



NOTICE OF EMPLOYEE TERMINATION

COUNSEL: **Steve Hughes, Robyn Greifzu, J.D. Luhnig, and Natalie Higgins**
FIRM: **Pitzer Snodgrass, P.C.**
HEADQUARTERS: **Saint Louis, MO**

EMPLOYMENT/WRONGFUL TERMINATION/ DUE PROCESS

Plaintiffs served as Chiefs for the Defendant, Monarch Fire Protection District (the "District"). They were terminated following a Missouri Court of Appeals decision which affirmed sexual discrimination judgments against the District due to their wrongful discrimination against four women who successfully sued the District .

The Plaintiffs then brought a wrongful termination suit seeking \$4,024,661 for alleged wrongful termination, violations of their due process rights, and loss of reputation; for re-instatement to their former positions; and for the resignation of an existing Monarch board member. Plaintiffs' demand was later reduced to \$900,000 as partial settlement. The case proceeded to trial on the issue of punitive damages (capped at \$2,000,000). Plaintiffs asserted that their termination was for political reasons rather than as a result of their alleged involvement in wrongful discriminating against the four women.

Despite the lack of a written employment agreement with the District, or a collective bargaining agreement, Plaintiffs alleged that the District's Official Rules and Regulations provided a procedure for dismissal which created a constitutionally protected property interest in their continued employment. Plaintiffs alleged that those procedures were not followed and that post-termination statements by Defendants violated their protected liberty interest in their reputations. Defendants argued that the District board members were shielded from individual liability for Plaintiffs' state law claims under the doctrine of official immunity. Further, Defense argued that Plaintiffs failed to show that they were entitled to progressive discipline and Plaintiffs did not have a protected property interest in their continued employment as the Plaintiffs were "at will" employees. With regard to the liberty interest claim, Defendants asserted that the Plaintiffs' failure to request a pre- or post-termination hearing precluded any such claim against the District. The Court found for the Defendants on all counts and granted Defendants' Motion for Summary Judgment. ■

COUNSEL: **Wendy J. Stein and Alan L. Landsberg**

FIRM: **Keller Landsberg PA**

HEADQUARTERS: **Fort Lauderdale, FL**

INSURANCE BAD FAITH

Lantana Insurance, Ltd., a QBE Insurance subsidiary, is a property and casualty insurance company. Lantana insured a restaurant owned by Suite 225, which allegedly suffered a covered water loss. The insured claimed benefits under its policy with Lantana, and won an appraisal award, which was confirmed by the U.S. District Court. Final Judgment was entered against Lantana for several hundred thousand dollars plus attorney's fees. Suite 225 then sued Lantana for bad faith claiming additional damages in excess of \$2 million.

After being retained to defend Lantana in the bad faith case, defense discovered that the underlying case was based on a fraudulent and inflated claim. The firm successfully moved to stay the bad faith suit, pending a separate Motion for Relief from Judgment in the original coverage suit to compel appraisal and in which the appraisal award had been confirmed and reduced to judgment. Both cases were venued in the Southern District of Florida. In Florida, a condition precedent to a bad faith action is a judgment against the insurance company, so vacating the original judgment in the underlying suit would necessarily defeat the bad faith case as a matter of law. Following a hearing and a year of argument and extensive briefing, the U.S. Magistrate Judge agreed the claim was fraudulent, and the U.S. District Court, adopting the Magistrate's Report and Recommendation, voided the underlying judgment, and ordered that all monies paid in satisfaction of the original appraisal award be repaid to Lantana. Lantana was also granted a right to recover its attorney's fees in the coverage action. With the judgment void, the bad faith action also fails, and Lantana will move to lift the stay of that suit and request entry of a final judgment in its favor. ■



COUNSEL: **Gary Snodgrass, William Thomas, Tony Hafner**
FIRM: **Pitzer Snodgrass, P.C.**
HEADQUARTERS: **St. Louis, MO**

PROFESSIONAL LIABILITY – ARCHITECT/ENGINEER

Plaintiff sued the structural engineer and lead designer for problems it believed were caused by errors and omissions in the design of a high-rise condominium building on the Lake of the Ozarks in Central Missouri. Plaintiff acquired the property after the owner/developer who was also serving as its own general contractor defaulted on the \$20 million project for failing to pay its subcontractors, drawing nearly \$2.5 million in mechanics' liens. The property was purchased out of receivership and the new ownership group embarked on a "cost recovery" effort by suing the design firm and main subcontractors for claimed problems with the facility, claiming over \$6 million in damages.

Defense engaged in limited written discovery, obtained documents and depositions from other pending lawsuits concerning the property, and was successful in filing a summary judgment motion disposing of all issues as to the design firm. Defense was granted summary judgment on the basis of lack of contractual privity, Missouri's "economic loss doctrine," and relying on a "no consent to assignment" provision in the underlying contract. ■

COUNSEL: **Dean C. Nichols and Chris Meyer**

FIRM: **Pitzer Snodgrass, P.C.**

HEADQUARTERS: **St. Louis, MO**

COMMERCIAL LITIGATION – PRODUCT FAILURE

Plaintiff's puzzle company obtained sanding sealer from the defendant for years. Plaintiff manufactured unique layered wooden puzzles. Plaintiff claimed the defendant specially formulated a sealant for manufacture of children's puzzles. However, the sanding sealer had phthalates which were prohibited by the Consumer Product Safety Information Act as of February 10, 2009. (CPSIA) Plaintiff produced puzzles for sale to Toys R Us that failed a CPSIA test. Plaintiff claimed production was completely shut down for over 6 weeks due to the failed sealant causing plaintiff to lose sales to Toys R Us, Kaplan, and Costco. Plaintiff claimed over \$3.2 million in lost profits and lost business relationships. Plaintiff further claimed it was forced to close down and layoff all of its employees as a result of defendant's actions. The case was tried for 7 days and the jury returned a unanimous verdict in favor of the defendant. ■



DEFENSE COUNSEL: **Kile Turner and Bains Fleming**
FIRM: **Norman, Wood, Kendrick & Turner**
HEADQUARTERS: **Birmingham, AL**

CONSTRUCTION DEFECT

The case involved the construction of a hotel that had numerous defects requiring extensive repairs. Plaintiff's expert testified repairs would easily exceed \$1.2 million. The owner alleged that the general contractor was guilty of negligent construction and suppression related to the construction of the hotel. Specific allegations related to the installation of the exterior siding and the use of lightweight concrete in the construction of the floors on the second and third floors of the building.

Defense obtained judgment as a matter of law in favor of defendant general contractor even though both the defendant and the defendant's expert testified that the defendant general contractor was ultimately responsible for any defective construction.

After four days of trial, which included the testimony of five expert witnesses, the plaintiff rested its case. Defense argued that the general contractor was entitled to judgment as a matter of law based on the plaintiff's failure to establish sufficient proof of damages. After hearing more than two hours of oral argument and consideration of briefs, the Court granted judgment as a matter of law in favor of the general contractor. Upon this ruling, the Court dismissed all of the plaintiff's claims.

Recently, the Alabama Court of Civil Appeals affirmed the judgment in favor of the general contractor. ■

LIABILITY INSURANCE COVERAGE CASE

Following the death of a minor child, four insured defendants in a wrongful death action, who coincidentally had the same homeowners insurance coverage, sought defense and indemnification of the wrongful death action from Universal Property and Casualty Company ("Universal"). Universal filed a declaratory judgment suit against the defendants and won summary judgment. The basis for finding no coverage rested on the intentional act exclusion in the policies, and the fact that the death was not the result of an accident as defined by the policy. Defendants argued that based on Florida's Stand Your Ground law, they were fighting the deceased as a matter of self-defense, and therefore, the incident was a covered event. Following the entry of Summary Judgment in favor of Universal, the Estate dismissed its action against all of the insured Defendants without the payment of any indemnity. Two of the defendants appealed. On appeal, Universal argued that the case was moot due to the dismissal of the wrongful death suit, and because the policy language did not support coverage. The Second District Court of Appeal dismissed the appeal based on mootness. ■



COUNSEL: **Raymond L. Robin**
FIRM: **Keller Landsberg PA**
HEADQUARTERS: **Fort Lauderdale, FL**

\$90 MILLION DAMAGE CLAIM – JURISDICTION, STATUTE OF LIMITATIONS

Plaintiff, a pharmaceutical company, sued Nordion Inc., a publicly traded company, and its affiliates (“Nordion”) in US District Court for the Southern District of Florida, claiming that Nordion was negligent in preparing the Master Cell Bank to be used in connection with the development of Plaintiff’s breakthrough spinal cord injury drug. Plaintiff alleged that Nordion used animal-based raw materials which created a risk of mad cow disease and would therefore prevent or delay FDA approval. Plaintiff claimed that much of the development work done had to be redone which would result in a four-year delay in time to market and some \$90 million in damages. Although the case was filed in Florida where the statute of limitations is four years, Nordion filed a Motion for Summary Judgment arguing that under the “significant relationship” test, the law of Quebec, Canada or Washington State would apply. Both Quebec and Washington have three year statutes of limitations. Nordion argued that the case was time-barred because Plaintiff filed it three and one half years after Plaintiff became aware of the issue. After Nordion filed its Motion for Summary judgment, Plaintiff accepted a settlement on terms very favorable to the defendants. Although the precise terms of the settlement were confidential at Plaintiff’s request, subject to Nordion’s duties to make the disclosures required of a publicly traded company, Nordion issued a press release on September 24, 2013, announcing that the case had been resolved “for a nominal amount” and that “[t]he settlement is expected to have a non-material impact on Nordion’s financial position, which the Company intends to report in its fourth quarter fiscal 2013 results.” ■

DEFENSE COUNSEL: **Richard K. Bennett and Scott Fisher**
FIRM: **Harman, Claytor, Corrigan & Wellman**
HEADQUARTERS: **Richmond, VA**

INVERSE CONDEMNATION ACTION AGAINST CITY BY DEVELOPER

A medium-sized city in Virginia was developing its property and conducting wetland mitigation at the request of the U.S. Army Corps of Engineers. City installed small check dams in a drainage ditch on its property to flood approximately 20 acres and convert it to wetlands as mitigation for other wetlands destroyed on the project. A developer which owned 300 acres of adjacent property sued the City claiming that this action converted much of its property from uplands to wetlands, resulting in an agreed difference in value of \$10.5 million. The City contended that the plaintiffs' property was largely wetlands to start with and that its actions had no impact on that property. Each side had five experts to support their contention. After a four day trial, the case went to the jury, which found in favor of the City. ■



DEFENSE COUNSEL: **George T. “Buck” Lewis**
FIRM: **Baker, Donelson, Bearman & Caldwell, PC**
HEADQUARTERS: **Memphis, TN**

MORTGAGE AND BORROWER FRAUD

Case involved a publicly traded national bank in an American Arbitration Association proceeding in which an adverse bank sought repurchase of approximately 500 home equity loans totaling approximately \$30 million in unpaid balances. The case included allegations relating to borrower fraud, mortgage insurance and violation of underwriting guidelines relating to appraisals, income verification, loan to value and debt to income ratios, reserves and borrower applications. The arbitration was litigated for over three years and included five separate hearings before a panel of three arbitrators. The parties are in the process of finalizing a confidential negotiated settlement. ■

DEFENSE COUNSEL: **David P. Corrigan and Scott Fisher**
FIRM: **Harman, Claytor, Corrigan & Wellman**
HEADQUARTERS: **Richmond, VA**

WRONGFUL DEATH, SCHOOL BULLYING SUICIDE – NEGLIGENCE, GROSS NEGLIGENCE ACTION AGAINST SCHOOL OFFICIALS

Defense retained to represent a high school principal, two assistant principals, and a guidance counselor in a school bullying suicide case. This case received attention from local, state, and national media. There were claims of negligence and gross negligence. The allegations were that the school officials failed to protect an alleged victim of school bullying and that his suicide was a result of the school officials' alleged failure to adequately address his complaints of bullying. \$10 million in compensatory damages were sought. The negligence claim was dismissed in conjunction with a sovereign immunity plea before trial, and the gross negligence claim was tried. After four days of trial, the case was dismissed pursuant to a plea in bar on the grounds that the alleged victim was found to be of sound mind at the time of his death such that his suicide constituted an illegal act under Virginia law for which a wrongful death recovery is not permitted. ■



DEFENSE COUNSEL: **Gregg Toomey**
FIRM: **Bunnell & Woulfe P.A.**
HEADQUARTERS: **Ft. Lauderdale, FL**

CIVIL RIGHTS – FALSE ARREST – RICO – SHERIFF’S OFFICE

Gregg Toomey, Resident Partner in the Fort Myers Office, obtained defense verdicts for his clients in the United States District Court for the Southern District of Florida. The five-week trial in *Caravella v. Miramar, et al.*, Case No. 0:11-cv-61607-JIC, involved claims of false arrest, conspiracy, negligence, State and Federal RICO and various federal constitutional claims, all arising from the 1983 rape and murder of Ada Jankowski in Broward County. The Plaintiff, who was fifteen years-old at the time, was sentenced to a life term in 1984. The conviction was vacated by a Broward County judge in 2010, based on DNA evidence, and the Plaintiff was released from prison. In this suit, the Plaintiff claimed his confession of guilt and subsequent conviction were the result of illegal coercion, and sought damages for his twenty-six-year incarceration. The pretrial demand was more than \$15 million.

Toomey represented the Sheriff’s Office and one of its former homicide detectives at trial, which was heavily covered in the media. At the close of the Plaintiff’s case, Judge Cohn granted the Sheriff’s Motion for Judgment as a Matter of Law, and the case against the Co-Defendants and the former Sheriff’s Office detective proceeded to the jury. The three male, five-female jury deliberated nearly three days before returning a verdict in favor of Toomey’s client. Two Co-Defendants were found liable for \$7 million in damages. ■

DEFENSE COUNSEL: **John W. Zotter**

FIRM: **Zimmer Kunz, PLLC**

HEADQUARTERS: **Pittsburgh, PA**

PRODUCT LIABILITY – ELECTRIC KILN MANUFACTURER

The 46 year old Plaintiff worked as a recreational therapist at a Veterans Affairs Hospital. The Plaintiff's duties included operating an electric kiln in the Ceramics Department at the hospital. Plaintiff alleged that when he turned on the electric kiln he sustained an electric shock through his right hand. Plaintiff claimed a traumatic brain injury from the electric shock. In addition, the Plaintiff alleged that he had to have cervical fusion surgery as a result of hitting his head following the electric shock. Plaintiff had not worked since the incident and claimed past wages of \$140,000, future wages of \$840,000 and past medical bills of \$100,000.

At trial, the defense argued that the product was not defective, that the Plaintiff did not sustain an actual electric shock, and that his fusion surgery was unrelated to the alleged incident. Plaintiff's final pre-trial demand was \$850,000. No settlement offer was made on the case. After a five day trial in the United States District Court for the Western District of Pennsylvania, the jury returned a verdict for the Defendant. ■

ENGINEERING JOINT DEFENSE AGREEMENT/DESIGN AND CONSTRUCTION DEFECT CASE

A structural engineering firm was successfully defended and received summary judgment in a claim that it breached a joint defense agreement by failing to pay a pro rata share of all defense costs associated with litigation involving the design and construction of the Petersen Events Center on the campus of the University of Pittsburgh. The structural engineering firm had a limited role in providing engineering support for the design and construction of the arena. The architects on the project settled one lawsuit and had a multi-million dollar verdict entered against them in the other lawsuit. The two lawsuits against the architects were brought by the University of Pittsburgh and the Pennsylvania Department of General Services.

The joint defense agreement was entered into by the architects, their engineer (who was a non-party to the litigation), and the structural engineering firm, who was also a non-party to the defect litigation. The structural engineering firm participated in defending the lawsuits, but had separate defense counsel. The architects and the non-party engineering firms were all insured by the same insurer, but under separate policies. The architects and the other engineering firm agreed to settle the one lawsuit through their insurer, but the structural engineering firm declined to contribute or to agree to the settlement.

This lawsuit was commenced in the Court of Common Pleas of Allegheny County, Pennsylvania. It was removed to the United States District Court for the Western District of Pennsylvania based on diversity jurisdiction. Originally, the architects attempted to claim that the structural engineering firm was responsible for a pro rata share of all defense costs as well as a portion of the prior settlement and the outstanding verdict. After the first motion to dismiss, they amended their complaint to assert the claim as to defense costs only that exceeded \$3,000,000 in total for a pro rata share of over \$750,000.

After discovery and extensive filings, the federal district court granted summary judgment ruling that there was no breach of the joint defense agreement. The language of the joint defense agreement was unambiguous and did not require the parties to the joint defense agreement to pay a pro rata share of all defense costs. Further, the federal district court analyzed extrinsic and parol evidence and resolved evidentiary disputes as to hearsay and expert testimony admissibility. In doing so, the court still found that the joint defense agreement did not require the parties to pay a pro rata share of all defense costs and that the structural engineering firm never agreed to pay such a pro rata share. ■



COUNSEL: **John W. Ong**
FIRM: **Cranfill Sumner & Hartzog LLP**
HEADQUARTERS: **Raleigh, NC**

PROFESSIONAL LIABILITY CASE AGAINST PHYSICAL THERAPIST

Plaintiff claimed to have suffered a torn head of the biceps tendon as a result of negligent physical therapy in which it was claimed that the therapist inappropriately manipulated the Plaintiff's arm, necessitating surgical intervention. Plaintiff's treating surgeon testified that based on the plaintiff's description of the incident and his surgical findings, the incident may have been the cause of the injury and subsequent surgery. Defense counsel was able to obtain a directed verdict following the close of the plaintiff's evidence based on the lack of specific testimony regarding the probability that the incident was the cause of the injury. ■

PUTATIVE CLASS ACTION, LEGAL MALPRACTICE, CONSPIRACY, RACKETEERING, RICO, NC-RICO

Plaintiffs filed a putative class action in Federal Court seeking to recover over \$1 billion in damages arising from Plaintiffs' relationships with credit repair companies which Plaintiffs alleged operated debt elimination and credit repair scams. Defendant attorney and law firm were alleged to have conspired with the credit repair companies. The causes of action against defendant and firm included unjust enrichment, conversion, violations of NC RICO and Federal RICO (i.e. racketeering), violations of the Credit Repair Organizations Act, conspiracy, negligence, fraud, and tortious interference with prospective business advantage. Defense filed a motion to dismiss for failure to state a claim. Court dismissed all claims with prejudice. ■



COUNSEL: **David D. Ward and PK Shere**
FIRM: **Cranfill Sumner & Hartzog LLP**
HEADQUARTERS: **Raleigh, NC**

MEDICAL MALPRACTICE

This is a medical malpractice/wrongful death action alleging negligence on the part of a trauma surgeon to timely recognize and appropriately respond to a substantial hemorrhage in the patient's spleen. The patient coded on the same day and remained hospitalized for another two months and died several months later. Plaintiff's expert linked the alleged negligence with patient's cause of death. Defense dealt with several issues including the fact that defendant placed a femoral cordis catheter to provide more efficient delivery of blood products to the patient. Unfortunately the catheter perforated the vein and ended up delivering blood products into the patient's peritoneal cavity. A radiologist conducted a splenic embolization. However, with the blood going into patient's peritoneal cavity and not her veins the embolization did not help. When she coded defendant opened her abdomen at bedside, discovered the catheter in her peritoneal cavity not her vein and took her to surgery for a splenectomy.

The jury returned a defense verdict. ■



COUNSEL: **Rob Griffin and Chip Campbell**
FIRM: **Cranfill Sumner & Hartzog LLP**
HEADQUARTERS: **Raleigh, NC**

FATAL TRUCKING ACCIDENT - ALLEGED BROKER AND SHIPPER LIABILITY

Plaintiffs, a family of four, were travelling through North Carolina when they were rear-ended by a tractor-trailer. The accident caused the death of a 23 year old and paralyzed her mother from the waist down. The husband and son were also injured. The life care plan of the paralyzed mother was valued up to \$3,800,000 and her future lost earning capacity was around \$1,000,000. Her past medical expenses were over \$600,000. The economic loss of decedent was \$1,200,000. In addition to the economic damages, the family sought damages for past and future pain and suffering, permanency, loss of companionship, society and services. There were no statutory limits that applied to Plaintiffs' damages.

Due to the limited liability limits of the motor carrier the plaintiffs sued the truck broker and shipper asserting multiple causes of action including negligent selection/hiring/retention, agency, joint venture and punitive damages. The defense included several "standard of care" experts to combat Plaintiffs' experts.

The case was litigated for several years. After discovery the defense moved for summary judgment to dismiss all claims. In response to the summary judgment motion, Plaintiffs filed a second amended complaint alleging 10 additional causes of action. For the hearing on the motion, defense briefed and argued the summary judgment motion, the amended complaint actions, and the opposition of the second amended motion alleging 10 additional causes of action.

The Court granted summary judgment in favor of defendant one month before trial. ■

UNION DISCRIMINATION CLAIMS AGAINST CITY

A union, the president of the union, and several members of the union brought claims under the North Carolina Constitution for free speech, right of association, due process, and equal protection. The union and its members sought class status, and claimed that the City and the former Police Chief had engaged in intimidation of the union and alleged several adverse employment actions taken against members of the union, including the investigation and termination of the former president. Plaintiffs collectively sought injunctive relief to prohibit the City or its officials from “threatening or intimidating” union members in the future. The former president also sought reinstatement and monetary damages. The case received significant media attention.

Defendants moved to dismiss on the grounds that the City’s internal grievance procedure constituted an adequate state remedy, and that the plaintiffs did not have standing to seek injunctive relief because they could not allege the likelihood of future injury. Following oral arguments, Defendants’ Motion to Dismiss was granted and all claims were dismissed. ■

RETALIATION, WRONGFUL DISCHARGE, DISABILITY, DISCRIMINATION AND CONSTITUTIONAL VIOLATIONS

Former employee brought claims for retaliation under REDA, wrongful discharge in violation of public policy, violation of the North Carolina Persons with Disabilities Protection Act, and violation of the due process and equal protection clauses of the North Carolina Constitution.

Plaintiff sought compensatory and punitive damages, including back wages. Plaintiff alleged that she had been terminated in retaliation for filing a worker's compensation claim following an on the job injury, and was denied accommodations requested as a result of her limitations following her injury. On a motion to dismiss, all claims were dismissed except for the REDA and wrongful discharge claims. Following discovery, Defendants moved for summary judgment on the grounds that the plaintiff could not establish a causal connection between her filing of a worker's compensation claim and her discharge; that Defendants had legitimate grounds to terminate Plaintiff's employment; and, that Plaintiff was barred from asserting that she could perform the essential functions of her job given her prior testimony in her worker's compensation case where she asserted she was unable to work. Following oral argument, the Court granted summary judgment for Defendant as to all remaining claims. ■

EXCESSIVE FORCE ALLEGATION AGAINST INDIVIDUAL POLICE OFFICER

Plaintiff brought suit alleging excessive force was used by two Raleigh police officers who, after obtaining a warrant, had a nurse forcefully draw blood from a DUI suspect. Plaintiff claimed that the officers choked him and threw him on the ground when he asked to see the warrant. Plaintiff named both officers as defendants in the case. A motion to dismiss the individual officers was filed on the grounds that the Plaintiff had not met the pleading requirements set forth in the recent NC Supreme Court case *White v. Trew*. Although Plaintiff stated in the body of his complaint that the officers were sued in both their individual and official capacity, he did not state this in the caption or prayer for relief. As a result, the Court treated Plaintiff's claims as official capacity claims, and dismissed them as duplicative of the claims against the City. The City, represented by the City Attorney's office, was also dismissed on a 12(b)(6) motion. ■

DEFENSE COUNSEL: **Paul J. Suozzi and Ryan Cummings of Hodgson Russ**

FIRM: **Hurwitz & Fine, P.C.**

HEADQUARTERS: **Buffalo, NY**

PRODUCT LIABILITY - MEDICAL DEVICE

Plaintiff, a 36 year old healthcare aide, underwent disc fusion which required the installation of medical devices designed and manufactured by the defendant. The original injuries were sustained in a work related accident. Approximately five or six months after surgery, one of the fixture screws fractured. Plaintiff claimed that the broken screw caused a fusion failure necessitating additional surgeries and rendering her disabled. The plaintiff's expert offered the opinion that the screw fracture was caused by a design error. Defendant countered with expert testimony that the failure of the screw was due to instability caused by inadequate insertion of the screw into the bone.

After a week of trial the jury returned a unanimous verdict in favor of defendant party.

■

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

PREMISES

The case involved the Alabama Employers Liability Act (for employment cases not covered by the workers compensation statute). The plaintiff alleged the stairs on the premises of her employer were defective. She also alleged a permanent injury to her foot with past and permanent future lost wages. The plaintiff called the city building inspector to attempt to establish the stairs did not meet code. Defense convinced the jury the building inspector's opinions lacked credibility because he used the wrong code and generally was not qualified. Further, the defense obtained testimony from an expert architect to testify that the stairs not only met the applicable code, but were generally safe and did not present a danger. The jury returned a defense verdict in less than 20 minutes. ■

DEFENSE COUNSEL: **J. Carter Fairley and S. Brent Wakefield**
FIRM: **Barber, McCaskill, Jones & Hale, PA**
HEADQUARTERS: **Little Rock, AR**

GENERAL NEGLIGENCE, NEGLIGENT TRAINING AND SUPERVISION

Plaintiff sued a worldwide drilling contractor and its employee for negligence arising from its participation in the casing operations of a gas rig. Defendant Tesco was hired as the casing contractor on the job. Plaintiff alleged the defendant owed him a duty under common law and by contract to follow the owner's safety policies on the rig. Plaintiff was injured while performing routine maintenance on the rig and while defendant's employee was present on the rig floor. The trial court determined, and subsequently, the 8th Circuit Court of Appeals affirmed, that the defendant had no duty to guard against risks that it could not reasonably foresee under common law or the parties' contract for services. ■



COUNSEL: **Tarush R. Anand and John G. H. Davis**
FIRM: **Brown Sims**
HEADQUARTERS: **Houston, TX**

PRODUCTS LIABILITY CLAIM

This case involved an 8-month old girl who was seated in a baby seat on a table. The child's mother was feeding her and simultaneously preparing dinner. According to the plaintiffs, the girl suddenly got out of her baby seat and fell to the floor. She sustained a depressed skull fracture as a result of the fall. Although medical records did not identify any brain injury, the plaintiffs' medical expert testified that the girl sustained a traumatic brain injury as a result of the fall.

The plaintiffs sued Bumbo International Trust and Target Corp. in federal court for strict products liability, negligence, and gross negligence. Brown Sims serves as national counsel for Bumbo International Trust and also represented Target Corp. in this case. Defense counsel argued that the seat was not meant to restrain children and that it was safe for its intended use as a device that simply allows infants to obtain an upright seating position while they are too young to do so themselves. Defense counsel argued that the seat included warnings telling parents that children could get out.

The plaintiffs sought \$1.5 million in actual damages and at least \$5 million in exemplary damages. The jury unanimously sided with the defense and returned a full defense verdict. ■

DEFENSE COUNSEL: **Amanda Jansen and Randy Stefani**

FIRM: **Ahlers & Cooney, P.C.**

HEADQUARTERS: **Des Moines, IA**

EMPLOYMENT DISCRIMINATION

Plaintiff sued her former employer, Casey's General Stores, Inc. (one of the Midwest's largest convenience store chains, and also the country's fifth-largest pizza chain), after her employment was terminated for numerous policy violations. Plaintiff claimed the reasons asserted were pretexts for age and disability discrimination. Plaintiff's alleged disability was her allergy to onions. She also claimed her termination constituted a breach of contract and intentional infliction of emotional distress. The court granted Defendant's motion for summary judgment on the common-law claims and the age discrimination claim. The disability discrimination claim, however, proceeded to a five-day jury trial. After less than two hours of deliberation, the jury returned a verdict for the defendant. This case was unique because it was one of the first employment discrimination cases alleging that a food allergy constituted a disability. Plaintiff claimed that mere exposure to an environment where onions were chopped caused her to suffer severe migraines and other symptoms, including blackouts. The jury, however, found her condition did not meet the statutory definition of a disability - i.e., an impairment that substantially limited Plaintiff in a major life activity. ■

DEFENSE COUNSEL: **Veronica Bates, Katherine Elrich, and Alex Shilliday**

FIRM: **Hermes Sargent Bates, LLP**

HEADQUARTERS: **Dallas, TX**

INSURANCE COVERAGE, COMMERCIAL GENERAL LIABILITY POLICY

Insured sought coverage for claims asserted against it in a \$20 million class action lawsuit regarding a weight loss product. The Fifth Circuit Court of Appeals affirmed the district court's order granting summary judgment in favor of the insurer. The court ruled that the insurer had no duty to defend or indemnify the insured because the underlying lawsuit did not seek recovery for bodily injury as required by the insurance policy. ■

DEFENSE COUNSEL: **Veronica Bates and Alex Shilliday**
FIRM: **Hermes Sargent Bates, LLP**
HEADQUARTERS: **Dallas, TX**

INSURANCE COVERAGE, COMMERCIAL AUTO POLICY

Declaratory judgment action brought by co-insurer regarding priority of coverage for motor vehicle accident involving \$1.8 million settlement entered on behalf of insured trucking company. The federal district court awarded summary judgment in favor of the client, determining that the tractor and trailer at issue had been deleted from the commercial auto policy issued by the client. ■



COUNSEL: **James M. Campbell, David M. Rogers, and Michelle M. Byers**
FIRM: **Campbell Campbell Edwards & Conroy P.C.**
HEADQUARTERS: **Boston, MA**

AUTOMOTIVE LIABILITY, FORD EXPEDITION ROLLOVER

Case involved the rollover of a 2004 Ford Expedition. Mr. Zeolla was a third-row passenger in the Expedition when it collided with a median barrier which initiated a three-quarter roll. Mr. Zeolla was not wearing his seatbelt and was ejected and sustained fatal injuries. The plaintiff Mrs. Zeolla claimed the absence of fixed as opposed to moveable tempered glass windows and a rollover activated side curtain airbag in the third row seating positions rendered the Expedition unreasonably dangerous and defective and that these defects were the cause of her husband's ejection from the vehicle and death.

The defense argued that even if the vehicle was equipped with fixed tempered glass windows and rollover activated side curtain airbags, Mr. Zeolla likely would have been ejected and died because he was not wearing his seatbelt and he was ejected during the median barrier impact before the rollover began. Defense also argued that it was not possible to have extended the side curtain airbag into the third row of the 2004 model year Expedition due to various technological hurdles. Defense demonstrated that the Expedition was reasonably safe as designed, that Ford was the first in the world to develop safety canopy technology, and was actively working to implement the system into the third row of the Expedition. It also demonstrated that if Mr. Zeolla had been wearing his seatbelt, he would not have been ejected from the vehicle.

After a three-week trial, the jury deliberated for a day and a half and returned a verdict for Ford finding that the Expedition was not unreasonably dangerous and defective and that Ford was not negligent. ■

MEDICAL MALPRACTICE, SUICIDE OF PATIENT AT PSYCHIATRIC HOSPITAL

The Connecticut Supreme Court reinstated a jury verdict in favor of the firm's client, a psychiatric hospital, in a case arising out of a patient's suicide. When the case was tried in late 2007, the jury returned a verdict finding that the hospital did not deviate from the requisite standard of care, despite the fact that the patient had attempted to commit suicide in the same room at the hospital on a prior admission a few years earlier. The plaintiff successfully appealed, claiming that the jury was unfairly tainted by pretrial publicity. In addition to reversing the lower appellate court ruling in favor of the plaintiff, the Supreme Court exercised its supervisory authority over the state's courts to issue a new rule governing jury selection in all trial courts in the state of Connecticut designed to protect against jurors' exposure to media accounts of trials.

Connecticut remains the only state in the country that permits individual voir dire as a matter of right in all civil cases. In addition, civil jury selection in the state is typically conducted without the involvement of a judge unless there is a disagreement about the propriety of the questions being asked or there is a challenge for cause with respect to a juror's ability to serve. Jury selection for the case took three weeks. After completion of jury selection and just prior to the start of evidence, the New York Times ran a lengthy article about the decedent's suicide and the resulting lawsuit. Prior to the start of evidence, plaintiff's counsel asked the court to poll the jury to determine whether any of them had read the article. The trial court denied this request, in part because the jurors had been advised by the jury clerk during the jury selection process to avoid any media accounts about the case. The court also instructed the jury throughout the trial that it could only decide the case based upon evidence presented during the trial.

The plaintiff appealed the jury's verdict in favor of the hospital and the Connecticut Appellate Court reversed, finding that the trial court abused its discretion by not polling the jury "in light of the inflammatory nature of the article and the potential prejudice and undue influence that exposure [to it] would have on the jury." In a unanimous decision, the Supreme Court reversed the appellate court's ruling and ordered that judgment be entered in the hospital's favor in accordance with the jury's verdict. The court held that the jury clerk's instructions given to potential jurors during jury selection to avoid extraneous sources of information were sufficient and that, in the absence of any evidence that any jurors read the article, the trial court was within its discretion to deny the request for a poll of the jury.

However, the court also directed that all trial courts immediately adopt a new procedure to protect against jurors' possible exposure to media accounts of cases, both prior to and during trial. The new rule requires that the presiding judge instruct all jurors, once selected, that (1) it is their sworn duty to decide the facts of the case based only upon evidence presented at trial; (2) that this duty requires the juror to avoid all publicity about the case and all communications with anyone else about the case or the issues involved; and (3) if, despite the juror's best efforts, he or she is exposed to such publicity or communications, the juror will immediately inform the court about such exposure in writing so that the court can follow up, as necessary, to ensure that all parties' right to a fair trial is protected. ■

DEFENSE COUNSEL: **Michael D. Hutchens and Elizabeth Snyder Poeschl**

FIRM: **Meagher & Geer, PLLP**

HEADQUARTERS: **Minneapolis, MN**

PROFESSIONAL LIABILITY, ELECTRICAL CONTRACTOR, MISSION CRITICAL ELECTRIC SYSTEM

One of the world's largest architectural and engineering firms retained Meagher & Geer to represent it in connection with the alleged failure of the electrical underground feeder system for a mission critical Target Data Center in Minneapolis. The general contractor sued the electrical engineer for contribution on a \$7 million settlement that it reached with Target. The case went to trial, and the jury found a nominal percentage of fault on the electrical engineer. The verdict was a fraction of the demand, and it was low enough to avoid a multimillion dollar attorney's fee claim. The case was noteworthy for its extraordinary complexity, which was boiled down to terms that the jury could understand and appreciate. ■

CYCLING WRONGFUL DEATH, NEGLIGENCE OPERATION, NEGLIGENCE SUPERVISION AND NEGLIGENCE TRAINING

This wrongful death action arose out of a fatal collision between an armored vehicle and a bicyclist. The decedent was a twenty-three year old single woman and an avid bicyclist. The bicyclist was preparing to pass the armored vehicle on the right (which is permissible). The plaintiff alleged that the armored vehicle made a sudden right turn across the lane markers causing the bicyclist to hit the armored vehicle. Upon impact, the bicyclist was propelled forward and she was fatally injured by the armored vehicle less than two seconds later.

Plaintiff asserted claims of negligent operation against the driver, negligent supervision against the truck captain and negligent training against the corporate defendants. Plaintiff also sought punitive damages; however, that claim was dismissed before trial. Key facts were that the bicyclist was always behind the armored vehicle, the armored vehicle never passed her, and the bicyclist was traveling at a rate of speed almost twice that of the armored vehicle. The driver testified that he did not see the bicyclist when he looked in the mirrors before starting the turn. No charges were brought against the driver by the Northampton Police. Demonstrative testing on the accident route was very helpful in illustrating visibility issues for bicyclist and the armored vehicle. After a seven day trial, the jury deliberated for an additional two days and returned a defense verdict. ■



COUNSEL: **Michael D. Corey**
FIRM: **Jermain Dunnagan & Owens, P.C.**
HEADQUARTERS: **Anchorage, AK**

PRODUCT LIABILITY – AVIATION COMPANY

Plaintiff, who severed two fingers on fan blades of an engine powering an aircraft heater, pursued a product liability claim against the company that refurbished the airport ramp equipment. Plaintiff asserted that the company failed to adequately guard the fan blades. Defendant argued that the cowling encasing the entire engine constituted effective guarding, and that the plaintiff defeated the guarding by opening a hatch and reaching his hand into the engine compartment. Plaintiff said he opened the hatch to touch the engine to determine whether the engine was warm and that air flow drew his hand into the fan. The defense expert testified that the cowling was adequate guarding and that the injury could not have occurred as the plaintiff claimed. The jury returned a complete defense verdict after an hour of deliberation. ■



COUNSEL: **Matthew Singer**
FIRM: **Jermain Dunnagan & Owens, P.C.**
HEADQUARTERS: **Anchorage, AK**

WHISTLEBLOWER AND FIRST AMENDMENT RETALIATION CLAIMS

Plaintiffs, two disgruntled police officers, sued the City of Fairbanks and each sought multi-million dollar judgments for lost wages and retirement benefits. Plaintiffs claimed they suffered adverse employment actions after bringing whistleblower claims to the Mayor. Out of eight causes of action, the trial court granted summary judgment as to all but claims for First Amendment retaliation. The case then proceeded to a three week jury trial, which ended in a mistrial when the jury could not reach a unanimous verdict. After trial, the federal district court granted a defense motion for judgment as a matter of law, thereby directing the verdict in favor of the defense. ■

DEFENSE COUNSEL: **Christopher A. Tinari and Michael R. Miller**

FIRM: **Margolis Edelstein**

HEADQUARTERS: **Philadelphia, PA**

CIVIL RIGHTS/POLITICAL DISCRIMINATION/ FIRST AMENDMENT RETALIATION

Plaintiff, a road laborer foreman, alleged he was terminated from employment for supporting political opponents of Township Supervisors. Plaintiff originally claimed that his termination violated an employment contract he had with the Township, but Defense Counsel convinced the federal district court for the Middle District of Pennsylvania that he did not have an enforceable contract as a matter of law. Plaintiff sought damages in excess of \$800,000 on the political discrimination and First Amendment retaliation claims. After discovery closed, Defense Counsel filed a motion for summary judgment alleging, among other things, that Plaintiff had not satisfactorily alleged sufficient facts to connect his termination to his prior support of political opponents. The Court granted defense counsel's summary judgment motion. ■



DEFENSE COUNSEL: **Robert S. Campbell**
FIRM: **Pessin Katz Law, P.A.**
HEADQUARTERS: **Baltimore, MD**

FBI AGENT HIT BY TRACTOR-TRAILER

The Plaintiff, an FBI agent, alleged that a tractor-trailer operated by Carroll County Foods, Performance Food Group, had rear-ended her passenger vehicle while travelling in excess of 50 miles per hour. The tractor-trailer driver asserted that the passenger vehicle had moved into the truck's lane of travel at an excessively slow speed for existing travel conditions. The force of the accident was sufficient to put the trailer on two wheels and to spin the passenger vehicle off of the roadway, also on two wheels. There was a supportive independent witness for each side. Under cross-examination, the Plaintiff's testimony wavered as to what lane she had been traveling in and provided testimony raising the inference that she may have fallen asleep or lost consciousness while driving. The Court found in favor of the Defendants as to the issue of negligence determining that the Plaintiff had failed to prove a prima facie case. ■

DEFENSE COUNSEL: **Brian P. Voke**
FIRM: **Campbell Campbell Edwards and Conroy P.C.**
HEADQUARTERS: **Boston, MA**

PRODUCT LIABILITY/AMPUTATION

Plaintiff, a 55-year-old machinist, brought a product liability action in United States District Court of Massachusetts after he suffered the amputation of two fingers on his dominant hand when he slipped and fell while operating an alligator shear. He underwent 3 surgeries on his hand and was permanently disabled. Plaintiff alleged that the guarding provided with the shear was defective and unreasonably dangerous and violated industry standards and OSHA regulations. Plaintiff's expert testified that the shear should have been provided with an interlocked guard, two-handed controls which would have prevented the operator from placing his hand in the area of the cutting blade and or a light curtain. Plaintiff's settlement lowest demand at mediation was \$1.6 million. The jury returned a defense verdict. ■

DEFENSE COUNSEL: **Barbara Marschalk**

FIRM: **Drew, Eckl & Farnham, LLP**

HEADQUARTERS: **Atlanta, GA**

COMPLAINT TO COMPEL ARBITRATION

The plaintiffs filed a lawsuit against a nursing home and an attending physician, alleging both defendants were negligent in their treatment of the plaintiffs' deceased mother. Plaintiffs brought their wrongful death and estate claims in state court. However, before the decedent was admitted to the facility, the decedent's executor and attorney-in-fact, one of the plaintiffs, signed an arbitration agreement agreeing to submit any future claims against the facility to binding arbitration. In light of this agreement, the nursing home defendant filed a separate lawsuit in federal district court based on diversity jurisdiction, requesting that the court enter an order compelling the plaintiffs' claims in their entirety against the nursing home to arbitration.

The plaintiffs, defendants in the federal action, opposed the motion arguing that the wrongful death beneficiaries' claims were not subject to arbitration because they were non-signatories to the agreement. They also raised additional defenses relating to the validity of the arbitration agreement. The federal district court disagreed, finding that all of the claims were subject to arbitration and the agreement was valid. Accordingly, the federal judge compelled the claims against the nursing home to arbitration. ■

CONSTRUCTION INJURY

The case involved a spinal cord injury that left the plaintiff a paraplegic. The company was awarded a contract by the State of Connecticut for rehabilitation work on a draw bridge spanning the Housatonic River between Stratford and Milford, Connecticut. The plaintiff, a senior project engineer for the company, was injured while taking quantity measurements of steel grating that had been installed in one of the bridge's "bascule pits." As the plaintiff was taking the measurements, he backed off the edge of the grating and into a ladder way opening. He fell approximately 10 feet and suffered a spinal injury that left him paralyzed.

In order to circumvent the workers' compensation bar to tort claims against his employer, the plaintiff alleged that the company intentionally created a dangerous situation, knowing with substantial certainty that the plaintiff would be injured, commonly known as the "intentional conduct/substantial certainty" exception to the workers' compensation bar. The plaintiff claimed that a temporary swing gate that was installed at the ladder way opening had been tied open and that the company removed all other forms of fall protection and instructed the plaintiff to take the measurements without safety precautions.

Defense argued that the plaintiff was aware that the gate was tied open and that he made the decision to take the measurements without attempting to have it closed. Further, the plaintiff testified that he was not instructed by the company to take the measurements with the gate tied open or without fall protection. The plaintiff also testified that safety was a priority for the company and that safety issues were always timely addressed.

The plaintiff made a demand of \$20,000,000 at mediation. Settlement discussions were complicated by a significant workers' compensation lien and no firm offers were made. The summary judgment motion was granted. ■

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