaminated with perchloroethylene, vinyl chloride, and dicloroethylene to Village water consumers. Hundreds of the Village's current and former residents sued the Village in over two dozen lawsuits, alleging they were exposed to contaminated drinking water from 1986-2007. The claimants allege that the contaminated water caused cancer, other serious illnesses, and death.

Scottsdale Indemnity Co. and National Casualty Co. insured the Village under twenty-two liability policies with more than $50 million in coverage limits. They declined to defend and denied coverage based on the pollution exclusion in the policies.

At issue was the scope of the absolute pollution exclusion. Under American States Insurance Co. v. Koloms, 687 N.E.2d 72 (Ill. 1997), courts applying Illinois law do not look solely to the exclusion's plain language. Rather, Koloms instructs that the exclusion applies only to injuries arising out of "traditional environmental pollution."

Judge Posner, writing for the Seventh Circuit, rejected the Village's argument that the pollution exclusion should not apply because it was not the original polluter: "The defendants point out that they didn't originate the contamination. That is irrelevant. The exclusion is of liability for harms resulting from the 'dispersal,' 'migration,' or 'release' of contaminants, not their creations or just their first distribution." Though not the original polluter, the Village distributed the chemicals from the water well and "caused" the contamination of its water supply. Further, the court concluded that the exclusion's wording makes clear that the pollution exclusion is not limited merely to situations where environmental clean-up costs were or could be incurred.

The Seventh Circuit also rejected the Village's argument that the exclusion should not apply when the insured's "core business activity" involves distributing the contaminated product. Separating high-risk from low-risk insureds would not be feasible. Moreover, the court rejected the Village's argument that the lawsuit was not about pollution at all because the Village's water supply was allegedly below the maximum contaminant level allowed by environmental regulations. The court concluded that contaminant levels are unimportant: "All that counts is that the suits are premised on a claim that the perc caused injuries for which the plaintiffs are seeking damages, and that claim triggers the pollution exclusion."

The rationale for the decision is based on extensive consideration of the intersection of the economics underlying the exclusion, the nature and pricing of insurance, and the exclusion's history and wording. ■

COUNSEL: **William C. McDow**
FIRM: **Richardson Plowden & Robinson, P.A.**
HEADQUARTERS: **Columbia, SC**

MEDICAL MALPRACTICE

The Plaintiffs filed a medical malpractice action against a gynecologist-oncologist surgeon and his practice in connection with the injuries of a fifty-nine year old woman as a result of the removal of a pelvic mass worrisome for ovarian carcinoma and return to surgery for treatment of a partial small bowel obstruction.

The patient had a previous history of surgery for a small bowel obstruction, re-obstruction resulting in small bowel removal during the same hospitalization and resulting abdominal adhesions. The Plaintiffs alleged the doctor was negligent in performing the initial surgery, failing to diagnose a post-operative small bowel perforation and/or treat a small bowel obstruction, or in the alternative, failure to delay return to surgery until the hostile abdomen calmed down. There were also issues of lack of informed consent. The patient did have a perforation after the second surgery, which resulted in an additional four surgeries and resulted in her short bowel syndrome. Medical bills totaled approximately $561,000. The case was tried for a week and the jury returned a defense verdict. ■

COUNSEL: **Michael L. Miller and Jeffrey Ward**
FIRM: **Drew, Eckl & Farnham, LLP**
HEADQUARTERS: **Atlanta, GA**

RETAIL & HOSPITALITY PREMISES LIABILITY, SLIP AND FALL

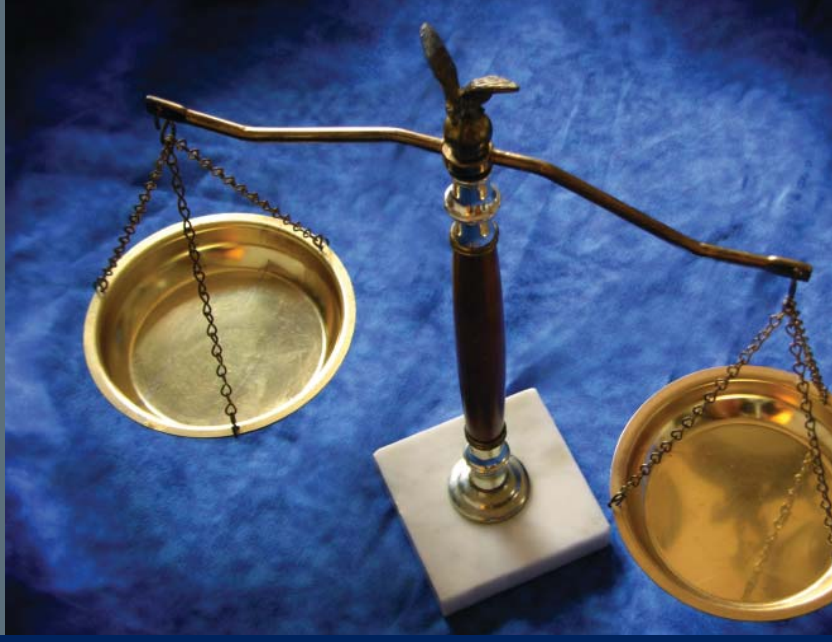
Plaintiff slipped and fell at a large retail store, and suffered a badly broken leg. Despite the presence of a warning cone in the area of her fall, Plaintiff claimed that the warning was insufficient, and that the store did an inadequate job of cleaning a prior spill. The accident was recorded by the store's video surveillance cameras. The video footage showed the prior spill, the clean-up efforts, the placement of the warning cone, and Plaintiff's fall very near the warning cone. Plaintiff suffered a fractured femur and incurred approximately $200,000.00 in special damages. Plaintiff claimed long-term, future pain and disability, demand of $2 million. The jury determined that Plaintiff was 50% at fault for the accident, which barred her from any recovery. The defense verdict was not appealed. ■

COUNSEL: **Jeff Lenkov and Evelina Serafini**
FIRM: **Manning & Kass, Ellrod, Ramirez, Trester LLP**
HEADQUARTERS: **Los Angeles, CA**

WAGE AND HOUR, BUSINESS CODE, MEALS, REST BREAKS, OVERTIME

Plaintiff was employed by Defendants as a photographer. On behalf of himself, and a class of similarly situated employees, filed none separate claims alleging violations of the labor code and business code. Claims included failure to indemnify, failure to pay drive time wages, failure to pay full overtime compensation, missed meal and rest breaks, failure to furnish an accurate itemized wage statement, failure compensate all hours worked, failure to pay compensation upon discharge, and violations of the business code. Further contentions included not fully reimbursing plaintiff and class members for all hours worked (including drive time and overtime); did not provide off-duty meal and rest periods or pay penalties for all missed meal periods; issued inaccurate wage statements, and did not pay all wages due upon plaintiff and class members' termination at the end of each photography season.

The court denied class certification saying the proposed sub-class failed to meet the numerosity requirement and concluding that the lead plaintiff did not have standing to represent current employees. ■



COUNSEL: **Barry Jacobs**
FIRM: **Abrams, Gorelick, Friedman & Jacobson, LLP**
HEADQUARTERS: **New York, NY**

LEGAL MALPRACTICE

Plaintiff, owner/developer, brought an action for legal malpractice against the lawyers who obtained a commercial building permit for it to expand its building. Plaintiff claimed that the defendants committed malpractice by failing to inform it that the commercial permit would lapse unless it was renewed, and that as a result had to forgo the commercial development for less favorable residential development. Original motion for summary judgment was denied. On appeal, it was shown the plaintiff would not have started the expansion without a prospective tenant, and, further the company did not have a single entity committed to becoming a commercial tenant before the decision was made to develop the building for residential use. As a result, plaintiff was unable to demonstrate that his damages were actual and ascertainable, as the law requires. Plaintiff damage claims were for $73 million. Despite the claim of malpractice, it was shown on appeal that plaintiff was unable to establish that the conduct of the lawyers proximately caused it harm because plaintiff was not in a position to utilize the special permit. Order denying defendants' motion for summary judgment is reversed, and motion granted. ■

COUNSEL: **Dean Nichols**
FIRM: **Pitzer Snodgrass, P.C.**
HEADQUARTERS: **St. Louis, MO**

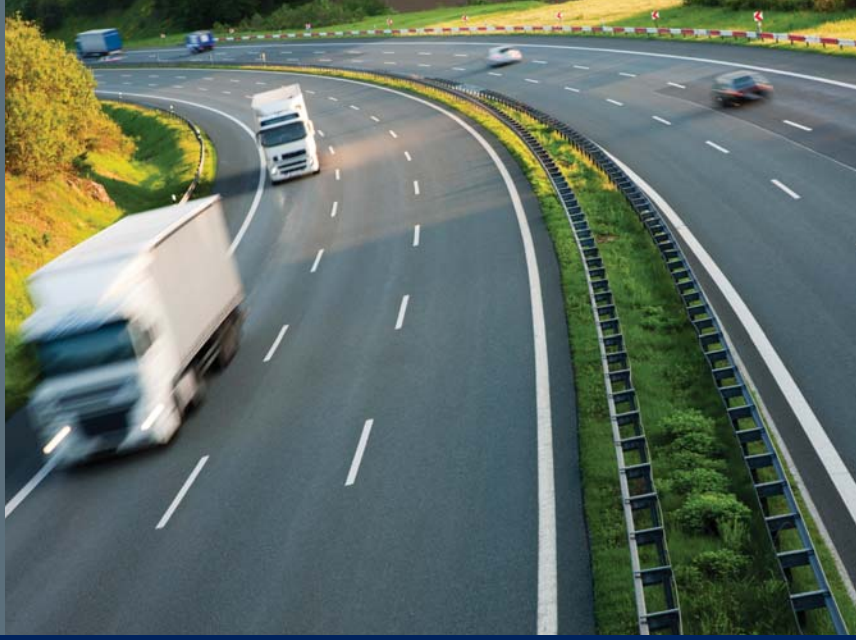
MEDICAL MALPRACTICE

Defense obtained a defense verdict on behalf of a large home health company. The plaintiff underwent bypass surgery with grafts and was discharged from the hospital. Plaintiff's cardiovascular surgeon enlisted the services of the defendant home health care provider to provide home care after discharge including monitoring of the plaintiff's incisions at the harvest sites. A nurse employed by the home health care company provided care and monitoring of the plaintiff in the two weeks after his discharge and visited him four times. Later the plaintiff was diagnosed with multiple serious infections at several of the vein harvest sites and the plaintiff was hospitalized. Verdict held the home health care provider was not negligent. ■

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

BRAIN INJURY

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: **Adam Spicer, Art Spratlin, Misty Albritton, and LeAnn Nealey**
FIRM: **Butler, Snow, O'Mara, Stevens & Cannada, PLLC**
HEADQUARTERS: **Ridgeland, MS**

TRUCKING

Defense team recently obtained a defense verdict for The Waggoners Trucking Company involving a negligence action brought by a woman who suffered a broken neck and severe spinal cord injury when she struck a vehicle stopped in the roadway waiting for the defendant's truck driver to complete a backing maneuver which blocked multiple lanes of the highway. Plaintiff asked for over $3.6 million in closing. Though the plaintiff claimed the truck driver was negligent in light of the time it took for him to perform the maneuver, and in choosing the particular maneuver that he did, the jury was persuaded that the driver was, in fact, not negligent. After a four-day trial, the jury returned its verdict for the trucking company after less than 30 minutes of deliberation. ■

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